

(1976) 09 KAR CK 0001
In the Karnataka High Court

Kamalamma Muckanappa

APPELLANT

Vs

G.S. Panduranga Rao

RESPONDENT

Date of Decision : 13-09-1976

Acts Referred:

Evidence Act, 1872 — Section 116

Karnataka Rent Control Act, 1961 — Section 21 (1) (h), 29, 29 (4)

Citation : AIR 1977 Kar 70 : (1976) ILR (Kar) 1799 : (1976) 2 KarLJ 269

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : S.K. Venkataranga Iyengar, for the Appellant; M.S. Purushotthama Rao, for the Respondent

Judgement

1. This revision petition is directed against the order of the Additional Civil Judge, Bangalore, whereby he has rejected an application of the petitioner-landlord u/s 29(4) of the Karnataka Rent Control Act, 1961, in as much as he directed that there was a dispute of the respondent being a tenant and unless that dispute was resolved, no jurisdiction could be exercised u/s 29 (4). The question arises in this manner. The petitioner-landlord filed an eviction petition under Sec. 21 (1), Provisos (a) and (h) seeking the relief of delivery of possession against the respondent-tenant. It was stated that there was no dispute as to the rent payable, which was at a monthly rate of Rs. 275/-. Upto 26-2-1973 when the petition was filed, a sum of Rs. 2750/- was due and payable. The respondent-tenant filed his counter statement and pleaded that the petitioner is not the owner of the premises and that he is not even his tenant. It was further pleaded that so much amount of rent was not due as considerable amount was paid by the tenant towards the house tax, water and electric charges. According to the respondent, he is the Secretary of a school by name New Horizon School which is being run in the premises. The school is a registered body under the Societies Registration Act and has a legal entity of its own. On this ground, the plea was founded that the respondent by name G. S. Panduranga Rao being the Secretary of the school was not the tenant. Although this plea was not initially incorporated

in the petition but subsequently it was sought to be brought as a result of amendment to the petition. The court allowed the amendment and therefore it is as good a plea as if taken initially in the petition. During the course of the trial the respondent-tenant deposited a sum of Rs. 2,520/-, which was withdrawn by the petitioner-landlord. It is, however, submitted that until the date of the filing of I. A. 13, which is the petition under the present dispute, a sum of Rs. 9,580/- have fallen due as arrears of rent.

2. Before the learned Civil Judge, the respondent-tenant filed I. A. 9 and contended that a preliminary issue be framed so that the question of the respondent being a tenant be decided in the first instance. Only thereafter, the main petition for eviction could proceed. The learned Civil Judge dismissed the petition. In his opinion, the question involved would necessarily lead to evidence, which could as well be regarded in respect of the remaining issues that arise between the parties. The petitioner-landlord has also opposed that application. Against the order of the learned Civil Judge, it is stated by the learned counsel for the respondent, that the tenant came in revision before the High Court, but ultimately withdrew that revision. Therefore, the decision made by the learned Civil Judge that all the issues be decided at one stage became final between the parties.

3. Thereafter, I. A. 13 was filed by the petitioner-landlord on 5-1-1976 with a specific prayer that u/s 29 (4), the proceedings are required to be stopped and an order is to be made directing the tenant to put the landlord in possession. The learned Civil Judge has held that until the dispute regarding status of the respondent being a tenant is decided, the court will have no jurisdiction to entertain such a petition. Therefore, the learned Civil Judge has dismissed the petition and the present revision is directed against that order.

4. The sine qua non for an application for interim relief u/s 29 of the Act is the acceptance of the status of the respondent as a tenant of the landlord. Unless that relationship is admitted or established, the jurisdiction under that section shall not be derived. The very opening words of the section indicate that until the deposit is made the tenant is not to contest the application for his eviction and in case he denies himself to be a tenant, that fact has got to be determined by the court in the first instance. For such a determination, the court may frame a preliminary issue and proceed to decide it. The decision arrived at has to be firm and final so that it is binding on the parties during the subsequent stages in the same proceedings. There may be a case, where for the reasons stated, the court does not frame a preliminary issue, and in that contingency the decision may be postponed until all the issues are decided. In that case, the jurisdiction u/s 291 shall only be exercised after such a decision is arrived at. This Court in *K. G. Shrinivasa setty v. M. S. Sashikumar* 1973 (2) Mys LJ 384, was confronted with a similar situation. The learned Judge held, where the relationship of landlord and tenant is denied in an application u/s 29 of the Act, the court should frame a preliminary issue in regard to the relationship between the parties, try the same

and record a finding on the said preliminary issue before considering the application of the landlord u/s 29 of the Act. That does not mean that the court is precluded from recording evidence, if it thinks that such a course is more convenient on all the issues involved in the case. It is manifest that the respondent has raised a specific issue that the tenancy contract is with the school meaning thereby that the respondent is not a tenant. Although this controversy was not there when the petition was initially filed, nevertheless by way of amendment the plea was permitted to be raised. When the respondent denies his status to be a tenant, the very jurisdiction of the court u/s 29 can only be exercised when that status is proved. Thus, applying the ratio of K G. Srinivasa Setty 1973 (2) Mys LJ 384, (supra), the learned Civil Judge was correct in refusing the jurisdiction.

5. The learned counsel for the respondent brought to my notice a receipt of rent issued by the landlord, which is in the name of the Secretary to the school. It is however admitted that there is no written lease. But these circumstances will be considered by the court while deciding the issue between the parties. It was also contended by the learned counsel for the petitioner-landlord that u/s 116 of the Evidence Act, during the continuance of the tenancy, the respondent cannot deny the title of the landlord. That is a principle of estoppel embodied in that section. But this controversy again is not relevant at this stage, as it would be a matter to be decided by the court. It is also contended on behalf of the respondent-tenant that the petitioner has closed her case and five of the witnesses of the respondent are also examined. Perhaps the respondent alone has to give his statement. That would lead to the closing of the case. At the fag-end, the petitioner brought the application u/s 29 before the, learned Civil Judge. in the circumstances it was rightly held by him that he should wait for the decision on all the issues and no order could be passed u/s 29 (4).

6. The revision is thus without any force and the case is dismissed. However, no order is made as to costs.

7. Revision dismissed.