

(2009) 12 KAR CK 0080

In the Karnataka High Court

Case No : Regular First Appeal No. 318 of 2009

Karnataka State Co-operative Consumers Federation Ltd.

APPELLANT

Vs

Smt. Lakshmamma @ Venkatalaksmamma

RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 125, 70, 70 (2), 70 (e)
Transfer of Property Act, 1882 — Section 106, 116

Citation : (2010) ILR (Kar) 2936 : (2010) 4 KCCR 2468

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : C.N. Satyanarayana Shastry, in R.F.A. Nos. 318/2009 and 1771/2007, for the Appellant; Kesvy and Co. in R.F.A. Nos. 318/2009 and 1771/2007, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—These two appeals are directed against the common judgment and decrees in O.S. No. 4070/2003 and O.S. No. 4093/2003 dated 21.4.2007 on the file of the 14th Additional Civil Judge, Bangalore. The appellant was the defendant in both the suits. Smt. Laksmamma was the plaintiff in O.S. No. 4093/2003. She was the first plaintiff in O.S. No. 4070/2003 and Sri. M. Ananda was the second plaintiff in the said suit.

2. The above suits were filed by the plaintiffs for the ejectment of the defendant from the suit schedule properties. It is the case of the plaintiffs that the defendant was the tenant of the suit schedule properties. In O.S. No. 4093/2003, the suit schedule property was let out to the defendant as per the lease deed dated 3.8.1992 on a monthly rent of Rs. 2,688/ -. In O.S. No. 4070/2003, the suit schedule property was let out on a monthly rent of Rs. 3,100/ - as per the lease deed dated 8.10.1989. In both the suits, the month of tenancy was as per the English calendar month. It is further contended that the defendant had agreed to pay the enhanced rent at the rate of 10% once in 5 years. In spite of

the repeated demands, the defendant has not paid the enhanced rents. The plaintiffs have terminated the tenancy of the defendant from the suit schedule properties by issuing notices dated 2.5.2003. Since the defendant has failed to vacate the properties as per the demand made in the notices, the plaintiffs have filed the above suits for ejectment of the defendant and for certain other reliefs.

3. The defendant has entered appearance in both the suits. In O.S. No. 4070/2003, defendant has filed the written statement, contending that it is a State Level Co-operative Organization registered under the Karnataka Co-operative Societies Act, 1959 (for short "Act"). Therefore, the plaintiffs ought to have issued a notice u/s 125 of the Act. Since such a notice has not been issued, the suit is not maintainable. The defendant has further denied that it was in arrears of rent. It is further contended that plaintiffs had filed eviction petition in HRC No. 488/1998 against the defendant, which was dismissed on 9.1.1999. Thereafter, the plaintiffs continued the tenancy of the defendant and accepted the rents offered from time to time without any objection. The defendant is ready to pay the enhanced rent as agreed by them. The defendant has not filed any written statement in O.S. No. 4093/2003.

4. On the basis of the pleadings of the parties, the Court below has framed the issues as under:

1. Whether plaintiff proves that tenancy is duly terminated?
2. Whether defendant proves that suit is not maintainable?
3. Whether plaintiff is entitled for possession of suit property?
4. What order or decree?

5. On behalf of the plaintiffs, plaintiff No. 2 in O.S. No. 4070/2003 was examined as P.W1 and the documents Ex.P 1 to Ex.P4 have been marked in his evidence. In O.S. No. 4093/2003, the general power of attorney holder of the plaintiff was examined as P.W1 and the documents Ex.P1 to Ex.P5 have been marked in his evidence. In both the suits, P.W.1 has not been cross-examined. The defendant has not let in any evidence. On consideration of the materials on record, the Court below has decreed the suits in the following terms:

Both the suits are decreed with costs.

In O.S. 4070/2003, the defendant is liable to pay arrears of rent of Rs. 45,260/ - the enhanced rent upto the filing of the suit. From 1.7.2003 onwards, the defendant is liable to pay damages amounting to Rs. 3,720/ - till handing over the possession.

In O.S. 4093/2003, the defendant is liable to pay arrears of enhanced rent amounting to Rs. 43,040/ -. From 1.7.2003 onwards, the defendant is liable to pay damages amounting to Rs. 3,764/ - per month till handing over the possession of the petition schedule premises.

6. Learned Counsel for the appellant/defendant would contend that the appellant is a Co-operative Society registered under the provisions of Karnataka Co-operative Societies Act, 1959 (for short "the Act"). Therefore, the plaintiffs ought to have issued notice to the Registrar of Co-operative Societies u/s 125 of the Act. Since such a notice has not been issued, the suits are not maintainable. Secondly, it is argued that after the expiration of the term of the lease, the defendant continued to be in possession of the properties. The defendant paid the rents regularly thereafter and the plaintiffs have accepted the same. The plaintiffs filed an eviction petition against the defendant in respect of the suit schedule property under the provisions of the Karnataka Rent control Act, 1961. After repeal of the said Act and coming into force of the Karnataka Rent Act, 1999, the eviction petition was dismissed as not maintainable. The defendant continued to be tenant holding over. Even after filing of the suits, the plaintiffs have accepted the rents from the defendant. Thus, the suits filed by the plaintiffs without fresh notices u/s 106 of the TP Act are not maintainable.

7. On the other hand, Learned Counsel appearing for the plaintiffs/respondents has sought to justify the impugned judgment and decree. It is argued that Section 125 of the Act has no application to the facts of the present case. The relationship between the plaintiffs and the defendant in respect of the suit schedule properties was that of a landlord and tenant before determination of the tenancy. It is no doubt true that the plaintiffs have accepted the rent after the lease was determined by efflux of time. That is why the plaintiffs issued notices determining the lease and called upon it to vacate and deliver vacant possession of the properties in question. The said notices dated 2.5.2003 were served on the defendant on 3.5.2003 and the suits were filed on 13.6.2003 and 16.6.2003 respectively. After filing of the suits, even if the defendant has paid the rents, there cannot be any revival of jural relationship of landlord and tenant because the plaintiffs had no intention to continue the tenancy. The Trial Court on proper consideration of the facts and circumstances of the case has decreed the suits. He prays for dismissal of the appeals.

8. Having regard to the arguments of the Learned Counsel made at the Bar, the points that arise for consideration in these appeals are as under:

(i) Whether the suits filed by the plaintiffs against the defendant for ejectment from the suit schedule properties are bad for want of notice u/s 125 of the Co-operative Societies Act, 1959?

(ii) Whether there is a valid determination of lease before filing of the suits for ejectment of the defendant from the suit schedule property?

Re. Point No. (i):

9. There is no dispute that the defendant was the tenant of the suit schedule properties under the plaintiffs. Ex.P1 is the lease deed dated 8.10.1989 in respect of the suit schedule property in O.S. No. 4070/2003 and Ex.P2 is a lease deed dated 3.8.1992 in respect of the suit schedule property in O.S. No.

4093/2003. Defendant is a Co-operative Society registered under the Act. It is contended by the plaintiffs that despite the issuance of notice determining the lease and calling upon the defendant to quit and vacate the suit schedule properties, the defendant has failed to do so which constituted the cause of action on the basis of which suits have been filed. Admittedly, the plaintiffs have not issued notices u/s 125 of the Act. Section 125 of the Act reads as follows:

Section 125. Notice necessary in suits: No suit shall be instituted against a Co-operative society or any of its officers in respect of any act touching the constitution, management or the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

10. It is evident from the aforesaid provision that in order to maintain a suit against a Co-operative society or any of its officers touching the constitution, management or the business of the society, a notice of two months in writing has to be delivered to the Registrar stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims and the plaint shall contain a statement that such notice has been so delivered or left. The point canvassed before me is that holding property by a Co-operative Society as a tenant is an act touching the business of the society. Therefore, the suit should be preceded by a statutory notice u/s 125 of the Act.

11. Section 70 of the Act provides for the nature of disputes, which may be referred to the Registrar for decision. Sub-Section (2) of Section 70 of the Act defines the disputes touching the constitution, management or business of a Co-operative society which are as under:

(2) For the purposes of Sub-Section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely:

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor, as a result of the default of the principal debtor whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of a President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or Member of Committee of the Society.

(d) any dispute between a Co-operative society and its employees or past employees or heirs or legal representatives of a deceased employee, including a

dispute regarding the terms of employment, working conditions and disciplinary action taken by a Co-operative society;

(e) a claim by a Co-operative society for any deficiency caused in the assets of the Co-operative society by a member, past member, deceased member or deceased officer, past agent or deceased agent or by any servant, past servant or deceased servant or by its committee, past or present whether such loss be admitted or not.

12. It is clear from the aforesaid provisions that any dispute touching the constitution, management or business of a co-operative society has to be referred to the Registrar for decision. It is not the case of the defendant that it is a real estate agent. The defendant is a State Level Co-operative Consumer Federation registered under the provisions of the Karnataka Co-operative Societies Act, 1959. Admittedly, the suit schedule properties were let out to the defendant to establish their Janatha Bazar unit at Sanjaynagar, Bangalore, to cater to the needs of the Government Offices, Hostels, Educational institutions and public at large at a reasonable price. The concern of the society was not to hold property. These are incidental matters which do not relate to the business of the society. The ejectment of the defendant does not come within the purview of Sub-sections (2)(a) to (e) of Section 70 of the Act.

13. A Division Bench of this Court in *The Ankola Urban Co-operative Credit Bank Ltd. v. Laxmibai and Anr.* 1959 My.L.J. 523 has considered a similar question. In the said decision, it has been held as under:

...As the Learned Munsiff in his judgment observed, "business" means that which busies one or engages the time, attention or labour of anyone as his principal concern or interest whether for longer or shorter time. Therefore, the principal concern of the society was not to hold property nor to pay rent. These are incidental matters. So also the liability of the society to pay rent is an incidental liability and cannot be said to relate to the business or affect the business of the society. I am in agreement with the view expressed by the Trial Court that once the mulgeni becomes the property of the defendant society after the auction purchase, the defendant holds it just as any other private property would be enjoyed after its acquisition. Neither the enjoyment of the said property nor non-payment of rent in respect thereof can, in my opinion, be said to be acts touching the business of the society. I am, therefore, of the opinion that on this point also the contention of the appellant must fail.

14. In *Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others*, the Apex Court was considering the scope of Section 91(1) of the Maharashtra Co-operative Societies Act, which is in pari materia with Section 70 of Act in question. In the said decision, the Court has held as under:

The question arises whether the dispute touching the assets of a society would be dispute touching the business of a society. This would depend on the nature of the society and the rules and bye-laws governing it. Ordinarily, if a society owns

buildings and lets out parts of buildings which it does not require for its own purpose it cannot be said that letting out of those parts is a part of the business of the society. But it may be that it is the business of a society to construct and buy houses and let them out to its members. In that case letting out property may be part of its business. In this case, the society is a Co-operative Bank and ordinarily a Co-operative Bank cannot be said to be engaged in business when it lets out properties owned by it. Therefore, it seems to us that the present dispute between a tenant and a member of the Bank in a building which has subsequently been acquired by the Bank cannot be said to be a dispute touching the business of the Bank and the appeal would fail on this short ground.

15. In *Asaktha Poshaka Sangh v. Viswakarma Co-operative Society* ILR 1973 KAR 235 this Court has held that in order to institute a suit for recovery of rents from a Co-operative society, notice u/s 125 is not necessary. Such a notice is required for institution of a suit against the co-operative society in respect of any Act touching the constitution, management or business of the society. It has been held as under:

The finding of the Trial Court is erroneous and is opposed to the express language of Section 125 of the Act. That Section provides that no suit shall be instituted against a Co-operative Society in respect of any act touching the constitution, management or the business of the society until the expiration of two months next as per notice in writing had been delivered to the Registrar.

Section 125 is no bar to a mere suit for recovery of rent due on a contract of lease filed by the landlord.

16. In *Charles D'souza v. The Permannur Co-operative Stores* ILR 1973 KAR 1098 this Court has again reiterated that in order to file a suit for recovery of rents against a Co-operative society, notice u/s 125 of the Act is not necessary. It has been held thus:

The non-payment of rent or violating the terms of the lease under which the premises are occupied cannot be an act touching the constitution, management or business of the society. The non-payment of rent, which is an omission, cannot be said to be an Act within the meaning of the said expression. Hence, no statutory notice is necessary.

17. It is clear from the aforesaid decisions that in order to recover the leased premises from a co-operative society, notice u/s 125 of the Act is not necessary. Point No. (i) is answered accordingly.

Re. Point No. (ii):

18. As has been stated above, the defendant remained in possession of the suit schedule properties even after the expiry of the term of the lease. Since the defendant has remained in possession of the properties after determination of lease by efflux of time and the plaintiff has accepted the rent from the defendant, the defendant has become a tenant "holding over" u/s 116 of the T.P.

Act. see Bhawanji Lakhamshi and Others Vs. Himatlal Jamnadas Dani and Others, . The purpose of the lease was to carry on the business in the suit schedule properties. Therefore, it is deemed to be a lease from month to month terminable by 15 days notice expiring with the end of a month of tenancy. The plaintiffs have issued notices to the defendant at Ex.P2 and Ex.P3 both dated 2.5.2003 terminating the tenancy which were served on the defendant on 3.5.2003. The suits were filed on 13.6.2003 and 16.6.2003 respectively. The determination of lease is valid. The suits have been filed after 15 days from the date of service of notice, which is in accordance with law. It is no doubt true that after filing of the suits, the defendant has paid rents/damages for use and occupation of the suit schedule property. The case of the plaintiffs is that the said amount has been accepted towards damages for use and occupation of the suit schedule property. P.W.1 has not been cross examined by the defendant. The defendant has not even let in any evidence. The contention of the defendant that the amount has been paid towards rents and that there is renewal of the lease is without any merit. It is to be noted here that the period of lease has not been extended as provided in the lease deeds. It is settled that mere acceptance of the amounts equivalent to rent by a landlord from the tenant after a lease has been determined either by efflux of time or by notice to quit cannot be regarded as evidence of a new agreement of tenancy. The Apex Court in Shanti Prasad Devi and Another Vs. Shankar Mahto and Others, , has held that on expiry of period of lease, mere acceptance of rent for subsequent months in which the lessee continued to occupy the leased premises cannot be said to be a conduct signifying "assent" to the continuance of the lessee even after the expiry of the period of lease. It has been held thus:

The lessor in the present case had neither expressly nor impliedly agreed for renewal. The renewal as provided in the original contract was required to be obtained by following a specified procedure i.e. on mutually agreed terms or in the alternative through the mediation of Mukhias and Panchas. In the instant case, there is a renewal clause in the contract prescribing a particular period and mode of renewal which was "an agreement to the contrary" within the meaning of Section 116 of the Transfer of Property Act. In the face of specific Clauses (7) and (9) for seeking renewal there could be no implied renewal by "holding over" on mere acceptance of the rent offered by the lessee. In the instant case, option of renewal was exercised not in accordance with the terms of renewal clause that is before the expiry of lease. It was exercised after expiry of lease and the lessee continued to remain in use and occupation of the leased premises. The rent offered was accepted by the lessor for the period the lessee overstayed on the leased premises. The lessee, in the above circumstances, could not claim that he was "holding over" as a lessee within the meaning of Section 116 of the Transfer of Property Act.

(emphasis supplied by me)

19. Therefore, I hold that the determination of the lease of the defendant is valid

and acceptance of damages by the plaintiffs during the pendency of the suits do not revive the relationship of landlord and tenant. Point No. (ii) is answered accordingly.

20. At this stage, learned Counsel for the appellant submits that two years time may be granted to the appellant to vacate the suit schedule property. Having regard to the facts and circumstances of the case, I deem it proper to grant time to the appellant till 31.12.2010 to vacate and deliver vacant possession of the suit schedule properties to the respondents.

21. In the light of the aforesaid discussions, I pass the following:

ORDER

(i) The appeals fail and they are accordingly dismissed.

(ii) The defendant/appellant is granted time till 31.12.2010 to vacate the suit schedule properties and hand over the same to the plaintiffs/respondents subject to the appellant filing affidavits before this Court undertaking to voluntarily vacate the said properties on or before the aforesaid date.

(iii) The undertaking as above shall be filed by the appellant within a period of eight weeks from today. No costs.

Draw the decree accordingly.