
(2010) 10 KAR CK 0030
In the Karnataka High Court
Case No : H.R.R.P. No. 208 of 2010.

Lakshmi and Another

APPELLANT

Vs

Kempaiah

RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:

Karnataka Rent Act, 1999 — Section 27 (2) (r), 3 (e), 43, 46 (1)

Citation : (2011) 2 RCR(Rent) 145

Hon'ble Judges : Jawad Rahim, J

Bench : Single Bench

Advocate : M.R. Rajagopal, for the Appellant;

Judgement

Jawad Rahim, J.—Landlord petition u/s 46(1) of the Karnataka Rent Act, 1999, (hereinafter referred to as the Act) is directed against the order dated 29.3.2010 on I.A.III in HRC.141/08 on the file of Judge, Small Causes Court, Bangalore.

2. Heard both sides. The petition is admitted and is taken up for final disposal.

3. Contextual facts to which reference needs to be made are:

a) Petitioners herein initiated eviction proceedings against the respondent under the provision of Section 27(2)(r) of the Act seeking his eviction on the premise that he was inducted as tenant by their grandmother- Venkatamma and continues to be tenant in the schedule premises.

b) During her lifetime, Venkatamma bequeathed the schedule property in their favour by testamentary disposition, i.e. will dated 9.2.1995. Being legatees under the will, they have acquired absolute right, title and interest and intend to use the schedule premises for their own use and occupation. The respondent-tenant was called upon to vacate and as he declined and failed to keep his promise, they sought eviction.

c) The respondent-tenant entered appearance and resisted the proceedings, firstly denying existence of relationship of landlord and tenant between him and

the petitioners. Though he raised such defence, there is clear admission in his pleadings that he was inducted into the schedule premises by Venkatamma and was paying rents to her and after her demise, he is paying rents to the petitioners. However, he referred to one Umesh, son of Venkatamma who, according to him, was alone entitled to a share in the property. He filed an application u/s 43 of the Act seeking to stop proceedings and to call upon the petitioners to seek adjudication of their rights in a Civil Court of competent jurisdiction.

d) The learned trial judge noticed from the material propositions in the pleadings that the tenant seriously disputed jural relationship. The petitioners requested the Court to dispose of the application as the respondent could not take a legal defence on that issue. Perhaps they had in mind the provision of Section 116 of the Evidence Act which acts as estoppel to contend otherwise, once the tenant admits tenancy. They also contended that the will in question was not the subject matter of issue and they are none else than the children of Umesh, son of Venkatamma; in other words, it was contended that there could not have been any dispute regarding title by any one claiming through or under Venkatamma, except Umesh and since they are children of Umesh, they were entitled to claim right through succession. However, instead of disposing of the application, the trial Court, by relying on three decisions cited by the respondent counsel, viz., (a) ILR 2007 Kar 1966 : AIR (2007 Kan HCR 537), (b) Sri Haji Iqbal Shariff Vs. Smt. C. Manjula, wherein this Court has opined that for an order u/s 43 of the Act, it was desirable that the trial Court must hold an enquiry regarding existence of relationship of landlord and tenant, held that it would be an enquiry of roving nature, and posted the case for evidence.

e) The petitioners are seriously aggrieved against such order because the trial Court has deferred disposal of the application till final adjudication.

4. It is seen from the order impugned that the application (I. A.III) is kept pending, which application ought to have been considered at the earliest or initial stage itself. Section 43(1) envisages that where there is a rent receipt or lease agreement, it shall be prima facie evidence establishing relationship of landlord and tenant. In the absence of such evidence or where such evidence is doubtful and the dispute is raised regarding title, then the Court would have to stop proceedings and direct the parties to have adjudication of their rights in the competent Civil Court. The provision has to be construed keeping in mind the object for which it was incorporated. In fact, there can be no doubt that this provision has been incorporated to deal with a situation where the question of title is involved and the dispute is of such nature that it requires a full fledged inquiry regarding title. But where the tenant admits tenancy but only disputes institution of proceedings on the ground that the landlord does not have absolute title over the premises, then the trial Court will have to keep in mind the definition of landlord" as described in Section 3(e) of the Act.

5. In other words, for a mere asking in the application u/s 43 of the Act,

proceedings cannot be stopped. The trial Court has to examine the material defence for ascertainment as to whether it reveals bona fide dispute of jural relationship of landlord and tenant. Otherwise, it will be an encouraging factor to litigious tenants to stall the proceedings.

6. In the instant case, as referred to in paragraphs supra, the respondent does not dispute he was inducted into the premises by Venkatamma who was admittedly the owner and landlord, and that petitioners are her grandchildren born to Umesh. It is also not in dispute that they claim title on the basis of the will and even otherwise, they could claim such right by succession. In the given fact situation, it was desirable for the trial Court to have considered whether such defence justifies stalling of proceedings. However, the trial Court has allowed the parties to lead evidence and as could be noticed from the submission of Sri M.R. Rajagopal, which is not disputed by the other side, parties have led evidence and cross-examination is going beyond the scope of inquiry by bringing in aspects which are not germane to the issue under consideration. That is the main grievance of the petitioners. They contend they have been hackled referring to the nature of attestors and other aspects relating to the will as if it was an inquiry in which the genuineness of the will has to be proved. It is further alleged that during the course of evidence, the learned trial Judge has allowed the respondent to indulge in lengthy cross-examination which is the cause of harassment.

7. For the reasons discussed above, I am satisfied that though it could be held that the application could have been disposed of on the basis of material propositions in the pleadings and an inquiry should have been to the limited extent, since the trial Court has allowed the parties to lead evidence and it is substantially over, it is desirable that the entire case could be disposed of on merits.

8. Being of this view, the petition is disposed of, but with a direction that in view of the grievance of the petitioners that there is unjustified procrastination of the proceedings, the trial Court shall expedite the matter and dispose of the petition within an outer limit of three months from the date of receipt of a copy of this order. It needs to be observed that the proceedings under the Rent Act are summary in nature and therefore, tendering of evidence for chief-examination and cross-examination shall be limited to issues under consideration and nothing more.

9. With the above observations, the revision petition is disposed of.