
(1990) 06 KAR CK 0040
In the Karnataka High Court
Case No : C.R.P. No. 3112/1990

L.J. Mohan

APPELLANT

Vs

Dr. Rama Prasad and Another

RESPONDENT

Date of Decision : 21-06-1990

Acts Referred:

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

Citation : (1990) 2 KarLJ 212

Hon'ble Judges : P. K. Shyamsundar, J

Judgement

Shyamsundar, J.-The learned Munsiff in the Court below, who was pressed to decide in limine the land-lord and tenant issue, declined to do so, placing reliance on a decision of this Court in Shantharam v Rama Amin (I.L.R. 1986 KAR. 1199). In that case, Mr. Justice Patil, as His Lordship then was, held after reiterating the earlier decisions and reviewing the case law on the point that in a summary proceeding under the Karnataka Rent Control Act, any issue requiring leading of evidence should not be treated as a preliminary issue and tried at the forefront.

2. There is no gainsaying that the question of land-lord and tenant relationship is a mere question of fact. It has to be decided on evidenciary material and the circumstance that it can be conveniently disposed of along with the controversies arising, is an aspect on which there can be no doubt at all and that is apart from the dicta declared in Rama Amin's case referred to above. But, Mr. Ajit J. Gunjal, learned Counsel for the petitioner wanted to persuade me to hold otherwise by placing reliance on earlier decision of the High Court of Mysore in Y. Narayana Rai v A.C. Appaji Rao ((1971)(2) MYS.L.J. 370). That was a case in which the very jurisdiction of the Court to undertake any investigation under the Act was challenged on the ground that the property in dispute was not a "premises" within the meaning of the Act (Mysore Rent Control Act (22 of 1961)). In that situation, the learned Judge held that a challenge to the nature of the very subject matter of lease and the entitlement of the Court to try the case, if made, should not be neglected or shunted to the background for a leisurely disposal along with other aspects of the case, but such a controversy should be disposed

off as an inlimine issue. Apart from the fact Rama Amin's case takes a different view and being a later decision which should prevail over the earlier one, it is quite obvious that the decision in Narayana Rai's case referred to above, relied on by Mr. Gunjal, is clearly distinguishable. If basically there is a dispute about the applicability of the Act itself, because a right under the Act arises only in certain situations, on a contention that a given situation did not exist then, the Court perhaps is compelled to take notice of the same and decide whether it can, in that situation, have seize over the subject matter of the dispute. A decision to proceed inlimine in such a situation, is thus clearly an enjoined duty. Hence, the Court under the Act, which has only a limited jurisdiction, when its very jurisdiction is challenged, has to decide whether it has jurisdiction or not and that should properly be done at the very outset.

3. But the argument is, whether the dictum in Narayana Rai's case is attracted herein (sic) where relationship of landlord and tenant is disputed, a question of fact to be decided on evidenciary material, but will not oust the jurisdiction of the Court on a mere allegation. Even otherwise, in deciding this dispute, complicated questions of law and fact are likely to arise and in those circumstances, the Court may have to direct the party to sort out the said issue elsewhere. On the other hand, if the fact situation is simple and capable of being resolved the Court will embark upon an investigation of such dispute. This is the essential distinction which has to be borne in mind. What is more, under Order XIV Rule 1 of Civil Procedure Code, an issue which is admixture of law and fact, need not be decided as a preliminary issue. This is also a fact to be borne in mind. The question as to whether a person is a landlord and the other person a tenant, is a pure question of fact. The decision of the Court depends very much on evidence, very little on law and as such the Court should not be pressed to decide that question as a preliminary issue. Moreover, it is not a requirement enjoined by law as pointed out by this Court in Rama Amin's case. Therefore it is I, pass the following order:

The impugned order of the Munsiff as confirmed by the District Judge on appeal, is hereby confirmed. In this view of the matter, revision petition fails and is dismissed, directing the Court of the Munsiff, Shimoga to decide the question of landlord tenant relationship along with other controversies arising in the matter.

Petition Dismissed.