

(1987) 10 KAR CK 0008
In the Karnataka High Court
Case No : First Appeal No. 334 of 1987

M.P.R. Perumalaswamy Chettiar and Others	APPELLANT
Vs	
R.V. Madhava Rao	RESPONDENT

Date of Decision : 12-10-1987

Acts Referred:

Limitation Act, 1908 — Section 18

Citation : AIR 1988 Kar 165

Hon'ble Judges : M.P. Chandrakantaraj URS, J;K.B. Navadgi, J

Bench : Division Bench

Advocate : Vasan Associates, for the Appellant; G.S. Visveswara, for the Respondent

Judgement

1. This is an appeal preferred by defendants I to 3 in O.S.No. 49/81 on the file of the Principal Civil Judge, Mysore, against the Judgment and decree dt. 17-3-1987 made therein.
2. The parties in this appeal would be hereinafter referred to with reference to the ranks assigned to them in the trial court.
3. The plaintiff instituted the suit to recover Rs. 2 2.603.44 ps. towards the arrears of rent or damages for the period from 1-1-74 to 1-2-81 at the rate of Rs. 250/- P.M. and also damages for unauthorised alteration- to the demised premises at As. 2500/- and notice charges of Rs. 100/-, after giving deduction to Rs. 1246.56 ps. towards the property tax paid by the. Defendants in respect of the demised premises.
4. Defendants land 2 are father and son. They run a concern under the name and style. of -M/s. Kachin"s Mens Wear", in the demised premises.
5. The averments in the plaint were, that defendant-I took the demised premises on lease on a monthly rental of Rs. 65/- in 1947; that since" then defendants are in possession of the premises; that defendants-1 was remitting the rent regularly to the plaintiff at his Madras address and that the last remittance was made on

8-4-74 cover big the rents up to the end of December 1973. The plaintiff further averred that he went to Mysore in the year 1974 and on his request to increase the rent, defendant- I agreed to increase the rent from Rs. 65/-,to Rs. 250/-P.M. from, 1-1-74 and promised to remit the same to his address at Madras. According to the plaintiff, defendant-4 did not- remit the amount at the incusted rate. Plaintiff vents to Mysore in March 1976 and demanded the payments. There was no response whatsoever.

6. Plaintiff alleged that though the defendants had taken the premises for residential purposes they had converted the front two rooms into bon-residential purposes without his consent.

7. It was on the basis of such averments, the plaintiff filed the suit after" issuing a lawyer"s notice.

8.The defendants resisted the suit and contended, inter alia, that defendant-I had taken the premises in the year 1947 from one Sri R. V. Srinivasa Rao agreeing to pay a monthly rent of Rs. 65/-and that the rent had been paid to the said R. V. Srinivasa Rao who died in the year 1958. They contended that they did not pay the rent to the plaintiff, if after 1958 because the plaintiff in spite of being asked failed to produce any documents showing his title to the demised premises.

9. The plaintiff filed rejoinder to the written statement filed by the defendants.

10. On the strength of the pleadings the trial Court framed the following issues for adjudication: -

1. Whether the plaintiff proves that he is the owner of the suit building?
2. Whether the plaintiff proves that his brother R. V. Srinivasa Rao leased the suit building, to the Ist defendant as his agent?
3. Whether the plaintiff proves that the 1st defendant agreed to pay monthly rent of Rs. 250/- with effect from 1-1-1974?
4. Whether the plaintiff proves that the suit claim for rent for the period prior to 1-21978 is not barred by limitation?
5. Whether the plaintiff proves that the 1st defendant has made alterations to the suit building and has thereby caused damages of Rs. 2500/-?
6. Whether the plaintiff proves that the defendants 2 and 3 are also liable to pay the arrears of rent?
7. Whether the 1st defendant proves that he has paid Rs. 3087.90 Ps. towards the tax of the suit building? If so, is he entitled to adjustment of the same out of the rent payable by him?
8. What decree or order?

11. On behalf of the plaintiff, plaintiff examined himself and adduced the evidence of one witness. In all 11 documents were marked for the plaintiff.

Defendants examined 2 witnesses as DWs. 1 and 2 and depended upon the documents Ex.D1 to D.6.

12. The learned trial Judge held that plaintiff had established his title to the demised premises and that the plaintiff had also established that R. V. Srinivasa Rao had leased out the premises to 1st defendant as his agent. He, therefore, held issues 1 and 2 in favour of the plaintiff.

13. We find, the reasoning adopted by the learned trial Judge in holding in favour of the plaintiff on issues 1 and 2 sound. It cannot be said to be either perverse or unreasonable. The evidence indicates that in the partition suit O.S.No. 29 of 1941-42 before the District Court, Mysore between the plaintiff and his brothers. there was a compromise in respect of the controversies raised in that suit and the demised premises the subject matter of the suit out of which this appeal has arisen was allotted in favour of the plaintiff in the compromise. Ex.P1 is the compromise petition dt. 30-6-1947.

14. It is in evidence that after 1958 rent was being, collected by the plaintiff from the defendants. This would make it clear that the plaintiff from the landlord and was entitled to receive the rent; plaintiff answers the definition of the expression "Landlord" under the Karnataka Rent Control Act. As landlord, he would have maintained the suit for recovery of arrears of rent.

15. On issue No. 3. the learned trial Judge accepted the evidence of PWs. 1 and 2 and held that the plaintiff had established his plea that there was an increase in the rate of rent with effect from 1-1-1974. The learned trial Judge after considering the evidence of PWs. 1 and 2 in detail and the probabilities involved in the case accepted plaintiff's case.

16. It was urged on behalf of the defendants that either in the month of December 1973 or in January 1974, 1st defendant was not residing in Mysore. that he was residing in his native place in Salem district in Tamil Nadu and that this aspect of the matter has been overlooked by the learned trial Judge while appreciating the evidence of PWs. 1 and 2. When asked by us to show the evidence regarding the residence of defendant- "in his native place either in the month of December 1973 or January 1974 " learned Counsel made a reference to certain letters received by 1st defendant at his address in Tamil Nadu. Even assuming that defendant is a permanent resident of Tamil Nadu and received the letters at that place, it does not establish that either in the month of December 1973 or January 1974, he was not present at Mysore. The fact that PW2 is a friend of plaintiff cannot detract from accepting his oral testimony unless it was impeached on good grounds.

17. The evidence of PWs. 1 and 2 probabilises the case of enhancement of rent. The long leniency since 1947 the situation of the premises in a busy locality of Mysore City and payment of par of the rent as tax up to the end of 1973 are circumstances probabilising the case of the plaintiff. We do not find any ground to disturb the finding of the learned trial Judge on issue No. 3

18. Lastly it was U-Oed (hat the suit in so far as it relates to the record of arrears of rent for the period of more than 3 years from the date of the institution of the suit was barred by limitation. The learned, trial Judge relying on Ex.P3, the reply issued by def endant-1 through his counsel on 20-1-1981 which contains the acknowledgement in writing of the liability to pay rent from 1-11974 to the date of notice, held that it would save the suit from limitation and the fresh period of limitation commenced from the date of acknowledgment for the whole of the arrears admitted as "due".

19. We have, read Ex.P3. A reading of Ex.P3 would show that defendants admitted the arrears of rent but disputed the quantum of rent. The learned counsel. for the defendants relied upon the decision of this Court in E. K. . Dasappa Setty v. Vedavithamma reported in (1972) 1 Mys LJ 551 : (AIR 1972 Mys 283), to support his contention that the acknowledgment of liability contemplated under S. 18 of the Limitation Act, 1963 should be before the expiry of the period of the limitation prescribed for the "suit and therefore any acknowledgment made after that date, would not ensure to the benefit of the plaintiff. We find. what the decision lays down is the opposite.

(4) That as S died after the Hindu Succession Act, 1956. came into force, the widow.-was admitted-, entitled to 1, /3rd share, in the properties of S. As she acknowledge the liability on 25-6-19,59 before the promissory notes became time barred, those debts were kept a five so for as her 1/3rd share was concerned and the subsequent acknowledgement of that liability by the son in P4 dt. 25- 12-60 saved limitation and the suit filed on 12-12-63 within three years thereafter was in time and the plaintiff w;-s entitled to a decree for the amount due only as against the 1. 3rd share of the widow out of the assets of the deceased S."

20. From the above it is seen that while the mother''s acknowledgment was within the period of 3 years from the date of the promote, the acknowledgment of the son as the kartha of the family was after the expiry of 3 years. It was held t6 the acknowledgment by the son was a valid acknowledgment which "would ensure to the benefit of the plaintiff therein to a fresh period of limitation from the latter date of acknowledgment.

21. One of us while exercising jurisdiction under the Companies Act had occasion to examine this question and relying upon various Indian decisions and English decisions came to the conclusion that an acknowledgment in a Balance sheet of a Company even in respect of time barred debt would be a valid acknowledgment as on the date to which the Balance-sheet related, despite the Balance-sheet having been signed subsequent to the date to which the Balance sheet related. See State Bank of India Vs. Hegde and Golay Limited,

22. Therefore, there is no merit in the, contention that the part of the claim of the suit was barred by limitation.

23. No other point was urged in support of the appeal. We find no merit in this

appeal. We reject it. No costs.

24. Appeal dismissed.