

**(2000) 01 KAR CK 0007**

**In the Karnataka High Court**

**Case No :** Civil Revision Petition No. 3215 of 1999

Nalinikant

APPELLANT

Vs

Ramacharya Burli (deceased) by L.Rs and another

RESPONDENT

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**Date of Decision :** 14-01-2000

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 115  
Karnataka Rent Control Act, 1961 — Section 30

**Citation :** (2000) ILR (Kar) 1681 : (2000) 4 KarLJ 314

**Hon'ble Judges :** B.N. Mallikarjuna, J

**Bench :** Single Bench

**Advocate :** Sri Krishna S. Dixit, for the Appellant; Sri P.H. Gotkhindi, for the Respondent

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## **Judgement**

1. In this revision u/s 115 of the CPC judgment-debtor No. 3 in Ex. P. 36 of 1997 on the file of the Principal Civil Judge (Junior Division), Bagalkot, has questioned the legality of the order dated 20-9-1999 directing the Senior A.D.L.R., Bagalkot to measure and handover possession of certain land admeasuring 275" east-west and 634" north-south in T.P. No. 39 to the decree-holders.

2. Both the learned Counsels for the revision petitioner and the caveator decree holders submitted that the matter may be taken for final disposal. Accordingly, they are heard in the matter.

3. Few facts necessary for the disposal of this revision may be stated thus:

Certain Venkobacharya Bin Anantacharya Burli is the grandfather of plaintiff/decree-holder and was the owner of a portion of open site in Sy. No. 39 of Bagalkot measuring 275" east-west and 634" north-south. He leased this open site in favour of Binny Company of Madras in the year 1889 for a period of 90 years, from 15-7-1889 to 15-7-1979 at a fixed annual rent of Rs. 40/-. Ex. P. 115 in O.S. No. 120 of 1959 is the lease deed. It would appear that the Binny Company took the site for installing ginning and pressing machines and for

putting up construction for other purposes also. Accordingly, Binny Company put up certain constructions and installed ginning and processing machines. Subsequently, it is stated that Binny Company transferred its tenancy rights in favour of Ningappa Hallur and Veerabhadrappa Garadi who in turn transferred their rights in favour of one Sheelavantappa in 1929 for Rs. 1,800/-. Undisputed case is that said Sheelavantappa transferred his rights in half of the area in favour of one Balakrishnadas Gujjar in 1932 and the remaining half in 1933. Defendant 1-Malini Bai and defendant 2-Sharada Bai are the two wives of Balakrishnadas Gujjar. Sharada Bai had a son by name Bhanudas and he died unmarried. Defendant 1 died in the year 1960. Defendant 2 it is stated adopted defendant 3-Nalinikant Ramadas Gujjar, revision petitioner herein as her son on 5-4-1954. Balakrishnadas Gujjar also died in the year 1947.

Things as it stood, landlord terminated the tenancy and instituted eviction proceedings against defendants 1 to 3 and their sub-lessees in Civil Suit No. 120 of 1959 on the file of the Munsiff, Bagalkot u/s 13(1)(a), (e), (j) and (k) of the Bombay Rent Act, repealed and replaced by the Karnataka Rent Control Act, 1961. Defendants resisted it and after contest it was dismissed. Aggrieved by the said order, landlord filed H.R.C. Appeal No. 13 of 1972 in the Court of the Additional District Judge, Bijapur and that appeal also came to be dismissed on 16-8-1975. Thereafter, landlord approached this Court in C.R.P. No. 39 of 1976. By judgment dated 22-7-1983, this revision was allowed, judgment and decree of both the Trial Court and as well the First Appellate Court were set aside and decreed that the landlord is entitled to recover possession of the premises indicated above, time was prayed on behalf of the third defendant to vacate and handover vacant possession and therefore six months time was granted.

4. The principal contention before this Court in that civil revision petition appears to be that the disputed land was not a premises within the definition of that expression contained in the Act and therefore eviction petition was not maintainable. This argument was repelled and further held that there is subletting in violation of the provisions of the Bombay Rent Act and it is a valid and effective ground for eviction under the Act and the revision was allowed. Aggrieved by the said judgment in C.R.P. No. 39 of 1976, dated 22-7-1983, 3rd defendant-revision petitioner herein approached the Supreme Court in Civil Appeal No. 2795 of 1985, Constitution Bench of the Apex Court, by judgment dated 9-8-1996 dismissed the said appeal, order of this Court in C.R.P. No. 39 of 1976 was confirmed. It is thereafter decree-holder sued out execution in the Court of Principal Civil Judge (Junior Division), Bagalkot in Ex. P. 36 of 1997. Judgment-debtors who are on record opposed the execution and however ultimately on 20-9-1999 Court made the order impugned directing A.D.L.R., Bagalkot to measure and handover to the decree-holder. The land in T.P. No. 39 measuring 275" x 643". It is this order that is under challenge in this revision.

5. Sri Krishna Dixit, learned Counsel for the revision petitioner contend that the execution petition is not maintainable in the absence of all the judgment-debtor

decree-holder was not entitled to the building on the site for the reason that what was leased was only open site and therefore whatever construction that had been put up on the said disputed open site belonged to the tenants. Further, he contended that the direction to the A.D.L.R. to measure and handover the land is bad. Thus, the order suffers from material irregularity and calls for interference. In elaborating his arguments and in support, he relied on certain decisions which I would advert to a little later.

Learned Counsel for the decree-holder per contra contended that there is no need for the presence of the other defendants/judgment-debtor as they are admittedly subtenants and this Court has declared in the earlier proceedings (C.R.P. No. 39 of 1976) that defendants 4 to 16 are not entitled to any immunity from eviction. Further, it is contended that some of them died during the pendency of the Revision Petition No. 39 of 1976 and as such there was no need to bring their L.Rs on record. On a careful scrutiny of the rival contentions, I hardly find any merit in the arguments advanced on behalf of the petitioner.

6. A perusal of the judgments in C.R.P. No. 39 of 1976 and Civil Appeal No. 2795 of 1985 clearly make out that the person who fought the litigation all these 40 years is defendant 3, the revision petitioner herein. Admittedly, some of the defendants died during the pendency of the revision, some of the defendants did not even file the written statement and participated in the proceedings, defendants 1 and 2 are dead and defendant 3 is their legal representative. This Court in C.R.P. No. 39 of 1976 has clearly declared that other defendants viz., 4 to 18 were the subtenants and they are not entitled to immunity from eviction in the case. The eviction petition has been allowed on the ground of subletting by the 3rd defendant. More importantly, Section 30 of the Karnataka Rent Control Act, 1961 contemplates that where the interest of the tenant in any premises is determined for any reason whatsoever and any order is made by the Court under the Act for the recovery of possession, the order shall, subject to the provisions of Section 21 binds all the persons who may be in possession and vacant possession thereof shall be given to the landlord by evicting such persons. Proviso to Section 30 of the Act only prohibits the executing Court from executing an order of eviction against a person who is in possession of the premises in his own right and has an independent title to it. In the instant case, there is an order of eviction in favour of the decree-holder. Defendants 4 to 16 are subtenants and they claim interest in the premises only through and the tenancy created by the 3rd defendant, who is contesting the proceedings. The Court has held in the eviction proceedings that the tenancy created is in violation of the Rent Act (see para 18 of the judgment in C.R.P. No. 39 of 1976). Therefore, there was no need for the executing Court to insist on the presence of judgment-debtors 4 to 16 or their legal representatives as the case may be before proceeding to make the order impugned. In the circumstances, there is hardly any merit in the contention that the presence of all the judgment-debtors was necessary in the execution proceedings.

Secondly, there is a clear direction in C.R.P. No. 39 of 1976 that the landlord is entitled to possession of certain area in T.P. No. 39 admeasuring 275" east-west and 634" north-south as described in the lease deed Ex. P. 115. This order has been confirmed in Civil Appeal by the Apex Court. It is submitted by Sri Krishna Dixit that a Review Petition No. 3815 of 1997 is filed and therefore the execution proceedings should have been stayed till the disposal of the review petition. But no efforts are made to show as to what has happened to the said review petition and whether it is really pending. Even assuming that it is pending, executing Court is not prevented from proceeding in the execution case so long as there is no stay order in that proceedings. At the hearing, learned Counsel for decree-holder submitted that on 8-10-1989 A.D.L.R., Bagalkot measured the land and delivered possession of the land as per the description of the said property in the warrant. Further, learned Counsel submitted that the executing Court closed the execution petition on 30-9-1999. Sri Krishna S. Dixit, learned Counsel relied on the decision of the Apex Court in Satyanarain Bajoria and another Vs. Ramnarain Tibrewal and another, . The facts and circumstances of the case came up for consideration before the Court are totally different, in that case, it was a money decree and the decree-holder keeping the judgment-debtor ignorant of the proceedings, brought the property to sale and had purchased it. It is in those circumstances the Court held that the whole proceedings are vitiated. It is not so in this case and they were not required to be notified in view of Section 30 of Karnataka Rent Control Act.

He next relied on a decision of this Court in A. Thakurdas and Anr Vs. A. Venilal and Others, . This has no application to the facts of the present case for the reasons stated supra. Lastly, he relied on the decision of this Court in Chandra Bai Vs. Tukaram, . In that case, by the time the parties entered into a contract of lease on 18-5-1964, lessee had already put up certain constructions and after the said lease added something more and had leased two rooms to two different persons. In those circumstances the Court held that lease of two rooms did not amount to subletting. Facts and circumstances of this case are different, secondly eviction is ordered on the ground of subletting and that order is upheld in appeal by the Constitution Bench of the Apex Court. In the circumstances, the executing Court cannot go beyond the decree and refuse to proceed with the execution proceedings.

In the circumstances, and for the reasons hereinabove stated, I hardly find any good grounds to interfere with the order impugned.

7. Sri Krishna Dixit, learned Counsel submitted that decree-holder are not entitled to the building materials that are available in the land measuring 275" x 634" for the reason that at the time of the lease what was leased is only an open site. Sri Gotkhindi, learned Counsel for decree-holder fairly submitted that the revision petitioner is entitled to take whatever building material that is available on the said area and it is recorded.

8. In the result, I decline to interfere with the order impugned and accordingly

dismiss this revision petition. Liberty is reserved to the revision petitioner-3rd J.R. to take such action as is necessary and permissible in law for the recovery of the building material if any, in the event decree-holder fails to deliver them. No costs.