

(1999) 05 KAR CK 0024

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1284 of 1999

N.K. Prakash Gupta

APPELLANT

Vs

Smt. Rukmaniyamma and Others

RESPONDENT

Date of Decision : 24-05-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 101, Order 21 Rule 103, Order 21 Rule 97
Karnataka Small Causes Courts Act, 1964 — Section 3
Limitation Act, 1963 — Section 14

Citation : (1999) ILR (Kar) 3043 : (1999) 6 KarLJ 558

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : Sri G.L. Vishwanath, for the Appellant; M/s. Naganand, Sundaraswamy and Ramdas, for the Respondent

Judgement

1. When this matter is listed for admission, Sri Nagananda, learned Counsel for the contesting respondents, has raised a preliminary objection stating that "The appellant having already invoked the jurisdiction of this Court by means of a Revision Petition u/s 50 of HRC Act and failed in his attempt cannot reagitate the same cause in this appeal. In other words, according to the learned Counsel, this appeal should not be entertained.

2. In view of the preliminary objections, learned Counsel's appearing for the parties were requested to address arguments on this preliminary point which they have done accordingly.

3. Heard Sri Vishwanath, learned Counsel appearing for the appellant and Sri Nagananda, learned Counsel for the contesting respondents.

4. Briefly stated the facts relevant to appreciate the point in controversy as gathered from the records produced by the appellant are as follows:

5. The controversy arises from an order passed by the Judge of the Small

Causes, Bangalore City on an application of the appellant raising obstruction to the execution of an eviction order passed under the Karnataka Rent Control Act.

6. One late Smt. Savitramma, owner of a premises bearing No. 75, situated at Bangalore South Taluk which consists of a residential and non-residential premises, together forming as one unit, had instituted an eviction petition in HRC No. 1931 of 1986 for evicting one Rukmaniyamma the tenant (hereinafter referred to as "the tenant") and the husband, the appellant Prakash Gupta, the Obstrucker (hereinafter referred to as the "Obstrucker1 for brevity).

7. During the pendency of the said eviction petition, Savitramma died on 12-7-1991. Consequently her husband, two sons and a daughter (Respondents 1 to 4 to this appeal) came on record as legal representatives by an order of the Court after contest and prosecuted the eviction petition. On 13-4-1992, the legal representatives of Savitramma and the tenant entered into a compromise under which the tenant agreed to vacate the premises in question by 1-9-1994. When the tenant failed to deliver possession, as agreed, the legal representatives of Savitramma sued out execution in Execution No. 12815 of 1992. When the Executing Court was in the process of executing the eviction order, the Obstrucker - husband of the Judgment-Debtor/tenant raised an obstruction by filing an application under Order 21, Rule 97 of the CPC contending as follows:

That late Savitramma had made a Will dated 6-6-1991 bequeathing the disputed property along with another property in favour of her eldest son Ramashesha respondent 4 herein to the exclusion of all the other members of the family and the said Ramashesha had executed a power of attorney in favour of one Parthasarthy and the latter under this authority had sold by means of a Registered Sale Deed dated 1-6-1992 for a consideration of Rs. 1,80,000/- the disputed property in his favour i.e., in favour of the Obstrucker, pursuant to which at the request of the Obstrucker, the tenant had attorned the tenancy in his favour and the decree does not survive"

8. Decree-holders i.e., legal representatives of Savitramma including Ramashesha the alleged sole legatee under Will objected to the application, among other grounds denying execution of the Will and the power of attorney.

9. Parties went to trial and led evidence, Learned Judge of Small Causes upon consideration of materials and contentions raised before him by his order dated 17-12-1992, dismissed the application of the Obstrucker and ordered execution.

10. The Obstrucker and the tenant (husband and wife) challenged the said order by means of a Revision Petition u/s 50 of the Rent Control Act in HRRP No. 1251 of 1996 before my brother Judge Hon'ble Mr. Justice Mallikarjuna on various grounds.

11. Learned Single Judge, by his elaborate order (produced before me by the appellants) dated 9-2-1999, dismissed the revision petition. Learned Single Judge at the instance of the appellants herein has gone into the merits of the

matter by reappraising the evidence. This is how the learned Judge at para 13 of the order has dealt:

" "Sri Reddy, learned Counsel contended that the Trial Court fell into an error in not appreciating the oral evidence properly". After overruling the objections to this contention of the respondent as (sic). Therefore in order to find out whether appreciation of evidence is proper and correct, this Court in revision can look into the evidence on record".

12. Thereafter learned Single Judge has on an reappraisal of the evidence has passed the order on merits dismissing the Rent Revision Petition.

13. I have only narrated the facts for better appreciation on the question of maintainability raised herein.

14. Sri Nagananda, learned Counsel appearing for the respondents submitted in support of his preliminary objection as follows:

That the impugned order passed by the Executing Court is by a Judge of the Small Causes exercising his jurisdiction under provisions of the Karnataka Rent Control Act constituted under Karnataka Small Causes Courts Act. According to the learned Counsel, if Section 18 and Section 35-A of the Small Causes Courts Act is read with Section 50 of the Rent Control Act, "it cannot be said that the revision power exercised by this Court at the instance of the Obstrucster tenant was beyond the jurisdiction of this Court". On this basis he submitted after reading to me the provisions of the Small Causes Courts Act and Rent Control Act that "If there are two modes of invoking the jurisdiction of this Court and the parties have already chosen and exhausted one mode, it would not be proper to grant relief in another set of proceedings challenging the same order". In support of the said contention, learned Counsel relied on the decision of the Supreme Court in Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, , S.R. Ganapathi Rao v Puttamma, Paramount Industries Vs. C.M. Malliga, and Jayanthilal Sampathraj Jain Vs. Noor Mohamed, . The relevant ones will be referred to by me at the appropriate place.

15. In answer to this, Sri Vishwanath learned Counsel for the appellants submitted that having regard to the language of Order 21, Rule 97 and Rule 103, any order passed in an obstruction proceeding by the Court is deemed to be a "decree" and therefore an appeal against such a decree to this Court is maintainable. The rent revision filed by the appellants was not maintainable, notwithstanding the appellant's voluntarily invoking the said jurisdiction. Hence this appeal filed is perfectly competent and maintainable. In support of the said contention, learned Counsel has read to me the provision of the Order 21, Rules 97 and 101 of the CPC and also relied on the following decisions:

(a) C. Rangaswamaiah and Others Vs. Karnataka Lokayukta and Others, .

(b) G. Ramakrishna Aithal Vs. Y. Varadappa, .

(c) B. Nookaraju Vs. M.S.N. Charities and others, .

(d) P.R. Deshpande v Maruti Balram Haibatti.

The relevant ones will be referred to at the appropriate place.

16. Having considered the arguments carefully, in my view, the preliminary objections has to be upheld and the appeal is liable to be rejected for the following reasons:

The order impugned as stated, arises from an "execution proceedings" of an eviction order passed by the Judge of the Small Causes in exercise of his powers under Karnataka Rent Control Act of a premises situated in Bangalore City. The eviction of tenants of all premises excepting non-residential one, the rental value of which is less than Rs. 500/- is completely regulated by the provisions of Karnataka Rent Control Act, 1961 (hereinafter referred to as the "Act"). The jurisdiction to pass eviction orders is vested only in the Courts or other authority as per Section 21 of the Act, the relevant provision of the Rent Act is extracted for ready reference:

"Section 21(1).--Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any Court or other authority in favour of the landlord against the tenant:

Provided that the Court may on an application made to it, make an order for the recovery of possession of premises on one or more of the following grounds only namely.-

xxx xxx xxx".

17. The jurisdiction of the ordinary Civil Courts therefore by necessary implication is excluded and is vested only in the "Courts" as defined in the Act. The "Court" referred to has been defined u/s 3(d)(i), (ii) and (iii) of the Rent Act as follows:

"Section 3(d)(i), (ii) and (iii):

Section 3(d) "Court" means:

(i) in respect of the area comprised within the limits of the City of Bangalore, as the Courts of Small Causes;

(ii) in such other areas as the State Government may, in consultation with the High Court, by notification specify, the Court of the Civil Judge having territorial jurisdiction over such area; and

(iii) in respect of areas other than those referred to in sub-clauses (i) and (ii), the Court of Munsiff having territorial jurisdiction of such area".

18. Thus under the scheme of the Act, jurisdiction to decide eviction matters is

vested in 3 different Courts depending upon the territorial area where the premises is situated. Insofar as the premises situated in Bangalore City as in this case, it is the Court of Small Causes which has the exclusive jurisdiction. A Court of Small Causes is constituted and established u/s 3 of the Karnataka Small Causes Courts Act, 1964. Section 3 reads as under:

"Section 3: The State Government may, in consultation with the High Court, establish by notification a Court of Small Causes at any place and define the local limits of its jurisdiction".

And a Court of Small Causes is defined u/s 2(b) as under:

"Section 2(b): "Court of Small Causes" means a Court of Small Causes constituted or deemed to have been constituted under this Act and includes any person exercising jurisdiction under this Act in any such Court".

19. Thus insofar as the premises situated at Bangalore, it is the Court of Small Causes as stated, has the jurisdiction to pass eviction orders. But under the scheme of the Rent Control Act, there is no provision for executing the "Eviction Orders" nor any detailed procedure has been provided as under Order 21 of the Code of Civil Procedure. If one goes by the provisions of the Code of Civil Procedure, a "Decree may be executed by the Court which passed it". u/s 38 and u/s 37, the "Court which passed a decree" is the Court of first instance or if such a Court ceased to exist or ceased to have jurisdiction, the Court which had the authority to decide the suit. But as stated, Rent Act has not provided a procedure for execution of its order. Therefore one has to fall back on the Small Causes Courts Act, 1964 or Rule 35 of the Karnataka Rent Control Rules to locate the power. Rule 35 of the Rent Control Rules stated as:

"Section 35: In deciding any question relating to procedure not specifically provided for by these rules, the Court shall as far as possible be guided by the provisions contained in the Code of Civil Procedure, 1908".

Thus by a reading of the rules, it could be held the Court may adopt the provision of CPC including Order 21 for executing the order. But though the procedure provided in CPC is applied, yet the power that is available is only for the "Small Causes Courts" to execute its orders. The "Execution of an order" takes within its sweep "Removal of obstruction" or "Dealing with the rights of an Obstructer to obstruct.

20. This view of mine is also supported by the decision of this Court in Ramachandran Vs. Khaleeq Ahmed, . A similar question came up for consideration viz., "Whether in the absence of specific provisions under the Rent Control Act, the Court of Small Causes exercising its power under the Karnataka Rent Control Act, in respect of premises situated in Bangalore City has the power to execute its orders of eviction. Answering in the affirmative, this Court has held as under:

"It is no doubt true that there is nothing specific in the Rent Control Act to

indicate as to whether the Court of Small Causes which has passed the eviction orders has got the jurisdiction to execute them. The legislature in its wisdom has not made a reference to it in the Rent Control Act, because the proceedings under the Rent Control Act would be governed by the CPC itself. Sections 37 and 38 of the CPC make it abundantly clear that the Court that passed the decree would have the power to execute its own decree or order. If the Court of Small Causes has been constituted as a Court having jurisdiction to entertain and hear the case filed under the Rent Control Act, that Court alone would have the jurisdiction to execute the orders passed by it.

The Court under the Rent Control Act, insofar as Bangalore City is concerned, is not a separate Court i.e., separate from the Court of Small Causes established under the Rent Control Act. One of the Courts that has been conferred with jurisdiction under the Rent Control Act is a Court of Small Causes in Bangalore City. Therefore ultimately it is the Court of Small Causes that will have to execute orders that have been passed by it under the Rent Control Act".

21. Insofar as the orders passed by the Court of Small Causes in an execution proceedings including the order in an obstruction proceedings, can this Court in exercise of its Revision Powers interfere with such orders? In order to answer the same it is necessary to look into the provisions of Rent Control Act. u/s 50 a Revision Power has been conferred to this Court. Section 50 is extracted for ready reference:

"Section 50. Revision.--(1) The High Court may, at any time call for and examine any order passed or proceeding taken by (the Court of Small Causes or the Court of Civil Judge) under this Act or any order passed by the Controller under Sections 14, 15, 16 and 17 for the purpose of satisfying itself as to the legality or correctness of such order or proceeding and may pass such order in reference thereto as it thinks fit.

(2) The District Judge may, at any time call for and examine any order passed or proceeding taken by the Court of Munsiff referred to in sub-clause (iii) of clause (d) of Section 3 for the purpose of satisfying himself as to the legality or correctness of such order or proceeding and may pass such order in reference thereto as he thinks fit. The order of the District Judge shall be final.

(3) The costs of and incidental to all proceedings before the High Court or the District Judge shall be in the discretion of the High Court or the District Judge, as the case may be".

22. A reading of Section 50, shows that any order or "proceedings of a Small Causes Court" may be examined by the High Court suo motu on an application by an aggrieved party, to satisfy about the legality or correctness. There is nothing to suggest either expressly or impliedly by the language of Section 50 or by any other provisions of the Act to exclude the orders passed in execution of eviction orders passed by Small Causes Court to be interfered by this Court.

23. Therefore it cannot be said as contended by the learned Counsel for appellant that the order passed by the learned Single Judge of this Court in HRRP No. 1251 of 1996 is without jurisdiction. The revision power u/s 50 of the Rent Control Act is wider than the powers u/s 115 of the CPC as held by the Supreme Court in *M.S. Zahed v K. Raghavan*, that evidence can also be reappraised by the Court u/s 50 if the case demands.

24. The appellant having invoked the Revision jurisdiction of this Court, obtained an unfavourable orders on merit now can he be permitted to reagitate again by means of this appeal? In a somewhat a similar situation a question arose in the case of *Shankar, supra*, before the Hon"ble Supreme Court cited by the learned Counsel for the respondent. Facts being the landlord therein had obtained a decree for eviction against the tenant by the Small Causes Court, which came to be confirmed by the Appellate Court. The Revision Petition filed by the tenant u/s 115 of the CPC came to be dismissed. The tenant again moved the Division Bench under Article 226 of the Constitution of India which came to be allowed on a leave petition to Supreme Court. The Supreme Court after referring to the decision in AIR 1932 165 (Privy Council) , with approval the decision of the Privy Council and that of the decision in *Raja of Ramnad v Kamid Rowthen*, wherein it was held "A Civil Revision Petition was considered to be an appropriate form of appeal from the judgment in a suit of small causes" and that of the Madras High Court in *P.P.P. Chidambara Nadar v C.P.A. Rama Nadar* and also the observations of Lord Westbury in *Attorney General v Sillem*, has held as under:

"Now when the aid of the High Court is invoked on the revision side it is done because it is a superior Court and it can interfere for the purpose of rectifying the error of the Court below. Section 115 of the CPC circumscribes the limits of that jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a Superior Court. It is only one of the modes of exercising power conferred by the Statute; basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in a wider and larger sense. We do not, therefore, consider that the principle of merger of orders of inferior Courts in those of superior Courts would be affected or would become inapplicable by making a distinction between a petition for revision and an appeal.

It may be useful to refer to certain other decisions which by analogy can be of some assistance in deciding the point before us. In *U.J.S. Chopra Vs. State of Bombay*, , the principle of merger was considered with reference to Section 439 of the Criminal Procedure Code which confers revision jurisdiction on the High Court. In the majority judgment it was held, inter alia, that a judgment pronounced by the High Court in the exercise of its appellate or revision jurisdiction after issue of a notice and a full hearing, in the presence of both the parties would replace the judgment of the lower Court thus constituting the judgment of the High Court - the only final judgment to be executed in accordance with law by the Court below. In *Chandi Prasad Chokhani Vs. The*

State of Bihar, , it was said that save in exceptional and special circumstances this Court would exercise its power under Article 136 in such a way as to bypass the High Court and ignore the latter's decision which had become final and binding by entertaining an appeal directly from orders of a Tribunal. Such exercise of power would be particularly inadvisable in a case where the result might lead to a conflict of decisions of two Courts of competent jurisdiction. In our opinion the course which was followed by the High Court, in the present case, is certainly one which leads to a conflict of decisions of the same Court".

(emphasis supplied)

25. The same ratio applies to the facts of this case with equal force. The revision jurisdiction of this Court is of a Court of superior jurisdiction u/s 50 of the Act, and is exercised for corrections or rectifications of the orders of the Small Causes Court which is an inferior Court. Besides as held by the Supreme Court, if the appeal is entertained, it may lead to conflict of decisions of the same Court. One other factor also to be stated is that insofar as the subject-matter of this appeal is concerned under the provisions of the Karnataka High Court Act, the powers of revision u/s 50 of the Rent Control Act and the appellate power and revision power u/s 115 of the CPC is to be exercised by a Single Judge of the High Court. Having regard to this and the records being before the learned Single Judge, the distinction between the "power of appeal" and "power of revision" is of no significance as long as the power is available to interfere in the impugned order. Looked at from any angle, this appeal is liable to be rejected upholding the preliminary objection.

26. Coming to the submissions of Sri Vishwanth, learned Counsel for appellant viz., that when an eviction order is sought to be executed, an application under Order 21, Rule 97 is maintainable, if so, the Court should hold an enquiry as contemplated under Order 21, Rules 101 and 104 and decide about the claims of the objector. Such an order or decision is deemed to be a "Decree", and against which only appeal is maintainable. If so, the "Only" remedy is by way of an appeal and not by way of revision. Elaborating the same, he submitted that the parties right of appeal can never be lost merely because of invoking the "Revision jurisdiction". Learned Counsel tried to emphasise the same by relying on the decision in Ghasi Ram and Others Vs. Chait Ram Saini and Others, . The question involved in this appeal is not one of availability of the Remedy of "Right of appeal". But "Whether this Court has no jurisdiction whatsoever u/s 50 of the Rent Control Act to interfere with the order of the Small Causes Court, when it passes an order while executing an eviction order passed by it under the provisions of Karnataka Rent Control Act and further whether a party after invoking the aid of such a revision power, can reagitate the same matter once again by means of an appeal"?

27. I have already discussed at length above and answered holding that he cannot reagitate on the principle of avoiding "conflict of decisions by the same Court", "merger".

28. The reliance of Ghasi Ram's case, supra, in this regard is not well founded. In Ghasi Ram's case, supra, the Hon'ble Supreme Court was interpreting Section 14 of the Limitation Act. The question that came up before the Court was "Whether time spent on prosecuting a revision petition before the High Court, against the orders of a Civil Court passed under Order 21, Rule 98 of the CPC as it stood prior to amendment should be excluded in computing the period of limitation for filing a suit under Order 21, Rule 103 (Prior to amendment of CPC Amendment Act of 1976). It was held by the Court while interpreting the word "Conclusive" in Order 21, Rule 103 of the CPC as follows:

"The word "Conclusive" appearing in Rule 103 indicates that it creates a presumption in favour of facts relating to rights to property as well as legality of the matter stated in the order. Such an order passed under Rule 98 is not subject to any further enquiry in any other proceeding, except by bringing a fresh suit under Rule 103. Thus, in view of the conclusiveness attached to the order passed by the executing Court on an application filed under Rule 97, which is subject to result of a suit, if any, filed under Rule 103, is not assailable in any other proceedings. In case no suit is filed under Rule 103, the order passed under Rule 98 is final between the parties. Accordingly, we are of the opinion that the High Court could not have entertained the revision since it suffered from "Other cause of a like nature" which precluded it from deciding the rights of the parties on facts".

29. It has to be noted that firstly after the CPC was amended after the Amending Act of 1976, the Executing Court itself has to decide all questions raised including the right, title, interest between the parties, and any such order is "Appellable". This distinguishes the said case from the facts of the present case.

30. Secondly in Ghasi Ram's case, supra, the availability of powers of revision of this Court u/s 50 of the Rent Control Act was not the subject-matter for consideration directly or remotely nor the theory of "Conflict of Decision". Hence no assistance can be drawn from the said case.

31. Insofar as the reliance placed by the learned Counsel in A. Chidambar Vs. Leela, , is concerned, it is held therein that "An application under Order 21, Rule 97 is maintainable where a Court is in the process of executing an eviction order passed under the Karnataka Rent Control Act". There cannot be any dispute about the said proposition.

32. Similarly in G. Ramakrishna Aithal's case, supra, referred to by the learned Counsel, the question that arose was "In the absence of a specific provision under the Rent Control Act, whether the orders passed by it can be executed and such orders are decrees within the meaning of Section 2(2) of the CPC. The Court after referring to Rule 35 of the Karnataka Rent Control Rules, answered the question in the affirmative and held that the orders are decrees and can be executed".

33. The question whether this Court in exercise of its revision powers can

interfere with the orders passed by the Courts of Small Causes was not the subject-matter. Hence the same has no bearing on the contentions of the appellant.

34. For the reasons stated above, the preliminary objection raised by the respondents' Counsel is upheld and the appeal is dismissed without going into merits.

H. Rangavittalachar, J,

24-5-1999

35. After the orders were pronounced, learned Counsel appearing for the appellant prayed that the impugned order in this appeal be stayed for a period of eight weeks from today as the appellant intends to approach the Hon"ble Supreme Court.

36. Heard the learned Counsel appearing for the respondents also.

37. In view of the submission made by the learned Counsel appearing for the appellant, the impugned order in this appeal is stayed for a period of eight weeks from today.