

(1977) 12 KAR CK 0017

In the Karnataka High Court

Case No : Civil Revision Petition No. 611 of 1976

Palthur Raja Saheb

APPELLANT

Vs

Noor Mohemed Saheb and Others

RESPONDENT

Date of Decision : 20-12-1977

Acts Referred:

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

Citation : AIR 1978 Kar 81 : (1978) 1 KarLJ 132

Hon'ble Judges : G.N. Sabhahit, J

Bench : Single Bench

Advocate : M.R. Achar, for the Appellant; T.S. Ramachandra, for the Respondent

Judgement

1. The Landlord obtained a decree in H.R.C. No. 65 of 1975 against the tenant for eviction in the Court of the Munsiff, Bellary, under Clause (j) of Section 21 (1) of the Karnataka Rent Control Act, 1961, on 31-7-1975. The tenant went up in Revision to the District Judge, Bellary, in H.R.C. Revision Petition No. 9 of 1975 and the learned District Judge, on hearing, dismissed the Revision Petition as devoid of merits by his order dated 27-1-1976. Aggrieved by the said order, the tenant has presented the present Revision Petition. After the Revision Petition was filed, the landlord Noor Mohemed Saheb died and his legal representatives, viz., the widow and sons, were brought on, record.

2. The learned Advocate for the Revision Petition vehemently contended that since the original landlord was no more the cause of action did not survive in favour of his legal representatives and without more, the Revision Petition should be allowed.

3. The learned Advocate relied on a decision of this Court rendered in C. R. P. No. 2495 of 1973 (Kant) wherein this Court held on the facts of that case that cause of action under Clause (j) did not survive in favour of the legatees. The learned Advocate submitted that the same holds good in the present case also and that the Revision Petition should be allowed holding that the benefit of the decree

obtained by the landlord does not enure to the benefit of his widow and sons -- the legal representatives.

4. On going through the order passed in C.R.P. No. 2495 of 1973 (Kant), it becomes clear that in that case, the L. Rs. brought on record were legatees who got the assets of the landlord by will. It was submitted before His Lordship in that case that the legatees could not sue and defend the benefit accrued to the estate of the deceased. His Lordship Justice Venkataswami, relying on the observations made in the case of Phul Rani and Others Vs. Sh. Naubat Rai Ahluwalia, held that the cause of action did not survive in favour of the legatees and that they were not entitled to defend the benefits accrued to the estate of the deceased.

5. The learned Advocate appearing for the respondents submitted that the ruling rendered by the Supreme Court in Phool Rani's case has been subsequently set aside in the case of Shantilal Thakordas and Others Vs. Chimanlal Maganlal Telwala, and he further distinguished the facts of the present case from the facts of the case in C, R. P. No. 2495 of 1973 (Kant). He submitted that in C. R. P. No. 2495 of 1973 (Kant), the L. Rs brought on record were legatees who claimed under a will, whereas in the instant case, they are the widow and sons of the deceased who succeeded to the property on the death of the landlord.

6. Moreover, he invited my attention to the observations of the Supreme Court in Phul Rani and Others Vs. Sh. Naubat Rai Ahluwalia, wherein the Supreme Court has observed (at p. 2113):

"Cases of the first category are distinguishable because the decisions therein are explicable on the basis, though not always so expressed, that the estate is entitled to the benefit which, under a decree has accrued in favour of the plaintiff and therefore the legal representatives are entitled to defend further proceedings, like an appeal, which constitute a challenge to that benefit."

The Supreme Court has put in the first category, the cases in which the death of the plaintiff occurred after a decree for possession was passed in his favour, say, during the pendency of an appeal filed by the unsuccessful tenant. In such cases, the Supreme Court clearly held, that the estate of the deceased is entitled to the benefit which under a decree has accrued to the deceased plaintiff. Therefore, the legal representatives are entitled to defend the further proceedings. These observations of the Supreme Court in Phool Rani's case, are left undisturbed in the case of Shantilal Thakordas and Others Vs. Chimanlal Maganlal Telwala, .

7. The present case falls in that category. Here, the deceased-plaintiff had already obtained a decree for eviction of the tenant from the suit premises. The decree was confirmed by the learned District Judge. It is the tenant who has come up in revision before this Court and it is during the pendency of this Revision Petition, that the landlord died. That being so, it becomes obvious that the L. Rs. who are none else than the widow and sons of the deceased, are entitled to defend the benefit that has accrued to the estate and the present

Revision Petition which constitutes a challenge to that benefit, can be resisted by the legal representatives. The question of survival of cause of action, as such, does not arise in cases like the present one.

8. That being so, I hold that there is no substance in the plea raised by the learned Counsel for the Revision Petitioner that the legal representatives of the deceased landlord cannot defend the benefit accrued to the estate of the deceased landlord during his lifetime. No other point was submitted for my consideration. The Revision Petition, there-fore, is dismissed as devoid of merits. The petitioner, however, is granted three months" time to vacate. No costs.

9. Revision dismissed.