
(1993) 06 KAR CK 0010
In the Karnataka High Court
Case No : C.R.P. No. 703 of 1993

Panalal Jain

APPELLANT

Vs

Brhmadev Sharma

RESPONDENT

Date of Decision : 23-06-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 14 Rule 2
Karnataka Rent Control Act, 1961 — Section 21, 21 (1) (h)

Citation : (1993) ILR (Kar) 3359 : (1996) 5 KarLJ 271

Hon'ble Judges : N.D.V. Bhat, J

Bench : Single Bench

Advocate : H.J. Sanghavi, for the Appellant; T.N. Raghupathy, for the Respondent

Final Decision : Dismissed

Judgement

N.D.V. Bhat, J.—The Revision Petition is directed against the order dated 30-1-1993 passed by the Addl. Small Causes Judge, Bangalore on I.A.IV in H.R.C. 1658/90. The matter has come up for admission. Having regard to the fact that the point in issue lies in a narrow compass, I have taken up the matter for final hearing since both parties are represented by Counsel.

2. Heard Learned Counsel Sri. Sanghavi for the petitioner and Sri Raghupathy learned Counsel for the respondents.

3. The facts relevant for the disposal of the Revision Petition, briefly stated, are as follows:

The instant respondents filed application for eviction against the instant Revision petitioner in H.R.C. 1658/90 praying for an order of eviction u/s 21(1)(h) of the Karnataka Rent Control Act ("the Act" for short) on the basis of the allegations reflected in the petition for eviction.

4. The petition for eviction was resisted by the instant Revision petitioner inter alia on the ground that the instant respondents have no title whatsoever in

respect of the property in question. In particular the adoption and the will pleaded in the course of the application filed by the instant respondents was contested by the instant Revision petitioner in his statement of objections before the lower Court.

5. Having regard to the fact that the title of the applicants before the Court-below was contested, the instant petitioner filed an application before the Court-below purporting to be one under Order 14, Rule 2 C.P.C. submitting that the issue relating to jurisdiction of the Court be disposed as a preliminary issue more so on the ground that it contains a complicated question of title. The lower Court, however, took the view that the totality of the facts brought on record do not bear any complicated question of ownership of the premises in question, with the result, the application filed by the instant Revision petitioner came to be dismissed. Hence, the instant Revision.

6. Learned Counsel Sri Sanghavi highlighted two points for the consideration of this Court. In the first place, it is argued by Sri Sanghavi that having regard to the order passed by this Court on 3rd July, 1989 in C.R.P.258/87 it was incumbent upon the instant respondent to go to a proper Court and obtain Probate before filing an application for eviction independently against the instant Revision petitioner. Secondly, it was argued by Sri Sanghavi that the Small Causes Court was not competent to go into the question of title like the one raised by the instant Revision petitioner before it. Sri Raghupathy, learned Counsel for the respondents, on the other hand submitted that none of the grounds canvassed by the other side is tenable. It is argued by Sri Raghupathy that the order passed by this Court in C.R.P. 258/87 cannot be interpreted in the way and the manner as is sought to be done by the learned Counsel for the Revision petitioner. It was also argued by learned Counsel Sri Raghupathy that there is no complicated question of title at all in the instant case and moreover evidence was already being recorded with reference to the merits of the case and that, therefore, the question of raising any preliminary issue as such did not arise at all.

7. By way of reply to the said submission learned Counsel appearing for the Revision petitioner has cited the following Decisions, viz.,

1. BUDHU MAL v. MAHABIR PRASAD
2. WILFRED LOVETTE v. GANESH
3. SHANTHARAM v. RAMA AMIN

I may mention here that Sri Ragupathy, learned Counsel appearing for respondents, has placed reliance on the Decision of this Court in 1990 (2) Kar.L.J. 212.

8. I have given my careful consideration to the submissions made on either side. In my view it is not necessary at this stage to go into the various aspects highlighted by the learned Counsel on either side. The precise question for

consideration of this Court is whether the trial Court ought to have decided the question raised by the respondent, as a preliminary issue. In fact this aspect is not the subject matter of the Decision in Budhu Mal's case or for that matter the Decision in Wilfred Lovette's case. In Budhu Mal's case it is pointed out that Section 23 of the Provincial Small Causes Court does not make it obligatory on the part of the Court of Small Causes to return the plaint once the question touching the ownership is raised by the tenant in a suit for eviction. In Wilfred Lovette's case the Bombay High Court has pointed out that in an ejectment suit where a defence is taken in the written statement that the defendant u/s 53A of the Transfer of Property Act is holding the property in part performance of a contract, the suit itself goes out of the jurisdiction of the Court of Small Causes since it cannot decide the substantial question regarding jural relationship involved in such a suit and the Court of Small Causes, in such a situation, has to return the plaint along with the written-statement for presentation to the proper Court having jurisdiction to decide the suit. A careful perusal of the said two Decisions would go to show that the ratio laid down in the Decisions referred to supra are in the context of the powers of the Court of Small Causes in deciding a suit in which complicated question of fact and law regarding ownership of property is involved and have no application to the facts of the instant case. It is true that in the instant case, it is the Court of Small Causes before which the point relating to title is raised. However, it is necessary to point out that the Judge in the instant case was exercising his powers under the Karnataka Rent Control Act. In that view of the matter the question in controversy will have to be resolved in the context of the Decision which is directly applicable to a situation like the one on hand. In fact this Court in the Decision in L.J. MOHAN v. DR. RAMA PRASAD and Anr. has dealt with this aspect. The Decision in the said case is directly on the point and it would indeed be refreshing to refer to the Decision in greater detail. In para No. 2 of the said Decision this Court has observed as under.

"There is no gain saying that the question of landlord and tenant relationship is a mere question of fact. It has to be decided on evidentiary 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 Raman 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.G. 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 in limine 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 in limine 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."

In substance this Court has pointed out that the question relating to relationship of landlord and tenant being a question of fact to be decided on evidentiary material, a mere allegation that there is no relationship of landlord and tenant would not oust the jurisdiction of the Court in deciding such dispute. In so deciding a dispute if the Court under the Act has to consider complicated questions of law and fact, the Court may direct the parties to a proper Court to sort out the said issue and not otherwise. In the said Decision it is ultimately held that such a dispute by its very nature depends upon evidence very much and very little on law and so in such cases the Court should not be pressed into deciding a question which is an admixture of facts and law as a preliminary issue. In the instant case it is seen that the instant petitioners have asserted that they are the landlords, of the petition premises on account of the will executed by the erstwhile owner of the property who admittedly was the landlord in relation to the Revision petitioner. In that view of the matter it is obvious that the contention raised by the tenant in substance is one of denial of relationship of landlord and tenant as between him and the applicants. In that view of the matter it is obvious that the matter would indeed require substantial evidence and as pointed out by this Court in L.J. Mohan's case it would certainly not be proper for the Court to try it as a preliminary issue. Further, it is significant to notice here that the application filed by the instant Revision petitioner before the Court-below was one under Order 14, Rules 1 and 2 C.P.C. Order 14, Rule 2 C.P.C. in particular provides the circumstances under which an issue can be decided as a preliminary issue. It reads :

"2. (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of Sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and fact arise in the same suit, and the Court is of opinion that case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to -

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

A careful perusal of the aforesaid Rule would clearly go to show that when an issue of both law and fact arises in the same suit and the Court is of opinion that case itself or any part thereof could be disposed of on an issue of law only, it may try that issue as a preliminary issue provided it relates to the jurisdiction of the Court or if there is a bar to the suit created by any law in force. It is not possible to say in the instant case that the case itself or any part thereof could be disposed of by deciding on an issue of law only. The decision with reference to the point raised by the tenant would depend upon mixed question of law and facts. This Court in the Decision in KARGUPIKER v. KULKARNI has held that an issue of fact and law on which evidence is required cannot be tried as a preliminary issue. This is the view ventilated in L.J. Mohan's case and it is not necessary to risk repetition here by referring to the views expressed therein over and again. In the result, there is no substance in the submission made by the learned Advocate for petitioner that the issue raised by him ought to have been tried as a preliminary issue. If that be so, it has to be seen whether the order passed by this Court in C.R.P. 258/87, is of any assistance to the instant Revision petitioner.

9. To support his contention that the Order passed by this Court in C.R.P. 258/87 does not support the petitioner in any way, learned Counsel Sri Raghupathy has made available a copy of the Order passed by this Court in C.R.P. 258/87. The relevant portion of the Order pressed into service by the petitioner to contend that the Court has no jurisdiction to decide the question at issue is as under:

"The landlord is reported to have died during the pendency of these proceedings. The applicants in I.A.No. 1 Sri Brahmadeva Sharma and Smt. Savithridevi, seeks to come on record as her legal representatives. The tenants does not admit, that they are the heirs and legal representatives of the deceased-petitioner. It is not disputed that the claim for the premises was specifically for the bonafide use and occupation of the deceased-petitioner. As such the claim does not survive for consideration in this revision. The question regarding the status of the applicants is left open. They are at liberty to seek necessary relief before the appropriate forum in accordance with law."

On a careful perusal of the portion of the Order culled out above, I have no hesitation whatsoever in holding that there is nothing in the said Order which would warrant an inference that this Court has taken the view that the status of the instant respondent can be decided only in a regular Civil Court or for that matter in a District Court. It is necessary to point out here that the Court has used the word "appropriate forum". In that view of the matter, there is no substance in the submission made by learned Counsel for the petitioner that this Court should be meant to have said that the question of ownership could not be

decided by the Court competent to decide the petition filed u/s 21 of the Act. In any view of the matter, there is no merit in any of the contentions urged by the Counsel for the petitioner necessitating interference with the order passed by the Court-below.

10. In the result, for the reasons stated above, the Revision Petition is dismissed. I make no order as to costs.