

(1988) 10 KAR CK 0002
In the Karnataka High Court
Case No : C.R.P. No. 430 of 1985

Popular Automobiles

APPELLANT

Vs

N. Veeraswamy

RESPONDENT

Date of Decision : 07-10-1988

Acts Referred:

Evidence Act, 1872 — Section 116

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

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10 (1), 19, 20, 5

Citation : (1989) ILR (Kar) 1555

Hon'ble Judges : Balakrishna, J

Bench : Single Bench

Advocate : S.G. Sundaraswamy, for the Appellant; H.B. Datar, for Shashidhar S. Karmadi, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna, J.—The petition is directed against the order of the Court of Small Causes, Bangalore City, dated 3-12-1984 passed in H.R.C.No. 614 of 1982 ordering the eviction of the petitioner.

2. The facts material to the case are as follows:

The petitioner is a tenant who is in occupation of the entire property bearing No. 48, Mavalli Tank Bund Road, Corporation Division No. 27), Bangalore, admeasuring East to West 280+293" and North to South 93"6"+ 135" 2 2 consisting of a building and vacant space within the said boundaries. The petitioner became a tenant by virtue of a lease from one Rajagopal. The building portion within the said premises actually measures 127"5" in length and about 45" in width. It consists of the ground floor and the first floor. According to the petitioner, the employees of the petitioner Firm (M/s Popular Automobiles) together with their families have been residing in the said building. The lease is in existence since over 38 years. The respondent is stated to be the purchaser of a portion of the premises which is in the occupation of the petitioner by virtue of

a sale deed dated 16-12-1981 executed by the aforesaid Rajagopal. The respondent instituted eviction proceedings against the petitioner claiming to be the landlord, for bona fide use and occupation of the premises u/s 21(1)(h) of the Karnataka Rent Control Act. It was contended by the respondent before the trial Court that he was in occupation of a small rented house measuring about 41/2 squares in extent in Basavanagudi and that his landlord had filed a petition for eviction against the respondent. According to the petitioner, the area purchased by the respondent from his vendor Rajagopal is only 50" x 70". After trial, the learned Small Cause Judge held that the respondent is entitled to eviction of the petitioner and ordered eviction of the petitioner from a portion of a residential property which belongs to the respondent as found by the trial Court. It is this order of eviction which is challenged in this revision petition.

3. The petitioner has raised several contentions. The principal contentions are:

(1) that the respondent has not correctly described and identified the portion of the property in respect of which he was seeking eviction;

(2) the former landlord sold different portions of the property to different persons under 9 sale deeds and the land and the building in occupation of the petitioner is owned by 9 different persons and their specific shares or portions of which they are the owners have not been determined and no apportionment of the rent of the property (sic) been made and in such circumstances the trial Court committed an error of jurisdiction to deciding the matter in proceedings to which the other purchasers are not parties;

(3) the petitioner's tenancy cannot be split up and eviction sought in respect of any portion of the premises is not sustainable;

(4) that there is no valid sale between the respondent and his vendor since the vacant land in the premises exceeded the ceiling limit of 1000 square metres and no exemption had been granted u/s 19 or Section 20 of the Urban Land (Ceiling and Regulation) Act and that there is no evidence to show that the respondent received possession from his vendor either actual or constructive. Therefore, the respondent has not acquired title to the petition schedule property;

(5) the need of the respondent has not been conclusively proved;

(6) the building in the occupation of the petitioner exceeds 100 squares of built area having 17 rooms and the respondent having a family of 8 persons including himself does not require such a large area for himself and his family;

(7) the trial Court ought to have considered whether partial eviction would have satisfied the requirements of the respondent.

4. The case of the respondent is that the petitioner Firm was a tenant of one S. Rajagopal occupying the petition schedule property paying a monthly rent of Rs. 175/- with the tenancy commencing on first of each calendar month. The respondent has been residing in a rented premises No. 30 Eastern Road,

Basavanagudi, Bangalore-4, and he purchased the schedule premises from S. Rajagopal under a registered deed of sale executed on 16-12-1981 with the sole intention of self-occupation and use. After the purchase, S. Rajagopal by a letter dated nil addressed to the petitioner, apprised the petitioner of the sale in favour of the respondent requesting the petitioner to attorn as a tenant of the respondent and asking him to pay the rents due in respect of the schedule premises to the respondent with effect from 1-1-1982. The said letter was acknowledged by the petitioner on 31-12-1981. Thereafter the respondent issued a notice dated 9-2-1982 through his Lawyer calling upon the petitioner to pay the rents in respect of the schedule premises to the respondent with effect from 1-1-1982 and also to deliver vacant possession of the schedule premises for the personal use and occupation of the respondent. In the reply issued by the petitioner dated 25-2-1982, the petitioner refused to deliver vacant possession of the schedule premises and, therefore, the respondent instituted eviction proceedings against the petitioner.

5. According to the respondent, there has been misunderstanding and ill-feelings between the respondent and his landlord Ramakrishna Raju who has been trying to evict the respondent on one pretext or the other. It is stated that Ramakrishna Raju filed two eviction proceedings against the respondent one for eviction of the respondent on the ground of nuisance and annoyance and another for permanent injunction restraining the respondent from causing damage to the tenanted premises. However, the case relating to annoyance and nuisance was ultimately dismissed by this Court and the other case in which permanent injunction was sought was pending before the learned 11th Additional City , Civil Judge, Bangalore, in O.S.No.3643 of 1980. On account of the hostile attitude of the landlord of the respondent and "unhealthy circumstances", the respondent states that he cannot continue in occupation of the tenanted premises and, therefore, the premises is reasonably and bona fide required for self-occupation of the respondent. It is also stated by the respondent that he would be put to greater hardship if eviction is not ordered whereas no such hardship would be caused to the petitioner if eviction is ordered. It is further stated that the 1st Floor of the building bearing No. 16, Kalasipalyam New Extension, Bangalore-2, belonging to the petitioner is lying vacant and that the I floor consists of about 100 squares. It is alleged that the petitioner has put up a to-let board on the said portion of the 1st floor.

6. For the sake of convenience, a description of the schedule to the eviction petition is given below:

Portion of the residential house property in premises bearing Municipal Old No. 1, then 1/48 and at present 48, situated at Mavalli Tank Bund Road, Bangalore-2, and bounded as follows:

East: By the remaining portion of the property in premises No. 48, sold to Sriyuths B. Ramachandra Naidu, V. Sriramulu Naidu and N. Srinivasa;

West: By portion of premises No. 48 sold to Sri G. Gurappa;

North: By property of Sri Ramappa; and

South: By common passage.

7. The trial Court decided the case by considering the following points:

(1) Whether the petitioner is the owner of the petition schedule building and whether there exists relationship of landlord and tenant between him and the respondent in respect of it?

(2) Whether the petition schedule building is incapable of being identified with certainty to pass an effective order of eviction?

(3) Whether points 1 and 2 above involves complicated questions of law which this Court has no jurisdiction to adjudicate upon?

(4) Whether the petitioner reasonably and bona-fide requires the petition schedule building for occupation by himself?

(5) Whether greater hardship would be caused by passing a decree than by refusing to pass it?

The word "petitioner" mentioned above, refers to the respondent before this Court, All the points were answered in favour of the respondent-landlord.

8. I have heard the arguments of the learned Counsel for the petitioner Sri S.G. Sundaraswamy and also the arguments of the learned Counsel for the respondent Sri H.B. Datar.

9. The main thrust of the argument of the learned Counsel for the petitioner is that the respondent has not acquired valid title to the property at all and, therefore, the eviction petition ought to have been dismissed by the trial Court. Before going to other points, it is necessary to consider this aspect of the case.

10. The learned Counsel for the petitioner forcefully contended that the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 ("the Act" for short) prohibit the transfer of the schedule property to the respondent under a sale deed from Rajagopal because the area of the property stated to have been sold to the respondent exceeds the ceiling limit imposed on vacant Urban Land situated in Urban Agglomeration of Bangalore. According to the learned Counsel what stands in the way of the respondent are the provisions of Sections 5, 10(1), 19 and 20 of the Act. The substance of the argument is that Section 5 of the Act prohibits any person holding vacant land in excess of the ceiling limit from transferring any such land or part thereof by way of sale until the holder has furnished a statement u/s 6 of the Act and a notification regarding the excess vacant land held by the holder has been published u/s 10(1) of the Act. The Act also declares that any transfer made in contravention of the said provisions would be null and void and the burden of showing that the land was not vacant land coming under the prohibition of Section 5 of the Act was on the purchaser

(the respondent in this case). The total extent of the premises in question in accordance with the Commissioner's report is 30495 square feet of which the building is only a part. The vacant land of the premises is far in excess of the ceiling limit of 1000 square metres and no exemption was granted to the holder under Sections 19 or 20 of the Act. Ex facie, according to the petitioner, the vendor of the respondent was holding land in excess of the ceiling limit and the transfer by means of a sale deed in favour of the respondent and others fell within the prohibitive clause of Section 5 of the Act and, therefore, became void. Further submission is that no valid sale could take place until notification u/s 10(1) of the Act is published and that there is no evidence of the filing of the statement u/s 5 and the notification u/s 10(1) of the Act by the respondent and, therefore, the respondent has not acquired any title to the property in question and has no locus standi to seek eviction of the petitioner. It is further contended that there is no evidence at all to show that the respondent received possession from his vendor either actual or constructive.

11. Therefore, the first question for determination is whether the respondent has no locus standi to sue the petitioner for eviction.

12. For the sake of convenience, it is necessary to refer to the relevant provisions of the Act:

"5(1) In any State to which this Act applies in the first instance, where any person who had held vacant land in excess of the ceiling limit at any time during the period commencing on the appointed day and ending with the commencement of this Act, has transferred such land or part thereof by way of sale, mortgage, gift, lease or otherwise, the extent of the land so transferred shall also be taken into account in calculating the extent of vacant land held by such person and the excess vacant land in relation to such person shall, for the purposes of this Chapter, be selected out of the vacant land held by him after such transfer and in case the entire excess vacant land cannot be so selected, the balance, or, where no vacant land is held by him after the transfer, the entire excess vacant land, shall be selected out of the vacant land held by the transferee:

Provided that where such person has transferred his vacant land to more than one person, the balance, or, as the case may be, the entire excess vacant land aforesaid, shall be selected out of the vacant land held by each of the transferees in the same proportion as the area of the vacant land transferred to him bears to the total area of the land transferred to all the transferees.

XXX XXX 10(1) As soon as may be after the service of the statement u/s 9 on the person concerned, the Competent Authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that -

(i) such vacant land is to be acquired by the concerned State Government; and

(ii) the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land, to be published for the information of the general public in the Official Gazette of the State concerned and in such other manner as may be prescribed.

xxx xxx (4) During the period commencing on the date of publication of the notification under Sub-section (1) and ending with the date specified in the declaration made under Sub-section (3) -

(i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and

(ii) no person shall alter or cause to be altered the use of such excess vacant land."

13. Under registered sale deed dated 16-12-1981, the respondent purchased the schedule premises from one S. Rajagopal. After the purchase, the landlord of the respondent addressed a letter to the petitioner apprising him of the sale in favour of the respondent and requesting the petitioner to attorn as a tenant of the respondent and to pay the rents to the respondent with effect from 1-1-1982 in respect of the schedule premises. The letter was acknowledged by the petitioner on 31-12-1981. This was followed up by a legal notice dated 9-2-1982 issued to the petitioner by the respondent calling upon the petitioner to pay the rents in respect of the schedule premises from 1-1-1982 and also to deliver vacant possession of the premises for the personal use and occupation of the respondent. However, in the reply dated 25-2-1982, the petitioner declined to deliver vacant possession of the schedule premises whereupon the respondent was constrained to institute the eviction proceedings against the petitioner. As against this version of the respondent, it is contended by the petitioner that it is true that the petitioner is a tenant under one Rajagopal in respect of the entire property bearing No. 48 (old No. 1 and new No. 1/48), Mavalli Tank Bund Road, Corporation Division No. 27, Bangalore, bounded on the East by Mavalli Tank Bund Road, West by Nariswamy Mutt, North by K. Ramaiah's property No. 49 and South by Somashekar Rao and Lakshmi Bai's property Nos. 46 and 47 measuring

East to West 280+293" and North to South 93'6"+ 135" 2 2 and all the property situate within these measurements consisting of a building and a vacant land. It is also contended by the petitioner that the purchase of the petition schedule property from S. Rajagopal by the respondent under a registered sale deed dated 16-12-1981 is false and that the alleged sale, if any, is illegal and void and further that the claim based on a void document is not sustainable both in law and on facts. It is contended that the sale deed is vitiated since it is violative of the provisions of the Urban Land (Ceiling and Regulation) Act, 1976. Regarding

the notice issued by the landlord of respondent to the petitioner calling upon the petitioner to attorn as a tenant of the respondent, in the statement of objections, what is mentioned is that the notice was suitably replied to. Ex.P-15 is the reply issued by the petitioner to the legal notice of the respondent. The relevant portion of the reply dated 25-2-1982 under Ex.P-15 is reproduced: "It is also equally not true that by virtue of the sale deed Sri S. Rajagopal is alleged to have made with your client, we are required to attorn ourselves as tenant of your client, Firstly we do not consider that any such sale is valid as Sri S. Rajagopal has not complied with the provisions of law relating to Urban Land Ceiling Act as applicable in the State of Karnataka. Non-compliance with the provisions of the Act by Sri S. Rajagopal has adversely affected our interests as tenants and we are entitled to seek relief in that behalf. In any case since our tenancy right covers the whole property, viz., the building and the adjoining land, what portion of that tenancy falls to the share of your client is not clear and it is a matter to be mutually agreed upon between Sri S. Rajagopal as landlord and ourselves as tenant. No such thing ever happened. We have also paid rent advance to Sri Rajagopal and what portion of that rent advance has been transferred to your client has not been stated in your notice.

Under the circumstances described above we are unable to pay rent to your client. Your client knew fully well that we have been occupying the premises since very long. The purchase by your client of the said premises can only be termed as a speculative venture. Your client's claim that he reasonable and bonafide requires the premises in our occupation is vehemently denied. He is neither in need of it nor has he any bonafides in claiming possession. There is no valid sale. There is no valid attornment. We are not bound to oblige your client's illegal claim."

14. The very fact that the vendor of the respondent S. Rajagopal had addressed a letter to the petitioner apprising the sale in favour of the respondent and requesting the petitioner to attorn as a tenant of the respondent and to pay the rents due in respect of the schedule premises to the respondent with effect from 1-1-1982 is not disputed. When the communication has been received from S. Rajagopal with whom the petitioner claims the relationship of landlord and tenant, it is rather strange that the petitioner not only denies the sale but also the validity of the sale deed and insists that S. Rajagopal continues to be the owner of the schedule premises as well as the landlord in so far as the petitioner is concerned. The stand taken by the petitioner is incongruous and strange indeed. By operation of law, even assuming that the petitioner regards the sale as null and void, there is what is known as statutory attornment and until and unless the sale is set aside by a competent Court, the petitioner has to be regarded as a tenant of the purchaser of the schedule premises. In other words, the respondent is deemed to be the landlord of the petitioner. In proceedings instituted for eviction of tenant, this Court cannot go into the validity of title to property in the circumstances in which a registered sale deed has come into existence the validity of which has not been challenged and relief sought before

the Court of Law in a civil suit. If the sale deed is violative of any of the provisions of the Urban Land (Ceiling and Regulation) Act, it is for the Authority under the Act to take such action in law as deemed fit by the Authority against the respondent in respect of the property in question. So long as no such action has been taken by the Authority under the Act, a mere assertion by the petitioner that the sale deed is null and void cannot destroy the relationship of landlord and tenant between the respondent and the petitioner, by virtue of deemed attornment. I am of the opinion that the trial Court was justified in holding that there is subsisting relationship of landlord and tenant between the respondent and the petitioner.

15. It is in evidence that a "No Objection Certificate" was obtained in accordance with the requirements of the Act before the property was sold by S. Rajagopal to the respondent. In the circumstances, it is not possible to accept the contention of the petitioner that eviction petition is not maintainable in law and that the respondent has no locus-standi.

16. So long as the petitioner is undisputedly in possession, occupation and enjoyment as a tenant of the premises in respect of which rents were being paid to the former landlord S. Rajagopal and petitioner continues to be in occupation of the same even today, in the light of the deemed attornment, it cannot be said that the schedule in the eviction petition describing the property is incapable of being identified with certainty in order to pass an effective order of eviction. On the other hand, I may observe that it is the person who is suing for eviction who has chosen to furnish the schedule as described in the eviction petition and he has done so at his own risk and it should not be a matter of concern for the petitioner who is his tenant. The trial Court was justified in holding that the only building on the property found in the plan Ex.D-32 lies exactly on the part of the property purchased by the respondent under Ex.P-1 and it is the very same property which is the petition schedule premises. The trial Court was also right in observing that merely because Exs.D-21 to D-23 and D-26 to D-28 mentioned vacant land with houses when indeed there is no house at all on the portions to which they relate, it cannot be said that the fact that the petitioner purchased the only building thereon is doubtful. There is no difficulty at all in identifying the petition schedule property from the rest because the petition schedule premises is the "B" schedule property purchased by the petitioner under Ex.P-1 and it is building that is found in the plan Ex.D-32.

17. The next question for consideration is whether the respondent reasonably and bonafide requires the petition schedule premises for occupation by himself. The case of the respondent is that he is presently a tenant in premises No. 30, East End Road, Basavanagudi, Bangalore-4, under the landlord one S. Ramakrishna Raju and that there has been misunderstandings and ill-feelings between the two. It is also stated that the landlord has been trying to evict the respondent on one ground or other. It is also stated that the landlord filed two eviction proceedings against the respondent one for eviction of the respondent

on the ground of commission of nuisance and annoyance and another for permanent injunction restraining the respondent from causing damage to the tenanted premises. Though the case relating to annoyance and nuisance was ultimately dismissed in H.R.C.No.706/78 by the Civil Judge, Bangalore and confirmed by this Court, the remaining case relating to grant of permanent injunction has been pending before the Additional City Civil Judge, Bangalore, in O.S.No.3643/80. It is for these reasons of hostility and undesirable circumstances, the respondent is unable to continue in occupation of the premises under his landlord S. Ramakrishna Raju. Therefore, the respondent contends that the schedule premises is reasonably and bonafide required for the self-occupation of the respondent. It is also contended that the respondent purchased the property from S. Rajagopal with the sole intention of using the premises for personal use and occupation. It is in evidence that the house in which the respondent is residing is small. It consists of a hall measuring 9"x7", a room of 8"x8", a kitchen of 4"x4", bath room and a latrine. The monthly rent is Rs. 40/- and his family consists of eight members. The respondent's children are grown up and have been studying in Schools and Colleges. For these reasons, the trial Court held that the respondent has established and substantiated the claim that the premises is required for self occupation since the needs are reasonable and bonafide. I do not find any thing wrong in the finding given by the Court below. I am of the opinion that the claim of the respondent is both reasonable and bonafide.

18. As regards comparative hardship, it is significant to note that the petitioner never made out a case, nor let in evidence to show that the petitioner absolutely had no alternative accommodation nor such an accommodation was not available on lease. Equally there is a failure of the petitioner in making out a case that the petitioner is incapable of paying rent at the current rate of rent for securing alternative accommodation. In fact, DW-1 has admitted that no attempts were made by the petitioner to secure alternative accommodation. For the foregoing reasons, I am of the view that comparative hardship would be more on the respondent by not ordering eviction than on the petitioner by declining eviction. One more aspect of the matter is relevant in this regard. The observation made by the trial Court commends my acceptance. The Court below has held:

"In this view, I hold that the respondent can take on lease the 110 square feet vacant area on the first floor of Popular Building and/or the 50"x70" shed behind that building, or any other alternative accommodation that can be secured at current day rate of rent, and that absolutely no hardship would be caused to the respondent by an order of eviction. It was urged for the respondent that 75 staff members of the respondent firm messing in the petitioner schedule premises would be rendered roofless by an order of eviction. In view of my finding that alternative accommodation can be secured for them, this contention cannot be accepted."

19. The last point for consideration is whether this is a fit case for ordering only

partial eviction. Partial eviction has been declined on the ground that there is no evidence that the existing building is very spacious and it is severable. The family of the respondent consists of himself, his wife, two grown up sons and four grown up daughters who are studying in Schools and Colleges requires reasonably big accommodation. A portion of the building adjoining which 75 male staff members are messing belonging to the petitioner's establishment cannot be regarded as being convenient and suitable for use and occupation of the respondent and his family for a reasonably comfortable living. In this regard, the respondent ought to be the Judge Of his own comforts so long as the comfort demanded is not exaggerated and unreasonable. Considering the size of the family, the requirements of the grown up members of the family who belong to both the sexes studying in Schools and Colleges, it is fair to say that the respondent is entitled to total eviction and it would be rather harsh to order partial eviction. Apart from that, partial eviction, in the circumstances of the case, is neither pragmatic, nor convenient. I may also observe that it is neither desirable, nor feasible, for a family living in privacy and reasonable comfort consisting of husband and wife and grown up sons and daughters to have in the neighbouring portion of the same building a male staff of 75 messing around, being the employees of an Automobile Concern.

20. In *Ram Dass Vs. Ishwar Chander and Others*, , the Supreme Court held:

"The question whether the requirement of the landlords is bona fide or not is essentially one of fact, notwithstanding the circumstances that a finding of fact in that behalf is a secondary and "inferential fact drawn from other primary or perceptive ones. All conclusions drawn from primary facts are not necessarily questions of law. They can be, and quite often are, pure questions of fact. The question as to bona fide requirement is one such."

It was also held:

"The bona fide need of the landlord should be genuine and honest, conceived in good faith; and the Court must also consider it reasonable to gratify that need. Landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it and that desire, to become a "requirement" in law must have the objective element of a "need". It must also be such that the Court considers it reasonable and, therefore, eligible to be gratified. In doing so, the Court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or whittled down. Courts can take a cautious cognizance of the subsequent events in order to mould the relief."

In *Tej Bhan Madan Vs. II Additional District Judge and Others*, the Supreme Court said:

"There can be a denial of the title by the tenant of his landlord without the tenant renouncing his character as such where, for instance, he sets up a plea of *jus tertii*. But the implication of the ground on which the denial of the title was made

was that if the tenant-appellant could not have denied the vendor's title by virtue of the inhibitions of the attornment, he could not question the vendee's (respondent 3) title either. The tenant did himself no service by this stand. What he did, amounted to a denial of title.

The tenant-appellant was precluded from doing so on the general principles of estoppel between landlord and tenant. The principle, in its basic foundations, means no more than that under certain circumstances law considers it unjust to allow a person to approbate and reprobate.

The law as to the estoppel of a tenant u/s 116 of the Evidence Act is a recognition, and statutory assimilation, of the equitable principles underlying estoppel in relation to tenants. The section is not exhaustive of the law of estoppel. The section, inter alia, predicates that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, title to such property."

21. Applying the legal principles enunciated in the two decisions cited above, I am further fortified in my view that not only the petitioner is deemed to be a tenant of the respondent but also that the reasonableness and bona fides of the needs of the landlord have been satisfactorily established.

22. I have looked into the decisions cited at the Bar by the learned Counsel for both the petitioner and respondent and I am convinced that barring the two decisions referred to above, the others are not applicable to the facts of this case.

23. In the result, for the reasons stated above, the Civil Revision Petition is dismissed. The petitioner is granted a time of six months from today to vacate the premises and deliver vacant possession of the same to the respondent.

24. In the circumstances, there shall be no order as to costs.