

(1985) 09 KAR CK 0040
In the Karnataka High Court
Case No : C.R.P. No. 290 of 1983 etc.

Ramachandra Dasharath Khade

APPELLANT

Vs

Mohamad Iqbal Dastagirsahab Sangolli

RESPONDENT

Date of Decision : 20-09-1985

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 21, 23 (1), 61

Citation : (1985) ILR (Kar) 3741

Hon'ble Judges : Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : B.V. Jigjinni and H. Thipperudrappa, for the Appellant; N.A. Mandagi, for the Respondent

Final Decision : Dismissed

Judgement

Chandrakantaraj Urs, J.—These are tenants' revision petitions u/s 115 of the CPC and are directed against the common order of the Principal District Judge, Belgaum, dated 22-10-1982 made in HRC. RPs. Nos. 22, 31 and 15 of 1981 on his file. Those revision petitions arose for consideration of the Learned District Judge on account of the common order passed by the I Additional Munsiff, Belgaum, on 6-10-1980 in HRC. Nos. 257 and 259 of 1977 on his file. Those eviction petitions were filed by the landlords who are Respondents 1 to 4 in this Court against 2 main tenants and 1 sub-tenant on the ground that they purchased the premises in the occupation of the tenants and the sub-tenant from the previous owner for a consideration of Rs. 25,000/- by virtue of a sale deed dated 12-8-1977; that the tenant had sublet the premises and that the purchase itself was made by the landlords to occupy the shops for their own use and occupation in order to carry on their trade in spices and other similar articles as they were doing the same hitherto on the road side.

2. The tenants resisted the eviction petitions on the ground that the so-called sale was not a sale at all; that the previous owner could not have sold the premises as the guardian of the new owner - his son who was a minor - who is

said to have been given the premises in question as part of the properties falling to the share of his minor son at the family partition and that there was no violation of the statute prohibiting sub-letting since the sub-letting had taken place long prior to the commencement of the Karnataka Rent Control Act of 1961. They further pleaded that there was no bona fide requirement of the landlords and the bona fide requirement as pleaded by the landlords was not genuine inasmuch as they were doing the business with their father and their father had been allotted 3 municipal shops in auction in the Belgaum market and, therefore, they were not in need of any other premises to carry on their business. On these pleadings the parties have examined themselves and produced documents.

3. It is useful to refer to the documents, viz., Exhibits P. 1 to P. 4 and P. 13. The first mentioned documents are the extracts of municipal kathas evidencing the change of mutation from the name of the previous owner to that of his son and subsequently, after the sale, the mutation in favour of the petitioners/landlords. Exhibit P. 13 is the sale deed by which the previous owner sold the premises as the guardian of his minor son to whose share the premises in question had fallen.

4. On appreciating the oral and documentary evidence, the Learned Munsiff came to the conclusion that there was sub-letting which was not lawful and that the landlords required the premises for their bona fide use and occupation. Therefore, he directed eviction. Aggrieved by the said order of eviction, the tenants preferred 2 revision petitions and the sub-tenant preferred 1 revision Petition before the Learned District Judge. The Learned District Judge confirmed the eviction accepting the reasons given by the Learned Munsiff. It is in these circumstances, the tenants and the sub-tenant have moved this Court u/s 115 of the CPC contending that the eviction order is vitiated by several illegalities and, therefore, this Court should interfere with the eviction order.

5. Mr. Jigjinni, Learned Counsel for the petitioners in all these cases, has strenuously contended the following:

(i) That the Sale Deed - Exhibit P. 13 -- was not proved and, therefore, the Court should not have acted upon that evidence by virtue of which the petitioners have been recognised as the landlords ;

(ii) That there was no consistency in what was pleaded by the landlords and in what was held by the Court not to have been proved ;

(in) That the sub-tenants are protected from the attraction of clause (f) to the proviso to sub-section (1) of Section 21 of the Karnataka Rent Control Act inasmuch as the subletting had occurred prior to the commencement of that part of the Act and well before 1961; and

(iv) That the petitioners/landlords did not prove what they had pleaded and, therefore, they should fail.

I do not find any merit in any one of the 4 contentions.

6. The contention raised in regard to the Sale Deed which was marked as Exhibit P. 13 in the Court of the first instance is not applicable to the facts of this case. There is no special mode prescribed in any statute for the proof of execution of a sale deed, like certain documents, for instance, execution of a testamentary Will. It must be proved like any other document only when the execution of the sale deed is disputed or when the genuineness of the sale is disputed. In the instant case, It is not in dispute that the document at Exhibit P. 13 is a registered document. Registration of a sale deed in respect of an immovable property worth more than Rs. 100/- is compulsory under the Transfer of Property Act as well as under the Registration Act. When a document is registered, it places some legal sanctity which prima facie establishes that the vendee therein is the new owner of the property. In addition to this, what convinced the Courts below to accept the sale deed in to was the fact that the previous landlord and the owner were also made parties in the H.R.C. eviction proceedings and they filed separate objections stating that they had sold the property to the petitioners who are now Respondents 1 to 4 in this Court. In the light of the admission and the fact that the document itself was produced before the Court by the petitioners/landlords, the Court came to the conclusion that the sale was established. I do not find any infirmity as contended by the Learned Counsel for the petitioners/tenants that execution of the sale deed was not proved. When the executant admitted execution of the document, the vendee therein need not prove the document further. The 2 situations when a sale deed is required to be proved are (1) when the executant has denied the execution of the sale deed and (2) when a third party claiming title to the property sold disputes the sale. If a third party claiming title to the property disputes the sale, due execution of sale in addition to the title must be proved. When this is the position, I do not understand how the tenants may question the transaction between the parties, viz., their landlords and a third party. Therefore, the first contention is rejected.

7. The second contention that the landlords have not proved that they are doing business in spices and other commodities on the road side and that they purchased the property with a view to carry on their trade therein, the learned Munsiff on the evidence placed before him came to the conclusion that the landlords had not proved that they were carrying on business on the road side. From that what follows is that their pleadings were exaggerated; but, it did not take away the force of the other evidence that they need the premises in question which they have purchased. The conclusion reached by the Courts below clearly indicate that the petitioners / landlords are traders in spices and other similar articles and that they have no place to carry on their own business and therefore, they indeed re-require the premises in question for their own use and occupation. I do not think that the eviction order is wrong on the basis of the observations made by the Court that they petitioners/landlords had failed to prove that they were carrying on business on the road side. Even assuming that they have some other premises which is rented, when an express plea that they purchased the property in order to do business therein was taken, the Court

below is right to accept their genuine need to occupy the premises despite the failure to prove that they carried on their business or trade on the foot-path. Therefore, there is no real force in the second contention also and it is also rejected.

8. On the plea of sub-letting the third contention -that the sub-lease prior to 1961 is lawful, the tenants did not adduce any evidence to establish the actual date of the commencement of the lease. The argument advanced by the learned Counsel for the tenants is that the burden is on the landlords and not on the tenants and it was for the landlords to establish that the sub-letting was unlawful and not in accordance with law. I do not think that this proposition is correct. In the instant case, the petitioners are admittedly tenants and sub-tenant. Their only plea is that the sub-lease commenced before 1961 and, therefore, they were protected in terms of Section 23(1) of the Rent Control Act as well as Section 61. The last mentioned provision relates to savings and repeal. I do not think that Section 23 (l) or Clause (f) of sub-section (1) of Section 21 of the Act should be construed in such a manner that it throws the burden on the landlords. All subletting without the consent of landlords are unlawful unless the sub-lease came into existence prior to 1961, i.e., before commencement of that part of the Act as mentioned in the relevant provision. In other words, the sub-leave created before the Act coming into force is not unlawful. That part of the Act provides a protective umbrella to the sub-lease anterior to the commencement of the Act. The person who claims to be a protected sub-tenant, cannot have the benefit of the protective umbrella unless he proves that he is protected by that umbrella. It would be a perverse view that the burden of proof should be on the landlords. In the instant case, the landlords were kept ignorant of the sub-lease for a long time by the unscrupulous tenants and it is only on the discovery of such a sub-lease the landlords used it as additional ground for seeking eviction. In the view that I have taken, the Court below is correct in rejecting the benefit of of the protective umbrella as no evidence was placed by the tenants to show that that sub-lease was before the commencement of the Act. Therefore, I reject this contention also.

9. The last contention is covered by what I have stated in regard to the 2nd contention. It is true that the Courts below did not literally accept the entire plea. Part of the plea has not been proved. But, the landlords did establish their need by independent evidence. They demonstrated that what was alleged by the Petitioners/tenants had nothing to do with them at all. They did independent business from that of their father. They stated in their evidence that the municipal shops were not suitable where things could be stored. They further stated that they were carrying on their business by carrying their commodities every day from their house to the market or to the road side. It is in that sense their plea might have been inadequate to that extent, but not so inadequate as to mislead the opponents. In that sense I do not see any merit in this contention also.

10. My attention was drawn to a decision of the Supreme Court in *Variety Emporium Vs. V.R.M. Mohd. Ibrahim Naina*, . In the said case, the Supreme Court held that the High Court was right in stating that sitting in revision it could not have reappreciated the evidence in the case as if it were a Court of appeal. But later on the Supreme Court pointed out where the High Court had missed the real point and that point was a subsequent event which the High Court had not noticed. Referring to the earlier decision of the Supreme Court on the question, it held that the High Court even in revision should take notice of the subsequent events which would ensure to the benefit of the tenant. That has come to be well accepted. But, in the said decision, nowhere the Supreme Court has stated that the High Court while sitting in revision u/s 115 of the CPC can assume to itself the functions of an Appellate Court. In any event, the scheme of revision and appeal provided under the corresponding Act, Tamil Nadu Buildings (Lease and Rent Control) Act, is not the same as the scheme in the Karnataka Rent Control Act. Therefore, any observations made by the Supreme Court, while construing the provisions of the Tamil Nadu Act would not seriously affect the position under our Act. I, therefore, decline to deal with other submissions made by the Learned Counsel for the tenants solely on the ground that appreciation of evidence is entirely for the Court of the first instance and for the first Revisional Court and not for this Court u/s 115 of the Code of Civil Procedure.

11. The Civil Revision Petitions are accordingly rejected. The tenants shall now vacate the premises in question on or before 31-12-1985 and deliver vacant possession thereof to the landlords subject to the payment of arrears of rents, if any, and also the current rents.