

(1973) 07 KAR CK 0003

In the Karnataka High Court

Case No : Civil Revision Petition No. 1465 of 1972

Rukamoddia Dastagirsab

APPELLANT

Vs

Basawwa and Others

RESPONDENT

Date of Decision : 17-07-1973

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 21 (1), 29, 50
Transfer of Property Act, 1882 — Section 53 A

Citation : (1973) 07 KAR CK 0003

Hon'ble Judges : Nesargi, J

Bench : Single Bench

Advocate : B.V. Krishnaswamy Rao, for the Appellant; K.A. Swamy, for the Respondent

Final Decision : Dismissed

Judgement

Nesargi, J.—This revision petition is filed u/s 50 of the Mysore Rent Control Act, 1961. (to be hereinafter referred to as the Act), against the decision of the Additional District Judge, Bijapur in R.A. No. 12 of 1966.

2. The Petitioner claiming to be the landlord of premises bearing C.T.S. No. 236 of Ward No. 1 of Bijapur, filed an application in Rent Misc. No. 103 of 1964, on the file of the Additional Munsiff, Bijapur, u/s 21 of the Act for recovery of possession of the said premises from Basalingappa Basappa Uppin, whose legal representatives now are the Respondents in this petition. He urged therein that he was entitled to vacant possession in view of the grounds mentioned in Clauses (h) and (i) of the proviso to Section 21(1) of the Act. The said Basalingappa appeared and contested the proceedings. He contended that the owners of the premises were Mahadinsab Husensaheb Huddar and Mohamed Khashim Husainsab Huddur, that he was since prior to 25-8-1956 a tenant of the premises under them, that on 25-8-1956 the said owners entered into an agreement to sell the premises to him and received various amounts under the agreement and that, therefore, his possession from that date was that of an owner and did not

continue to be that of a tenant in view of Section 53A of the Transfer of Property Act. He on this basis further contended that the Petitioner by his alleged purchase of the premises on 15-5-1964 from the owners Mahadinsab Husensaheb Huddar and Mohamed Kashim Husainsab Huddar, could not have secured any title to the premises and. hence, could not have become the owners of the premises as the said 2 persons were themselves not owners of the premises and therefore, could not have conveyed¹ any title to the Petitioner. Thus, he challenged the status of the Petitioner as landlord and his right to move the Court under the Act for securing vacant possession of the premises.

3. The learned Additional Munsiff, Bijapur, considered all the questions raised by the parties and held that the opponent Basalingappa had not established that he had become the owner of the premises from 25-8-1956, the date of the alleged agreement of sale in his favour as he had failed to show that Section 53A of the Transfer of Property Act supported his case on this point. In view of this finding, he further concluded that the Petitioner had satisfactorily established that he had purchased the premises on 15-5-1965 from the former owners Mahadinsab Huseinsaheb Huddar and Mohamed Kashim Husainsab Huddar and, therefore, had become the landlord under the Act and the opponent Basalingappa was a tenant and that the Petitioner had satisfactorily established that there was relationship of landlord and tenant between him and the opponent Basalingappa. Having arrived at these conclusions, the learned Additional Munsiff proceeded to uphold the contention of the Petitioner-landlord and directed eviction of the opponent Basalingappa.

4. Basalingappa preferred R.A. No. 12/66 in the Court of the District Judge. Bijapur, and on his death, his heirs, who are the present Respondents, came on record as his legal representatives. The Additional District Judge, concluded that the points in dispute gave rise to complicated questions of title, and these questions ought not to have been gone into and decided by the Additional Munsiff in such a summary proceeding. Acting on this conclusion, he held that the Petitioner will have to approach the Civil Court in a regular suit for possession of the suit premises on the basis of his title, and that the Petitioner had failed to establish the relationship of landlord and tenant between him and the Respondents.

5. Sri B.V. Krishnaswamy Rao, the learned Counsel for the Petitioner, in the first instance, contended that the conclusions of the learned Additional District Judge are contrary to each other as the learned Additional District Judge having held that the complicated question of title involving interpretation of Section 53A of the Transfer of Property Act, which has arisen for consideration, ought not to be gone into in such a summary proceeding under the Act, could not have further proceeded to conclude that the Petitioner had failed to establish the relationship of landlord and tenant between him and the Respondents. Sri K.A. Swami, the learned Counsel for the Respondents, fairly stated that the learned Addl. District Judge, had erred in recording these contradictory conclusions, but what the

learned District Judge ought to have done according to the view expressed by him is to hold that the Court under the Act ought not to consider the complicated question of title involving interpretation of Section 53A of the Transfer of Property Act and therefore, the claim of the Petitioner could not be considered.

6. In my opinion, nothing much turns on the above mentioned question as the said question depends on the competency of a Court under the Act to record finding on questions of title. If such a Court is competent to decide disputes of title to properties then it will have to be held that the decision of the Additional District Judge is not according to law. If it is found that such a Court is not competent to give its finding on a question of title to property, the order of allowing the appeal and dismissing the petition passed by the Additional District Judge will have to be sustained. The words in which the learned Additional District Judge ought to have couched his order would, therefore, be immaterial.

7. Sri B.V. Krishnaswamy Rao, nextly contended that a Court under the Act had jurisdiction and power to decide even questions relating to title to the property or the premises involved in a proceeding under the Act if incidentally it becomes necessary to do so. He urged that whether such a question of title does or does not incidentally arise, depends on the facts and circumstances of each case. He contended that in the case on hand, the Court under the Act, being entrusted with the jurisdiction of granting reliefs to landlords u/s 21 of the Act, had to discharge that function and in order to do so had to decide whether the jurisdictional fact, viz; "relationship of landlord and tenant" was established by the Petitioner, and in order to do so, it had to settle the dispute relating to the title to the property raised by the parties. In view of these circumstances, according to him, the Court had to incidentally, give a decision on the disputed question of title.

8. Sri K.A. Swami, the learned Counsel for the Respondents, vehemently urged that the Court functioning under the Act has limited jurisdiction and it has no power to decide question of title to properties and, therefore, whether incidentally or not, it cannot enter into such questions and thereby usurp the jurisdiction of the ordinary Courts. Entering into such questions and recording decisions by such a Court, would be nothing but acting beyond the jurisdiction of the Court and that cannot be permitted in law. He nextly contended that even in case it is held that a Court functioning under the Act has got to record findings on such questions of title whenever it becomes necessary to decide the jurisdictional fact, the Court cannot be permitted to proceed to consider complicated questions of facts and law while attempting to decide the dispute relating to title to the property and, therefore, the view taken by this Court in the decision in Mohammed Ibrahim v. Mahaboobbi 1963 (2) Mys LJ 250, will be applicable and the parties will have to be directed to get the question of title decided by a competent Civil Court. He further urged that in view of this position in law, the petition u/s 21 of the Act ought to be dismissed.

9. It has not been and it cannot be disputed that the proceedings under the Act

are summary proceedings. It has been so held by this Court in Mohammed Ibrahim's case 1963 (2) Mys LJ 250 and in the decision in Venkappaiah v. Papanna 1968 (1) Mys LJ 435, and many other decisions of this Court. It is laid down in both these decisions that if the questions relating to title necessarily arise for consideration before a Court under the Act, such a Court can proceed to decide those questions provided that they are not complicated questions. In Mohammed Ibrahim's case 1963 (2) Mys LJ 250, it has been held that if there is a complicated dispute as to the title of the landlord, the Court functioning under the Act, should not proceed to determine such a question as the proceedings before it is of a summary nature and especially in view of Section 48(6) of the Act. It has been further clearly stated in this decision, that merely because a tenant disputes the title of the landlord, a Court functioning under the Act would be divested of jurisdiction, is not a correct proposition in law, and that it is only when complicated dispute as to the title of the landlord arises, that the Court, functioning under the Act, should stay its hands and allow the parties to approach a competent. Civil Court

9-A. In Venkappaiah's case 1968 (1) Mys LJ 435, the facts were similar to the facts on hand. There also the tenant relied upon an agreement of sale and sought the benefit of Section 53A of the Transfer of Property Act. The tenant failed in both the Courts below and it was contended in this Court that the two Courts below ought not to have proceeded to determine the disputed question of title which was complicated in nature Venkataswami, J. who rendered the decision, held that it could not be said with any show of reasons that the facts were complicated so as to require adjudication of the title of the landlord in a regularly tried civil suit. The decision of the two Courts below was upheld.

10. It is therefore, clear that the consistent view taken by this Court is that a Court functioning under the Act is competent to decide even disputes relating to the title of the landlord provided that such disputes are not complicated. Whether such a dispute in a particular case is or is not complicated, of course, depends on the facts and circumstances available in each case. If the Munsiff holds that it is not a complicated dispute and proceeds to decide it, it is on appeal open to the District Judge to consider that aspect and either agree or disagree with the view of the Munsiff, relating to the dispute about title of the landlord. Finally it is open to the High Court acting u/s 50 of the Act to consider whether the approach of the two courts below in regard to this aspect of the matter is acceptable or not.

11. Sri K.A. Swami pointed out that in every case under the Act the jurisdictional fact, that relationship of landlord and tenant subsists, has to be established and whenever a tenant disputes the status of the landlord the decision on the grounds on which such a dispute is based, cannot be considered as an incidental one, and hence, grave consequences in view of the doctrine of res judicata and Section 48(6) of the Act would follow and argued that the Courts functioning under the Act should not be permitted to determine disputes as to the title of the landlord in the guise of settling the jurisdictional fact.

12. Whether such a decision operates as *res judicata*, would depend on the facts and circumstances of each case. But, one thing that is certain is that in view of Section 48(6) of the Act, the decision rendered either by the Court or the District Court or the High Court as the case may be under the Act, becomes final and cannot be called in question in any Court of law, whether in a suit or other proceedings, either by way of appeal or revision. It cannot be disputed that a Court under the Act has to settle the jurisdictional fact viz., whether there subsists a relationship of landlord and tenant between the parties.

In *Venkataram v. P.H. Seshagiri Rao* 1965 (1) Mys LJ 560 it is held that where the tenant questions the status claimed by the applicant for eviction as landlord, the Munsiff cannot make any order under the statute (Section 29 of the Act) without first settling the dispute as to the existence of the jurisdictional fact. That jurisdictional fact is the existence of the relationship of landlord and tenant in respect of the premises.

This decision is followed in *Narayana Rai v. Appaji Rao* 1971 (2) Mys LJ 370. In that case, a tenant challenged that the property occupied by him was not a "premises" as defined in the Act and, therefore, the petition filed by the landlord was not competent before the Court functioning under the Act. This Court held that whether the property in question was or was not a "premises" under the Act was to be decided by the Court functioning under the Act as it was incumbent on it to determine that jurisdictional fact.

In *Hajarabi v. Babalal Hasimsaheb* C.R.P. No. 44 of 1969. D/- 25-1-1971 (Mys) the tenant contended that there was only ostensible title in the Petitioner-landlord while in fact the Petitioner-landlord was only a benamidar for himself (the tenant) and, therefore, there was no relationship of landlord and tenant existing between the parties. The Munsiff considered that dispute and directed the Petitioners before him to obtain a declaration from the Civil Court regarding their title to the properties. This Court in revision held that existence of the relationship of landlord and tenant was a jurisdictional fact and it was incumbent on the Court to determine that fact. It further held that, the question of title to the premises and whether the Petitioner was the benamidar for the Respondent-tenant or not did not really arise in the proceedings and that question was outside the scope of the Act and that as it did not really arise; it was unnecessary for the Munsiff to have directed the Petitioners to obtain an adjudication on the question of their contention as to the benami nature of the title alleged by the landlord.

13. In view of the foregoing, it is manifest that existence of relationship of landlord and tenant between the parties is a jurisdictional fact and it is incumbent on the Court functioning under the Act to determine that question. The consistent view taken by this Court, as already stated above, is that even a dispute relating to the title of the landlord, if not complicated, can be decided by the Court, in case it is absolutely necessary to do so, to determine the jurisdictional fact. Now the question would be whether such a decision can be

regarded as incidental on the ground that the decision on such a dispute relating to title would have nothing to do with the relief claimed in the proceeding. I am unable to agree with the contention of Sri Krishnaswamy Rao that on the facts and circumstances of the case on hand such a decision can be regarded as incidental.

In *Isher Singh Vs. Sarwan Singh and Others*, it is laid down that the question whether a matter was directly and substantially in issue in the former suit has to be decided (a) on the pleadings in the former suit, (b) the issues struck therein, and (c) the decision in the suit, and that further it depends upon whether a decision on such an issue will materially affect the decision of the suit.

In AIR 1932 50 (Privy Council) it has been held that if the parties and the Court have dealt with the matter as if it formed a direct and principal issue, it must be taken to have been directly and substantially in issue though in the first instance, it was not raised properly or was raised only as an ancillary or incidental issue. Therefore, the practical test for determining whether a matter was directly and substantially in issue in a previous suit will be furnished by effecting a separation of the discussions and findings on the various groups of issues dealt with in the judgment and if, after the elimination of all, but one such group, the judgment still remains intelligible and, in itself, sufficient for the adjudication of the suit and the decree is in entire harmony with it, then the matter so dealt with may be said to have been directly and substantially in issue.

In *Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others*, their Lordships while dealing with the doctrine of *res judicata* u/s 11, Code of Civil Procedure, were considering the effect of the decision rendered by a Court under the Land Acquisition Act while determining the quantum of apportionment between the persons interested, as defined under the Land Acquisition Act. Their Lordships held that the Land Acquisition Court had jurisdiction to decide the question of title of the parties in the property acquired and that title could not be decided except by deciding the controversy between the parties about the ownership of the four annas share claimed by the sons and Rajalakshmi, and, therefore, the question of title to the 4 annas share was necessarily and substantially involved in the land acquisition proceedings and was finally decided by a Court having jurisdiction to try it and that decision thus operated as *res judicata*. It is, hence clear that if a question of title is necessarily and substantially involved in determining questions which a Court functioning under the Act has got to determine, then it will have to be held that such a decision will operate as *res judicata*. On the facts on hand, the Court under the Act could not proceed to determine the jurisdictional fact without deciding the dispute relating to the title of the landlord, because this question of title is necessarily and substantially involved in the proceeding. Sri Krishna swamy Rao sought assistance from the decision in *Asgarali Roshanalli and Another Vs. Kayumalli Ibrahimji*, in support of his contention that such a decision on the question of title would be an incidental one as in the proceeding in question the Petitioner-landlord had not asked for a

relief relating to title to Immovable property, but for a relief he was entitled to ask u/s 21 of the Act. Asgarali Roshanalli and Another Vs. Kayumalli Ibrahimji, is under the Provincial Small Cause Courts Act. It was a suit for rent, and the tenant disputed the contractual relationship of landlord and tenant, on the ground that the Plaintiff had no title to the property and the question arose whether the dispute in regard to title could lie decided by the Court under the Provincial Small Cause Courts Act, Shall, J. relying on the earlier decision of the Bombay High Court in Puttangouda v. Nilkanth ILR(1913) 37 Bom 675 held that the Court under the Provincial Small Cause Courts Act was competent to decide that question of title as such a decision had nothing to do with a relief relating to title to immovable property, but was an incidental one. It has been already shown how the decision on title in the case on hand cannot be regarded as an incidental one. Therefore, I am unable to accept this contention. He nextly sought support from the decision in Mangan Lal Deoshi Vs. Mohammad Moinul Haque and Others, Sri Krishnasswamy Rao pointed out that in this decision observations by Lord Esher, M.R. in Queen v. Commr. for Special Purposes of the Income Tax (1888) 21 QBD 313 at p. 319, have been excerpted with approval and followed. The said observations read as follows:

When an inferior Court or Tribunal or body which has to exercise the power of deciding facts is first established by Act of Parliament the Legislature has to consider what powers it will give that Tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such Tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise, There it is not for them conclusively to decide whether that state of facts exists and if they exercise the jurisdiction without its existence, what they do may be questioned and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The Legislature may entrust the Tribunal or body with a jurisdiction, which includes jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on findings that it does exist, to proceed further or do something more. When the Legislature are establishing such a Tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases. I have mentioned it is an erroneous application of the formula to say that the Tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the Legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction.

I am unable to see how this decision is of any assistance to support the contention of Sri Krishnaswamy Rao. The fact to be remembered is that according to the scheme of the Act, a decision rendered by the Munsiff is appealable to the Court of the District Judge and that decision recorded by the

District Judge is subject to the final order passed by the High Court in revision u/s 50 of the Act. Section 48(6) of the Act lays down mandatory that such decision is final and cannot be questioned in any Court. Their Lordships of the Supreme Court, were, in *Mangan Lal Deoshi Vs. Mohammad Moinul Haque and Others*, considering the effect of a similar provision viz., Sub-section (3) of Section 16 of the Bihar Buildings (Lease, Rent and Eviction) Control Act (Act III of 1947). It reads as follows:

The decision of the Commissioner and subject only to such decision, an order of the Controller shall be final, and shall not be liable to be questioned in any Court of law whether in a suit or other proceeding by way of appeal or revision.

Their Lordships held that the decision of the High Court holding that a suit for a declaration that the order passed by the Rent Controller was without jurisdiction, was maintainable, was erroneous. The same principle would be applicable to the position available in this case.

14. In view of the foregoing reasons. I am clearly of opinion that the decision of the Court functioning under the Act, on the dispute relating to the title of the Petitioner-landlord, would operate as *res judicata*, and the doubt expressed by Somnath Iyer, J. (as he then was) in *Mohammed Ibrahim's case* 1963 (2) Mys LJ 250 to the effect that the provisions of Section 48(6) of the Act would make the adjudication conclusive and an interpretation leading to that result by reason of an adjudication in a summary proceeding may be open to objection, is well founded. It has to be held that such a decision would be final and would operate as *res judicata* and cannot be questioned in any Court of law as laid down in Section 48(6) of the Act. But, this would have nothing to do with the power and competency of the Court functioning under the Act to decide a dispute relating to title of the landlord. As already found, such Court is competent and has, the power to decide, but it should exercise its power only if the dispute relating to title of the landlord is not a complicated one. In view of the fact that its decision would be final and will operate as *res judicata* and also cannot be called in question in any suit or proceeding in any Court of law, the Court, functioning under the Act, has to carefully and conscientiously apply its mind to find out whether the dispute relating to title of the landlord, in a given case, is complicated or not. It has to exercise its judicial discretion bearing in mind the consequences that would flow from its decision on such a dispute. Whether a judicial discretion has been properly expressed or not by a Munsiff, is in appeal subject to the scrutiny of the District Judge which in turn is subject to the scrutiny of the High Court u/s 50 of the Act.

15. The foregoing discussion makes it clear that what is now to be decided is whether the dispute raised by the Respondents-tenants in regard to the title of the Petitioner-landlord is complicated or not. The learned Additional District Judge had, in his detailed judgment, attempted to show how the dispute relating to title calls for interpretation of the provisions of Section 53A of the Transfer of Property Act. The discussion of the law on this point made by the Additional

Munsiff, Bijapur, shows that such argument on either side was based on the proviso below Section 53A of the Transfer of Property Act. I have, therefore, no hesitation in agreeing with the conclusion of the Additional District Judge that the decision regarding the dispute relating to the title of the landlord involved complicates questions of law. In view of this state of affairs, I hold that it is in the interest of justice that this question be settled in a properly instituted suit and not in a summary proceeding.

16. In view of the foregoing, I hold that the findings of the Additional District Judge, Bijapur, that the Petitioner has failed to establish the existence of the relationship of landlord and tenant between him and the Respondents, is to be set aside, and the judgment of the Additional District Judge in other respects, is to be confirmed. I, therefore, set aside the said finding and dismiss this petition. Any of the parties to this petition may get the dispute settled in any manner that they choose to do in a properly instituted civil suit.

17. No order as to costs under the circumstances of this case.