

(2015) 02 KAR CK 0125
In the Karnataka High Court
Case No : HRRP Nos. 512 and 515/2012

Sadashivswamy G. Hiremath and Others	APPELLANT
Vs	
Prema Nagayya Sandanam and Others	RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 6 Rule 17
Karnataka Rent Control Act, 2001 — Section 27(2)(a), 27(2)(a)(f), 27(2)(r), 27(a), 27(f)

Citation : (2015) 02 KAR CK 0125

Hon'ble Judges : S.N. Satyanarayana, J.

Bench : Single Bench

Advocate : Mrutyunjay Tata Bangi, Advocate, for the Appellant; D. Ravikumar Gokakakar, Advocate, for the Respondent

Judgement

S.N. Satyanarayana, J.—These two revision petitions are filed impugning the common judgment dated 16.2.2012 passed in HRC Revision Petition Nos. 42 to 45 of 2007. The revision petition in HRRP No. 512/2012 is in respect of the judgment passed in HRC Revision Petition No. 44/2007 and the revision petition in HRRP No. 515/2012 is in respect of the judgment passed in HRC Revision Petition No. 45/2007.

2. The brief facts leading to these two HRRPs are as under:

"a) These two proceedings are pertaining to property No. 43/C (in HRRP No. 515/2012) and 43/D (in HRRP No. 512/2012) of Mahadwar Road, Belgaum, each one of them measuring 10" x 20" and these two properties are the properties situated adjacent to each other along with three other properties bearing No. 43/A, 43/B and 43/1. All these five units are admittedly the properties of Kalmath, which was initially started by a person viz., Siddaramayyaswamy several years ago. The said properties were his personal properties. Incidentally the said properties are devolved on the persons who were appointed as pontiff of the said Math. In the year 2005 a person by name Sadashivswamy Hiremath was

representing the Math as pontiff and the aforesaid properties which were devolved upon him were held as his individual properties. As such it is stated that he filed eviction petition in HRC Nos. 66 and 65 of 2005 seeking eviction of respondents in each of the petitions.

b) HRC No. 66/2005 was filed seeking eviction of Prema Nagayya Sandanam and her children who are L.Rs of original tenant. HRC No. 65/2005 was filed seeking eviction of Shashikala Hiremath and her children who are the widow and children of original tenant Mallikarjun Hiremath. The fact that these people and three others were tenants of these five tenements from 1960's is not in dispute. They were all inducted into suit schedule property as tenant on a paltry sum payable as monthly rent. So far as the tenant in HRC No. 66/2005 is concerned, he was paying rent in a sum of Rs. 8/- per month since 1968. However it is stated that from 1985 they have not even paid Rs. 8/- per month also. So far as the tenant in HRC No. 65/2005 is concerned, they are paying Rs. 20/- per month during 1960 and they also stopped paying rent from the year 1985.

c) It is seen, in the year 1985 more or less all the tenants took up a contention that pontiff Sadashivswamy Hiremath was not the owner of the property. The property is the property of a trust said to be registered under Bombay Public Trust Act. Therefore he is not entitled to represent the trust and collect the rent from them. In this background it is seen that all of them refused to pay rent for no valid reasons and the landlord having waited till 2005, thereafter initiated eviction proceedings in HRC Nos. 66 and 65 of 2005 against Prema Nagayya Sandanam and Shashikala Hiremath in respect of property Nos. 43/D and 43/C and also against other persons in occupation of other portion of the same property.

d) In the said proceedings the provision which was invoked was Section 27(a), (f) and (r) and in the trial two of the points which were framed for consideration regarding Section 27(a) and (r) were held in favour of the petitioner landlord. The provisions of Section 27(2)(a) is for arrears of rent i.e., rents due from the year 1985 till the date of the petition and Section 27(2)(r) is for bona fide need of the petitioner. So far as Section 27(f) is concerned, is for demolition of the premises. Since a specific defence was taken that the petition properties are in good condition and they need not be demolished, the said provision which was invoked was rejected as the same cannot be considered.

e) It is seen that the order of eviction passed in HRC Nos. 66 and 65 of 2005 is under common judgment dated 29.3.2007 by the Court of 1st Addl. Civil Judge (Jr. Dn.), Belgaum, not only in respect of these two petitions but also in respect of other three eviction petitions filed for other portions of property. The judgment in these two petitions were taken up in challenge by the respondents herein in HRC Revision Petition Nos. 44 and 45 of 2007 on the file of 1st Addl. District Judge, Belgaum. It is seen that similarly two other revision petitions which were filed by the tenants of two other portions viz., property No. 43/1 and 43/A were also taken up in challenge along with these two petitions and all the four HRC

Revision Petitions were taken up for consideration and disposed of by common judgment dated 16.7.2012.

f) In the HRC Revision Petitions two applications were filed by the tenants in I.A. Nos. 2 and 3. In I.A. No. 2 which was filed under order 41 Rule 27 of CPC, they were seeking permission to produce additional documents i.e., extract of Public Trust Register to demonstrate that the petition schedule property is trust property and the Kalmath in which the petitioner Sadashivswamy Hiremath was pontiff was referred to as public trust registered under Bombay Public Trust Act and as such the petition schedule property is a property belonging to the public trust. Thereby they tried to project, petitioner Sadashivswamy Hiremath was not competent to initiate proceedings for eviction of tenants by invoking any of the provisions of Section 27(2)(a), (2)(r) and (2)(f) and as such they are required to be dismissed.

g) In the said proceedings another application in I.A. No. 3 was filed under Order 6 Rule 17 of CPC seeking permission to urge whatever stated in these two applications as additional grounds in the written statement filed in the eviction proceedings for seeking dismissal of the eviction petition. The lower revision Court allowed the application in I.A. Nos. 2 and 3 and remanded the matter back to the trial Court by its order dated 16.7.2012. The said common order dated 16.7.2012 is under challenge before this Court in four HRRPs i.e., these two HRRPs and another two in HRRP Nos. 513 and 514 of 2012."

3. Incidentally the respondents in the said revision petitions who are tenants in respect of petition schedule property bearing Nos. 43/1 and 43/A entered into an agreement with the petitioner landlord accepting him as landlord and also agreeing to pay the monthly rent at prevailing market rate mutually quantified at the rate of Rs. 1,300/- p.m., took time for vacating the petition schedule premises in their possession till May 2016. So far as remaining two petitions are concerned, there were disputes among legal heirs of original tenants i.e., some of the legal heirs claiming themselves to be in possession who are trying to agree for settlement on same terms as in case of other two HRRPs and some of the legal representatives who are not in possession of the property as legal heirs are not willing to join the tenants in possession of the properties for settlement on same terms in which the tenants of other properties got their dispute settled with the landlord. Hence, these two petitions have remained on board whereas other two petitions are disposed of by settlement.

4. In these two revision petitions the grounds urged by the petitioner landlord is that the petition schedule properties are the absolute properties of the petitioner Sadashivswamy Hiremath. According to him the said Math is not a public trust as contended by the tenants in their applications in I.A. Nos. 2 and 3. It is the specific case of the landlord that the original Kalmath was a private Math and it was not a public trust and all the properties of the Math were individual properties of original pontiff Siddaramayyaswamy who started the Math long back. It is stated that the original pontiff by way of Will appointed one

Basalingswamy as successor to the Math and also to inherit the properties belonging to him, which were exclusive properties of Siddaramayyaswamy. Subsequently Sri Basalingswamy who was appointed as pontiff and inherited the assets of the Math, nominated another Siddalingswamy by Will who in turn appointed one Somashekharaswamy as pontiff of said Kalmath and the said Somashekharaswamy has nominated the present petitioner Sadashivaswamy as pontiff and also to inherit the properties as his personal properties.

5. The learned counsel for the petitioner would submit that this position is no longer in dispute in view of a finding rendered in the proceeding initiated before the Assistant Charity Commissioner in Application No. 46/1968. In the said proceedings the Assistant Charity Commissioner of Belgaum has discussed in depth the status of Kalmath which was initially started by Siddaramayyaswamy and which is subsequently headed by various Swamyjies from time to time, up to the present petitioner Sadashivaswamy is discussed at length.

6. While doing so, it is held that the petitioner landlord in HRC proceedings is not representing the Math as trustee, since the said Math is not registered under the Bombay Public Trust Act and as such the properties of the petitioner are not the properties of either the Math or the trust registered under the provisions of the Bombay Public Trust Act and therefore he categorically held that the property in dispute is the absolute property of petitioner who is the pontiff of Math. He is in possession of the same in his individual capacity and it is heritable by each of the Swamijies who are appointed to the said post and accordingly by order dated 20.1.1997 rejected the said application, which has attained finality.

7. In fact the status of the petitioner as owner of the property was subject matter of revision petition in HRRP No. 507/2011 on the file of this Court which was filed by the very same petitioner against one Wangi, the tenant in respect of property No. 43/B situated adjacent to other properties connected in this petition in respect of which the petitioner herein had initiated eviction proceedings in HRC No. 19/2005 which was disposed of by judgment and order dated 4.12.2010 and the same was challenged by the tenants in HRC Revision Petition No. 24/2010 on the file of Prl. District Court, Belgaum, wherein the similar applications under Order 41 Rule 27 of CPC and also under Order 6 Rule 17 read with Section 43 of the Karnataka Rent Control Act were filed which was also remanded for fresh consideration by the trial Court and the order of remand was taken up in HRRP. The said applications were rejected against which they had come up in HRRP No. 507/2011 on the file of this Court. A coordinate bench of this Court after hearing the said HRRP filed by the tenant namely Wangi dismissed the said HRRP No. 507/2011 as withdrawn.

8. Based on which eviction petition was filed and consequently order passed in HRC Revision Petition No. 24/2010 on the file of Prl. District and Sessions Judge, Belgaum was confirmed which was subject matter of HRRP No. 100010/2014 before this Court, wherein the original tenant entered into a settlement with the respondent accepting that the respondent is the landlord and agreed to vacate

the petition schedule property by the end of May 2016. In this background this revision petition is taken up for arguments.

9. While addressing arguments, learned counsel appearing for the respondent tried to submit that the order of Assistant Charity Commissioner, Belgaum in Application No. 46/1968 is subject matter of an appeal before the Charity Commissioner, which is filed by some of the respondents in the said proceedings. However he submitted that he is not in a position to tell either the number of appeal which is said to be pending before the Charity Commissioner, Belgaum, or the status of the appeal.

10. However the learned counsel Sri D. Ravikumar Gokakakar is fair in his submission that there is no interim order granted in the said appeal arising out of the order passed on Application No. 46/1968 holding that the petition schedule properties are not the properties of trust and Kalmath which is headed by petitioner Sadashivaswamy is not a registered public trust under the Bombay Public Trust Act 1950. With this it is clear that suit property is the property of the petitioner, which he has inherited as the pontiff who is exclusively appointed by the erstwhile pontiff with the right to hold the petition schedule property as his individual property which is at his disposal as his private property.

11. In the light of aforesaid discussion, this Court find that the 1st Revision Court i.e., the Court of Prl. District Judge, Belgaum, has failed to look into all these aspects and has jumped into a conclusion that the Kalmath headed by petitioner Sadashivaswamy in the Court below is a public trust and the averments in defence sought to be incorporated by way of amendment is necessary to decide the same which is erroneous and therefore the same is required to be set aside.

12. While doing so, it is also observed that the order for payment of arrears of rent and order for eviction passed by the trial Court in HRC Nos. 66 and 65 of 2005 in respect of the property Nos. 43/D and 43/C respectively under the tenancy of Prema Nagayya Sandanam and Shashikala Hiremath are required to be confirmed as just and proper orders and they should be directed to vacate and hand over the said properties in favour of the petitioner Sadashivaswamy.

13. In that view of the matter the order of remand passed in HRC Revision Petition Nos. 44/2007 and 45/2007 along with other connected two petitions is hereby set aside so far as it pertains to these two petitions. In respect of other two petitions, since the tenants have accepted the petitioner as the landlord and agreed to vacate the petition schedule premises on their own by taking reasonable time to vacate and also by paying the entire arrears of rent they have agreed to pay revised existing rent till the time they vacate the petition schedule premises, therefore no order is required to be passed in this proceedings with reference to said petition which would affect their right to continue in possession of the property under the settlement arrived at between the parties.

14. In this petition also some of the children of Prema Nagayya Sandanam and some of the legal heirs of Shashikala Hiremath are before this Court seeking

similar benefit to them to continue in the premises till May 2016 on same terms in which the tenants of other portions of the property continued. However as there is resistance by some other L.Rs who are not in possession of the property, this Court is not inclined to sit in judgment over their rights in this proceedings and would deem it convenient to decide the right of the original petitioner Sadashivswamy and to decide whether he is the absolute owner of the property and as such he is entitled to initiate proceedings for their eviction. If that is decided and arrears of rent is decided and his right to receive vacant possession is decided, it is always open for the tenants in these two petitions who are revision petitioners before the lower Revision Court to enter into a settlement to continue in possession for some time as the other tenants are continuing till May 2016. The respondent tenants are permitted to approach the petitioner herein, in the execution proceedings to be levied by him, wherein they may arrive at settlement on mutual understanding. So far as legal right of petitioner is concerned, it is decided in this petition in the aforesaid manner by allowing these two Revision Petitions.

15. It is brought to the notice of this Court, that some of the parties who are tenants in respect of adjacent portion are said to have approached the Civil Court in trying to challenge the order of eviction passed by this Court under the settlement. The landlord Sadashivaswamy is given liberty to file a copy of this order in the original suit filed by the tenants of other portion seeking relief of injunction and as well as quashing of the consent order passed by this Court in connected petitions. As and when such application is filed by the landlord, the Court below is directed to consider the same giving due weightage to the observation made by this Court with reference to the petitioner Sadashivaswamy's right to petition schedule properties in all five petitions and also his right to seek eviction of tenants under the provisions of Karnataka Rent Control Act by invoking Section 27(2)(a) (f) and (r) for arrears of rent, for demolition and for self occupation as the same is dealt at length by this Court in this order. The Court below should ensure that the tenant filing frivolous suit cannot deny the landlord his right to enjoy the fruits of order of eviction, by filing false and frivolous suit under the guise of enforcing their non existing right.