

(2012) 10 KAR CK 0007

In the Karnataka High Court

Case No : Civil Revision Petition No. 312 of 2007

S.J. Nagaraj, since Deceased by Lrs. (Smt. Shobha Nagaraj, Smt. Prathiba Devi, Smt. Rekha Devi and Smt. Sachi Devi) Legal Representatives 1 to 4 are Represented by General Power of Attorney Holder Smt. Shobha Nagaraj All Are	APPELLANT
Vs	
M/s B.H. Govindaiah Setty and Son	RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (2012) 10 KAR CK 0007

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : P.D. Surana and Sri Shivasharanappa M, for the Appellant; P.H. Ramalingam, N.R. Prakash and T.S. Vijayakumar, for the Respondent

Final Decision : Allowed

Judgement

N. Ananda

1. Heard Shri P.D. Surana, learned Counsel for the petitioners. Learned Counsel for the respondent is absent.
2. The learned trial Judge had dismissed the eviction petition by holding that first respondent is not in possession of the schedule premises, second defendant is stated to be in possession is a sub-tenant. He died during the pendency of proceedings and his legal representatives were not brought on record.
3. The first defendant has admitted that schedule premises was owned by the father of plaintiffs and it was let out in favour of the father of defendant. After his death, first defendant continued to be in possession as a tenant. It is contended by the defendant that plaintiff is not the absolute owner. He is only a rent collector. The second defendant approached first defendant and requested to provide some accommodation to carry on business for a limited period.

Accordingly, second defendant was accommodated in a small portion of schedule premises. The plaintiff in collusion with second defendant unlawfully dispossessed first defendant from schedule premises. Therefore, the first defendant is not in possession of schedule premises and there cannot be a decree of eviction against the first defendant.

4. The learned trial Judge accepting contentions of first defendant has held that first defendant was not in possession of the schedule premises even before the date of petition. Therefore, plaintiffs could not have terminated his tenancy. The learned trial Judge has held that second defendant was in possession of schedule premises. After death of second defendant, his legal representatives were not brought on record. In the circumstances, plaintiffs cannot have an order of eviction.

5. The law is fairly well settled. When the lease of premises is governed by provisions of Transfer of Property Act or Rent Control Act, tenancy created in favour of a person would not come to an end either by voluntary surrender of possession of leased premises by tenant in favour of landlord or by a decree of eviction. The tenant cannot plead that he was forcibly dispossessed by somebody and there cannot be an order of eviction against him. In a decision reported in Balvant N. Viswamitra and Others Vs. Yadav Sadashiv Mule (dead) through Lrs. and Others, , Supreme Court has held:

24. It was contended by the learned counsel for the respondents that the respondents were not made party defendants in the suit and hence no decree could have been passed nor could be executed against them. We are afraid we cannot uphold the contention. It is the case of the plaintiffs that the property was let to Papamiya. It is not even the case of the respondents that they were the tenants of the plaintiffs. They are claiming through Papamiya. At the most, therefore, they can be said to be sub-tenants i.e. tenants of Papamiya. There was no privity of contract between the landlord and the respondents. In our opinion, therefore, it was not necessary for the plaintiffs to join respondents as defendants in the suit nor to give notice to them before initiation of the proceedings. The respondents cannot be said to be "necessary party" to the proceedings.

25. As held by this Court in Udit Narain Singh Malpaharia v. Addl. Member, Board of Revenue, Bihar, [(1963) Supp 1 SCR 676], there is a distinction between "necessary party" and "proper party". In that case, the Court said:

The law on the subject is well settled : It is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

(emphasis. supplied)

26. In Importers and Manufacturers Ltd. Vs. Pheroze Framroze Taraporewala and Others, , this Court held that in a suit for possession by a landlord against a tenant, sub-tenant is merely a proper party and not a necessary party.

27. In Rup Chand Gupta Vs. Raghuvanshi Private Limited and Another, , an ex parte decree was passed in favour of the landlord and against the tenant. An application for setting aside the decree was made by the sub-tenant by invoking the provisions of Order IX, Rule 13 of the Code of Civil Procedure, 1908, inter alia contending that the decree was collusive inasmuch as the sub-tenant was not joined as party defendant. The decree was, therefore, liable to be set aside. Repelling the contention, this Court observed:

It is quite clear that the law does not require that the sub-lessee need be made a party. It has been rightly pointed out by the High Court that in all cases where the landlord institutes a suit against the lessee for possession of the land on the basis of a valid notice to quit served on the lessee and does not implead the sub-lessee as a party to the suit, the object of the landlord is to eject the sub lessee from the land in execution of the decree and such an object is quite legitimate. The decree in such a suit would bind the sub-lessee. This may act harshly on the sub-lessee; but this is a position well understood by him when he took the sub-lease. The law allows this and so the omission cannot be said to be an improper act.

(emphasis supplied)

The learned Judge without comprehending law on the point and ignoring settled principles of law has dismissed the suit. In the result, I pass the following:

ORDER

The petition is accepted. The impugned judgment is set aside. The suit is decreed. The plaintiffs are entitled to recover possession of schedule premises from defendant.