

(2008) 05 KAR CK 0021
In the Karnataka High Court
Case No : HRRP No. 653 of 2004

Smt. Gowramma and Sri Puttaiah @ Kengaiiah

APPELLANT

Vs

Smt. Jayamma and Others

RESPONDENT

Date of Decision : 28-05-2008

Acts Referred:

Karnataka Rent Act, 1999 — Section 43, 43 (1)

Citation : (2009) 6 KarLJ 130

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : R.B. Sadashivappa and G.B. Nandish Gowda, for the Appellant;
Annapoorna Bevinji, Raghavendra and N. Dwarakanath for R-1 to R-6, for the
Respondent

Final Decision : Dismissed

Judgement

K. Ramanna, J.—The unsuccessful petitioners have come up with this revision u/s 115 of the CPC to set aside the impugned order dated 6.9.2004 passed by the Prl. District Judge, Mysore in Rent Revision No. 99/2002 whereby the learned District Judge affirmed the order dated 14.11.2002 passed by the II Addl. I civil Judge (Jr.Dn), Mysore in HRC No. 448/1984 dismissing the eviction petition filed by them.

2. The brief facts of the case of the petitioners is that the petitioner No. 1 smt. Gowramma is the daughter of late Sri Bank Boregowda and his wife late Scat. Lakshamma. During the lifetime of late Sri Bank Boregowda, father of petitioner No. 1, he bequeathed all his properties to his wife late Smt. Lakshamma under a registered will Ex.p-1 dated 10.1.1958 wherein it is made clear that she should enjoy the property and the income therefrom during her lifetime and also directed that his children including petitioner No. 1 are entitled for partition of the properties and partition may be affected among his children by Lakshamma. Accordingly, Lakshamma executed a registered partition deed dated 7.10.1963 dividing the properties bequeathed to her under the will Ex.P-1. Therefore

petitioner No. 1 got the petition schedule property and she became the absolute owner but late Lakshamma reserved her right to utilise the rent realised from the house property during her life time but subsequently she executed a registered Release deed dated 3.12.1966 in favour of the petitioners giving up bar right to the rant from petition schedule house and conferred absolute right, title over the same to the petitioner No. 1. Therefore the petitioners became the absolute and exclusive owners of the petition schedule premises. The petitioners leased the premises to one Sri B.L. Ramaiah in the year 1968 on a monthly rent of Rs. 100/-. After his demise, the respondents have continued to be in possession of the petition schedule premises as lessees under the petitioners as legal heirs of deceased B.L. Ramaiah. Therefore they have no right or interest in the petition schedule premises. It is further case of the petitioners that deceased Lakshamma has executed a registered Cancellation deed dated 15.4.1972 purporting to cancel the prior registered Release deed dated 3.12.1966. Later the petitioners came to know that a Gift deed dated 12.11.1973 was said to have been executed by late Smt. Lakshamma in favour of Boraiah, brother of petitioner No. 1 with ulterior motive. Later the petitioners came to know that Boraiah appears to have executed registered sale deeds dated 8.1.1983 and 28.2.1983 in favour of the first and second respondents deliberately describing the door number of the premises as 2899/1 in a misleading manner. In view of the partition deed dated 7.10.1963, petitioner No. 1 became the absolute owner of the petition schedule premises and subsequent release dated 3.12.1966 in favour of petitioners confirming absolute title on them. Therefore the Cancellation deed dated 15.4.1972 is of no consequence. Thereby the respondent Nos. 1 and 2 will not get any right, title over the petition schedule premises. Either Smt. Lakshamma or Boraiah have any right whatsoever to deal with the property in any manner. Since the premises in occupation of petitioners is insufficient and congested as the number of members of the family have increased and they have number of relatives to visit them regularly, they need extra accommodation. It is further case of the petitioners that petitioners have got marriageable and school going children for whom also the present house is insufficient. Therefore the petitioners require the petition schedule premises for their occupation, which is suitable for the comfortable stay of the petitioners and their family. The respondents being the heirs of deceased B.L. Ranaiah have acquired the premises bearing Door No. 18/2 (Assessment No. 2021/1), Madhavachar Road, K.R. Mohalla, Mysore. Apart from that respondent No. 1 acquired site in Vijayanagar I Stage, Mysore and has built a residential house thereon. Respondent No. 4 has acquired a house behind Kamakshi Hospital, t.k. Layout, Mysore. The respondents are having suitable accommodations for their occupation. In spite of legal notice dated 2.3.1984, respondent Nos. 1 and 2 who are in actual possession failed to comply the demand made by the petitioners and sent an untenable reply.

3. After service of notice, the respondents appeared through Counsel and filed detailed objections contending that their father B.L. Ramaiah was a tenant of the petition schedule premises under Lakshamma. After the death of their fattier B.L.

Ramaiah, they continued to be in occupation of the petition schedule premises as tenants under Lakshamma. In fact, Lakshamma executed a gift deed in favour of Boraiah, brother of petitioner No. 1 in respect of the petition schedule premises and the respondents purchased the same from Boraiah in the year 1983 under two registered sale deeds. Therefore as soon as they purchased the property and continued to be in possession as lawful owners, the question of jural relationship of landlord and tenant does not arise. They are the owners of the petition schedule premises. Therefore the question of vacating the same does not arise. The petitioners have made a false allegation that the respondents have not paid the rent from 1.1.1983 onwards and the court-below cannot go into the question of title in a summary trial and the trial Court has no jurisdiction to entertain the same. In view of the dispute between the parties with regard to the title of the petition schedule premises, civil court alone has jurisdiction to decide the matter. Therefore they pray for dismissal of the petition.

4. To prove their respective contentions, petitioner Nos. 1 and 2 examined PW.1-Puttaiah and got marked 20 documents i.e. Exs.P-1 to P-20 whereas the respondents examined two witnesses and got marked 14 documents.

5. After hearing the arguments and after considering the materials, learned II Addl. I civil Judge (Jr. Dn), Mysore dismissed the eviction petition on the ground that the Court has no jurisdiction to decide the question of ownership and title over the petition schedule premises. Assailing the same, the vary petitioners filed a Rent Revision No. 99/2002 before the Prl. District Judge, Mysore. After hearing the arguments and after considering the materials placed on record, learned District Judge opined that the matter involves complicated questions of title and interpretation of documents. Therefore held that the trial court was right in dismissing the eviction petition and directed the petitioners to approach the civil Court to establish their right. Hence, this revision.

6. Heard the arguments of the learned Counsel for the petitioners and the respondents.

7. Sri R.B. Sadashivappa, learned Counsel for the petitioners submitted that as per the recitals of the Will, late Lakshamma, wife of Bank Boregowda acquired huge properties and ha bequeathed the same in favour of his wife under a registered will. After the death of Boregowda, Lakshamma, mother of petitioner No. 1 rightly executed a registered partition deed dated 7.10.1963 dividing the properties bequeathed to her under the will dated 10.1.1958 by her husband-late Baregowda. The father of the respondent was a tenant under Lakshamma by paying rent of Rs. 100/- per month, under the registered partition deed the petition schedule premises had fallen to the share of petitioner No. 1 and subsequently late Lakshamma executed a registered release deed dated 3.12.1966 in favour of both the petitioners confirming absolute title over the petition schedule premises. Therefore the petitioners are the lawful owners of the petition schedule premises. After the death of B.L. Ramaiah, the father of respondent Nos. 1 and 2 continued in possession of the petition schedule

premises as lessees. Instead of allowing the eviction petition filed by the petitioners, the Courts-below have wrongly appreciated the oral and documentary evidence. so also not properly interpreted the contents of the documents and came to a wrong conclusion in dismissing the eviction petition and revision petition which is liable to be set aside. It is argued that when once the respondents admitted that their father was a tenant, they continued to be tenants in the premises but they sat up a wrong plea that they have purchased the premises under two registered sale deeds from Boraiah, son of late Bank Boregowda after executing partition deed and release deed dated 3.12.1966 in favour of petitioners and the Courts-below failed to note that respondents had filed an application u/s 43 of the Karnataka Rent Act, 1999 and the said application was dismissed by the trial Court, by and also the revisional Court and also by this Court. Another revision petition filed by respondents in HRRP No. 318/2000 was also dismissed directing the trial court to take a decision in accordance with law. The Courts-below have not properly considered the same and came to a wrong conclusion. SO also the Courts-below failed to note that the documents produced by the parties including the decree passed in S.C. No. 2125/1994 filed against the respondents for recovery of arrears of rent. The property said to have been purchased by the respondents is not the petition schedule premises. Hence the Orders under challenge suffers from factual and legal infirmity. Therefore they are liable to be sat aside. In support of his contentions, learned Counsel for the petitioners relied on the following decisions:

a) Sri Haji Iqbal Shariff Vs. Smt. C. Manjula, wherein it has been held as follows:

when once the tenant admits his relationship with the previous owner, that itself is sufficient to cone to a conclusion that there is relationship of landlord and tenant. Automatically the petitioner becomes a tenant u/s 109 of Transfer of Property Act. The petitioner in order to protract the proceedings has filed an application u/s 43(1) to stay all further proceedings.

Silva Uddin Vs. Nagaraju, wherein it has been held as follows:

In view of transfer of ownership, the transferee becomes the owner of the premises-The tenant cannot dispute the right of the transferee landlord to maintain an Eviction Petition under the Rent Act or to claim rent-Atonement by the tenant is unnecessary to confer validity to the transfer of the lessor's rights-Section 109 protects payments of rant by the tenant to the transferor without notice of the transfer, as Section 100 creates a statutory attornment.

(c) Mohar Singh (Dead) by Lrs. Vs. Devi Charan and Others,

(A) Transfer of Property Act (1882) Sections 109, 106-Scope-Unity and integrity of tenancy-splitting up, of Section-109 provides exception-Lease of two shops by co-owners-on partition, one shop coming to share of one co-owner- Action for eviction of tenant from that shop-impeding another co-lessor Not necessary.

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Held, that on partition the co-owner and consequently his referee became the exclusive owner of one of the shops which came to that co-owner's share. There was therefore no question of splitting up the integrity and unity of the tenancy. on proof of bona fide need the transferee-landlord was entitled to evict the tenant and there was no necessity of joining another co-owner in the action.

Hence it is submitted that the revision petition be allowed by setting aside the orders passed by the courts-below.

8. On the other hand, learned Counsel for the respondents submitted that in view of the fact that the respondents have purchased the petition schedule premises under two registered sale deeds from one Boraiah who is none other than the son of deceased Bank Boregowda on the basis of the Gift Deed executed by his mother-late Lakshamma by cancelling the earlier partition deed, therefore there is no jural relationship of landlord and tenant between the petitioners and respondents. The Courts-below are right in dismissing the eviction petition and revision petition. There are no incorrect or illegal findings or wrong appreciation of the evidence placed on record by the petitioners. The question of title is involved and the court of Small Causes has no jurisdiction to entertain the eviction petition. It is further argued that the principles of res-judicata does not operate in respect of a finding with regard to the question of title incidentally determined by the Court of Small causes. In this behalf, learned Counsel for the respondents relied on the following decisions:

a) Doddannavar Bros. Vs. Malathibai,

b) Smt. Gangabai Gilda Vs. Smt. Chhabubai Gandhi, which reads as follows:

(A) Civil P.C. (5 Of 1908) Section 11-Res Judicata-Finding as to title by Small Cause Court-Does not operate as res judicata in subsequent suit for determination of interest in immovable property.

When a finding as to title to immovable property is rendered by a Court of Small Causes res judicata cannot be pleaded as a bar in a subsequent regular civil suit for the determination or enforcement of any right or interest in immovable property. In order to operate as res judicata the finding must be one disposing of a matter directly and substantially in issue in the former suit and the issue should have been heard and finally decided by the court trying such suit.

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A question of title" in a Small Cause suit can be regarded as incidental only to the substantial issue in the suit and cannot operate as res judicata in a subsequent suit in which the question of title is directly raised.

(c) Rameshwar Dayal Vs. Banda (Dead) through his Lrs. and Another, which

reads as follows:

Res Judicata-when operates-Question of title incidentally determined by Small Cause Court does not operate as res judicata in a subsequent suit based on title-Suit for eviction of tenant and respondent sub-tenant decreed ex parte by Small Cause Court without even incidentally determining question of title of respondent-Subsequent suit of respondent on his title to the property-Held, not barred by res judicata-Provincial Small Cause Courts Act, 1887 Section 23.

(d) Madhvi Amma Bhawani Amma and Others Vs. Kunjikutty Pillai Meenakshi Pillai and Others, which reads as follows:

(B) Civil P.C. (5 of 1908), Section 11-Res judicata-decision on an issue-operates as res judicata-only if that issue was raised and decided-Findings incidentally recorded do not operate as res judicata.

In order to apply the general principle of res judicata Court must first find whether an issue in a subsequent suit, was directly and substantially in issue in the earlier suit or proceeding, was in between the same parties, and was it decided by such Court. Thus there should be an issue raised and decided, not merely any finding on any incidental question for reaching such a decision. SO if no such issue is raised and if on any other issue, if incidentally any finding is recorded it would not come within the periphery of the principle of res judicata.

(e) AIR 2005 SC 1370 (I.T.C. Ltd. v. Commissioner of Central Excise, New Delhi and Anr.) which reads as follows:

(A) Civil P.C. (5 of 1908, Section 11-Res judicata-Plea of-Cannot be raised for first time in appeal-Excise duty exemption to cigarettes on basis on M.R.P. declared on packets-show cause issued on ground that lower M.R.P. was declared-High Court in petition against show cause-Though expressing its view on question whether revenue could go behind the declaration-Giving liberty to parties to raise all questions before adjudicatory authority-Revenue in fact raising also the question before authority and Tribunal-Plea that finding of High Court binds assessee from re-agitating the question-Not allowed to be raised before S.C.

(f) Puthiyottil Kunhava and Others Vs. Kaniattichalil Mammadkutty, :

(A) Civil P.C. (1908), Section 11-Res judicata-Plea not raised by defendant-Matter decided by Court on merits-Later decision prevails.

Jurisdiction of the Court to try suit or an issue is always there and res judicata only bars investigation and decision on matters finally decided inter parties earlier. If the defendants omit to plead and prove res judicata and the Court investigates and decides matters already concluded between the parties without knowing such a decision, it is not void for want of jurisdiction. Plea of res judicata is one which might and ought to be raised as a defence and established in order to operate as a bar in the exercise of jurisdiction to try and dispose of the matter

subsequently. Otherwise the later decision will prevail and the plea of res judicata itself will be barred by constructive res judicata and the later decision overlooking the bar of res judicata alone will prevail.

(g) AIR 1966 SC 1024 (Krishnapasuba Rao Kundapur (Dead) by his L.R. and Anr. v. Dattatraya Krishnaji Karani):

(B) Supreme Court-Practice-New point-Plea of res judicata not raised before High Court-Plea will not be entertained in appeal before Supreme Court.

(h) R. Shariff and Others Vs. A. Mohammed Noor and Another, wherein it has been held as follows:

Section 43 of the new Act is enacted to safeguard the interest of the tenants and they should not be evicted by the persons who have no title to the petition schedule property. It is no doubt true that frivolous applications are made to stall the eviction proceedings, but however in the case on hand the fact that a series of proceedings at undisputed point of time when the title of the vendor of the present petitioner itself was questioned and having been denied by the Courts, the applications maintained by the respondents in the Trial Court for deferring the eviction proceedings until the title is decided cannot be said to be either frivolous or to drag on the proceedings.

Therefore it is submitted that there are concurrent findings recorded by both court and this Court being a revisional Court is not entitled to reappraise the evidence or documents produced by both parties. Hence it is prayed for dismissal of the eviction petition.

9. Having heard the arguments of the learned Counsel for both parties and after perusing the materials placed on record, the point that arises for consideration and decision is, "whether the Courts-below are justified in dismissing the eviction petition and revision petition filed against the respondents?"

10. It is an undisputed fact that late Bank Boregowda was the husband of late Lakshamma and petitioner No. 1 is the daughter and the one Boraiah is the son of Bank Boregowda and Lakshamma. It is also an undisputed fact that late Bank Boregowda acquired vast property both movable and immovable during his life time and during his life time he executed the will in favour of late Lakshamma as per Ex.P-1. Under the said Will late Bank Boregowda bequeathed his properties including the petition schedule premises in favour of his wife Lakshamma to enjoy the same till her death and also directed her to affect partition among his children during her life time. Accordingly a partition is said to have been made allotting the petition schedule premises in favour of petitioner No. 1, however Lakshamma is said to have reserved her right to enjoy and collect the rents from the petition schedule premises, subsequently the mother of petitioner No. 1 also executed a registered release deed in favour of both the petitioners. The contention of the petitioners is that they got the petition schedule properties under a registered partition deed and the release deed executed by late

Lakshamma. No doubt the respondents have not disputed that originally their father was a tenant under Lakshamma in respect of the petition schedule premises. The respondents are said to have purchased the property under two registered sale deeds from Boraish, son of late Bank Boregowda and Lakshamma. Late Lakshamma is said to have executed a Gift Deed in favour of her son Boraiah canceling the partition deed and the release deed executed by her in favour of the petitioners. After considering the evidence, the courts below have recorded that the recitals of documents produced by both parties disclose a complicated question of title and requires interpretation of recitals of the documents and the Small cause court cannot decide the rights of the parties with regard to the ownership of the petition schedule premises. No doubt the petitioners herein who have filed a suit for recovery of arrears of rent to the tune of Rs. 3500/- from the respondents before the Civil Court, which came to be decreed against the respondents. However in view of the law laid down in case of Madhvi Amma Bhawani Amma and Others Vs. Kunjikutty Pillai Meenakshi Pillai and Others, and also in case of Puthiyottil Kunhava and Others Vs. Kaniattichalil Mammadkutty, , referred supra, the petitioners can not take benefit of the said decision and use the findings recorded therein in this revision. Ex.P-1 is a very important document to throw light to decide whether late Lakshamma, wife of late Bank Boegowda had a right to execute the partition deed or dispose of the property by executing the gift deed or will in favour of her children. The recitals of Ex.P-1 and other documents i.e. Exs.R-1 to R-3, registered sale deed Ex.R-4, Cancellation deed, relinquishment deed are to be interpreted by the Civil Court. The petitioners themselves admit that sale deeds Ex.R.2 and 3 are related to petition schedule premises, but the petitioners have not challenged the said documents, further the petitioners have not challenged the Ex.R.5 and 6 cancellation deeds executed by late Smt. Lakshamma canceling the said partition and release deed made by her in favour of petitioners. It is a well settled law that mere transfer of khata in the name of person will not be a conclusive proof of his ownership of that property. The petitioners are expected to prove that they have got right, title over the petition schedule properties either under the will Ex.P-2, relinquishment deed Ex.P-3. Likewise respondents are expected to prove that they have purchased the petition schedule premises from the person who has got right, title and ownership but the Small Cause Court cannot decide such questions. Such complicated questions of title which requires interpretation of documents are to be done by civil courts alone after a full dressed trial and the same cannot be decided in a summary proceedings adopting summary procedure. The Courts-below in detail considered and appreciated the material placed on record by the parties and came to a right conclusion in dismissing the eviction petition and the revision petition filed by the petitioners. Further the Courts below have rightly directed the petitioners to approach the Civil Court for establishment of their legal right over the petition schedule premises and the same does not call for interference. The approach of the trial Court as well as learned District Judge is with sound reasoning. Therefore I do not find any illegal or incorrect findings recorded by the Courts-below to upset the concurrent

findings which is under challenge.

11. For the foregoing reasons, the revision petition stands dismissed.