

(2008) 12 KAR CK 0050

In the Karnataka High Court

Case No : Writ Petition No's. 34512 of 2002 (HRC) and 103 of 2006

Smt. Indubai and Others

APPELLANT

Vs

Ningouda Malagouda Patil since deceased by L.Rs.

RESPONDENT

Date of Decision : 18-12-2008

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 21 (1) (a), 21 (1) (f), 21 (1) (h)

Citation : (2010) 1 KCCR 90

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : B.S. Kamate, in Writ Petition Nos. 34512 of 2002 and 103 of 2006, for the Appellant; M.G. Naganuri, for Respondents-1 to 3 (a-c) in Writ Petition Nos. 34512 of 2002 and 103 of 2006, Ravi S. Balikai, for Respondent-3, M. Rabbhat, for Respondent-4 and Rahamatulla K.B., for Respondents-6 (a-d) and 7 in Writ Petition No. 34512 of 2002, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—In these two writ petitions as two portions of the same property are the subject matter, they are taken up for consideration together as the impugned order is one and the same.

2. The subject-matter of these proceedings is a shop premises bearing CTS No. 2826, 2827 and 2828 situate at Sankeshwar, Hukkeri Taluk, Belgaum district. One Mallagouda Patil was the permanent tenant of these lands. After his death his son-first respondent in this proceeding Ningouda Malagouda Patil had leased this property in favour of Shivaram Govind Topade on monthly rental of Rs. 83/-. About 50 years back, the said Shivaram Govind Topade sold lease hold rights under a registered sale deed dated 19.2.1975 in favour of Sri Dattatreya Vishnu Topade. Ningouda filed a suit O.S. No. 69 of 1978 against the said Dattatreya Vishnu Topade for ejectment. The said suit came to be dismissed on the ground that tenancy of Dattatreya was terminated u/s 106 of the Transfer of Property Act. Thereafter, the said Dattatreya sold his lease hold rights in favour of the

petitioners herein under a registered sale deed dated 21.10.1983 for a consideration of Rs. 12,500/-. From that day, the petitioners are in lawful possession and enjoyment of the suit schedule property. After the dismissal of the suit in O.S. No. 69 of 1978, Ningouda issued a notice dated 22.7.1984 to Dattatreya terminating his tenancy and thereafter filed HRC 1/1985 for eviction u/s 21(1)(a), (f) and (h) of the Karnataka Rent Control Act. In the said proceedings, the petitioners herein were arrayed as respondents 2 and 3 as there was an illegal tenancy created in their favour. The petition was contested. Evidence was recorded.

3. The trial Court on appreciation of the oral and documentary evidence on record allowed the petition and directed the respondents to deliver vacant possession within 3 months. The said order came to be passed on 3.1.1996. Aggrieved by the same, the respondents therein preferred a revision petition in HRC RP No. 39 of 1996 and 28 of 1996 before the District Judge, Belgaum. During the pendency of the aforesaid revision Petitions, Karnataka Rent Act, 1961, was repealed and it is replaced by Karnataka Rent Act, 1989. Section 70 of the present Act deals with what should happen to the pending proceedings. Therefore, the petitioner herein filed a memo stating that the proceedings have abated and they should be reserved liberty to challenge the said order in appropriate forum. The District Judge, on the basis of the said memo, dismissed the revision petition and the revision petitioners were directed to put the respondents in those proceedings in possession of the petition premises on or before 11/10/2002. Being aggrieved, Indubai and her children preferred writ petition challenging the order passed by the District Judge. Others also filed another Writ Petition. That is how these two writ petitions are filed before this Court i.e., Writ Petition No. 34512 of 2002 and Writ Petition No. 103 of 2002.

4. Sri B.S. Kamate, learned Counsel for the petitioner assailing the impugned order contends there is no jural relationship of landlord-tenant between the parties therefore HRC Court had no jurisdiction to pass the order of eviction. Secondly he contended the land in question being a inam land had vested with the Government and admittedly it is not re-granted and therefore, the respondent cannot maintain any eviction petition as he has no interest in the property. Thirdly he contended by virtue of the registered sale deed dated 21.10.1983 the petitioner has purchased the property and therefore no eviction decree could be passed against the owner of the property. Lastly he contended that the respondents have got alternative accommodation and therefore eviction order passed u/s 21(1)(h) of the Act is not sustainable.

5. Per contra, the learned Counsel for the respondent supports the impugned order.

6. The material on record discloses the first respondent Ningouda Malagouda Patil leased the property in favour of Shivaram Govind Thopade. The said position is categorically admitted in the written statement filed in O.S. No. 69 of 1978. Lease was on a monthly rent of Rs. 83/-. Said Shivaram Govind Thopade sold

lease hold rights to Dattatreya Vishnu Topade under a registered sale deed dated 19.2.1975. The said Dattatreya Vishnu Topade sold the lease hold rights in favour of the petitioners under a registered sale deed dated 21.10.1983 for a consideration of Rs. 12,500/-. All these facts are evidenced by registered sale deeds. It is in the light of these undisputed facts, it is to be seen whether there is any substance in the contentions of the petitioners that the petitioner are the owner of the land and there is no jural relationship of the landlord and tenant and the petitioner has become the owner of the property.

7. Section 116 of the Indian Evidence Act, 1872 deals with estoppel of tenant and of licensee of person in possession. It categorically states no tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy a title to such immovable property. THEREFORE, ONCE Shivaram Govind Topade admits tenancy under Ningouda Patil, his tenant Dattatreya Vishnu Topade and the petitioners herein who have purchased the lease hold rights under the registered sale deed and who are claiming through him, cannot deny that Ningouda Patil had no title to the said immovable property.

8. In that view of the matter, the trial Court on proper appreciation of the oral and documentary evidence on record taking note of the recitals in the registered sale deeds as well as the contents of the Written Statement in O.S. No. 69 of 1978 and the evidence which is recorded, has rightly held there exists relationship of landlord and tenant between the respondents and the petitioners and therefore eviction petition filed u/s 21(1)(a), (f) and (h) is maintainable. Admittedly no rents are paid to the landlord. Therefore a case u/s 21(1)(a) of the Act is made out. Admittedly the said tenancy are illegal under the Karnataka Rent Control Act, 1961. Therefore a case of illegal sub-letting is also made out. Insofar as bona fide and reasonable requirement is concerned, the trial Court on the basis of the oral and documentary evidence on record has recorded a finding that requirement is established which is based on legal evidence. Therefore, the said finding which is purely a question of fact do not call for any interference, as it cannot be termed as perverse or capricious.

9. In that view of the matter, I do not see any merit in these two writ petitions. The impugned orders do not suffer from any illegality or infirmity which calls for interference.

10. At this stage, the learned Counsel for the petitioner submits the petitioners are carrying on business for the last 25 years and the entire family is dependent on the income of the petitioners from the said business. They are poor and it is difficult for them to acquire another alternative suitable premises for the business and therefore prays sufficient time to make the alternative arrangements. Hence, I pass the following order:

11. Both the writ petitions are dismissed. However, the petitioners are granted

two years time to vacate the suit premises subject to the following conditions:

1. They shall pay a sum of Rs. 500/- towards damages for use and occupation of the schedule premises during this period of two years;
2. They shall not sublet, underlet or put 3rd parties in possession of the schedule property during this period of two years;
3. They shall not make any alterations or damage to the schedule premises during this period of two years;
4. They shall file an undertaking to quit and deliver the vacant possession of the schedule premises on the expiry of two years period without forcing the landlord-respondents to file any execution petition for recovery of the possession of the suit premises;
5. It is made clear that the grant of two years time to the petitioner to vacate would not confer any right on them in derogation of eviction decree passed by the trial Court which is affirmed by this Court in this order;
6. The petitioners shall file an affidavit giving the aforesaid undertaking within four weeks from today. If the undertaking is not filed within four weeks or having filed undertaking, if the petitioner commit any breach of terms of undertaking, the petitioners would not be entitled to the benefit of this two years period and the decree for eviction becomes executable forthwith.

Parties to bear their own costs.