

(2010) 04 KAR CK 0186
In the Karnataka High Court
Case No : H.R.R.P. No. 83 of 2010

Smt. Mumtaz

APPELLANT

Vs

Sri Puttaraju (Since Deceased by his LR's P. Mamatha and Sri
Nikil Kumar represented by their Natural Guardian/Smt.
Lakshmamma) and Smt. Lakshmamma

RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:

Karnataka Rent Act, 1999 — Section 27 (2) (a), 27 (2) (r), 43

Citation : (2010) 6 KarLJ 95 : (2011) 6 RCR(Civil) 1602

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Geethamala, for the Appellant; K.N. Puttegowda, for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—In this revision petition, respondent is questioning the correctness and legality of the order passed in HRC No. 179/2007 dated 10-11-2009 on the file of the XI Addl. Judge, Court of Small Causes, Bangalore.

2. The facts in nutshell are as follows:

Respondent herein initiated eviction proceedings against the tenant in HRC 179/2007 u/s 27(2)(a) and (r) of the Karnataka Rent Act, 1999. It was contended in the eviction petition that they purchased the property bearing No. 72, assessment No. 133 K. No. 710 Laggere village, Yeshwanthapura Bobli. Measuring east to West 30 North to South 50 wherein the petition schedule premises is situated under sale deed dated 19-6-2006 from one Sri Anthony Raj. Subsequent to the purchase khatha has also been transferred to their name and they have been paying taxes.

3. It was further contended subsequent to the purchase the respondent was informed about the purchase of the property and on the understanding that respondent has agreed to continue revision petitioner as a tenant of the schedule

premises whereunder it was agreed that respondent tenant would pay rent of Rs. 300/- per month within 15th of every month tenancy was continued. On account of the default committed in payment of rent it was alleged that a legal notice dated 23-12-2006 came to be issued terminating the tenancy and calling upon the tenant to pay the arrears of rent on account of noncompliance of the demand made in the notice and eviction proceedings as referred to supra was initiated.

4. On service of notice respondent-tenant appeared before Court below and filed statement of objections contending that there is no jural relationship of landlord and tenant and it was contended that petitioners were strangers and there was no brevity of contract and at no point of time she had paid any rents to the petitioners. She further contended that one Sri Muniraju who claims to be an agreement holder in respect of the property referred to above had filed a suit on the file of the City Civil Court in O.S. No. 8566/2006 for specific enforcement of agreement to sell and hence it was contended that there is serious dispute with regard to title of the property in question.

5. During the pendency of the proceedings an application u/s 43 came to be filed by the respondent tenant seeking for stay of further proceedings in HRC 179/2007. In the said application respondent contended that Anthony Raj is the absolute owner of the property in question. The application came to be resisted by the petitioner landlord by filing detailed statement of objections.

6. In support of their respective claims parties have tendered in their evidence before the trial Court. On the basis of the pleadings and evidence on record the Court below framed the following points for its consideration:

(i) Whether the respondent proves that there exist dispute with regard to the relationship of landlord and tenant?

(ii) What order?

7. On considering the pleadings, evidence on record and arguments advanced, the Court below by its order dated 10-11-2009 dismissed the application filed u/s 43 of the Karnataka Rent Act. It is this order which has been questioned in the present revision petition.

8. I have heard Smt. Geethamala, learned Counsel for the petitioner and Sri K.N. Puttegowda learned Counsel for respondents.

9. Smt. Geethamala Learned Counsel for the respondent tenant would contend that there is no jural relationship of landlord and tenant between the petitioner and the respondents inasmuch as no agreement came to be entered into between the parties. At no point of time the respondent treated the petitioners as the landlord of the premises in question. She would contend that one Muniraju has admittedly filed a suit for specific performance of sale and the same is pending adjudication and hence there is a cloud on the title to the property in question. She would also submit that there is no written agreement between the parties and Section 109 of the Transfer of Property Act is not attracted to the

facts of the present case. She would submit that respondent is a tenant under Mr. Anthony Raj and respondent has been paying rent to the said Anthony Raj and at no point of time the rent was paid to the present petitioners.

10. Per contra Sri K.N. Puttegowda, learned Counsel for the respondent landlord would contend that order of Court below does not suffer from any infirmities whatsoever. He would submit that admittedly Mr. Anthony Raj was the owner of the property in question and he having alienated the same in favour of the petitioner under a registered sale deed dated 19-6-2006 is now attempting to wriggle out of the situation and has filed a false complaint and same is also countered by the petitioner by filing separate complaint. He submits that pursuant to sale deed Khatha of the property has been transferred to the names of the petitioners/landlords and they have been paying the taxes regularly. He would further contend that subsequent to the sale deed executed by Sr. Anthony Raj respondent/tenant was allowed to reside in the petition schedule premises on payment of rent of Rs. 300/- per month and since they defaulted in the payment of rent, the respondent is liable to be evicted and accordingly eviction petition was filed both for arrears of rent and for self occupation. On these grounds he submits that there exists jural relationship between the petitioner and the respondent and trial Court having considered this fact has rightly rejected the application and he prays for dismissal of the present revision petition. In support of his submission he relies upon the decision of this Court in the case of K.V. Srinivasa and Another Vs. Indian Bank, .

11. Having heard the learned Counsel for the parties the following points arise for my consideration.

(i) Whether the respondent/tenant has proved before the Court below there is no jural relationship of landlord and tenant between the petitioner and respondent?

(ii) Whether the order passed by the Court below in rejecting I.A. No. 2 suffers from any infirmity either in law or on facts?

(iii) To what order?

12. Re: Point No. 1. The respondent tenant during the adjudication of eviction petition filed an application u/s 43 and has got himself examined. It is stated therein that he has been paying rents to the landlord namely Sri Anthony Raj and at no point of time he has paid rents to the respondent landlords. In the affidavit supporting the application at paragraph 4 it is stated by the respondent tenant to the following effect:

I am paying rent to the landlord every month and I have contract of tenancy with one with Anthony Raj and not with the petitioner herein.

Unless and until the title dispute is resolved by the Civil Court in O.S. No. 8566/2007, the petitioner cannot claim protection contending Anthony Raj is landlord in respect of premises in question. Admittedly Anthony Raj has sold the property in favour of petitioner/landlord and he seized to be owner and landlord.

Even in the affidavit filed in support of his objections he has reiterated what has been stated in the statement of objection and contended that Mr. Anthony Raj is the landlord.

13. It is a fact that the said Anthony Raj is the vendor who has sold the property in question to the respondent landlord i.e., Puttaraju and others under the registered sale deed dated 19-6-2006. It would be of relevance to extract the definition of landlord as per Section 3(e) of the Karnataka Rent Act, 1999 which reads as under:

3(e) "landlord" means a person who for the time being is receiving or is entitled to receive, the rent of any premises, whether on his own account or on account of or on behalf of or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or to be entitled to receive the rent, if the premises were let to a tenant;

Once the owner of the property in question i.e., Sri Anthony Raj has sold the property in question the respondent herein namely the petitioner before the trial Court would be entitled to receive the rents which was paid by the tenant to said Anthony Raj subsequent to the purchase of the premises in question. In fact similar issue had come up for consideration before this Court in the case of Silva Uddin Vs. Nagaraju, and this Court has held to the following effect:

7. In view of transfer of ownership of the premises to the respondent by the previous lessor, the respondent - becomes the lessor and becomes entitled to receive rent in terms of the lease by operation of Section 109 of the T.P. Act. It is relevant to state that in India no attornment of tenancy is necessary in law as Section 109 of the T.P. Act creates a statutory attornment. The section does not insist that transfer of the lessor's rights can take effect only if the tenant attorns. Attornment by the tenant is unnecessary to confer validity to the transfer of the lessor's rights. However, the section protects payment of rent by the tenant to the transferor without notice of the transfer. The transfer of ownership of the premises to the respondent by the previous lessor has resulted in statutory attornment by the tenant in favour of the lessor's transferee i.e. the respondent herein and consequently jural relationship of landlord & tenant.

8. In this context, it is also relevant to examine as to whether the right of the transferee u/s 109 of the T.P. Act is curtailed or modified by the Rent Act. The definition of "landlord" u/s 3(e) of the Rent Act reads as follows:

Landlord means a person who for the time being is receiving or is entitled to receive, the rent of any premises, whether on his own account or on account of or on behalf of or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would, so receive the rent or to be entitled to receive the rent, if the premises were let to a tenant:

The expressions "entitled to receive the rent" and "to be entitled to receive the rent" in the aforesaid definition signify that the transfer of interest of the

landlord in favour of any other person is not prohibited. Hence the right of the transferee u/s 109 of the T.P. Act is not curtailed/modified by the Rent Act. Thus a transferee of a lessor is entitled to collect rent in terms of the lease as of right and becomes landlord u/s 3(e) of the Rent Act. The tenant cannot dispute the right of the transferee landlord to maintain an eviction petition under the Rent Act or to claim rent. Hence in the case of a valid transfer of the premises by the lessor by way of sale, question of referring the parties namely the transferee of the lessor and the tenant to a Civil Court u/s 43 of the Rent Act does not arise. The judgment relied on by learned Counsel for the petitioner in *Ayesha Begum v. Shahzadi* is not applicable to the facts of this case of cases of the present nature i.e., cases to which Section 109 of the T.P. Act is applicable.

14. In view of the same and also in view of the fact that respondent himself has admitted that he was paying rent to Sri Anthony Raj he would not get better title than what he had with the earlier landlord namely Sri Anthony Raj i.e., of tenant. Having admitted that he was a tenant under Anthony Raj it was incumbent upon him to pay rent. The suit for specific performance, said to have been filed against Anthony Raj would not curtail the right of the present respondent in proceeding with the eviction proceedings. In view of the above, I am of the considered opinion that the respondent has utterly failed to establish that there is no jural relationship of landlord and tenant and accordingly point No. 1 is answered in favour of the respondent herein.

15. Re: Point No. 2: In so far as the decision in the case of *Joseph Kaniharaj* 2010 AIR SCW 1411 relied upon by the learned Counsel, it is to be noticed that in the said case tenant therein pleaded that he was a tenant in respect of the petition schedule premises therein. During the pendency and continuation of tenancy an agreement of sale came to be executed by the landlord owner in favour of tenant/respondent and thus tenant claimed that his lesser interest that of a "tenant" got extinguished and it blossomed itself into a larger interest namely, that of a "purchaser". It was contended on this ground that he ceased to be a tenant. However, the Court below did not accept the said contention and rejected the same which came to be reversed by the Hon'ble Supreme Court. In the facts and circumstances of the said case it was held that it was incumbent upon the Court below to examine whether the said lesser interest got blossomed into larger interest and to examine such question, matter came to be remanded. However, in the instant case, it is not the case of the respondent tenant Smt. Mumtaz has got any better title or interest than what Mr. Anthony Raj possessed. In view of this, I am unable to accede to the request of the learned Counsel for the petitioner that the judgment of the Court below has to be reversed.

16. The word of caution given by their lordship's in the *Joseph Kantharaj* 2010 AIR SCW 1411 case is required to be quoted which reads as under:

Under Rent Act for eviction should be wary of defendants coming forward with defences of agreement of sale, lest that becomes a stock defence in such petitions. Unless the Court is satisfied the prima facie that the agreement is

genuine and defence is bonafide, it should no defer the proceedings for eviction under the Rent Act.

In view of the above caution given by the Hon"ble Apex-Court, the same is examined to discreen whether such defence has been set up in the instant case and I am of the considered opinion this is one such stock defence set up by the tenant to stall the eviction proceedings and same ought not to be countenanced and Court below has rightly rejected said contention and hence the same is confirmed.

17. In view of the same I am of the considered opinion that order of Court below does not suffer from any infirmity whatsoever. Even otherwise as rightly pointed out. by the learned Counsel for respondent in the case of Silva Uddin Vs. Nagaraju, referred to supra paragraphs 7 and 8 are clearly applicable to the facts of the present case, which has been relied upon by the trial Court. Hence, the order of the Court below does not suffer from any infirmity whatsoever.

18. Re: Point No. 3: In view of the above discussion, the following order is passed.

ORDER

The revision petition is devoid of merits and is accordingly dismissed.

In view of revision petition having been dismissed Misc. 6246/2010 does not arise for consideration.