
(2013) 09 KAR CK 0390

In the Karnataka High Court

Case No : Civil Revision Petition No. 23 of 2013

Smt. R. Shobha Bai

APPELLANT

Vs

D.R. Jayaraj

RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (2013) 6 KarLJ 270 : (2014) 2 RCR(Civil) 375 : (2014) 1 RCR(Rent) 289

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : M.T. Nanaiah, for the Appellant;

Final Decision : Allowed

Judgement

Huluvadi G. Ramesh, J.—Heard the Counsel for the petitioner. Though notice is served on the respondent, none represents him. Suit was filed by the petitioner for eviction and other relief before the Small Causes Judge, Bangalore in SC No. 2923 of 2011 which came to be disposed of after inquiry, on 21-11-2012 wherein while determining the points for consideration on the contention raised by the parties, the Trial Court stating that tenancy is not terminated as per Section 106 of the Transfer of Property Act, 1882, also negated the contention of the plaintiff that she is entitled for the relief of possession and other incidental relief. Being aggrieved, petitioner landlord is before this Court on the contention that petition premises was let out in the usual course and not for a manufacturing unit. The unit run by the respondent is not a manufacturing activity except twisting of silk yarn in the usual course which does not involve any process of change of product and therefore, the finding of the Trial Court on the point of six months notice and holding that it is a manufacturing unit is erroneous and thus, sought for allowing the suit and decree the same.

2. Though the petitioner has relied upon the judgment of the Apex Court in South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others, , wherein

it is held that the act "manufacture" implies a change but every change in the raw material is not manufacture and there must be such a transformation that a new and different article must emerge having a distinct name, character or use. The ratio, of course in the case, is applicable to the case on hand.

3. The respondent is shown to be carrying out threading from the cocoons. The cocoons are transformed into thread in simple process and the thread will be twisted. This does not include any manufacturing activity. Learned Counsel also relied upon the decision of the Apex Court in the case of Union of India (UOI) Vs. Delhi Cloth and General Mills, . In para 14 of the judgment, referring to another judgment, the Apex Court has observed that "manufacture" implies a change. But every change is not manufacture and every change of article is a result of treatment, labour and manipulation but, something more is necessary and there must be transformation; a new and a different article must emerge having a distinct name, character or use.

4. According to the petitioner's Counsel, basically the yarn will be twisted and that would be directly converted into thread and the thread would be twisted in a simple procedure and will not involve any manufacturing process or conversion except the thread is taken from the cocoons. In view of the ratio laid down by the Apex Court and having regard to the nature of activity carried out by the respondent, it cannot be treated as manufacturing activity as such, notice of six months as required u/s 106 of the Transfer of Property Act would not arise. Further, when once there exists a relationship of landlord and tenant and there is no manufacturing activity, then the Trial Court ought to have passed an order of eviction based on the notice issued. Since the activity itself is wrongly defined as "manufacturing process" by the Trial Court, it has proceeded to conclude that there is no notice as required u/s 106 of the Transfer of Property Act which is erroneous. While setting aside the order of the Trial Court to that extent, it is hereby ordered that there is proper service of notice as required and the activity carried out is not manufacturing activity except the process of taking the thread from the cocoons and twisting it, which is a simple procedure. Another six months time is given to the respondent to vacate and hand over vacant possession of the premises subject to payment of rentals and to file an undertaking to that effect within eight weeks from the date of this order.

Petition is allowed.