

(2002) 11 KAR CK 0057

In the Karnataka High Court

Case No : House Rent Revision Petition No. 273 of 1997

Smt. Vijaya Bai

APPELLANT

Vs

Sri. Subhas Shripad Chinchewadikar and Another

RESPONDENT

Date of Decision : 11-11-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Karnataka Rent Act, 1999 — Section 5, 51
Karnataka Rent Control Act, 1961 — Section 21 (1) (f)

Citation : (2003) 1 KCCR 451

Hon'ble Judges : A.V. Srinivasa Reddy, J

Bench : Single Bench

Advocate : R.K. Masoor, for the Appellant; M.B. Naragund, for Respondents 1, for the Respondent

Final Decision : Allowed

Judgement

A.V. Srinivasa Reddy, J.—This revision u/s 115 CPC is preferred by the Petitioner-landlord being aggrieved by the order dated 16.11.1966 passed in House Rent Revision Petition No. 38 of 1992 on the file of the Prl. District Judge, Belgaum, allowing the revision petition and setting aside the order passed in H.R.C. No. 20 of 1988 on the file of the Additional Munsiff, Belgaum allowing the petition filed u/s 21(1)(f) of the Karnataka Rent Control Act, 1961 ("the Old Act" for short).

2. The Petitioner-landlord filed the eviction petition against the present Respondents and two others viz., Smt. Gangubai, w/o. Shripad Chinchawadikar and Manjunath Revankar u/s 21(1)(a)(h) and (f) of the Old Act. The learned Munsiff while dismissing the petition filed u/s 21(a) and (h) of the Old Act, however, allowed the petition u/s 21(1)(f) of the Act. The aggrieved tenant preferred revision before the Court-below. The Court-below allowed the revision and set aside the order passed by the Munsiff by dismissing the eviction petition in toto. Being aggrieved by the said order of dismissal the present revision is preferred by the landlord u/s 115 Code of Civil Procedure

3. I have heard the learned Counsel on both sides.

4. During pendency of the revision in this Court, the Old Act has come to be replaced by The Karnataka Rent Act, 1999 ("the Act" for short) which in its wake has brought about substantial changes in the matter of regulation of eviction. The Act narrowed down the definition of "tenant" by eliminating from its ambit the legal representatives of a tenant who under the Old Act were entitled to acquire the status of full-fledged tenant on the demise of the original tenant. As a consequential fall-out of this narrowing down of the definition and in order to determine their present legal status under the Act vis-a-vis the premises under their occupation, Section 5 regulating the inheritability of tenancy has also been introduced. As the fate of this revision hangs on the interpretation of Section 5 of the Act, it requires reproduction for considering the rival contentions urged before me. The said provision reads:

5. Inheritability of tenancy. (1) In the event of death of a tenant, the right of tenancy shall devolve for a period of five years from the date of his death to his successors in the following order, namely:

(a) Spouse;

(b) Son or daughter or where there are both son and daughter both of them ;

(c) Parents;

(d) Daughter-in-law, being the widow of his predeceased son:

Provided that the successor has ordinarily been living or carrying on business in the premises with the deceased tenant as a member of his family up to the date of his death and was dependent on the deceased tenant:

Provided further that a right to tenancy shall not devolve upon a successor in case such successor or his spouse or any of his dependent son or daughter is owning or occupying a premises in the local area in relation to the premises let.

(2) If a person, being a successor mentioned in Sub-section (1), was ordinarily living in or carrying on business in the premises with the deceased tenant but was not dependent on him on the date of his death, or he or his spouse or any of his dependent son or daughter is owning or occupying a premises in the local area in relation to the premises let to which this Act applies, such successor shall acquire a right to continue in possession as a tenant for a limited period of one year from the date of death of the tenant; and, on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in possession of the premises shall become extinguished.

Explanation: For the removal of doubts, it is hereby declared that.

(a) Where, by reason of Sub-section (2), the right of any successor to continue in possession of the premises becomes extinguished, such extinguishment shall not affect the right of any other successor of the same category to continue in

possession of the premises but if there is no other successor of the same category, the right to continue in possession of the premises shall not, on such extinguishment, pass on to any other successor specified in any lower category or categories, as the case may be;

(b) The right of every successor, referred to in Sub-section (1) to continue in possession of the premises shall be personal to him and shall not, on the death of such successor, devolve on any of his heirs. (Underlining is Mine)

5. Mr. M.B. Nargund, learned Counsel for Respondent No. 1 submitted that in the light of the fact that the Act does not recognize the legal heirs of the original tenant as tenants, the provisions of the Act could not be applied and made use of by a landlord to recover possession of the tenanted premises and nor could a Court determine the right of a person to continue to be in occupation of the premises leased to the original tenant, under the provisions of the Act, as the Act only regulates and determines the rights of persons having the relationship of landlord and tenant and where this relationship is non-existent, the landlord could only seek the remedy of recovery of possession of the premises by taking recourse to the common law. Mr. R.K. Masoor, learned Counsel for the Petitioner, hotly denies this position in law and according to him a eviction proceedings begun under the Old Act for eviction of a person continuing in possession of the premises leased to the original tenant is very well maintainable.

6. The right that accrued to a tenant, be it under the Old Act or under the Act, is determinable by the landlord by taking resort to eviction proceedings which is in the nature of a summary proceedings. Law does not cast on the landlord the necessity of resorting to proceedings under the common law which is more elaborate and time consuming. There can be no doubt that the legal representatives of a deceased original tenant cannot seek to derive a better right than what he himself had. If the original tenant himself could be deprived of the right that had accrued to him under the Act by means of a summary proceedings, the legal representatives cannot hope to inherit a better right which is defensible in a more elaborate original proceedings under the common law. The intention of the Legislature not to treat the legal representatives on par with the original tenant under the Act becomes apparent not only from the restricted meaning given to the term, "tenant" under the Act, but also by the introduction of the new provision u/s 5 which curtails their right of occupation of the premises to different periods of time without bestowing on them the status of a tenant. The intention appears to be to let the legal representatives continue in the tenanted premises for a limited period of time without bestowing on them the rights that accrue to a tenant under the Act. In order to put matters beyond doubt the Legislature has also framed Section 51 of the Act which provides for proceedings by or against legal representatives. It reads:

51. Proceedings by or against legal representatives. (1) Any application made, appeal preferred, or proceeding taken under this Act, by or against any person, may, in the event of his death be continued by or against his legal representative.

(2) Where any application, appeal or other proceeding would have been made, preferred or taken under this Act by or against any person such application, appeal or other proceeding may, in the event of his death, be made, preferred or taken by or against his legal representative.

Section 51 of the Act is, therefore, a perfect answer to the submission made by Mr. M.B. Nargund. It is not essential that for a landlord to start an eviction proceedings under the Act against the occupants of the tenanted premises the persons in occupation of the premises must necessarily be tenants. The Act covers not only the relationship of landlord and tenant but also that of the landlord and the persons in occupation of the tenanted premises. In the light of the restricted meaning given to the term "tenant" in the Act and on a combined reading of Section 5 and Section 51 of the Act, it is open for a landlord to start an eviction proceeding against the legal representatives after the demise of the original tenant. In the event of death of the original tenant during pendency of the proceedings the landlord can continue the same against his legal representatives u/s 51. Therefore, in the face of Section 51 of the Act, it is not open for the Legal Representatives of the deceased original-tenant to contend that the Petitioner-landlord can only recover possession of the tenanted premises by invoking proceedings under the common law and not in a proceedings under the Act. There is no dispute that Ravaji Chindhawadikar the original tenant had died long ago. The present Respondent No. 1 who was the son of the original tenant had also died on 22.2.1989. His wife died on 14.2.1989. Under Clause (b) of the Explanation to Section 5, the right of every successor, referred to in Sub-section (1) to continue in possession of the premises shall be personal to him and shall not, on the death of such successor, devolve on any of his heirs.

8. The present Respondent No. 1 who, admittedly, was the successor of the original tenant Ravaji Chindhawadikar, himself having died on 22.2.1989 the right to continue in possession of the premises has not devolved on his legal representatives and therefore the landlord is entitled to recover possession from the L.Rs. of the deceased Respondent No. 1 u/s 5 of the Act without even the need to establish his case under any of the grounds enumerated u/s 27 of the Act. In this view of the matter, I find no need to go into the merits of the impugned order which is one passed u/s 21(1)(f) of the Old Act as the Petitioner is entitled to recover possession of schedule premises by the operation of law itself.

9. Learned Counsel for the Petitioner cited two decisions for my consideration viz., *General Auto Agencies v. Hazari Singh* AIR 1977 Rajasthan 180 and *Smt. Dayawati and Another Vs. Inderjit and Others*, . Both these decisions, in my opinion, are not relevant for the purpose of determining the issue on hand and, therefore, they cannot be of any aid to the Court for arriving at a decision in this revision.

10. In the result, for the reasons stated above, the revision is allowed. The Respondent is given three months" time to vacate the petition premises and

hand over vacant possession of the same to the la