
(2010) 09 KAR CK 0140

In the Karnataka High Court

Case No : Regular First Appeal No. 440 of 2007

Sri. B. Channakrishna Since dead by is L.R. C. Dwarakanath APPELLANT
Vs

Smt. Nirmala and Others RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 21 (1), 31

Citation : (2010) 09 KAR CK 0140

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : G. Papi Reddy, for the Appellant; N.R. Nagaraj and Assts. for C/R, for the Respondent

Judgement

A.S. Bopanna, J.—The Appellant herein is the Defendant in O.S No. 946/1998. The suit in question was filed seeking for a judgment and decree of ejectment against the Defendant. the trial Court after considering the rival contentions has decreed the suit by its judgment dated 14.11.2006. The Defendant claiming to be aggrieved by the said judgment, is before this Court in this appeal.

2. Heard the learned Counsel for the parties and perused the appeal papers including the records received from the trial Court. The parties shall be referred in the same rank as assigned to them before the trial Court for the purpose of convenience and clarity.

3. The Plaintiffs had tiled the suit claiming to be the landlords and co-owners of the building bearing No. 463 as they had succeeded to the same from Sri H.S. Shivarudrappa that is the husband of the lat Plaintiff and the lather of Plaintiffs 2 to 5. The Plaintiffs contended that the Defendant, was a tenant in respect of the said building arid was running a shop known as M/s. Dwaraka Pen Centre on a rent of Rs. 400/- per month. It was contended by the Plaintiffs that the Plaintiffs were in need of the said premises and as such had issued a legal notice dated 01.12,1997 terminating the tenancy as contemplated u/s 106 of the Transfer of Property Act. Since the Defendant had failed to vacate the premises, the

Plaintiffs, were constrained to file the suit

4. The Defendant on appearance had read his written statement and had opposed the suit of the plaintiffs. It was contended that the suit was not maintainable in view of the provisions contained under Sections 21(1) and 31 of the Karnataka Rent Control Act. It was contended since admittedly the rent was Rs. 400/- and also the number of premises, the suit was not maintainable in view of the said provision. Measurement of the property as contended by the plaintiffs was also disputed.

5. The trial Court on taking note of the rival contentions had framed as many as four issues for its consideration and an additional issue was thereafter framed, The issues are as under:

- a. Whether Plaintiffs prove that tenancy is duly terminated as per law?
- b. Whether defendant proves that the suit is not maintainable in view of the provisions of Rent Act?
- c. Whether Plaintiff is entitled for possession of the suit property?
- d. What order or decree?

Addl. Issue No. 1: Whether the Plaintiffs prove their title to the suit schedule property?

6. In order to discharge the burden cast on the parties, the 2nd Plaintiff was examined as P.W.1 and produced documents at Exa.P1 to P7. The Defendant examined himself as D.W.1 and documents, at Exs.D1 to D3 were marked.

7. The trial Court on analysing the said evidence had come to the conclusion that the Plaintiffs had proved that the tenancy was duly terminated and the suit was maintainable and as such Defendant was directed to vacate and hand over the possession of the property within a period of six months. The said ejectment is called in question in this appeal.

8. Learned Counsel for the Appellant assailing the judgment would contend that the trial Court was not justified in its conclusion, inasmuch as the suit itself was not maintainable it was also contended that the measurement of the property has not been proved and the same is liable to be dismissed. Even with regard to the termination of the tenancy, the learned Counsel would contend, that the trial Court was not justified.

9. Learned Counsel for the Respondents however sought to justify the judgment and decree passed by the trial Court.

10. Having considered the rival contentions of the learned Counsel and on perusal of the judgment passed by the trial Court, in the background of the documents available on record in the trial Court records what is to be noted is that the suit is one for ejectment and the notice of termination as contemplated u/s 106 of the Transfer of Property Act has been issued. In a normal

circumstance, the only question that has to be considered by this Court is to whether the termination is in accordance law and in terms of the provision contained u/s 106 of the Transfer of Property Act. However, in the instant case, since the contention was also with regard to the maintainability of the suit, the same also needs consideration. In this regard, the trial Court had framed issue No 2. For considering the same, provision contained u/s 31H of the Karnataka Rent Control Act was taken note by the trial Court and in that context had come to the conclusion that despite the said provision the suit was maintainable. With regard to the same, there can be no dispute that there were 6 mare tenants and rent was also Rs. 400/-. Though the conclusion has been appropriately reached by the trial Court, what is to be noted is that in the present facts during the pendency of the suit itself, the Karnataka Rent Control Act had been repealed and the rent Act had come into force. Therefore in any event, said Section 31 was not available to be pressed in the present facts of the case.

11. Having concluded thus the only other question to be considered is as to whether the tenancy had been terminated it accordance with law. There can be no dispute that the tenancy in question was a month to month tenancy. In the instant case, the Plaintiff had got issued a notice dated. 01.12.1997 and the same was produced and marked at Ex.P.1. Postal acknowledgment for service of the same was produced and marked at Ex.P.2. The Defendant had issued a reply notice which was marked at Ex.P.3. The notice at Ex.P.1 had provided 15 days time and thereafter tenancy was terminated. Therefore, keeping this aspect and considering the fact that the tenancy had been duly terminated in. accordance with law, the Plaintiffs in any event was entitled to succeed and therefore the trial Court was justified in. its conclusion.

12. At this stage, learned Counsel for the Appellant would, contend, that this Court grant the period of two years to the Defendant to vacate the premises. Learned Counsel for the Respondents-plaintiffs would however opposed the grant of two years time on the ground that the suit itself was instituted before the trial Court in the year 1998 and sufficient time has lapsed. It is also contended that the trial Court had itself granted six months time and during the pendency of this appeal sufficient, time ha a been, lapsed. Hence, it is stated this Court may grant reasonable time subject to conditions.

13. In view of the rival contentions, in a matter of this nature, this Court will have to take into consideration the interest of both the parties while granting time. I am of the view that considering the fact that the Appellant is carrying on the business of selling pens and stationery in the said premises, reasonable time has to be granted to the Appellant to vacate the premises. At the same time, keeping in view, the premises in question is a commercial premises and the Plaintiffs should also enjoy the benefit of the premises even during the granted period, appropriate conditions are to be imposed by this Court. In that view of the matters I am of the view that the Appellant is entitled to a period of one year from this day to vacate the suit schedule premises. The grant of period of one

year at the instance of this Court is subject to the condition that the Appellant will pay the amount of RS. 2000/-(Rupees two thousand only) per month for the first six months commencing from 15th of September 2010. After the completion, of the initial period of six months, for the last 6 months* the Appellant shall pay the amount of Rs. 3,500/- (Rupees three thousand five hundred only) per month. The grant of time with the said condition of enhanced amount is purely at the instance of the Court and shall not be considered as an agreement reached between the parties.

14. Further, it is also made clear that the grant of time is subject to the Appellant filing an undertaking before this Court that the time granted and condition imposed by this Court is being availed by him by accepting this judgment as final. He shall also undertake that the premises would not be sublet or underlet and he would vacate the premises at the end of one year without driving the Respondents - Plaintiffs to file execution petition. Such undertaking shall be filed by the Appellant within fifteen days from, the date of receipt of a copy of this judgment. It is also made clear that the amount as indicated by this Court shall be deposited by the Appellant on or before the 5th of every successive month to S.B. Account No. 10096745674 in S.B.I Bank, V.V. Puram Branch and if there is any default in depositing the amount even for one month, the time granted by this Court will not enure to the benefit of the Appellant and the Respondents would be entitled to execute the decree. Learned Counsel for the Appellant has " also handed over a cheque dated 20.09.2010 for Rs. 13,200/- in favour of H.S. Nirmala being the arrears of rent up to date and the same has been received by the learned Counsel for the Respondents.

In terms of the above, the appeal stands disposed of. No order as to costs.