

(2006) 03 KAR CK 0053
In the Karnataka High Court
Case No : HRRP No. 554 of 2003

Sri K. Chandrashekara

APPELLANT

Vs

Sri S. Ganesha and Others

RESPONDENT

Date of Decision : 22-03-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Karnataka Rent Act, 1999 — Section 42 (1), 43
Karnataka Rent Control Act, 1961 — Section 21 (1) (a), 21 (1) (h)

Citation : (2006) ILR (Kar) 1966 : (2006) 3 KarLJ 423 : (2006) 2 KCCR 1137

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : Ashok K.L. and G.T. Kumar, for the Appellant; C.S. Ramadas, for the Respondent

Judgement

Ashok B. Hinchigeri, J.—This revision is presented u/s 115 of the C.P.C. against the concurrent orders-orders, dated: 18.9.2002 passed by the Principal Civil Judge (Jr.Dn.,) Shimoga on I.A. No. 7 in HRC No. 11 of 2000 and the order, dated 2.6.2003 passed by the Court of the Additional District Judge, Shimoga, in R.R.P.No. 14 of 2002.

2. The brief facts of the case are that the petitioner instituted eviction proceedings invoking Section 21(1)(a) and (h) of the Karnataka Rent Control Act, 1961. When the petitioner's examination-in-chief was over and when the matter was set down for cross-examination of PW.1, the respondent No. 1 made an application u/s 43 of the Karnataka Rent Act, 1999, seeking the stoppage of all the proceedings and for a direction to the parties to approach the Civil Court for the determination of their rights. The Trial Court allowed I.A.No.7. Aggrieved by this order, the petitioner preferred Rent Revision Petition No. 14 of 2002 to the District Court, which by its order, dated 2.6.2003 dismissed the revision petition.

3. On suffering the concurrent orders, the petitioner instituted this revision petition. Sri Subramanya Jois, the Learned Senior Counsel for Sri Ashok K.L.

appearing for the petitioner has made the following submissions:

(a) I.A. No. 7 u/s 43 of the said Act was filed only by the respondent No. 1 who has vacated the schedule premises in 1997 by his own admission, which he has made in the objection statement filed to the main petition. Therefore he has no subsisting interest in the schedule premises;

(b) His application and supporting affidavit cannot be taken to have been filed on behalf of the respondent No. 3, who is residing in the schedule premises, because he does not state in the affidavit that he is swearing to the affidavit on behalf of other respondents;

(c) The respondent No. 3 is a practicing advocate. He has himself not made an application u/s 43. Nor has he filed any memo supporting or adopting the statements of the respondent No. 1;

(d) I.A. No. 7 is a fraud on court's power and the abuse of the process of law. In the letter at Ex.P5, the respondents 1 and 2 do not whisper of there being agreement-holders. They impliedly admit that they are the tenants; they have undertaken to vacate the schedule premises on or before September, 1998. The Trial Court and the First Revision Court have not paid any weightage to this vital documentary evidence;

(e) The petitioner is a senior citizen (76 years of age). He is suffering from Parkinson's disease. The attempts made by the respondents to convert the non-issues into issues should not be permitted to come in the way of the old and ailing petitioner to get back the possession of the premises during his lifetime.

4. Per contra, Sri Ramadas, the Learned Counsel for the respondents made the following submissions:

(a) That the petitioner's side is not justified in making the submissions, as if he same are being made in the First Appeal. The scope of the revision is extremely limited and more so, the scope of second revision. When the concurrent orders are passed, there is little scope for interference u/s 115 of the C.P.C. Sri Ramadas also took me through the relevant portions of the order passed by the District Court.

b) Sri Ram Das further submits that the second respondent's affidavit filed in support of the application u/s 43 has to be construed as an affidavit on behalf of the respondent No. 1 also; the non-mentioning that he was swearing to the affidavit on behalf of the First Respondent is just as technical omission.

c) The respondents were never inducted into the schedule premises as tenants. They forcibly occupied the schedule premises on 25/12/1987. It is Ram Das's further case that the petitioner had difficulty in evicting his former tenants from the schedule premises. The respondents had paid Rs. 30,000/- to the former tenants and incurred other incidental expenditure.

d) Section 43 of the Karnataka Rent Act, 1999 does not contemplate the holding

of an enquiry. If the tenant disputes the existence of jural relationship and in the absence of lease agreement and rent receipt, the Trial Court has no option but to close the proceedings before it by directing the parties to approach the Civil Court for the determination of their rights. He has also relied upon a judgment of this Court in the case of Ayesha Begum Vs. Shahzadi, in this regard.

e) The Senior Counsel appearing on behalf of the petitioner is not justified in making the allegation of fraud against a brother Advocate and that in any case, the fraud required to be established by leading cogent evidence.

f) Just because the respondents No. 1 and 2 have left the schedule premises, it does not mean that they have no subsisting interest in the schedule premises; as the co-agreement holders they are entitled to their share in the schedule premises. They are justified in resisting the proceedings not in their capacity as tenants but in their capacity as share holders.

g) It is not open to the petitioner's side to advance the contentions which are not urged in the memorandum of this revision petition.

h) In 1987 the respondents' father entered into an agreement of sale with the petitioner in respect of the schedule property by paying an advance sale consideration of Rs. 204000/-.

5. In the course of his rejoinder submission, the Learned Senior Counsel, Sri. Jois clarifies that the allegation of fraud is not made against the 3rd respondent in his capacity as an advocate but in his capacity as a litigant. He submits that both the orders are per se perverse for unnecessarily and baselessly denying the existence of jural relationship. The respondents are liable to be evicted on the ground provided u/s 27(2)(o) of the Act. He draws support from a judgment of this Court in the case of Babulal and Another Vs. K. Sharadamma and Another, He also drew my attention to the petitioner's passport, which reveals that in 1987 he was not in India at all but was in Dubai. Therefore the question of the respondents or their father giving any amount to the petitioner who was in Dubai at that point of time does not arise at all. The Learned Senior Counsel vehemently argues with reference to Section 70(2)(a) that the proceedings pending as on the date of commencement of the 1999 Act have to be disposed of, as if the Karnataka Rent Act, 1961 had not been repealed, meaning the application u/s 43 of the 1999 Act, ought not to have been entertained by the Trial Court.

7. Considering the rival submissions made at the Bar, the propriety and legality of the impugned orders are to be examined. I have also scrutinised the Lower Court records minutely. The stage at which the application u/s 43 is filed was when the petitioner had completed his examination-in-Chief and the case was set down for his cross-examination by the respondents.

8. The Court below has allowed I.A.No.VII because the petitioner contended that the lease agreement was oral and because he did not produce the rent receipts.

The Trial Court did not look into the materials placed on its record by the petitioner. Nor did it call upon the respondents to demolish what the petitioner said in the course of his examination-in-chief. Ex.P.5 is the letter stated to have been written by the respondent Nos. 2 and 3. This letter states that they (respondent Nos. 2 and 3) have been staying there for the last 4 to 5 years and that they could not vacate the schedule premises due to their personal difficulties. They undertook to vacate before September 1998. What is the evidentiary value of this document has to be determined after the respondents cross-examine PW-1 on Ex.P. 5. However, the Trial Court proceeded to conclude prematurely.

9. The submission of Sri Ramdas, the Learned Counsel for the respondents is that once an application u/s 43 is made in any eviction case, where no lease agreement and rent receipts are produced, the Trial Court has to invariably stop the proceedings by putting the parties on to the Civil Court. This submission does not commend itself to me. In my opinion this is a far-fetched contention not supported by law. His submission that no enquiry is contemplated in the proceedings u/s 43 is devoid of merits. Section 42 deals with the procedure to be followed by the Trial Court for disposing of an application. Section 42(1) is extracted hereinbelow.

42. "Procedure to be followed by the Court:- (1) No order which prejudicially affects any person shall be made by the Court under this Act without giving him a reasonable opportunity of showing cause against the order proposed to be made and until his objections, if any, and any evidence he may produce in support of the same have been considered by the Court.

10. Therefore just because Section 43 does not speak of the enquiry, the requirement of holding the enquiry cannot be dispensed with. Any order, visiting the parties with serious consequences, cannot be passed without holding the enquiry. The compliance with the provisions contained in Section 42(1) of Karnataka Rent Act, 1999 and sacrosanct principles of natural justice require that an application u/s 43 of the said Act be disposed of only after holding an enquiry. Section 42(1) of the said Act requires the Court to give a reasonable opportunity of showing cause to a party against the order, proposed to be passed which may prejudicially affect him. An opportunity has to be given to him to file his objections and to produce evidence in his favour. Further he is also entitled to the consideration of his objections and evidence.

11. As the impugned order is passed without completing the enquiry, I hold that the same is not sustainable.

12. In the result, I set aside both the orders under revision; I am of the considered view that I.A.No.7 has to be considered along with the main matter by the Trial Court. Therefore I remand the matter to the Trial Court for the enquiry in accordance with law both on the main matter and on I. A. No. 7 I deem it fit and just to make the following directions and observations:

(a) Considering the fact that the petitioner is 76 years old and that he has completed his examination-in-chief; the Trial Court is directed to dispose of the matter within an outer limit of six months from today;

(b) All the contentions, including the issue of jural relationship, are kept open;

(c) Both the main matter and I.A.No. VII shall be taken up together for consideration;

(d) The parties are directed to be present before the Trial Court in HRC No. 11 of 2000 on 5.4.2006 without waiting for any notice from the Court. Both the parties are directed to co-operate with the Trial Court in expeditiously concluding the proceedings.

(e) The office is directed to transmit the Lower Court Records forthwith.

(f) Neither this order nor the remanded matter shall come in the way of the parties settling the matter amicably and out of Court. However no party shall protract the proceedings before the Trial Court on the ground that the matter is being settled.

No order as to costs.