

(2012) 02 KAR CK 0023

In the Karnataka High Court

Case No : Regular First Appeal No. 822 of 2007 A/W Miscellaneous Civil. No. 9123 of 2010

Sri Kempahanumiah

APPELLANT

Vs

M/s. Allied Motors Service Station

RESPONDENT

Date of Decision : 27-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Transfer of Property Act, 1882 — Section 105, 106, 7

Citation : AIR 2012 Kar 100 : (2012) ILR (Kar) 2388

Hon'ble Judges : H.S. Kempanna, J

Bench : Single Bench

Advocate : S.R. Krishna Kumar, for the Appellant; Santosh, for Kesvy and Co., for R4, R2-Service held sufficient, R1(A-B) are legal representatives of R1 who are already on record as R2 and R3 M/s. V.S. Hegde Associates for impleading R-5 (Absent), for the Respondent

Final Decision : Allowed

Judgement

H.S. Kempanna

1. This appeal is by the plaintiff challenging the judgement and decree of the trial court dismissing the suit filed by him for ejectment, mesne profits and other reliefs against respondents 1 to 4 herein. For the sake of convenience, the parties in this appeal would be referred to by their rankings as they are arrayed in the suit before Trial Court.

2. The suit schedule property is the property bearing No. 29 situated at Avalahalli, Uttarahalli, Mysore road, Bangalore - 26 measuring of 7000 sq.ft. morefully described in the schedule to the plaint (hereinafter referred to as the suit schedule property).

3. It is the case of the plaintiff that he is the absolute owner in possession of the suit schedule property. The first defendant represented by its partners are the

tenants under the plaintiff in respect of the suit schedule property on a monthly rent of Rs. 13,000/- for the first six months and thereafter Rs. 17,500/-. The period of lease under the unregistered lease deed was 8 years. The defendants committed willful default in payment of rents due to the plaintiff. Therefore he got issued a statutory notice dated 03.03.2004 to the defendants calling upon them to pay the arrears of rent which was due to the extent of Rs. 5,16,500/- as on 01.03.2004 and also terminated the tenancy. No reply was sent by the defendants to the said notice and they also did not pay the arrears of rent. Thereafter the plaintiff got issued one more statutory notice dated 15.02.2005 to the defendants terminating their tenancy. The defendants sent an untenable reply as per Ex.P3 dated 23.02.2005, but did not comply with the demand of the plaintiff to vacate the premises and also to pay the arrears of rent. Therefore, the plaintiff left with no other alternative was constrained to institute the suit seeking for delivery of vacant possession of the suit schedule property and for mesne profits.

4. After service of notice, the defendants appeared and contested the suit. They contended that in view of the lease deed fixing the term of lease for 8 years from 07.06.2001, the date on which they were inducted as tenants and as the suit was filed on 18.03.2005 before the expiry of the lease period, suit is not maintainable, premature and liable to be dismissed.

5. On the basis of the above pleadings, the trial Court framed the following issues:

1. Whether the termination of tenancy of the defendant is valid and is in accordance with law?

2. Whether the plaintiff is entitled for possession of suit property from the defendant?

3. Whether the plaintiff is entitled for mesne profits claimed?

4. Whether the defendant No.2 and 4 prove that suit is not maintainable?

5. What decree or order?

6. The plaintiff in support of his case, got examined himself as PW. 1 and got marked three documents as Exs.P1 to P3. The defendants did not choose to examine any witness nor got marked any documents in support of their case.

7. Thereafter, the trial Court on hearing the learned counsel for the respective parties and on going through the evidence and the documents on record, held that plaintiff has failed to prove that there is valid termination of tenancy and he is not entitled to possession of the suit schedule property and mesne profits. The defendants have proved that the suit is not maintainable. Accordingly, by the impugned judgement and decree dated 25.01.2007, dismissed the suit of the plaintiff.

8. The appellant/plaintiff being aggrieved of the judgment and decree of the Trial

Court is in appeal before this Court.

9. The learned counsel appearing for the appellant/plaintiff submitted that the trial Court was not justified in dismissing the suit on the ground that lease period has not expired. He further submitted that the premises was leased in favour of the defendants for a period of 8 years. The lease was not under a registered lease deed, but it was unregistered lease deed. Since the lease was beyond one year, it has to be taken that the tenancy was from month to month. Therefore the plaintiff got issued the two legal notices calling upon the defendants to quit and deliver vacant possession of the premises and to pay the arrears of rent. The Trial Court relying upon the unregistered lease deed produced by the defendants before the Court has erred in holding that the suit is not maintainable and there is no valid termination of the tenancy. He further submitted that the trial Court erred in not noticing that the defendants neither stepped into the box nor got marked the unregistered lease deed, Which is also a xerox copy. In the absence of any valid lease deed having been placed on record and the evidence in support of the same, which ought to have been produced by the defendants, the impugned judgment dismissing the suit of the plaintiff cannot be sustained. He further submitted that the trial Court has also wrongly interpreted the judgement rendered by the Apex Court in the case of Vittal Bai Private Limited vs. Union of India reported in ILR 2005 Karnataka page 1531. He further submitted that in view of the judgement of this Court reported in 2006 (5) AIR Karnataka R 478 in the case of Smt G. Kusuma Devi vs. Smt Gowramma & Ors., in the absence of a registered lease deed stipulating the period of lease, the tenancy would be from month to month. The Trial Court ignoring this factual position in law has erred in dismissing the suit and therefore the impugned judgement and decree be set-aside and the appeal be allowed.

10. Per contra, the learned counsel appearing for the contesting respondents/defendants submitted before this Court on 25.02.2012 that the firm-respondent No.1 has been vacated and respondent No. 4 who is one of the partners acting on behalf of the other partners has delivered vacant possession to its original owners in the year 2009 i.e., A.C. Narasimhaiah and others. As such, contesting respondents in this appeal, i.e., respondents 1 to 4 as on date, have no interest in the suit schedule property.

11. Before advertng to the merits of the appeal it is pertinent to note that during the pendency of this appeal Misc.Cvl.No.9123/2010 has been filed by the applicant Sri B.V. Jinesh Kumar seeking permission to implead himself in the present proceedings as respondent No. 5

12. In the affidavit filed in support of the application, by the impleading applicant, it is stated that the appellant in this appeal is not the owner of the suit schedule property. On the other hand, he is only power of attorney of the owners of the suit property namely A.C. Narasimhaiah, A.N. Gangadhar, A.N. Shivaramu, Smt Bhagyamma and Smt Uma Devi who had executed Power of Attorney in favour of the appellant, in respect of the suit schedule property. As the appellant

was acting detrimental to the interest of executors of GPA, they have revoked the Power of Attorney executed in favour of the appellant on 15.07.2006, and thereby the appellant has lost all his rights over the suit schedule property and he is no more the owner of the same. It is further stated that by virtue of the Power of Attorney executed in his favour, he had filed suit against the respondents claiming to be the owner of suit schedule property. It is further stated that on 07.12.2006, the original owners have executed a sale deed in respect of the suit schedule property in his favour. The said fact is within the knowledge of this appellant. Despite the same, the appellant without disclosing the said fact has preferred the above appeal challenging the impugned judgement and decree passed in OS No.2202/2005 in order to get possession of the property from respondents 1 to 4 who have vacated the suit schedule property and delivered physical possession of the same in favour of his vendors i.e., Sri A.C. Narasimhaiah and others. In view of the fact that now he has become the owner of the suit schedule property by virtue of the sale deed dated 07.12.2006 and as the appellant has no right, interest or title in the property, he is a necessary party to the appeal as the owner of the property and therefore he be impleaded as respondent No.5 in the above proceedings.

13. The said application has been opposed by the appellant herein. The appellant in his objections to the application inter-alia has contended that the impleading applicant is not a party to the suit in the trial Court and therefore he cannot seek permission to come on record. The suit has been filed for ejection wherein the respondents/defendants did not dispute the relationship between them as landlord and tenant and as such there was no dispute with regard to either title of the appellant or the status over the suit schedule property. No relief has been sought for by the appellant against the applicant. The applicant's presence is not required to decide the appeal or to pass any effective orders as against him. The suit is one for simple ejection between the landlord and tenant. The applicant being a third party claiming and setting up title in himself is neither a proper nor a necessary party to the proceedings and therefore he cannot seek permission to implead himself as a party to the proceedings. If the applicant is impleaded, as he has no interest in the property, it would change the complexity of the suit, enlarge the scope by converting into a title suit and such controversies which are beyond the scope of this appeal is not permissible in law. It is further contended that the applicant alleges to have purchased the suit schedule property on 07.12.2006 during the pendency of the suit and therefore it is hit by doctrine of lis-pendens and hence he is not entitled to come on record as respondent No. 5. On the other hand, the appellant is entitled to contest the claim of the impleading applicant in a properly instituted comprehensive civil suit before the Civil Court and not in the simple proceedings of the ejectment. It is also contended that, admittedly the appellant is empowered and authorised to lease out the property which is done in the year 2001 in favour of respondents/defendants 1 to 4 by virtue of Section 7 of the Transfer of Property Act, 1882 and consequently the appellant is a lessor as defined u/s 105 of the Transfer of

Property Act, 1882 and the defendants are lessees under him. Viewed from this angle also, the impleading applicant cannot come on record as a party and contest the claim of the appellant herein.

14. The learned counsel who has filed the present impleading application was not present before the Court when the matter was heard on 25.02.2012. It is posted today for further arguments. Today also he has remained absent. Since the application is only for impleading, the Court was left with no alternative to hear the learned counsel for the appellant and to proceed to order as the main appeal which has been contested by the respondents/defendants has been heard.

15. The learned counsel appearing for the appellant reiterating the contentions urged in the objections filed in respect of the application filed for impleading, relied upon the judgement reported in AER 2002 SC 1061 and submitted that the application does not merit any consideration as the applicant has no interest in the proceedings. At this stage, if at all if he claims any title, it is in between the appellant and applicant in different proceedings and therefore the application does not deserve any merit and hence it be dismissed.

16. Taking the rival submissions into consideration, the evidence and the documents now on record placed before me, the points that arise for my consideration are:-

1. Whether the impleading applicant is a necessary party and he should be permitted to come on record?
2. Whether there is valid termination of the tenancy?
3. Whether the appellant is entitled to possession of the suit schedule property from respondents 1 to 4, consequently whether the appellant is entitled to mesne profits?
4. What order?

17. Re-point No. 1

The present application has been filed by the impleading applicant to come on record as contesting respondent No.5 on the ground that he has purchased the suit schedule property by virtue of sale deed dated 07.12.2006. It is his case that he has purchased the suit schedule property from the original owners namely A.C.Narasimhaiah and others, after they have revoked the Power of Attorney executed by them in favour of the appellant on 15.07.2006. Since he has become the owner of the property from 07.12.2006. he is a necessary party and therefore he be impleaded. On the other hand, the material on record show that the appellant has filed suit in the year 2005 which is not in dispute. It is his case that he is the owner of the property in question and the same had been leased in favour of respondents 1 to 4 in the year 2001. Since respondents 1 to 4 committed default in making payment of rent, the appellant issued two legal notices demanding payment of arrears of rent and to quit and handover vacant

possession of the suit property. The contesting respondents sent reply as per Ex.P3 denying the case of the appellant on the ground that there is no valid termination of the tenancy by virtue of the lease deed executed by the appellant agreeing to lease the property for a period of 8 years from 07.06.2001 as such there is no valid termination of the tenancy and suit itself is not maintainable. The trial Court accepting the case of the respondents/defendants has dismissed the suit of plaintiff, which is now under challenge in this appeal. During the pendency of this appeal, applicant has purchased the property in question. Admittedly it is on 07.06.2001, the appellant has leased the property in favour of the defendants. There was no dispute with regard to jural relationship of landlord and tenant between the parties, i.e., the appellant/plaintiff and the respondents/defendants 1 to 4. No relief has also been sought by the appellant against the present impleading applicant. Apart from this, the impleading applicant has sought permission to come on record, during the pendency of this appeal, as the owner of the property, claiming that he has valid title to the property. In my view, application of this nature does not merit consideration as it will enlarge the scope of the dispute inasmuch as, it will have to be treated as a suit for declaration of the title between the parties. In view of the facts and circumstance of the case, as the suit is one for simple ejectment and as the impleading applicant claims that he has purchased the suit property during the pendency of the suit his request to come on record cannot be granted as it is not permissible in law. In this connection, the Apex Court in case of J.J. Lal Pvt. Ltd. and others vs. M.R. Murali and another reported in AIR 2002 Supreme Court 1061, has held as follows:

(F) Civil P.C. (5 of 1908), O. 1, R.10 - Suit for eviction of tenant - Impleadment of parties -Relationship of Municipal Corporation, the original owner of premises with landlords and their mutual rights and obligations are not germane to the proceedings - Similarly, the question of title between sister of landlords and the landlords cannot be decided in these proceedings - Impleadment of Municipal Corporation and sister of landlord would change complexion of litigation and raise such controversies as are beyond scope of this litigation - Presence of either of the applicants is neither necessary for decision of question involved in these proceedings nor their presence necessary to enable the Court effectually and completely to adjudicate upon and settle questions involved in these proceedings - Held, they are neither necessary nor proper parties.

Both the sets of applications raise such controversies as are beyond the scope of these proceedings. This is a simple land-lord-tenant suit. The relationship of Municipal Corporation with the respondents and their mutual rights and obligations are not germane to the present proceedings. Similarly, the question of title between Hemlata Mohan and the respondents cannot be decided in these proceedings. The impleadment of any of the applicants would change the complexion of litigation and raise such controversies as are beyond the scope of this litigation. The presence of either of the applicants is neither necessary for the decision of the question involved in these proceedings nor their presence is

necessary to enable the Court effectually and completely to adjudicate upon and settle the questions involved in these proceedings. They are neither necessary nor proper parties. Any decision in these proceedings would govern and bind the parties herein. Each of the two applicants is free to establish its own claims and title whatever it may be in any independent proceedings before a competent forum. The applications for impleadment are dismissed.

18. In the aforesaid decision, the Apex Court has held that in a simple suit for eviction between the land lord and the tenant, an application under Order 1 Rule 10 of CPC filed by the applicants claiming title to the property cannot be considered as that would change the complexion of the litigation and raise such controversies as are beyond the scope of litigation. Any decision in the ejectment suit would govern and bind the parties therein. The impleading applicants are free to establish their claims and title whatever it may be in an independent proceeding before a competent forum. Therefore, the applicants claiming to be the owners in title cannot be permitted to come on record.

19. In this particular case also the present applicant claiming to be the owner of the suit schedule property which is purchased during the pendency of the suit and the appeal has filed the present application to come on record. Admittedly, as on the date the property was leased and suit was filed he was not the owner of the property. As he is claiming the title in respect of the suit schedule property, it is between the impleading applicant and the appellant which has to be agitated in a separate comprehensive suit in which the appellant has right to defend himself. Further, admittedly the appellant as on the date of lease i.e. 7.6.2001, he was empowered and authorised to lease the property in favour of defendants 1 to 4 by virtue of Section 7 of T.P. Act, 1882 and consequently, the appellant would be a lessor coming within the purview of Section 105 of the T.P. Act, 1882 and the defendants are lessees under him. Taking from this angle also the applicant cannot be permitted to come on record. In that view of the matter, I do not find any merit in the application filed by the impleading applicant and accordingly, it is liable to be dismissed.

20. Re. Point Nos 2 and 3 :-

It is the case of the plaintiff that he is the owner of the suit schedule property. He has leased the same in favour of respondents/defendants 1 to 4 in the year 2001 to be more specific on 07.06.2001. It is stated in the plaint that the lease was for a period of 8 years under an unregistered lease deed. Since the lease was extending beyond one year as it was an unregistered lease deed and as the defendants committed default in paying the rent, the plaintiff took steps to issue legal notice on 03.03.2004 and since there was no reply again, he took steps to issue another legal notice on 15.02.2005 calling upon the defendants to quit and deliver vacant possession and also to pay the arrears of rent. The defendants in response to second legal notice, sent an untenable reply dated 23.02.2005 as per Ex.P3. In the said reply they contended that the lease was for a period of 8 years and therefore as the period has not expired, they are not liable to

handover the vacant possession of the premises as demanded in the notice. Since the defendants did not accede to the request of the plaintiff, he filed the present suit. The trial Court solely relying on the statement of the defendants and the unregistered lease deed, which is not brought on record, has come to the conclusion that the suit is not maintainable on the ground that lease period has not expired.

21. In this case it is pertinent to note that the lease though was for a period of 8 years, it was under an unregistered lease deed. It is not a registered lease deed between the parties. If it were to be registered lease deed, then the period mentioned in the lease deed would come into effect on expiry of which the owner could take steps for initiating action against the lessee i.e. the tenant, as contented by the defendants. In this case, the defendants have relied upon the unregistered lease deed. The said lease deed is a xerox copy which finds place in the record of the trial Court. The defendants have not stepped into the box and have tendered their evidence in support of their case. The alleged xerox copy of the unregistered lease deed is not even a certified copy of the original unregistered lease deed. The trial Court relying on this xerox copy of the unregistered lease deed which is also not brought on record and in the absence of any oral evidence of the defendants has come to a wrong conclusion that the lease was for a period of eight years and as the said period has not expired, the plaintiff could not have taken steps to issue any notice or get them evicted from the premises. The Trial Court has come to this conclusion relying upon the judgement in the case of Vittal Bai Private Limited vs. Union of India reported in ILR 2005 Karnataka page 1531. A perusal of the said judgement goes to show that it was a case where there was a registered lease deed and the suit had been filed prior to the expiry of the lease period mentioned therein. Initially no objection had been taken by the defendants in the said suit with regard to the maintainability of the suit, on the ground that the lease period has not expired. But the suit went on for a period more than stipulated in the lease agreement. The learned single judge of Calcutta High Court on the original side decreed the suit, but in intra court appeal of the same Court, it was set aside. When the matter was taken up to the Apex Court, it held that the suit is maintainable as on the date of disposal of the suit lease period had expired and as initially, the defendants/tenants in the suit had not taken any objection as regards the maintainability of the suit. Since it was a case of registered lease deed, the facts of the said case do not have a bearing to the present facts of the case. In this particular case, the lease deed that has been relied upon by the defendants is an unregistered lease deed, which is a xerox copy. As already pointed out, except for producing it before the Court, it is not properly brought on record and the defendants have not lead any evidence. It is the case of the plaintiff that since it was an unregistered lease deed and as the lease was for a period of more than one year, the tenancy has to be construed as one from month to month. Therefore, the plaintiff took steps to terminate the tenancy by issuing legal notice as per Exs.P1 and P2 and he has relied upon the latter legal notice issued

as contemplated u/s 106 of T.P. Act.

This Court in the case of Smt G. Kusuma Devi vs. Smt Gowramma & Ors. reported in 2006 (5) AIR Karnataka R 478 has held as follows:

Transfer of Property Act (4 of 1882), Ss. 53A, 107 - Registration Act (16 of 1908), S. 49 - Unregd. lease deed - Admissible for defending possession obtained in part performance of agreement of lease - However, since lease is for period beyond one year and same is created by unregd. Instrument - It is a "monthly" and not "yearly" lease - Lessee cannot rely upon terms of lease relating to thirty years lease period and claim protection from eviction qua S. 53A T.P. Act - Term relating to period of lease is not "collateral purpose" within meaning of S. 49 of Registration Act

22. In the aforesaid decision, this Court has held that in case of an unregistered lease deed, as the lease is for a period of more than one year, the lease will have to be construed as monthly and not yearly.

23. In the present case also the defendants /tenants have relied upon the unregistered lease deed which is also not properly brought on record. An unregistered lease deed is inadmissible in evidence. But unregistered lease deed can be admitted in evidence for the limited collateral purpose. The collateral purpose in this case is the relationship between the parties as land lord and tenant. Except for this collateral purpose, the court will not consider the unregistered lease deed for any other purpose. The court will not enforce the terms and conditions of an unregistered lease deed. In the instant case, according to the defendants one of the terms of the lease deed is eight years lease period. This term in the unregistered lease deed is unenforceable in the court of law. The Trial Court committed an illegality in considering this term of eight years in the unregistered lease deed in the impugned judgment. Therefore, the impugned judgment is liable to be set-aside.

24. Even if the lease period is 8 years, then the same is subject to performing of other obligations by the defendants. Admittedly, the defendants are the tenants under the plaintiff initially for a period of six months @ Rs. 13,000/- p.m. and thereafter @ Rs. 17,500/- p.m. Plaintiff contends that defendants have committed default in payment of monthly rents and they were due in a sum of Rs. 5,16,500/- as on 1.3.2004. There is no evidence on record to show that the defendants have paid the rents regularly as and when the same fell due. Therefore, the termination of tenancy of defendants for breach of terms of lease in payment of monthly rents is valid in law.

25. As already held, the defendants are monthly tenants. On 15.2.2005, the plaintiff got issued a lawyer's notice terminating the tenancy of defendants. The defendants by their reply dated 23.2.2005 contended that the tenancy is not duly terminated. The suit is filed on 18.3.2005. Under the amended Section 106 of the Transfer of Property Act, the suit is filed after lapse of 15 days from the date of notice. Therefore, there is valid termination of tenancy. The Trial Court

committed an illegality in not considering this aspect of the matter.

26. In view of the above conclusion it has to be held that the tenancy was from month to month and in view of Ex.P2, which has been issued as contemplated u/s. 106 of the T.P.Act, it is to be held that there is valid termination of the tenancy. The learned trial judge in my view has committed an error in holding that there is no proper termination of tenancy, the plaintiff is not entitled to vacant possession of the suit premises and the suit is not maintainable. At this juncture I may also mention that before this Court it was submitted on behalf of respondents 1 to 4 that they have already vacated the premises in question and have delivered the same. That is also fortified from the statement made by the impleading applicant in his application. In that view of the matter, the impugned judgment and decree of the trial Court cannot be sustained.

Re-point No. 4.

For the reasons stated to above, I proceed to pass the following :

ORDER

The appeal is allowed.

The impugned judgment and decree of the trial Court is set aside. The suit of the plaintiff is decreed as prayed for with cost throughout.

Misc. Cvl. 9123/2010 is dismissed.