

(2007) 06 KAR CK 0009

In the Karnataka High Court

Case No : Regular First Appeal No. 399 of 2001

Sri. Mahanthara Mutt Trust

APPELLANT

Vs

Sri. A.R. Mankikya Vyasagam Chettiar

RESPONDENT

Date of Decision : 22-06-2007

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 31

Citation : (2008) 2 CivCC 362 : (2007) ILR (Kar) 3862 : (2008) 1 KarLJ 564

Hon'ble Judges : H.V.G. Ramesh, J

Bench : Single Bench

Advocate : Abhinav. R., for Kumar and Kumar, for the Appellant; G.V. Thirumale, for the Respondent

Final Decision : Allowed

Judgement

H.V.G. Ramesh, J.—This appeal is against the judgment and decree passed by the XIV Addl. City Civil Judge, Bangalore in O.S. No. 7007/96 dated 20.1.01.

2. The Plaintiff/Trust represented by its trustees filed a suit for possession of the schedule premises and for mesne profits alleging that plaintiff is the owner of the non-residential premises bearing Nos. 232 and 233 situate at A.S. Char street, Chickpet; the defendant is in occupation of the premises on a rental of Rs. 1,000/- per month and the tenancy commences on first of every month; the schedule property was measuring about 40" East to West and 10.5" North to South; consequent upon the demolition of the portion of the premises by the Bangalore City Corporation for widening the road, the measurement came to be reduced to 28" East to West and 10.5 North to South; stating that building is in a dilapidated condition and requires demolition and reconstruction, plaintiff terminated the tenancy of the defendant by issuing legal notice and also called upon him to vacate the premises and to deliver the vacant possession; the defendant replied to the said notice and failed to vacate the premises. Hence, the suit. The suit was contested by the defendant contending that his father-in-law took premises No. 232 on lease during the year 1958 on a monthly rental of Rs.

60/- and he has taken the adjacent premises No. 233 on lease during the year 1972 on a monthly rental of Rs. 250/-; during the year 1961 the premises bearing No. 232 which was taken by the defendant's father-in-law was transferred to the defendant and the rent was revised to Rs. 120/-per month; subsequently, from the year 1972 both the petition premises are in occupation of the defendant as tenant by paying monthly rental of Rs. 500/-; the rent is being paid by a single cheque although there are two separate tenancies. As such, a single suit filed for both the premises is not maintainable. Further, it is stated that plaintiff has been accepting the rent without any demur and the monthly rental of each of the premises does not exceed Rs. 500/- as such, the suit is barred u/s 31 of the Karnataka Rent Control Act of 1961. The trial Court based on the pleadings has raised the following three issues.

i) Whether the plaintiff proves that the defendant's tenancy is duly terminated as at the end of June 1996?

ii) Whether the plaintiff is entitled to mesne profits for the period after 30.6.1996 for use and occupation of the schedule premises?

iii) What order or decree the parties are entitled to?

After the trial and after hearing the parties, the trial Court held the first issue in the negative and accordingly, he failed to answer the second issue stating that it does not survive for consideration and dismissed the suit of the plaintiff on the ground that without any objection the plaintiff was receiving the rent and subsequent to the termination of tenancy with the filing of the suit the notice was waived by the plaintiff by the conduct of receiving the rent treating the defendant as tenant. Further, while referring to the judgments of the Allahabad and Gujarat High Courts, the trial Court has come to the conclusion that acceptance of rent from the tenant by the landlord after expiry of determination of the contractual tenancy will not afford ground for holding that the landlord has asserted to a new contractual tenancy and that the case is filed under the Transfer of Property Act and not under the Rent Control act and the plaintiff has forfeited the right to seek possession of the schedule premises. Hence, this appeal by the appellants/plaintiff-Trust.

3. Heard the learned Counsel for the appellants.

4. It is the submission of the learned Counsel for the appellants that since 1958 the defendant was in occupation of one portion of the premises and subsequently, the adjacent premises was also let out to him. Though the defendant has taken a stand that there are two tenements ultimately it was agreed to pay the rent in common by treating it as a single tenancy as per Ex.P1 and there was enhancement of rent from time to time and at the time of filing the suit the rental was more than Rs. 1,000/-, as such, jurisdiction is available to the trial Court to try the suit. It is further submitted that even otherwise in so far as the religious and charitable institution, the restriction of rental amount to maintain the suit does not arise. Accordingly, submitted that the trial Court has

committed an error in relying upon the decisions of two High Courts as against the present legal position that when once the legal notice of termination of tenancy is issued and suit is maintained, even if rental is accepted that will not amount to waiver of tenancy, as such, the order of the trial Court requires interference.

5. Having heard the learned counsel for the appellant the points for consideration are:

1. Whether the trial Court is right in holding that the plaintiff has not proved that the defendant's lease is duly terminated as at the end of June 1996?

2. Whether the plaintiff is entitled for damages for the use and occupation of the premises?

3. To what order?

6. In so far as issue No. 1 is concerned the trial Court held that Ex.P.1, the document dated 20-8-1970 and it suggests that the premises was leased to the defendant and two of his brothers on a rental of Rs. 450/-. The trial Court is of the view that even though defendant was not the only tenant in respect of the two schedule premises, however, it has noted that two premises were leased on a rental of Rs. 450/- and signed by all the three tenants and as such it was held that Ex.P.1 will not enure to the benefit of the plaintiff to prove that the premises was leased to the defendant alone on a rental of Rs. 1,000/- per month. Further according to the trial Court, even after the termination of the tenancy plaintiff continued to receive the payment without any objection from the defendant as is evident from the documents at Ex.D-1 to D-41 rental receipt and noticed that allegation of payment of rents after the termination of tenancy, the trial Court relying upon the provisions of Section 113 of the T.P. Act, and also the judgment of the Calcutta High Court and the Allahabad High Court reported in Bengal-Nagpur Railway Company, Limited Vs. Firm Bal Mukunda Biseswar Lall, and in Om Prakash Saxena Vs. Raja Babu Saxena, has come to the conclusion that when the plaintiff has received the payment of amount towards rents subsequent to the termination of the tenancy till the filing of the suit, it is held that there is waiver of the notice regarding the termination of the tenancy. Accordingly it has dismissed the suit of the plaintiff

7. It is seen that on a reading of the contents of Ex.P.1, although it appears that one of the premises was let out in the year 1958, another premises was let out for some higher rent in the year 1970. Thus subsequently by an agreement as at Ex.P.1 a common rent was fixed in respect of both the premises including the one which was in occupation of the father-in-law of this defendant and subsequently taken by the defendant mentioning common boundary and as such the intention of the plaintiff is to treat the very tenancy as individual tenancy and subsequently on getting the second premises from the plaintiff by the defendant and at that time as per the agreement there was change in the rent and the rental was enhanced for the third time and even Ex.D2 to D41 that fixed the

payment of rental in common in respect of this premises which he treated as a single unit, although the agreement was entered into between the plaintiff and the three persons including the defendant. So far as plaint schedule petition is concerned one rent is fixed in respect of the plaint schedule premises and the adjacent premises, by treating the same as one and let out the same person and also when common boundaries are mentioned by the very conduct, it is treated as single unit and at the time of filing the suit for ejectment the rental was Rs. 1,000/- as is evident from Ex.D.2 to D41 which are the rent receipts. By not considering the same and treating this as two tenements, the trial Court has come to the conclusion that the suit is not maintainable as the rental is lesser amount which is fixed for maintaining the ejectment suit in respect of HRC suit.

8. In so far as acceptance of the rental is concerned it is undisputed fact that legal notice had been issued by the plaintiff to the tenant and of course as per the terms of the notice, there is termination of the tenancy. But the very fact that the plaintiff has accepted the subsequent rental by itself cannot be treated as waiver by conduct unless it is shown that no further steps had been taken by the plaintiff in this regard and rather in furtherance of the termination of the tenancy the plaintiff has issued a legal notice. The Plaintiff has farther filed a suit for ejectment and the plaintiff has proceeded against the defendant to evict him, since the defendant voluntarily did not vacate the premises. The plaintiff has accepted by his conduct that the plaintiff is relieved of the tenancy. Under the circumstances, the finding of the trial Court in interpreting these circumstances that the provisions of Section 111 and 113 of the TP Act is not in accordance with law nor that the very conduct of the plaintiff in furtherance of the notice even though he has received the rental subsequently, he is maintaining his suit for ejectment as the defendant did not vacate on his own, and this conduct shows that there is no implied consent or express consent in terminating the tenancy and the said contention in this regard cannot be accepted. In respect of the two of the portions which subsequently merged to form one tenement under the agreement at Ex.P.1 is to be treated as one tenancy and not two different tenancies. This Court in the judgment reported in has held that in the absence of evidence that two separate new tenancies exist as on the date of quit notice and also when there is lack of evidence i.e., separate receipts for the two tenancies, there can be no doubt that the trial Court was justified in the conclusion that the acceptance of one tenancy as on the date of suit notice is in respect of two shops. This ratio is applicable to support the case on hand to hold that there is one tenancy and subsequently they entered into the agreement as per Ex.P.1 although two premises are let out earlier, one during the year 1958 and another during 1970. Clubbing these two tenements they formed one tenement as per Ex.P.1 on which the trial Court has not taken note of. Further there is no question of implied consent in accepting the rents. It is not expected of any tenant to say that the plaintiff was not claiming for rental till the order of eviction is passed. For the foregoing reasons, it is necessary that point No. 1 is answered in favour of the plaintiff and it is a valid termination of the tenancy and suit is maintainable

and tenancy is terminated. Although the trial Court has relied on two judgments on the ground that there is subsequent receipt of the rent but the apex Court in the decision reported in C. Albert Morris Vs. K. Chandrasekaran and Others, , it is held that mere acceptance of rent by landlord will not renew the lease so as to confer on the erstwhile tenant the status of a tenant This position of law in view of the decision of the Supreme Court is clear that mere acceptance of the rental subsequent to the issuance of the legal notice terminating the legal notice does amount to waiver of termination notice.

9. The very fact that the petition premises is old one and said to be in dilapidated condition and according to the petitioner/appellant that the premises is needed for demolition and reconstruction this aspect has not been examined by the trial Court Admittedly one of the premises was let out during the year 1958 and as on today more than 60 years. Even the building is said to be charitable institution and admittedly when there is requirement pleaded by the plaintiffs for and when there is valid termination of tenancy by issuance of termination notice, the defendant cannot farther resist the suit for ejectment What is to be considered is whether there is valid termination of the tenancy. The defendant is disputing the termination of the tenancy and also the rental of Rs. 1,000/- at the time the notice of termination was issued. Such being the tact the suit is very much maintainable. The trial Court under the wrong notion has held that there is waiver of termination of tenancy. When once there is a valid termination of tenancy has taken place, it is for the defendant to vacate and hand over possession of the suit schedule property.

10. In the result, the appeal is allowed. The judgment and decree of the trial Court dismissing the suit is reversed. The respondent shall vacate and hand over possession within six months from today subject to payment of rental regularly as last payment made and if the rental is not paid so far, they shall pay the rental forthwith towards arrears and shall go on paying the rental till he vacates and handovers possession on the expiry of six months from to-day and the respondents shall file an undertaking to the Court for continuation of the tenancy till the end of six months. Parties to bear their own cost.