

(2012) 08 KAR CK 0181

In the Karnataka High Court

Case No : Regular Second Appeal No. 1291 of 2012

Sri. Pandurange Gowda

APPELLANT

Vs

Sri. M. Somasurdar

RESPONDENT

Date of Decision : 09-08-2012

Acts Referred:

Citation : (2012) 08 KAR CK 0181

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

Bench : Single Bench

Advocate : G.K. Bhat, for the Appellant; S.A. Maruthi Prasad, Advocate), for the Respondent

Judgement

A.S. Pachhapure

1. The appellant has challenged the judgment and decree for eviction passed by the Trial Court and confirmed in appeal by the First Appellate Court. The facts relevant for the purpose of this appeal are as under:-

Parties will be referred as per their rank in the original proceedings for the sake of convenience.

The appellant is the defendant whereas the respondent is the plaintiff in the suit instituted for eviction of the appellant. The plaintiff is the owner and landlord of the portion of property bearing No. 442/10, CH-21/3 with the description and boundaries mentioned in the schedule to the plaint. The defendant is the tenant in occupation of the premises on the basis of lease agreement dated 12.11.1994 on a monthly rent of Rs. 2,250/-. As the landlord wanted the premises for his own occupation, he issued a notice terminating the tenancy. As the defendant did not vacate the premises even after the termination of tenancy, the plaintiff was constrained to institute a suit for eviction.

2. The defendant appeared and filed the written statement denying the allegation made and admitting the relationship of landlord and tenant between the parties.

The Trial Court framed the issues and recorded the evidence. After hearing the counsel for parties and on appreciation of the material placed on record, it granted a decree for eviction. The said judgment and decree was challenged in appeal in RA No. 1007/2010. The said appeal was also dismissed on merits. Aggrieved by the concurrent findings of the Courts below, the present appeal has been filed.

3. I have heard learned Counsel for the parties.

4. At the outset, counsel for the appellant requested that if a year's time is granted to vacate the premises, the appellant is ready and willing to vacate and hand over the possession of suit property. He submits that as the appellant is running a liquor business in the said premises and the license has been obtained for a period of one year which expires by the end of June, 2013 and as he has paid a huge sum to obtain the license, he submits that it is just and reasonable in case if a year's time is granted to vacate the premises. He also submits that in case if so much of time is not granted, the appellant will be put to great injustice.

5. Per contra, learned Counsel for the respondent submits that as the party is facing litigation since for the last 4 years and the appellant is very much aware of the proceedings and in the circumstances, he claims that the Trial Court and the First Appellate Court had granted three months time to vacate the premises and therefore, submits that at the most, three months time may be granted to vacate the premises.

6. Admittedly, the appellant is carrying on the business of selling foreign liquor in the suit premises. It is relevant to note that he is the contesting party in the litigation for eviction since from the year 2008. The judgment and decree of the First Appellate Court was pronounced on 22.10.2011. It is after the confirmation of eviction order that the appellant has filed the present appeal. Despite the fact that there was a judgment and decree of eviction against him, he has taken the risk of obtaining a license for another year. Merely because he has taken such a risk it does not mean that he is entitled for a period of one year to vacate the premises. Taking into consideration the fact that the appellant is running a liquor business and that he requires a reasonable time to shift and vacate the premises, the interest of justice would be met in case if six months time is granted to the appellant to vacate and hand over the possession of suit property to the respondent subject to the payment of mesne profits as ordered by the First Appellate Court.

In the result, the appeal is disposed of granting six months time from today to the appellant to vacate and hand over the possession of suit property to the respondent subject to payment of mesne profits every month regularly. In case, if the appellant commits two consecutive defaults in payment of mesne profits, the respondent will be at liberty to execute a decree.

The appellant shall file an affidavit undertaking to vacate the premises as ordered by this Court within 15 days from today.

As the main appeal itself is disposed of on merits, IA. 2/2012 for stay does not survive for consideration and accordingly, it is disposed of.