
(2013) 12 KAR CK 0137

In the Karnataka High Court

Case No : Regular Second Appeal No. 7477 of 2013

Sunil Kumar Nirani

APPELLANT

Vs

Vasavadatta Cement and Others

RESPONDENT

Date of Decision : 20-12-2013

Acts Referred:

Citation : (2014) 1 AKR 524 : (2014) 2 KCCR 1141

Hon'ble Judges : K.N. Keshavanarayana, J

Bench : Single Bench

Advocate : Jayashree M. Biradar, for the Appellant; N.B. Diwanji, for the Respondent

Judgement

K.N. Keshavanarayana, J.—This appeal is by the plaintiff in O.S. No. 179/2008 and sole defendant in O.S. No. 103/2011 on the file of Civil Judge, Sedam, and is directed against the concurrent judgment of the Courts below dismissing the suit filed by him for perpetual injunction and decreeing the suit of the respondent-plaintiff and directing the appellant to quit and delivery the vacant possession of shop No. 4 situated in Vasavadatta Cement Factory Colony, Lakshminarayan Nagar, Sedam, to the respondent-plaintiff. There is no dispute that the appellant was the licensee in respect of shop in question on monthly licence fee at Rs. 2,000/-. The appellant apprehending that he is likely to be dispossessed forcibly without recourse to law, filed the suit in O.S. No. 179/2008 seeking relief of perpetual injunction against the respondent-plaintiff and others restraining them from dispossessing him from the suit schedule shop except under due process of law. Subsequently the respondent-plaintiff instituted the suit in O.S. No. 103/2011 seeking ejectment of the appellant from the suit schedule shop, contending that licence granted to the appellant-defendant has been terminated in accordance with law and therefore appellant-defendant has no right to remain in possession of the property. The trial Court clubbed both the suit, held common trial and by common judgment dismissed the suit of the appellant and decreed the suit filed by the respondent-plaintiff and directed appellant to quit and deliver

the vacant possession of the shop. Aggrieved by the said common judgment the appellant filed a single appeal in RA No. 33/2013 before the Senior Civil Judge, Sedam, which came to be dismissed by judgment shown to have been pronounced on 18.12.2013 though in the body of the judgment it is dated as 21.12.2013. Aggrieved by the said judgment, the appellant has presented the second appeal.

2. Heard the learned counsel for the appellant. I have perused the judgment under appeal. After having heard the learned counsel and on perusal of the judgment of the Courts below, in my considered opinion, the appeal does not involve any question of law, much less substantial question of law warranting consideration by this Court.

3. As noticed supra, there is no serious dispute that the appellant-plaintiff is in possession of the suit schedule shop owned by the respondent either as a lessee or as a licensee and admittedly, the tenancy/licence of the appellant in respect of the suit schedule shop has been duly terminated in accordance with law. Therefore, the possession of the appellant because illegal as such, the appellant has no right to continue in possession of the premises. Therefore, Courts below are justified in decreeing the suit filed by the respondent-plaintiff and directing the appellant to quit and deliver the vacant possession of the same. In this view of the matter, the appeal has no merit. At this stage learned counsel for the appellant sought for grant some reasonable time for the appellant to deliver the possession by contending that respondent-plaintiff has already filed execution petition and the executing Court has issued delivery warrant. Certified copy of the order sheet in execution petition No. 18/2013 is produced. As could be seen from the same, the executing court has already ordered issue of delivery warrant on 18.12.2013. Therefore, from the above it is clear that the appellant would be dispossessed from the suit schedule property immediately. Admittedly, the appellant has been carrying on some business in the suit schedule premises. Therefore, interest of justice demands grant of some reasonable time to the appellant so as to make some alternative arrangement to shift his business to some other premises. Having heard the learned counsel on both sides regarding grant of time, this Court is of the considered opinion that interest of justice would be met by granting six months time to the appellant to quit and deliver the vacant possession of the premises subject to appellant filing undertaking by way of affidavit, to the effect that he would deliver the suit schedule property on the expiry of six months without driving the respondent-plaintiff to execution proceedings. In this view of the matter, the appeal is dismissed. However, the appellant is granted six months time from today to quit and deliver the vacant possession of the suit schedule premises to the respondent-plaintiff subject to appellant filing an undertaking by way of affidavit as stated supra. The appellant shall continue to pay the damages every month as ordered by the trial Court until delivery of vacant possession. Affidavit to be filed during the course of the day.