
(1998) 01 KAR CK 0055

In the Karnataka High Court

Case No : House Rent Revision Petition No. 1018 of 1994

Syed Nazmuddin

APPELLANT

Vs

N.S. Krishna Murthy

RESPONDENT

Date of Decision : 08-01-1998

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 21 (1) (a), 21 (1) (b)
Transfer of Property Act, 1882 — Section 108, 108 (d)

Citation : (1998) 4 KarLJ 110

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : Sri Kallemulla Shariff, for the Appellant; Sri B. Neelakanta, for the Respondent

Judgement

1. The respondent herein filed an eviction petition against the petitioner herein on various grounds, important of them being that the premises in occupation of the tenant is required for his son to start a Small Scale Industry; That the tenant has acquired suitable alternative premises; This petition was resisted by the tenant by filing a detailed objection statement, denying generally all the petition averments including the ground of eviction viz., that the premises is required for landlord's own use; Besides the above, the tenant objected, for the landlord in including the adjoining open space, also as the "petition schedule premises", as the same belonged to him. On the basis of the pleadings, the parties went to trial and adduced evidence; The landlord in support of his case examined himself besides examining his son and three more witnesses, he also produced about 55 documents; Similarly the respondent had examined himself and produced about 15 documents. The learned Judge of the Small Causes in appreciation of the evidence led by the parties has allowed the eviction petition filed u/s 21(1)(h) and (p) of the Act while dismissing the petition filed u/s 21(1)(a) (c) and (o). In so far as the objection of the tenant for the landlord in including the "Adjacent open space also, as the schedule premises" the learned Judge has held that "Though the said open space was not the subject-matter of lease between the

parties, as the same also belongs to the landlord and the tenant has encroached the same, by the principle of "Accession to the leased property" the tenant is liable to be evicted from the same".

2. Aggrieved by the same the tenant has preferred this petition.

3. The learned Counsel appearing for the petitioner-tenant submitted firstly that the Trial Court has committed an error of law in ordering eviction in respect of not only the leased property but also in respect of the adjoining vacant area on the northern and eastern side of the leased property which admittedly was not the subject-matter of the original lease; and belonged to him.

4. Secondly he submitted that the learned Judge has not properly appreciated the evidence on record in holding that the requirement of the landlord is "reasonable and bona fide". So also the finding that the tenant has acquired suitable alternative premises.

5. On the other hand the learned Counsel appearing for the landlord while defending the impugned order submitted that even though what was leased originally to the tenant was an area of 12" x 42", the tenant having encroached upon the vacant land on the eastern and northern side belonging to him, he is liable to be evicted in respect of the said portion also along with the leased premises, having regard to the provision of Section 108(d) of the Transfer of Property Act.

6. The facts relevant and necessary for appreciating the rival contentions are set out briefly as under:

The landlord has filed the eviction petition in respect of premises No. 89, having a residential accommodation in an area of 42" x 12", and vacant land on the northern side of the premises stretching till the road and vacant land in the eastern side wherein the tenant has put up a workshed. The petitioner-tenant has admitted that the built up portion in the schedule in the area of 42" x 12" belongs to landlord and it was leased to him in the year 1966. In so far as the surrounding vacant land on the northern and eastern side he has denied the landlord's title in his objection statement, though during trial he has set up a title in himself. The landlord has traced his title to the vacant land on the eastern and northern side, by purchase from one Radhabai, mother of Srinivasa Rao, vide Exhibit P-1. The said Srinivasa Rao had in turn purchased from Abdul Sattarkhan vide Exhibit P-2, the said property was also got converted after purchase by Srinivasa Rao vide Exhibit P-3, later this property was also assessed to Corporation Tax and khatha was also made in the name of landlord vide Exhibit P-4; according to the landlord the tenant during the year 1981-82 unauthorisedly put up a thatched shed by encroaching into the vacant land and on being objected to, voluntarily enhanced the rent from Rs. 60/- to Rs. 80/-. This version of the landlord is believed by the Trial Court; However, the Court has disbelieved the defence of the tenant, in setting up a title in himself on the ground that "he deposes in evidence that this vacant land was sold to him from

one Sattar Sab in 1964, but there is no mention of his title to the same while describing the boundaries to the lease deed admittedly executed by the landlord in his favour in respect of the built portion, secondly, the tenant has not produced any documents including the alleged sale deed, either the original or its certified copy to substantiate the same, and lastly, the tenant voluntarily enhanced the rent from Rs. 60/- to Rs. 80/- without offering any explanation more so when it was case of landlord that the extra rent of Rs. 20/- was paid for unauthorisedly occupying the vacant space"; The learned Counsel appearing for the tenant is unable to show how these findings are either against the record or the learned Judge has omitted to consider any relevant material. I am in agreement with the said findings as they are based on evidence and the learned Judge was justified in holding that prima facie the landlord is also the owner of the adjacent open space on the northern and eastern side adjoining the leased premises. But the next question that calls for consideration is whether even though the said vacant land on the eastern and northern side was not the subject-matter of the lease express or implied but in occupation of the petitioner could he be held as a tenant in respect of the same also liable to be evicted under Rent Control proceedings.

7. All contractual leases in the absence of contract to contrary are governed by the provisions of Transfer of Property Act, 1882 (hereinafter referred to as T.P. Act" for brevity). In this case admittedly between the parties there is no contract governing the above. Hence one has to fall back to the provisions of T.P. Act for resolving the controversy. Section 108 of the T.P. Act which enumerates the Rights and Liabilities of the lessee, section 108(a) the relevant clause is extracted herein for ready reference;

Section 108(d).--If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease".

By a reading of the above, it is clear that if any lessee makes an accession to leased property while the lease is subsisting the territory of the leased property gets expanded as to include the accession made by the tenant; The burden is on the tenant to show that it is otherwise. The tenant subject to his rights under the contract of lease is also obliged to protect the landlord's rights and to deliver up the subject of his territory. The rule is based on the principle "that the tenant is under an obligation to protect his landlord's right and to deliver up the subject of tenancy into some condition" as has been held by Willes in *Whitmore v Humphries* .

This decision White more has been referred to with approval in *Smrik v Lyndale Developments Limited*. It is necessary herein to extract the relevant portion stating the "Principle of Encroachment" in the words of Willis.

"The rule is based upon the obligation of the tenant to protect his landlord's rights, and to deliver up the subject of his tenancy in the same condition, fair

wear and tear excepted, as that in which he enjoyed it. There is often great temptation and opportunity offered to the tenant to take in adjoining land which may or may not be his landlord's, and it is considered more convenient and more in accordance with the rights of property that the tenant who has availed himself of the opportunity afforded to him by his tenancy to make encroachments, should be presumed to have intended to make them for the benefit of the revisioner, except under circumstances pointing to an intention to take the land for his own benefit exclusively. The result is to avoid questions which would otherwise frequently arise as to the property in land, and to exclude persons who have come in as tenants, and who are likely to encroach, from raising such questions. The reason of the rule appears on the one hand to be entirely independent of any notice of encroachment being a wrong done, and so also on the other hand it appears to be quite independent of the question, whether the encroachment was made with the assent of the landlord. (Then, I do not think I need read the next passage, but read on further). For these reasons I come to the conclusion that the meaning of the word "Encroachment" is quite apart from any question of assent or dissent on the part of the landlord, and signifies something taken in by the tenant by reason of his being tenant without anything to show that it was so taken otherwise than for the benefit of the landlord, to be held as part of the demised premises, and given up accordingly at the end of the term".

and the opinion of Pennychick V.C. in Smrik's case is as follows:

"If the lessor is allowed to remain under the belief that the encroachment is a part of the lease the lessee is estopped from denying it and must render it up at the end of the term as the portion of the demise (see *Kingsmil v Millard*). Further, the lessor is entitled at the determination of the lease to recover from the lessee not only the land originally demised but also any land which the lessee may have added to it by encroachment from the waste, such encroachment being deemed to be made by him to tenant as an addition to his holding, and consequently for the benefit of his landlord, unless it is made under circumstances which show an intention to hold it for his own benefit alone, and not as part of his holding under the landlord.

For these reasons I come to the conclusion that the meaning of the word "encroachment" is quite apart from any question of assent or dissent on the part of the landlord, and signifies something taken in by the tenant without anything to show that it was so taken otherwise than for the benefit of the landlord to be held as part of the demised premises, and given up accordingly at the end of the term".

This rule has been applied to decide a similar case by the Division Bench of the Calcutta High Court in *Md. Ahmed Amolia and Others Vs. Nirmal Chandra Roy and Others*, . In this case the question, that came up for consideration is whether a strip of land of about 12 ft. in depth adjoining the leased property and in occupation of the tenant becomes a tenanted property and will it be able to be

surrendered by the tenant at the termination of tenancy. The Court held relying on the decisions referred to above both on the theory of Encroachment and Estoppel that the same became tenanted property.

8. Thus it has to be held by a reading of Section 108(d) and on the strength of the decisions referred to above. "There is a presumption that whenever a lessee or a tenant encroaches upon the adjacent area to his leased or tenanted premises, then such encroached area or premises or property, also gets included as the "Leased or Tenanted" property and the tenant is obliged to protect the landlord's rights in respect of the encroached area also, and deliver up unto the landlord at the end of tenancy the said encroached area alongwith the original tenanted or leased area".

9. On the facts I have held that the open space on the northern and eastern side of the leased portion prima facie belong to the landlord. Applying the above said rule I hold that this disputed vacant land is also to be considered as tenanted property. If it is held as a tenanted property then the relationship of the petitioner in respect of the disputed property is also to be held as one of landlord and tenant. In that view the petition u/s 21(1) is maintainable for eviction.

10. The learned Judge has held on the basis of the evidence of P.Ws. 1 to 3 that the landlord has only one son who is an unemployed Engineering Graduate and he has the necessary experience to start the business. He has also held that they have the required finance for starting the business and he does not own any other premises other than the schedule premises. Admittedly the premises is located in a industrial area and is fit for setting up of an industry. Under the circumstances the finding of the learned Judge cannot be faulted as without evidence or perverse calling for interference.

11. On the question of hardship the learned judge has held that the landlord suffers greater hardship in case eviction is refused. If eviction order is refused it would be virtually preventing the son of the landlord in getting employment and it is not difficult for the tenant to obtain an alternative accommodation. I am in agreement with the said finding as the same is determined on evidence.

12. On the question that the tenant has obtained an alternative accommodation, the Court below has held that the tenant has secured premises No. 75, Nehru Road, Kuvempunagar for running a factory and residence. The tenant himself has stated that the said premises is bigger than the leased premises and relying on the decision of this Court in Dr. Shashibhushan Vs. Bata India Ltd., , the Court has held that the tenant has acquired suitable alternative accommodation which has made him liable to be evicted. I do not find any infirmity in the said finding.

13. For the reasons stated above this revision petition is liable to be dismissed and is accordingly dismissed.

14. At this stage the learned Counsel appearing for the petitioner submitted that the tenant has installed machineries and has been carrying on manufacturing

activities. Having regard to the same he prays for a reasonable time of one year to quit and deliver vacant possession. The learned Counsel for the landlord fairly conceded for granting of time. Under the circumstances the tenant is given one year time to vacate the premises subject to the following conditions:

1. That he shall file an affidavit within 3 weeks from today undertaking to voluntarily surrender possession of the property without driving the landlord to file an execution petition.
2. That the affidavit shall be filed after serving a copy of the same on the other side.
3. That he shall pay the monthly rent regularly without default as and when it falls due.
4. That he shall not sub-lease, sub-let.
15. Revision petition dismissed.