

(2005) 07 KAR CK 0039

In the Karnataka High Court

Case No : Regular First Appeal No's. 357 and 358 of 2005

Vishnukanthi

APPELLANT

Vs

P. Shanmugam

RESPONDENT

Date of Decision : 07-07-2005

Acts Referred:

Citation : (2006) ILR (Kar) 1322 : (2006) 5 KarLJ 313 : (2005) 4 KCCR 2306

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : G.R. Mohan, for the Appellant; Bhojraj, Nagaiah and M.S. Nagaraj, for the Respondent

Judgement

V. Gopala Gowda, J.—The respondent herein was the common plaintiff (hereinafter referred to as plaintiff) and the Appellant was 3rd defendant in O.S.No. 1512/91 and sole defendant in O.S.No. 5019/93 (hereinafter referred to as defendant).

2. The premises involved in the these matters is a residential quarter belonging to Bangalore City Corporation, which is now Mahanagara Palike, Originally one Mari was the tenant of the same. He had two wives. One of the wife had no issues and hence he adopted the plaintiff. The defendant is the grand daughter of Mari born to the other wife. It is the case of the parties that after the death of original tenant Man, both plaintiff and defendants lived in the suit schedule premises in different portions.

3. The plaintiff filed O.S.No. 1512/91 against the Commissioner and Deputy Revenue Officer of Bangalore City Corporation (defendants 1 and 2) and the 3rd respondent/defendant seeking injunction restraining defendants 1 and 2 from registering occupancy right or conferring title deeds in respect of the suit schedule property in favour of the defendant/respondent. O.S.No.5019/93 was filed for permanent injunction restraining the defendant from putting up construction or preventing the plaintiff from using the property in question. The

defendants contested the suit. Consequently, O.S.No. 1512/91 was dismissed against defendants 1 and 2 and partly decreed restraining the defendant (defendant No. 3) from interfering with plaintiffs possession. O.S.No. 5019/93 was also decreed restraining the defendant from interfering with plaintiffs possession. Aggrieved by the same, the defendant has filed these two appeals.

4. The legality, validity and correctness of the findings of the Trial Court need not be gone into in these Appeals. The crux of the matter is, the premises in question is a "public premises". Both the plaintiff and defendant are not entitled to stay therein. The Trial Court has not considered this aspect of the matter. The Bangalore City Corporation should not have continued their occupation after the death of original tenant Mari. The facts mentioned in the memorandum of appeals disclose that Mari died in the year 1955 and his wife Bhagyammal died in 1983. It is strange how the Corporation allowed occupation of the premises after the death of Mari in the year 1955. For the last 50 years the Corporation is keeping quiet without taking any action for the eviction of the occupants of the premises by invoking the power under the Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974.

5. Since Mari was the employee of the Corporation, he was permitted to occupy the premises. After his death, the occupation of the same by the plaintiff and defendant was unauthorized. Their possession was not lawful. Despite that, both the suits were filed seeking injunction and the same have been entertained by the Trial Court. In one of the suit the injunction was sought against the true owner-the Corporation which is impermissible in law.

6. Both the occupants of the premises claim their possession through the original tenant Mari. Mari died in the year 1955 itself. Therefore, unless it is shown that the occupants of the premises had been authorized or permitted to stay, they are not entitled to continue in possession of the premises. The Corporation blindly allowed them to occupy the premises and no steps are taken for the last 50 years to evict them. This is how public premises are being misused by third parties while genuine employees of the Corporation are deprived of available quarters. Such things cannot be allowed to exist or continue. The Corporation has to wake-up at least now, find-out such unauthorized occupations of its quarters and take immediate steps for the eviction of such persons and allot such quarters to its employees.

7. For the reasons stated above, the judgment and decrees of the Trial Court are set aside and the suits are dismissed reserving liberty to the Bangalore City Corporation to exercise its power and take steps for the eviction of the occupants of the schedule premises under the provisions of aforementioned Act, till then they may be permitted to continue in occupation subject to collecting occupation charges from them as provided under the provisions of the above Act, if they are not entitled for occupation of the suit schedule property after the death of Man.

8. Send a copy of this judgment to the Commissioner, Bangalore Mahanagara

Palike for compliance.