

Rajashekhar Vs. Vijaykumar

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Court : Karnataka Dharwad

Decided On : Jun-03-2014

Judge : A.V. Chandrashekara

Appeal No. : RSA No. 5254 of 2010 (PERMN. INJ)

Appellant : Rajashekhar

Respondent : Vijaykumar

Judgement :

(Prayer: This Rsa Is Filed U/S. 100 Of Cpc., Against The Judgement and Decree Dtd:02-01-2010 Passed In R.A.No.41/2005 On The File Of The Fast Track Court-I, Chikodi, Dismissing The Appeal, Filed Against The Judgment Dtd:05-03-2005 And The Decree Passed In O.S.No.89/2002 On The File Of The Civil Judge (Jr. Dn.) and Nipani, Decreed The Suit Filed For Injunction.)

1. Plaintiff of an original suit bearing O.S.No.89/2002 which was pending on the file of the Court of Civil Judge (Jr.Dn.), Nippani, of Belgaum District, is before this Court as he is aggrieved by the judgment of the First Appellate Court passed in R.A.No.41/2005 i.e., by the Fast Track Court-I, at Chikodi. The respondent herein is the absolute owner of the suit schedule property situated in Nippani town of Chikodi Taluk. Plaintiff's father Appasaheb was doing business in tobacco and hence he had taken the premises in question on lease from the respondent herein and was paying monthly rent as agreed. Plaintiff's father died in the year 1983 and

later on plaintiff joined the Sugar Factory as an Engineer in 1985. The case of the plaintiff is that the jural relationship of landlord and tenant still continues inspite of the fact of the death of his father and that he has been doing tobacco business in the schedule property. Since the defendant attempted to interfere with his possession as a tenant by putting a lock on the schedule property, he was constrained to file a suit for the relief of permanent injunction.

2. Defendant-respondent herein had contested the suit on various grounds. According to the defendant, the suit itself is not maintainable, more particularly, without seeking the relief of possession in the light of a lock being put by the defendant. It is also averred that the premises in question is not fit to be used and that the tenancy was terminated and possession has been taken over by him. Hence, he had prayed for dismissal of the suit.

3. On the basis of the above pleadings, following issues came to be framed by the trial Court:

1. Whether plff. proves that he is in possession of the suit property?

2. Whether plff. proves the alleged obstruction by the deft?

3. Whether plff. is entitle for the relief?

4. What order or decree?

4. Plaintiff is examined as PW1 and as many as 27 exhibits have been got marked. Defendant, inspite of filing written statement, did not choose to enter into the witness box and hence, no documentary evidence is got marked on his side.

5. After hearing the arguments, the learned Civil Judge (Jr.Dn.) of Nippani, has answered issues 1 to 3 in the affirmative and consequently decreed the suit on 05.03.2005. This was appealed by the defendant under Section 96 of CPC before the Court of Civil Judge (Sr.Dn.), Chikodi, and it was withdrawn and transferred to the Fast Track Court-I, Chikodi, and renumbered as R.A.No.41/2005.

6. After hearing the arguments in the appeal filed under Section 96 of CPC, the First Appellate Court has allowed the appeal and has set aside the judgment

passed by the trial Court. Consequently, the suit of the plaintiff has stood dismissed. It is this divergent finding which is called in question on various grounds as set out in the appeal memo.

7. After hearing the arguments and perusing the entire records, following substantial question of law has been framed by this Court :

"Whether the First Appellate Court has committed serious error in reversing the judgment of the trial Court by ignoring the material evidence placed on record and thus the judgment of the First Appellate Court is perverse and illegal?"

8. Learned Counsel appearing for the parties have submitted their arguments. The fact that the defendant is the absolute owner of the schedule property in question is not in dispute. The fact that the property in question had been leased on monthly rental basis to the father of the plaintiff by the defendant, is also not in dispute. The fact that the plaintiff's father died in the year 1983 and that he was doing business in tobacco using this premises is not in dispute. What is argued by the learned Counsel for the respondent herein is that when the plaintiff joined as an Engineer in the year 1985, he could not have done any business in tobacco and therefore, the question of plaintiff being not in possession of the property does not arise. One cannot forget that the relationship of landlord and tenant can only be terminated by issuing a proper notice in accordance with Section 106 of Transfer of Property Act, if the provisions of the Karnataka Rent Act, 1999 is not applicable. Nothing has been placed on record to show that tenancy has been terminated and possession has been taken in accordance with law. On the other hand, the plaintiff has furnished documents in support of having paid the agreed rent on 30.12.1994 and 28.07.1994 and they are evidenced by means of receipts issued vide Exs.P3 and P4. The best person who could have denied the authenticity of Exs.P3 and P4 is the defendant and he has not stepped into the witness box. If really plaintiff was not in possession of the schedule property, there was no necessity for the plaintiff to have paid taxes to the Municipal Council, Nippani. The payment of taxes at regular intervals is evidenced in the form of tax paid receipts which are marked as Exs.P5 to P27.

9. What is argued before this Court by the learned Counsel for the respondent is that the plaint itself would disclose that defendant has put a lock on the door of the premises in question and therefore, the suit for permanent injunction is not maintainable seeking the relief of possession. This Court is unable to accept the said contention for the simple reason that putting a lock by the defendant over the lock already put up by the plaintiff would be an act of interference and therefore, the plaintiff was constrained to file a mere suit for the relief of permanent injunction. In the light of non placing any materials regarding the termination of tenancy and possession being taken over in accordance with law by the defendant-owner, the suit of the plaintiff for the relief of injunction cannot be considered as not maintainable. Suffice to state that the very suit for the relief of injunction is maintainable.

10. The party who takes up a specific contention in the written statement is expected to substantiate the same by entering into the witness box. Though the defendant can disprove the case of the plaintiff by effective cross-examination, such an exercise is not made. On the other hand, it is very difficult to disbelieve the documentary evidence placed on record by the plaintiff in the form of tax paid receipts for having paid the rent to the defendant.

11. Learned Counsel for the respondent-defendant has argued that as an Engineer, plaintiff could not have carried on any business in tobacco. Admittedly, the plaintiff is working as an Engineer in a private Sugar Factory. If there was any inhibition for the plaintiff to carry on with the trade in tobacco, the defendant could have furnished some evidence and that is lacking.

12. The First Appellate Court is the final Court of facts. It is expected to reassess the entire evidence by formulating suitable points for consideration as per the mandate of Order 41 Rule 31A of CPC. The judgment of the First Appellate Court is very bald. The judgment of the First Appellate Court runs into only seven pages. The actual reasoning given by the First Appellate Court is to be found only in paragraph-16. The entire basis for the judgment of the First Appellate Court is based on the reasoning given in paragraph-16. What is observed by the First Appellate Court is that when the plaint itself discloses about the defendant having

put a lock on the door of the premises of the plaintiff, the suit is not maintainable and therefore, the suit is liable to be dismissed.

13. This Court is unable to accept such a contention. One sentence found in the plaint cannot be the basis for dismissing the suit of the plaintiff by allowing the appeal filed under Section 96 of CPC. In fact, the plaintiff has been fair enough to state that the defendant has high handedly put a lock over the door of the premises in question. This aspect of interference has not been properly considered, more particularly, in the light of plaintiff having pleaded about the defendant putting a lock on the lock already put by him. The points raised for consideration by the First Appellate Court as found in page-4 is as follows:

Whether the impugned judgment and decree requires the interference of this court and that the appeal is fit to be allowed?

14. In fact, various grounds had been taken up by the defendant in the appeal memo filed under Section 96. The point so framed is very bald. The object of Rule 33 of Order 41 is to make it incumbent on the Appellate Court to raise points for determination so as to clear pleading and focus the attention of the Court and of the parties on the specific and rival contentions which arise for decision. The provisions of Rule 31 of Order 41 are mandatory and it cannot be said that failure to comply with these provisions is a mere irregularity. The exact questions which arise in the appeal and require determination must be stated in the judgment. It is not sufficient to formulate the points for consideration stating as to whether any interference is required by the First Appellate Court and if so to what extent. The points to be formulated must not only be consistent with the grounds raised in the appeal, but also the grounds which are raised during the course of submission of arguments, with the permission of the Court.

15. The judgment of the First Appellate Court does not speak anything about the existence of relationship of landlord and tenant and about the alleged termination of tenancy and the taking over of possession of the land in question. Suffice to state that the First Appellate Court has virtually abdicated its responsibility as contemplated under Section 96 of CPC. It has not pointed out as to where the trial Court has gone wrong. It has not pointed out as to what should be the approach of

the First Appellate Court.

16. In fact the principles reiterated by the Hon'ble Supreme Court in the case of Santosh Hazari Vs. Purushottam Tiwari reported in AIR 2001 SC 965 are relevant and they have not been taken into consideration. It has been consistently held by the Hon'ble Supreme Court and more particularly, in Santosh Hazari's case that the First Appellate Court has an added responsibility that too when upturning the well considered judgment of the trial Court. Having not done so, this Court is of the opinion that the First Appellate Court is not justified in interfering with the well considered judgment of the trial Court. It is to be noted that the trial Court has assessed the entire evidence on the touchstone of intrinsic probabilities and has adopted a right approach to the real state of affairs. The approach adopted by the First Appellate Court is not consistent with the mandate of Section 96 of CPC coupled with Rule 33 Order 41 of CPC. Hence, the substantial question of law will have to be answered in the affirmative.

ORDER

Accordingly, the appeal is allowed and the judgment of the First Appellate Court is set aside and consequently, the judgment of the trial Court is restored. Notwithstanding the allowing of this appeal, the defendant is at liberty to take possession in accordance with law and the order of injunction passed by the trial Court will be in subsistence till plaintiff is dispossessed in accordance with law either by following the provisions of Transfer of Property Act or the provisions of Karnataka Rent Act, 1999, as the case may be.

In view of the facts and circumstances of the case, the appeal is allowed with costs.

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