

Rathnamma Vs. Premavathi

Rathnamma Vs. Premavathi

SooperKanoon Citation : sooperkanoon.com/1177570

Court : Karnataka

Decided On : Aug-20-2015

Judge : B.S. Patil

Appeal No. : H.R.R.P.No. 134 of 2014

Appellant : Rathnamma

Respondent : Premavathi

Judgement :

(Prayer: This HRRP is filed U/Sec.46(1) of Karnataka Rent Act, against the order dated: 23/04/2014 passed on I.A.02 in HRC.No.10040/2009 on the file of the XV-Addl Judge, Court of Small Causes, Mayo Hall Unit, Bengaluru, Allowing I.A.No.2 filed U/sec.43 of the Karnataka Rent Act.)

1. Order dated 23.04.2014 passed by the Court of Small Causes, Bangalore in H.R.C.No.10040/2009, thereby allowing I.A.No.2 filed by the respondent under Section 43 of the Karnataka Rent Act (for short 'the Act') ordering stoppage of further proceedings in HRC No.10040/2009 with a direction to the parties to approach the Civil Court seeking declaration of their rights and title over the petition schedule premises is challenged in this revision petition.

2. Petitioner has filed the eviction petition seeking a direction to the respondent to vacate and deliver vacant possession of the premises contending inter alia that respondent was a tenant under the revision petitioner. Eviction petition is filed

under Section 27(2)(b)(c) and Section 31 of the Act.

3. Petition averments disclose that premises bearing No.273/26 Old No.1045 situated at Abbigere Main Road, Jalahalli West, Bangalore has been absolutely owned by the plaintiff - petitioner. Defendant - respondent entered into an agreement of lease with the plaintiff on 19.01.2004 agreeing to occupy the premises for a period of three years by paying advance amount of Rs.80,000/-. Copy of the agreement has been produced at Annexure - B. According to the petitioner, the amount of Rs.80,000/- was refundable at the time when the defendant vacated the premises and it did not carry any interest. It is urged that after the expiry of three years, on 18.01.2007 petitioner demanded vacant possession of the premises but the defendant sought for six months time to vacate. Ultimately, when the defendant did not vacate and as the petitioner was abused and assaulted, a private complaint was lodged followed by the institution of eviction proceeding in the present HRC petition. The petitioner has also sought for a direction to the defendant to pay mesne profits at the rate of Rs.1,500/- with interest for illegal occupation of the premises.

4. The respondent filed objections denying the petition averments and contending that petitioner had executed a general power of attorney under which she had become the absolute owner of the property; she was paying taxes regularly and her name had been recorded in the khata extract and therefore as per the GPA dated 17.03.2004 she had become the owner of the property. She has further contended that after obtaining GPA, she had let out a portion of the premises in the ground floor to a person by name Sri Pallavi Kumar. She also contended that the first floor had been let out to other persons.

5. Respondent filed an application under Section 43 of the Act supported by an affidavit seeking a direction to the petitioner to file a suit for declaration of title in respect of the schedule property by stopping the proceedings in the HRC Case.

6. The Court below has heard both parties on the application. It has examined the pleadings and the documents produced and relied upon patricianly Ex.P.3 - lease agreement. It has come to the conclusion that perusal of the contents of Ex.P.3 disclosed that it was more in the nature of mortgage as the property had been

offered as security for a loan of Rs.80,000/- because petitioner was in need of money. It has also referred to the stand taken by the respondent denying the fact that the document was in the nature of mortgage. However, as per the terms of the agreement and as per the pleadings of the parties, it was clear that there was a dispute regarding the title to the property and the relationship of landlord and tenant. Hence, the Court below, after referring to the fact that the GPA was not an instrument conveying right, title or interest over the property, has come to the conclusion that as there was no jural relationship of landlord and tenant in existence between the petitioner and respondent, it was just and necessary to direct both parties to approach the Civil Court seeking declaration of their rights with respect to the petition schedule property.

7. Upon hearing the learned counsel for both parties and on careful perusal of the entire pleadings and the impugned order, I find that Ex.P.3 on which petitioner has placed reliance to contend that there was relationship of landlord and tenant does not show any such relationship of landlord and tenant. The respondent has denied the title of the petitioner over the suit property. There is no material placed on record to show that the property was given on lease either on monthly rental or on the basis of any other premium paid. In the circumstances, question raised between the parties had to be adjudicated by the Civil Court in a properly instituted suit. The HRC Court under the provisions of the Act cannot pronounce on the disputed facts regarding title to the property. Therefore, I do not find any illegality in the order passed by the Court below.

8. It is brought to the notice of the Court that in a Civil suit instituted by the petitioner, she has already filed an application by way of amendment seeking declaration of her title to the property. If that is so, she is reserved liberty to proceed with the said suit and the relief sought by way of amendment, so that the controversy between the parties is conclusively settled in the said suit.

9. With the above observations, this revision petition is dismissed.