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Court : Karnataka

Decided On : Aug-03-2015

Judge : B.S. Patil

Appeal No. : H.R.R.P.No. 80 of 2015

Appellant : Krishnamurthy

Respondent : Vimala

Judgement :

(Prayer: This HRRP filed under Sec. 46(1) of Karnataka Rent Act, 1999 against the order dated 30.03.2015 passed in HRC No. 91/2014 on the file of the Chief Judge, Court of Small Causes, Bengaluru, (SCCH 1), allowing the petition filed under Sec. 27(2)(i) and (r) of the Karnataka Rent Act, 1999.)

1. This revision petition is filed by the tenant challenging the eviction order dated 30.03.2015 passed in HRC No. 91/2014.

2. Respondent herein instituted the eviction proceedings under Section 27(2)(i) and (r) of the Karnataka Rent Act, 1999, seeking eviction of the petitioner from the petition schedule premises. It was contended by the landlady that she had purchased the schedule property from the legal heirs of one Doraiswamy Mudaliar and his son Padmanabha Mudaliar vide sale deed dated 12.12.2006 for valuable consideration of Rs.24,25,000/-, and thereafter, the tenancy was attorned and the respondent paid rent for sometime to the petitioner but later he became defaulter.

It was also contended by the landlady that the respondent had filed a suit in O.S. No. 7364/2010 seeking the relief of declaration that he had become owner by adverse possession in respect of the petition schedule property and the said suit was dismissed by the judgment and decree dated 23.01.2014. Thereafter, the landlady issued a notice followed by institution of the suit seeking eviction.

3. The tenant resisted the petition contending that there was no jural relationship between the parties. It was urged that father of the revision petitioner was inducted as tenant of the schedule premises on a monthly rent of Rs. 16/- during the year 1958 by Doraiswamy Mudaliar. Upon his death in the year, 1966, he has continued in the premises. He has denied the title and ownership of the respondent herein over the suit premises. Therefore, he sought for dismissal of the petition stating that it was totally misconceived.

4. Based on the pleadings, the court below framed the necessary points for consideration regarding the existence of jural relationship of landlord and tenant between the petitioner and the respondent and the bona fide requirement of the landlady of the petition premises for her use and occupation after demolition and re-construction.

5. On consideration of evidence on record, the court below has come to the conclusion that in the wake of Ex.P-10 " judgment rendered by the Civil Court in O.S. No. 7364/2010, it was not open for the tenant to contend that the respondent herein was not the owner of the property. It is also further held that the landlady proved existence of jural relationship of landlady and tenant and that the petition premises was required for her use and occupation. It has thus ordered eviction of the tenant from the premises by allowing the petition filed under Section 27(2)(i) and (r) of the Act by granting four months time to vacate the premises.

6. Learned Counsel appearing for the petitioner contends that the court below has committed serious illegality in recording a finding regarding proof of title by the landlady over the petition schedule premises. It is his submission that finding of the Civil Court in Ex. P " 10 " judgment that the revision petitioner had failed to establish his plea of adverse possession, did not and could not come in the way of the tenant contending in the proceedings instituted in HRC case that the

respondent was not the landlady of the premises. It is his further submission that several documents have been produced before the court to show how the respondent had manipulated the sale deed to show that she was the owner of the property, but the court below did not go into the same. It is also his submission that the property belonged to Corporation and the respondent did not have any right over the same because the khatha of the property was not recorded in the name of the respondent, and therefore, the court below could not have passed the impugned order.

7. In support of his contention that plea as to absence of title of the landlady could be raised even before this Court, he has placed reliance on the judgment in the case of PRATAPSINGH and OTHERS VS JAIBUNNISA BEGUM and ANOTHER “ AIR 1989 KAR 70. To support his contention that a document will be a sham document if it ostensibly creates rights and obligations which were not intended to be acted upon by the parties to the deed, he has placed reliance on the judgment in the case of V.M. SALIM VS FATHIMA MUHAMMED and OTHERS “ (2011) 15 SCC 756. In support of the contention that payment of rent does not necessarily establish relationship of landlord and tenant and such payment may only prove permissive occupation not amounting to any right or title to possession, he has placed reliance on the judgment in the case of SHEODHARI and OTHERS VS SURAJ PRASAD SINGH and OTHERS “ AIR 1954 SC 758.

8. Learned Counsel appearing for the respondent strongly supports the order passed by the court below.

9. Upon hearing the learned Counsel for both parties and on perusal of the pleadings and the impugned order, I find that Ex. P-10 is the judgment rendered in O.S. No. 7364/2010 by the City Civil Court on 23.01.2014. This suit was filed by the present revision petitioner/tenant seeking declaration of his title over the property by adverse possession. He had impleaded the present respondent/landlady as one of the defendants along with her vendors. The issue framed in the said suit was whether the plaintiff proved that he was in possession of the suit schedule property by way of adverse possession for more than the required statutory period, thereby perfecting his title to the suit property by adverse

possession'. One more issue which was framed in the suit was whether the 3rd defendant therein/respondent “ landlord herein proved that she was the bona fide purchaser of the suit schedule property for valid consideration'.

10. In the said judgment, the City Civil Court has held that the revision petitioner herein failed to establish that he had perfected his title by adverse possession over the suit premises. It is also found in the said judgment that 3rd defendant therein/respondent-landlord herein was the bona fide purchaser of the suit schedule property for valid consideration. A finding has been also recorded holding that petitioner herein was in possession as a tenant, and therefore, his possession had to be protected only till the possession was legally taken over. Therefore, the Civil Court granted the decree of permanent injunction in favour of the revision petitioner in the said suit. It is thus amply clear that in a properly instituted suit before the City Civil Court between the present revision petitioner and the respondent, the Civil Court has recorded a finding that respondent herein was the owner of the property and that the plaintiff therein “ revision petitioner herein was a tenant and his possession as a tenant had to be protected until he was legally dispossessed.

11. In the wake of the aforesaid findings, the Small Causes Court in this case has rightly held that it was not open for the tenant to deny the title of the landlord over the suit premises. It has also independently considered other materials regarding jural relationship of landlord and tenant including the admitted fact that petitioner-tenant was inducted as a tenant by the previous vendor “ Doraiswamy Mudaliar and that the property having been subsequently purchased by the landlady under a registered sale deed, there was a statutory attornment in terms of Section 109 of the Transfer of Property Act.

12. The Trial Court has also rightly referred to and relied upon the ratio laid down in the judgment of this Court in the case of BASAVARAJ VS PUTTARAJU (SINCE DECEASED) BY HIS LRS and ANOTHER “ 2010 (3) KAR. L.J. 619, with regard to transferee's right to step into the shoes of the lessor-transferor and become entitled to receive rent and also to claim other benefits.

13. The contention of the learned Counsel for the petitioner that the tenant can re-agitate the valid title and ownership of the premises in the landlady even in the proceedings in HRC No. 91/2014 cannot be accepted as the title of the defendant has been conceded and the revision petitioner has failed in the suit and the landlady had succeeded in establishing that she was a bona fide purchaser of the suit schedule property for valid consideration. The said question cannot be re-agitated in the present proceedings. Admittedly, the judgment and decree passed in Ex.P-10 has attained finality.

14. With regard to bona fide requirement of the petition premises for personal use, the findings recorded by the court below are supported from the evidence on record. There is no illegality or perversity in the findings recorded. Hence, there is no scope for interference in the order passed by the court below in exercise of revisional jurisdiction.

15. Therefore, this petition is dismissed. However, petitioner is granted three months time to vacate the premises.

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