

G. Vinod and Others Vs. Jijabai

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Court : Karnataka Dharwad

Decided On : Jul-03-2015

Judge : B. Veerappa

Appeal No. : House Rent Revision Petition No. 100005 of 2015 c/w House Rent Revision Petition Nos. 100006 & 100007 of 2015

Appellant : G. Vinod and Others

Respondent : Jijabai

Judgement :

(Prayer: This HRRP is filed u/s.115 of CPC, praying to set aside the order passed by the Presiding Officer, Fast Track Court-III, at Belagavi, dated: 04.02.2015, passed in H.R.C. Revision Petition No.19/2014 confirming the Order of eviction passed by the Principal Civil Judge (Jr.Dn.) and JMFC, Belagavi, passed in H.R.C. No.31/2012 dated:26.09.2014 and dismiss I.A.No.4 by allowing the present revision petition.

This HRRP is filed u/s.115 of CPC, praying to set aside the order passed by the Presiding Officer, Fast Track Court-III, at Belagavi, dated: 04.02.2015, passed in H.R.C. Revision Petition No.17/2014 confirming the order of eviction passed by the Principal Civil Judge (Jr.Dn.) and JMFC., Belagavi, passed in H.R.C. No.29/2012 dated:26.09.2014 and dismiss I.A.No.4 by allowing the present revision petition.

This HRRP is filed u/s.115 of CPC, praying to set aside the order passed by the Presiding Officer, Fast Track Court-III, at Belagavi, dated 04.02.2015, passed in H.R.C. Revision Petition No.18/2014 confirming the order of eviction passed by the Principal Civil Judge (Jr.Dn.) JMFC, Belagavi, passed in H.R.C. No.30/2012 dated 26.09.2014 and dismiss the I.A.No.4 by allowing the present revision petition.)

Re. HRRP No.100005/20105

1. The tenant filed the above Revision Petition against the order dated 04.02.2015 made in H.R.C. Revision Petition No.19/2014, on the file of the Presiding Officer, Fast Track Court Court-III, at Belagavi, rejecting the Revision Petition, confirming the order dated 26.09.2014, made in H.R.C. No.31/2012, on the file of the Principal Civil Judge (Jr.Dn.) and JMFC, Belagavi, in respect of residential premises on the first floor, consisting of one bedroom, one living room, one kitchen-cum-dining room attached with latrine and front side gallery, measuring 15 feet in width and 50 feet in length, out of RCC building, compromising in R.S. No.79/A+A (part of Old R.S. No.79/1B), V Cross, Manchalaya Nivas, Adarsh nagar, Angola, Belagavi.

Re. HRRP No.100006/2015:

2. The tenant filed the above Revision Petition against the order dated 04.02.2015 made in H.R.C. Revision Petition No.17/2014, on the file of the Presiding Officer, Fast Track Court Court-III, at Belagavi, rejecting the Revision Petition, confirming the order dated 26.09.2014, made in H.R.C. No.29/2012, on the file of the Principal Civil Judge (Jr.Dn.) and JMFC, Belagavi, in respect of residential premises on the ground floor, consisting of two bed rooms, dining hall, living room, kitchen room, toilet and bathroom measuring about 15 feet in width and 50 feet in length, out of RCC building, compromising in R.S. No.79/A+A (part of Old R.S. No.79/1B) V Cross, Manchalaya Nivas, Adarsh Nagar, Angola, Belagavi.

Re. HRRP No.100007/2015:

3. The tenant filed the above Revision Petition against the order dated 04.02.2015 made in H.R.C. Revision Petition No.18/2014, on the file of the Presiding Officer, Fast Track Court Court-III, at Belagavi, rejecting the Revision Petition, confirming the order dated 26.09.2014, made in H.R.C. No.30/2012, on the file of the Principal Civil Judge (Jr.Dn.) and JMFC, Belagavi, in respect of residential premises on the ground floor, consisting of two bed rooms, one living room, one kitchen-cum-dining room, attached with latrine and front side gallery, measuring 15 feet in width and 50 feet in length, out of RCC building, compromising in R.S. No.79/A+A (part of Old R.S. No.79/1B) V Cross, Manchalaya Nivas, Adarsh Nagar, Angola, Belagavi.

BRIEF FACTS IN ALL THESE CASES ARE:

4. The respondent/alleged landlord, Smt.Jijabai, filed HRC Nos.29/2012, 30/2012, 31/2012 under the provisions of Section 27(2)(a) and (r) of the Karnataka Rent Act, 1999 (hereinafter referred to as the Rent Act', for short) for eviction, against the petitioners/tenants alleging that the petition premises is all piece and parcel of the building in R.S. No.79/A+A (part of old RS No.79/1B), situated at V Cross, Manchalaya Nivas, Adarsh Nagar, Angola, Belagavi originally belonging to one Sri.Subhash Shankar Jadav. He had appointed his brother Shrikant Shankar Jadav as his General Power of Attorney holder, to deal and maintain the said premises. The said GPA holder has sold the entire property on 07.07.2011 to the respondent. Thereby, she became the owner of the property in question, she also stated that the present petitioners were indicted as tenants in respect of the premises by the erstwhile owner through GPA holder Sri.Shrikant Shankar Jadav on monthly rent of Rs.3,000/, Rs.2,000/- and Rs,3,000/- respectively and her ownership and tenancy of the petitioners were misused and the petitioners have admitted the jural relationship of the landlord and tenants in respect of the petition premises. Therefore, she sought for eviction.

5. The petitioners, who are tenants in all the HRC petitions, filed statement of objections and denied the entire petition averments and also denied the very jural relationship between the landlord and tenants, which was said to have been in existence between the respondent and petitioners. The petitioners / tenants further

denied the very Power of Attorney being executed by the owner of the property in favour of Sri.Shirkant Shankar Jadav to deal with his property and it was specifically denied that the alleged agent executed a sale deed in favour of the land-lord and when the land-lord is not the owner of the property in question, there is no question of passing of title in respect of the property in question in favour of the respondent and also contended that there is no question of any arrears of rent in respect of the premises, since the tenants have denied all the rights of the respondent, etc. Therefore, sought for dismissal of the petitions.

6. After completion of the evidence of the landlord/petitioner in HRC Nos.29, 30 and 31 of 2012, the present petitioners/tenants, filed applications under Section 43 of the Rent Act seeking to stay further proceedings in the petitions. The same were resisted by the landlord. After considering the entire material on record, the learned Principal Civil Judge and JMFC dismissed the said IA, holding that without having trial, the Court is not supposed to give its opinion regarding the relationship between the parties. The same was confirmed by the Presiding Officer, FTC-III, Belagavi, in HRC Revision Petition Nos.12, 13 and 14 of 2014 and the said orders have been reaffirmed by this Court in HRRP Nos.100002, 100003 and 100004 of 2015 on 25.03.2015.

7. During the pendency of the eviction petitions before the trial court, the respondent/alleged landlord filed IA No.IV under Section 45 of the Rent Act, seeking an order that the tenants/petitioners are not entitled to contest the petition, as they are wilful defaulters in payment of arrears of rent. The said applications were resisted by the tenants. After considering the arguments on both sides, learned Civil Judge (Jr.Dn.) and JMFC, Belagavi, by his order dated 26.09.2014 allowed the application under Section 45 of the Rent Act.

8. Aggrieved by the said order, the petitioners / tenants filed HRC Revision Petition Nos.17, 18 and 19 of 2014 before the Presiding officer, FTC-II, Belagavi, who after hearing both parties by separate orders, has dismissed the Revision Petitions on 04.04.2015, holding that the tenants are liable to pay arrears of rent before proceeding with the case. Against the said orders, the present Revision Petitions are filed.

9. I have heard the learned counsel for the parties to the lis.

10. Sri.Mrutyunjay Tata Bangi, learned counsel for the petitioners/tenants, has contended that the impugned orders passed by the trial court directing the petitioners/tenants to deposit the rents is perverse and capricious, and there is no jural relationship between the landlord and tenants; there is a dispute between the landlord and her brother-in-law in O.S. No.1036/2011 with regard to title. Therefore, unless and until the dispute with regard to ownership is decided by the trial court, the petitioners/tenants are not liable to pay any rents to the present respondent/alleged landlord and they can contest the proceedings before the HRC Court. Therefore, order of the HRC Court in directing the petitioners/tenants to pay/deposit rents before proceeding with the suit, cannot be sustained.

11. Learned counsel further contended that Section 45 of the Rent Act is not mandatory, but it is only directory and he has also relied upon the decision of this Court in the case of SUBRAMANYA Vs. JM ESW/ARAI AH (SINCE DEAD) BY HIS LR'S AND OTHERS, reported in 2010(5) Kar.L.J. 308, to support his contention. He further contended that Section 45 of the Rent Act would be mandatory only (i) when there is an admitted jural relationship of landlord and tenants between the parties; (ii) when the tenant has recognised the landlord and has paid the rent at any point of time; (iii) there are prima facie documents to evidence payment of rent at any point of time and (iv) when there is a finding of trial court on this issue and the same is not questioned in higher forum. All these ingredients of Section 45 of the Rent Act did not come into place in the present case. Therefore, he sought to set aside the impugned orders passed by the Courts below, by allowing the above Revision Petitions.

12. Per contra, Sri.M.G.Naganuri, learned counsel for the respondent/alleged landlord has contended that, earlier, applications filed by the tenants under Section 43 of the Rent Act, seeking stay of further proceedings in the original petitions, were rejected by the HRC Court and confirmed in HRC Revision petitions and reaffirmed by this Court in HRRP Nos.100002, 100003 and 100004 of 2015 on 25.03.2015. Therefore, the tenants are liable to pay the arrears of rent before proceeding with the HRC petitions. He further contended that Section 45(1)

of the Rent Act is mandatory and hence, the impugned order passed by the Courts below, allowing the applications filed by the landlord under Section 45 of the Rent Act, is in accordance with law.

13. Learned counsel for the respondent also relied upon the following judgments:

(i) ILR 1985 KAR 3474;

(ii) 1984(2) KLJ 267;

(iii) 1974 (1) KLJ SN II Part 7;

(iv) 1990 (2) KLJ 61

(v) 2010 (2) KLJ 325;

(vi) 1977 (2) KLJ 169;

(vii) 1992 (1) KLJ 281;

(viii) 2000 (5) KLJ 255;

(ix) ILR 1999 KAR 623 (SC).

14. I have given my thoughtful consideration to the arguments advanced by the learned counsel for both the parties and perused the entire material on record, including the judgments relied upon by the learned counsel for both parties.

15. It is not in dispute that the present respondent had purchased the property in question under a registered sale deed dated 07.07.2011 and she became the owner by virtue of the operation of law. Therefore, she filed the present HRC petition against the tenants for eviction under the provisions of Section 27(2)(a) and 27(2)(r) of the Rent Act, on the ground that the present premises is required for the bono fide use and occupation of her children. It is also not in dispute that during the pendency of the proceedings, the present tenants filed applications under Section 43 of the Rent Act to stay further proceedings in the original petition on the ground that there is no jural relationship between the petitioners and respondent (between tenants and landlord). The said applications came to be

rejected and was confirmed in H.R.C. Revision Petition Nos.17, 18 and 19 of 2014 and the same was reaffirmed by this Court in HRRP Nos.100002, 100003 and 100004 of 2015 on 25.03.2015, that is final and conclusive. Thereafter, the respondent/landlord filed the applications under Section 45 of the Rent Act, directing the tenants/petitioners to deposit the arrears of rent in the Court and also sought for striking off the defence in the present petitions.

16. After considering the said applications, the trial court directed the tenants to deposit the rents in the Court in order to contest the matter against the landlord, failing which the Court has to exercise its discretionary power to strike off the defence. Accordingly, the said applications were allowed.

17. Against the said orders, the petitioners / tenants filed Revision Petitions and the revisional court has dismissed the Revision Petitions, recorded a finding that there is no dispute about the quantum of monthly rent, but only dispute is with regard to the jural relationship between the landlord and tenants. In view of the sale deed, which is executed in favour of the respondent in respect of the petition premises, the revisional petitioners, who are tenants in respect of premises in question, cannot stop paying monthly rent. The right, title and interest in respect of the petition premises will be decided in the original suit, which is instituted by Subhash Shankar Jadav. But, in HRC proceedings, the tenants cannot deny or delay and even they cannot withhold the payment of rent amount. Therefore, the revisional court dismissed the Revision Petitions and confirmed the order passed by the HRC Court (original court).

18. In view of the facts and circumstances of the present case, it is appropriate to rely on Section 109 of the Transfer of Property Act, 1882, which reads as under:-

109. Rights of lessor's transferee.-If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to

him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased. ?

19. A plain reading of Section 109 of the Transfer of Property Act makes it manifest that, once the premises is transferred in favour of the respondent by the previous lessor, the respondent becomes the lessor and becomes entitled to receive rent in terms of the lease by operation of Section 109 of the Transfer of Property Act. It is relevant to state that no attornment of tenancy is necessary in law, as Section 109 of the Transfer of Property Act creates a statutory attornment. The Section does not insist that transfer of the lessor's rights can take effect only if the tenant attorns. Attornment by the tenant is unnecessary to confer validity to the transfer of the lessor's rights. However, the Section protects payment of rent by the tenant to the transfer or without notice of the transfer. The transfer of ownership of the premises to the respondent by the previous lessor has resulted in statutory attornment by the tenant in favour of the lessor's transferee, i.e. the respondent herein and consequently, jural relationship of landlord and tenants. By operation of Section 109 of the Transfer of Property Act, the transferee steps into the shoes of the lessor and becomes entitled to all the rights of the lessors.

20. The definition of Landlord under Section 3(c) of the Rent Act, reads as under:-

Landlord means a person who for the time being is receiving or is entitled to receive, the rent of any premises, whether on his own account or on account of or on behalf of or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or to be entitled to

receive the rent, if the premises were let to a tenant; ?

21. The expression entitled to receive the rent and to be entitled to receive the rentTM in the aforesaid definition, signify that the transfer of interest of the landlord in favour of any other person is not prohibited. Hence, the right of the transferee under Section 109 of the Transfer of Property Act is not curtailed/modified by the Rent Act. Thus, a transferee of a lessor is entitled to collect rent in terms of the lease as of right and becomes landlord under Section 3(e) of the Rent Act. The tenant cannot dispute the right of the transferee landlord to maintain an eviction petition under the Rent Act or to claim rent.

22. In view of Section 109 of the Transfer of Property Act and definition of landlord under Section 3(e) of the Rent Act, the impugned order passed by the HRC Court and confirmed by the Revisional Court are in accordance with law. The petitioners/tenants are not entitled to any relief before this Court under revisional jurisdiction.

23. It is not in dispute that Section 29 of the Karnataka Rent Control Act, 1961 (Karnataka Act No.22 of 1961) is corresponding to Section 45(1) of the Karnataka Rent Act, 1999. While considering the provisions of Section 29(1) of the Rent Control Act, 1961, a Division Bench of this Court in the case of *M/s.M.G.BROTHERS Vs. M.A. NA GA RAJ* reported in ILR 1985 Kar.L.J. 3474, has held that the right of contest means, the right to enter appearance and then proceed with the case. In that sense, till the date of appearance, as indicated in the summons, the tenant has time to pay the arrears of rent in order to acquire the right to contest. But, that does not apply to the prosecution of any further proceedings or any revision which is also spelt out in sub-section (1) of Section 29 of the Karnataka Rent Control Act, 1961. Therefore, the condition precedent is that all rents due must be paid or deposited in Court before the revision is prosecuted; in other words, presentation of petition as a condition precedent, i.e., deposit of rent or payment of rent.

24. This Court, in the case of *CHIKKAIAH vs. PARVATHAMMA* reported in 1974 (1) Kar.L.J. Short Note 247, has held as under:

Where the lower courts had found that the petitioners were tenants of the premises under the respondent, they are bound to pay or deposit arrears of rent and without such payment or deposit, they are not entitled to prosecute or contest the revision in the High Court (CRP No.843 of 1964 foll.) ?

25. While considering the provisions of Sections 29 and 50 of the Karnataka Rent Control Act, 1961, Hon'ble Supreme Court in the case of P.K.DESHPANDE Vs. MAKUTI BALAKAM HAIBATTI, reported in ILR 1999 K4R 623(SC), at paragraphs 15 to 17 has held as under:

15. The words in sub-section (1) or to prefer or prosecute a revision petition under Section 50 encompass two stages. First is at the threshold when the tenant files the petition for revision. Second is a stage when he prosecutes his revision. On the first stage, his revision petition is not maintainable unless it is accompanied by either payment or deposit of all the arrears of rent due up to the date of payment or deposit ?. If the revision is validly preferred, then in the next stage of prosecution of revision, the tenant has to continue to pay or deposit any rent which may subsequently become due until termination of the proceedings.

16. Learned counsel for the appellant contended that the liability of the tenant under Section 29(1) of the Rent Act would come into operation only after the court determines the amount to be paid. This argument is based on sub-section (3) but the contingency under that sub-section would arise only where there is dispute as to the amount of rent to be paid or to be deposited. In this case, the appellant filed revision petition on 20.04.1991. The High Court has noticed that admittedly, the tenant did not deposit the rent on 20-4-1991 when the revision petition was filed before the learned District Judge. ?

17. The admitted position being as above, it is not open to the appellant now to contend that he did not make the deposit along with filing of revision petition due to want of an order from the Court. ?

26. In view of the admitted facts that the respondent has purchased the property in question under a registered sale deed dated 07.07.2011 and the fact that the application filed by the tenants under Section 43 of the Rent Act to stay further

proceedings with regard to jural relationship was rejected by the HRC Court, confirmed in Revisional Court and reaffirmed by this Court, as already stated above, and the concurrent finding of fact by the Courts below, under the present impugned orders, holding that the petitioners/tenants are bound to pay the arrears of rent before proceeding with the case, is based on the sound legal principles of law as contemplated under Section 45 of the Rent Act. Therefore, the same is in accordance with law. The petitioners are bound to pay the arrears of rent.

27. The decision relied upon by the learned counsel for the petitioners, in the case of SUBRAMANYA Vs. J.M.ESW/ARAI AH (Since dead) BY HIS LRs. AND OTHERS, reported in 2010 (5) Kar.L.J. 308, wherein the relationship between the landlord and tenant has been proved in the original proceedings. In the said case, my brother Judge has remitted the matter to the revisional court to reconsider as to whether the cause shown with reference to the rents alleged to have been paid by the revisional petitioners would amount to payment / deposit and would constitute sufficient cause as contemplated under Sub-section (4) of Section 45 of the Rent Act and then proceed to consider the revision petition on merits, if necessary and in accordance with law.

28. In the present case, the suit is pending between the respondent and her brother-in-law in O.S. No.1036/2011. The facts of the said case has no application to the facts and circumstances of the present case. Therefore, the said judgment is in no way helpful to the present petitioners to avoid deposit/payment of arrears of rent.

29. Admittedly, the present petitioners, who are tenants, are not parties to the said suit and the said suit is between the brother-in-law and sister-in-law, in respect of title and the petitioners cannot take advantage of the same to deny the payment of rents or to deposit the rents before the HRC Court. Ultimately, the person who succeeds in the said Suit will become the owner of the property in question and the petitioners have not disputed that they are the tenants in respect of the property in question and therefore, they are bound to pay or deposit the arrears of rents before the Court, subject to result of either HRC petition or the Original Suit.

30. In view of the aforesaid reasons, the impugned order passed by the Courts below allowing the application under Section 45 of the Rent Act is based on the sound principles of law and the same is in accordance with law. The petitioners have not made out any prima facie case to exercise revisional jurisdiction of this Court under the provisions of Section 115 of the Code of Civil Procedure. Accordingly, all these Revision Petitions are dismissed.

However, in the peculiar facts and circumstances of the present case, it is appropriate to direct the petitioners/tenants to deposit the entire arrears of rent before the HRC Court within a period of three months in three installments, subject to result of HRC Nos.29, 30 and 31 of 2012 and Original Suit No.1036/2011, whichever is earlier.

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