

Kutti Krishna Vs. Narayanamma and Others

Kutti Krishna Vs. Narayanamma and Others

SooperKanoon Citation : sooperkanoon.com/1185384

Court : Karnataka

Decided On : Jan-19-2017

Judge : L. Narayana Swamy

Appeal No. : Civil Revision Petition No. 418 of 2012

Appellant : Kutti Krishna

Respondent : Narayanamma and Others

Judgement :

(Prayer: This CRP is filed under Sec.18 of Small Cause Act., against the Orders Dated:17.08.2012 passed in S.C.2405/2011 on the file of the XIII-Addl. Small Causes Judge, Bangalore, partly decreeing the suit for ejectment.)

1. This civil revision petition is filed by the tenant-respondent in S C No.2405/2011 on the file of the 13th Additional Court of Small Causes, at Bengaluru being aggrieved of the judgment and decree dated 17.08.2012 directing the petitioner to quit, vacate and hand over vacant possession of the schedule premises to the petitioner within three months.

2. The facts of the case are that respondent filed the suit for ejectment on the ground that she is the owner of half share in suit property No.123, in Staircase of B V K Iyengar Road, next to Hotel Shalika, measuring 4 x 11 feet as per the judgment in O S No.565/1996. The petitioner was inducted as tenant from 20.11.1978 on a rent of Rs.110/- per month by mother of respondent

Smt.Narasamma. After death of mother of the respondent, she got issued legal notice on 6.6.1994. The petitioner neither paid the rent nor vacated the premises. Hence she filed the suit.

3. The petitioner filed the written statement admitting the tenancy but contended that respondent is not the absolute owner of the suit premises. The petitioner admitted having filed suit against the respondent and her sister for the relief of injunction in O S No.146/2009 and also H R C No.1807/1994 for deposit of rent in the name of sister of the respondent. The petitioner denied arrears of rent at Rs.85,200/-. It is contended by the petitioner that respondent has no locus standi to file the suit and that the respondent has not complied the provisions of Section 106 of T P Act.

4. The court below framed the points relating to termination of tenancy and entitlement of the respondent for mesne profits and answering both the points in favour of the respondent, decreed the suit.

5. Being aggrieved, the petitioner has filed the present civil revision petition.

6. I have heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the impugned judgment.

7. The learned counsel for the petitioner contends that a co-owner could not have maintained the suit for ejectment without there being division of the property by metes and bounds and without the consent of the other co-owner, the judgment commenced in a wrong premises and ended in wrong conclusion and there is no actual final decree in the proceedings. It is further contended that considering the measurement of the suit schedule premises and the rate of rent, the suit was not maintainable in view of provisions of the Karnataka Rent Act. The court below without advertng to the said aspect of the matter and wrongly applying the decision in S K Sattar Sk.Mohd.Choudhari Vs., Gundappa Amabadas Bukate, AIR 1997 SC 998, has decreed the suit. The suit as brought about by the respondent ought to have been dismissed on the ground of maintainability. Therefore, he prays for allowing the petition.

8. On the other hand, the learned counsel for the respondent contends that the petitioner disputed the ownership of the respondent and therefore the suit was filed. There is already a decree from a civil court deciding half share in favour of the respondent. The petitioner having not raised maintainability at the initial stage, is not entitled to raise it at the stage of revision. The court below has considered all the aspects in proper perspective and has rightly concluded to decree the suit. There are no good grounds to interfere in the revision filed by the petitioner. Hence, he prays for dismissal of the petition.

9. On the basis of the submissions made by the respective parties, the points that arise for determination in this revision petition are:

(a) Whether the suit filed by the respondent was not maintainable in view of measurement and rate of rent as per Section 2(3)(e) and (g) of Karnataka Rent Act 1999?

(b) Whether the judgment and decree passed by the court below is liable to be interfered with?

My answers to the above points are against the petitioner and in favour of the respondent for the following reasons:

10. It is true, considering the measurement of the suit schedule premises i.e., 4 x 11 feet and the rate of rent which the petitioner has admitted it to be Rs.700/- per month, it is the Rent Act 1999 is applicable. The petitioner who is the tenant of the suit schedule premises did not raise in his written statement about the maintainability of the suit on the ground of measurement of non - residential premises having a plinth area of not exceeding fourteen square meters and rent not exceeding Rs.3,500/-. The petitioner has also not raised such a contention in the present revision petition. But he has orally submitted so in his submission about the maintainability. I am of the considered opinion that the petitioner having not raised such a contention either in the written statement initially or in the revision petition, the respondent cannot be non-suited at this stage on the ground of maintainability of the suit before the Small Causes Court. The petitioner allowed the proceedings to conclude before the Court of Small Causes and even in the

revision petition he has not raised such a contention. Therefore, the petitioner is not entitled to raise such a contention of maintainability at this stage in the revision petition.

11. The respondent has examined herself as PW-1 and got marked Ex.P1 to P5 to prove her case before the court below. PW-1 deposed to the plaint averments. Ex.P1 is the certified copy of the judgment in O S No.565/1996. Ex.P2 is the certified copy of the judgment in O S No.146/2009. Ex.P3 is the copy of legal notice and Ex.P5 is copy of reply notice. Considering the oral evidence of PW-1 and coupled with legal notice and reply notice, there is a valid termination of tenancy under Section 106 of the Transfer of Property Act. The petitioner is not entitled to take advantage of other co-sharer not joining the proceedings. It is between the co-owners. The judgment delivered by the competent civil court clearly discloses half share in the suit schedule property in favour of the respondent. The court below has rightly held that suit for eviction filed by one co-owner is maintainable. The court below has also come to the right conclusion that the respondent being legal heir of Narasamma has right to maintain the suit for ejection. It is borne from the records that the respondent is making her efforts to get possession since 1994. There is no merit in any of the contentions sought to be urged by the petitioner in the present revision petition. The revision petition is liable to be dismissed.

Accordingly, the revision petition is dismissed. However, the petitioner is granted one month's time from today to quit, vacate and handover the vacant possession of the suit schedule premises to the respondent. In all other respects, the impugned order is hereby confirmed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com