

Udaya Kumar vs Sarojamma

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Court : Karnataka

Decided On : Nov-04-2025

Judge : V Srishananda

Appeal No. : CRP/74/2020

Appellant : Udaya Kumar

Respondent : Sarojamma

Judgement :

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04TH DAY OF NOVEMBER, 2025 BEFORE THE HON'BLE MR. JUSTICE V SRISHANANDA CIVIL REVISION PETITION No.74 OF 2020 BETWEEN: UDAYA KUMAR AGED ABOUT 58 YEARS, S/O PERUMAL MUTTU, RESIDING AT NO.5/3, JAYAMMA BUILDING, MURUGESH PALYA, BENGALURU -560 017, REPRESENTED BY HIS POWER OF ATTORNEY HOLDER MR RAVICHANDRA, S/O A.M. SUNDER MURTHY AGED ABOUT 54 YEARS, R/AT NANJAREDDY COLONY, HAL POST, BANGALORE-560 017 PETITIONER (BY MS.ADITI FOR SRI SAMPATH A, ADVOCATES)

Digitally AND: signed by MALATESH KC 1. SMT.SAROJAMMA AGED ABOUT 63 YEARS, Location: HIGH W/O LATE R.ABBAIAH REDDY, COURT OF KARNATAKA 2. A JAGADEESH AGED ABOUT 50 YEARS, S/O LATE R.ABBAIAH REDDY,

3. A VIMALA AGED ABOUT 51 YEARS, D/O LATE R ABBAIAH REDDY, -2-

4. A JYOTHI AGED ABOUT 53 YEARS D/O LATE R.ABBAIAH REDDY, RESPONDENT Nos.1 TO 4 ARE RESIDING AT NO.108, KODIHALLI, VARTHUR HOBLI, H.A.SANITARY BOARD AREA, INDIRANAGAR POST, BANGALORE-560 038

5. R JAYAMMA AGED ABOUT 79 YEARS, W/O LATE VENKATARAMANA REDDY, RESIDING AT NO.102, RAMAIAH COMPOUND, KODIHALLI, INDIRANAGAR, BANGALORE -560 038 RESPONDENTS (BY SRI M.B.RAVI KUMAR, ADVOCATE FOR R1 TO R4) THIS CRP IS FILED UNDER SECTION 115 OF CIVIL PROCEDURE CODE, AGAINST THE JUDGMENT AND DECREE DATED 17.11.2018 PASSED IN OS No.2148/2006 ON THE FILE OF THE XLIV ADDL.CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-45) DISMISSING THE SUIT FOR POSSESSION. THIS PETITION, COMING ON FOR ORDERS, THIS DAY,

ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA -3-

ORAL ORDER

The matter is taken up for disposal with the consent of the parties, though it is listed for Orders.

2. Heard Ms.Aditi, Advocate for Sri Sampath A, learned counsel for the revision petitioner and Sri M.B.Ravi Kumar, learned counsel for the respondent Nos.1 to 4.

3. Unsuccessful plaintiff is the revision petitioner whose suit

in O.S No.2148/2006 on the file of the XLIV Additional City Civil and Sessions Judge, Bengaluru, filed under Section 6 of the Specific Relief Act came to be dismissed.

4. Validity of the said judgment of dismissal of the suit is called in question in this revision petition.

5. Facts in the nutshell which are utmost necessary for

disposal of the present petition are as under: Revision Petitioner/plaintiff filed a suit contending that plaintiff was in possession of the portion of the property bearing district No.5/3 carved out of Sy.No.84/2 Jayamma Building, Murugeshpalya, Kodihalli, Bengaluru-560 078, comprising of a hall, room and a kitchen in total measuring 3 squares within -4- the boundaries mentioned in the schedule to the plaint, morefully described hereunder and hereinafter referred to as the suit property.

All the piece and parcel of portion of property bearing District 5/3, carved out of Sy.No.84/2, Jayamma Building, Murugeshpalya, Kodihalli, Bengaluru-560 078, comprising of a hall, room, kitchen and hall measuring three (3) square and bounded on: East by: Portion of the same property in occupation of tenants. West by: Portion of the same property in occupation of tenants, North by: Passage and thereafter RCC building belonging to 5th defendant, South by: Property of Munireddy.

6. It is the contention of the plaintiff that the defendants, in

the guise of executing the eviction decree obtained against G.N.Gowda, wrongfully dispossessed the petitioner/plaintiff from the suit property and therefore suit under Section 6 of the Specific Relief Act came to be filed.

7. Suit, on due contest came to be dismissed.

8. Learned Trial Judge while dismissing the suit of the

revision petitioner in O.S.No.2148/2006 by the judgment dated -5- 17.11.2018 has supplied adequate reasons for dismissing the suit and has noted that plaintiff was not in possession of the property nor the defendants have evicted the plaintiff in the guise of executing the decree passed in eviction proceedings.

9. Paragraphs 18 to 21 of the judgment of the Trial Court is culled out hereunder for ready reference:

18. On perusal of Ex.D.5 copy of the execution petition in No.136/2005 filed by defendant No.1 to 4 herein, it appears that the execution petition was filed to enforce the order of eviction passed in HRC No.1490/96. In the said proceedings, Ex.D-1 mahazar was drawn and through the said mahazar defendant No.1 to 4 were put in possession of the suit property. No doubt, there is an

order of eviction filed by defendant No.5 herein in HRC

placed before the Court with regard to the dispossession of J.N.Gowda by 5th defendant enforcing the order passed in HRC 2463/1993.

19. The other submission made by counsel for defendant

No.1 to 4 that the plaintiff and 5th defendant did not enter the witness box rather their respective power of attorney holders been examined. It is contended that they have no authority to depose all the acts of the principal. Hence, their evidence cannot be looked into in support of the contention, counsel relies the judgment reported in -6-

(2005)2 SCC 217 Janki Vashdeo Bhojwani and another vs.

Indusind Bank Ltd., and others. In the judgment, it is held

that power to depose in place of principal, held extends only to depositions in respect of acts" done by power of attorney holder in exercise of power granted by the instrument. Further, power of attorney holder cannot depose for principal in

respect of matters of which only principal can have personal knowledge and in respect of which principal is liable to be cross-examined. If principal is unable to appear in Court, a commission for recording his evidence may be issued. Further, attachment and auction of property and recovery of any fine could be made as land revenue of the concerned person follows. In the case in hand, in Ex.P-2 power of attorney, it is only stated as the executant (plaintiff) of the document was unable to manage and look after the case due to his personal inconvenience. He had appointed P.W.1 to prosecute the case. According to P.W.1, he was residing with the plaintiff. Further, since the plaintiff was vastu expert and he (P.W.1) was doing real estate business, he came in contact with him and thereby, they became friends and in the year 2004, plaintiff became his friend. Ex.P-1 rental agreement indicates that in the year 2002, rent deed was executed. Therefore, P.W.1 has no personal knowledge as to who had let out the suit property to the plaintiff. Further, P.W.1 had deposed in the cross- examination that he does not know personally about the 5th defendant and he had seen 5th defendant whenever she used to collect rents front the plaintiff.

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20. It is the case of the 5th defendant that she had given

power of attorney in favour of D.W.2. According to him, he is the son-in-law of the 5th defendant and they are residing separately. On perusal of Ex.D-7 GPA, it appears that same was executed on 29.8.2016. Therefore, he (D.W.2) cannot speak the acts of the 5th defendant done prior to 2016. According to D.W.2, 5th defendant has let out the suit property to the plaintiff under rental agreement dt.15.11.2002. Therefore, D.W.2 has no personal knowledge with regard to the said act of the principal. Hence, in view of the said judgment, the evidence of P.W.1 and D.W.2 cannot be looked into with regard to the evidence of the acts of the principal prior to the power of attorney been executed. Hence, on that basis also, the plaintiff cannot succeed in the case. Hence, the plaintiff has failed to prove that he is in occupation of the suit property on monthly rent of Rs.2,000/- and he was illegally dispossessed from the suit

property on 21.10.2005. Accordingly, I answer issue No.1 and 3 in negative.

21. Issue No.6: Even though a contention is taken by the

defendant No.1 to 4 that the suit of the plaintiff in the present form is not maintainable, it is not convinced as to how the suit is not maintainable. Hence, defendants have failed to prove the said aspect. Accordingly, I answer this issue in affirmative.

10. Pertinently, learned Trial Judge took note of the mahazar vide Ex.D-1 before dismissing the suit of the plaintiff. -8-

11. Being aggrieved by the same, plaintiff has preferred the present revision petition on the following grounds: The Judgment and Decree impugned therein passed by the Hon'ble Trial Court is illegal and one rendered with material irregularity and hence the same is liable to be set aside. The Trial Court failed to appreciate that the suit is filed

by the plaintiff/petitioner was under Section 6 of the Specific Relief Act and therefore, the only question that was required to be adjudicated was to find out whether the petitioner was in possession of the suit schedule property as on the date of dispossession or was Mr. G.N. Gowda was in possession. The court below failed to note that respondent No.5 had filed an eviction petition against G.N. Gowda in HRC 2463/1993 and the same allowed. That apart, the respondent No.1 to 4 had filed an application to implead themselves in HRC No.2463/1993 which was dismissed. That from a perusal of the documents exhibited in the above case it was absolutely clear that it was the petitioner who was in possession on 21-10-2005 and that he was forcefully disposed from the suit schedule property without there being an Order of eviction against him.

The Trial Court utterly failed to note the clear admission of the respondent No.1 to 4 in their written statement wherein they have admitted that on 21-10-2005 (date of -9-

dispossession) petitioner did not resist dispossession. The relevant portion of the written statement of respondents No.1 to 4 from para 6 is extracted below. .The plaintiff who was present and signed the delivery proceedings at the time of delivery of possession, did not resist or protest the delivery proceedings....

If the respondent No.1 to 4 have pleaded that petitioner

did not resist dispossession, it only means that the petitioner was in possession and that he was dispossessed without an Order of eviction passed against him, hence the finding of the Trial Court, that the petitioner was not in possession of the suit schedule property on 21-10-2005 is illegal and liable to be set aside.

The Trial Court failed to appreciate that the only

question to be decided in the suit under Section 6 of the Specific Relief Act was to find out who was in possession and whether he was dispossessed illegally. The Court below also failed to appreciate the clear admission of respondent No.1 to 4 in the written statement wherein they admitted that the petitioner herein had signed the delivery proceedings. The relevant portion of the written statement from para 5 is extracted below. The plaintiff in this suit has signed the delivery proceedings on 21-10-2006 acting for and on behalf of the Judgment Debtor said G.N. Gowda.... - 10 -

The respondent No.1 to 4 having admitted that the

petitioner did not resist dispossession, the Trial Court should have held that he was in possession. If the Trial Court had correctly assessed the pleadings and evidence it could not have held that the petitioner was not in possession of the suit schedule property on the date of dispossession contrary to the admitted fact. Hence the finding of the Trial Court is

perverse, illegal and liable to be set aside.

The finding of the Trial Court with regard to the

Judgment /Order passed in HRC 2463/1993 against G.N.

Gowda that no further action was taken to executed the

Order is illegal. The Trial Court failed to note that the

very same person ie. G.N. Gowda had admitted that he was a tenant of respondent No.5 and that he delivered possession to her.

12. Ms.Adithi, learned counsel for the revision petitioner/

plaintiff, reiterating the grounds urged in the revision petition, vehemently contended that the learned Trial Judge has not taken into consideration the relevant aspects of the matter and identified the property and wrongly dismissed the suit of the plaintiff and thus, sought for allowing the revision petition.

13. Per contra, Sri M.B.Ravi Kumar, learned counsel for the respondents supports the impugned order. - 11 -

14. Having heard the arguments of both sides, this Court perused the material on record meticulously.

15. In order to appreciate the rival contentions of the parties, it is just and necessary for this Court to cull out Section 6 of the Specific Relief Act, which reads as follows:

6. Suit by person dispossessed of immovable property.-

(1) If any person is dispossessed without his consent of

immovable property otherwise than in due course of law, he or any person 3[through whom he has been in possession or any person] claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may

be set up in such suit.

(2) No suit under this section shall be brought-

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof. - 12 -

16. On close reading of the above provision, it is incumbent

on the plaintiff to show that plaintiff was in possession of the suit property six months earlier to the date of dispossession. The plaintiff is required to prove that he has been dispossessed within a period of six months from the date of filing of the suit.

17. In that regard, contention of the plaintiff in the plaint assumes importance.

18. In the plaint, it is contended that plaintiff was in possession of the property and by way of executing the eviction decree G.N.Gowda dispossessed the plaintiff.

19. Ex.D.1 is the mahazar said to have been drawn at the time of G.N.Gowda was alleged to have been dispossessed under a delivery warrant by the Court ameen.

20. The said aspect of the matter is established by the

defendants by placing cogent and convincing evidence on record which has been appreciated by the learned Trial Judge in the impugned judgment in paragraphs 18 to 21 as referred to supra. - 13 -

21. Moreover, if the plaintiff is the owner of the property, it is always open for the plaintiff to file necessary suit seeking declaration and possession. That remedy is always available to the plaintiff.

22. With that liberty for the plaintiff, the following:

ORDER

(i) Civil Revision Petition is dismissed.

(ii) If any such intended suit is filed, all defences available to the respondents are kept open to be urged. Sd/- (V SRISHANANDA) JUDGE kcm List No.: 1 SI No.: 0

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