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Srinivasiah Vs. Thayamma

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Court : Karnataka

Decided On : Oct-19-1954

Reported in : AIR1955Kant48; AIR1955Mys48; ILR1954KAR499; (1956)34MysLJ172

Judge : Mallappa, J.

Acts : Mysore House Rent Accommodation Control Act, 1951 - Sections 8; Code of Civil Procedure (CPC), 1908 - Sections 148

Appeal No. : House Rent Control Revn. Petn. No. 112 of 1954

Appellant : Srinivasiah

Respondent : Thayamma

Advocate for Def. : K.R. Gopivallabha Iyengar, Adv.

Advocate for Pet/Ap. : C. Nagaraja Rao, Adv.

Judgement :
ORDER

1. This revision petition is against the order of the learned First Additional District Judge Bangalore, in H. R. C. Appeal No. 90 of 1953, setting aside the order of the Additional Munsiff and House Rent Controller, Corporation Area, Bangalore, in H. R. C. Petition No. 224/ ACC(B)/1953 that the petitioner should be put in

possession of the premises of which he was formerly a tenant, but had to vacate as the respondent-landlady had to effect some repairs.

This High Court in its order dated 1-9-1952 in H R. C. Revision Petition No. 647/51-52 directed that the present petitioner should vacate the premises by 1-11-52 and-that he should be put back in possession of the property within two months from that date. It has to be noticed that the petitioner did not vacate the building on 1-11-52, but had to be expelled later on by a coercive process. As such, as contended by the learned Advocate for the respondent, he is not entitled to apply for being put in possession of the property. It Will be noticed that, according to Section 8 Clause 5(b), Mysore House Rent Accommodation Control Act, 1951,

'if the tenant delivers possession - on 'or before the date specified in the order, the landlord shall, on the completion of work of repairs place the tenant in occupation of the house or part thereof on the original terms and conditions without prejudice however to the landlord's claim for enhancement of rent, if any, admissible under this Act in view of the repairs effected to the house.'

As such it is clear that before the tenant claims to be put in possession of the house after the repairs he should have fulfilled the condition of the order and vacated the house within the time fixed.

It was contended by the learned Advocate for the petitioner that he could have got the time, fixed by the Court, extended under Section 148, Civil P. C. But that point does not arise for consideration as he did not get the time extended.

There is one other point which the lower Court has not taken into consideration. That point is: that the remedy for a tenant, who has obtained an order under Section 8, Clause 5(c) for being put in possession of the property which he has vacated, is by filing an application under the said section, which is as follows:

'If, after the tenant had delivered possession on or before the date specified in the order, the landlord fails to commence the work of repairs within one month of the specified date or falls to complete the work within a reasonable time or having completed the work fails to place the tenant in occupation of the premises in

accordance with Clause (b), the Court may on the application of the tenant made within one year of the specified date order the landlord to place him in possession of the house or part thereof on the original- terms and conditions and on such an order being made, the landlord or any person who may be in occupation shall give vacant possession to the tenant of the house or portion thereof.'

The lower Court should have noticed that no such application has been filed by the petitioner. On the other hand he filed an application for review of an order, to which he was not a party allotting the premises to other persons. The application is not maintainable and should have been dismissed by the Rent Controller. The learned District Judge was right in setting aside the order allowing the application for review though It is difficult to agree with the reasons given by him.

2. This revision petition stands therefore dismissed. It will however be noticed that the pointsof law referred to above were not pressed andthey have not been taken into consideration bythe Courts below. Considering this circumstancethe parties will bear their own costs throughout.

3. Petition dismissed.

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