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Smt. Shankuntala Bhat Vs. Ajit Kumar

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Court : Karnataka

Decided On : Jan-30-1995

Reported in : AIR1996Kant293; ILR1995KAR634; 1995(2)KarLJ599

Judge : G.P. Shivaprakash, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 21 and 29; Code of Civil Procedure (CPC), 1908 - Order 14, Rule 2

Appeal No. : H.R.R.P. No. 98 of 1995

Appellant : Smt. Shankuntala Bhat

Respondent : Ajit Kumar

Advocate for Def. : G.M. Paramashivaiah, Adv.

Advocate for Pet/Ap. : Urval N. Ramanand, Adv.

Judgement :
ORDER

1. Heard the learned Counsel for the petitioner and the respondent. The learned Counsel for the petitioner relying on the decisions reported in : AIR1987 Kant1 (K. Shantharam v. A. Rama Amin) and : ILR 1993 KAR3359 (Panalal Jain v. Brhmadev Sharma), submitted that when ever jural relationship between the parties is in dispute, the Court has to decide that issue along with the main

petition, as otherwise it would amount to deciding the question of title as a preliminary issue. In Panalal Jain v. Brhmadev Sharma, : ILR 1993 KAR3359 this Court has opined that whenever there is denial of relationship of landlord and tenant, the matter would require substantial evidenceand it would not be proper for the court to tryit as a preliminary issue.

2. In the instant case the eviction petition is filed under Section 21(1)(h) of the Karnataka Rent Control Act by the respondent-landlord. The petitioner disputes the jural relationship. In other words, she denies that the respondent is her landlord. According to her, she is in possession of the premises as mortgagee. During the pendency of the petition in the trial Court, an application under Section 29 of the K.R.C. Act has been filed by the respondent. It appears evidence has been let in by the petitioner as well as by the respondent. At this stage, an application purporting to be under Order 14, Rule 2, C.P.C., has been filed by the petitioner with a prayer that Section 29 application may be considered along with the main petition. The trial court has dismissed the said application. This revision is presented against the said order.

3. According to the learned Counsel for the petitioner while considering Section 29 application, the disputed question of relationship between the petitioner and the respondent cannot be determined as a preliminary issue. For the purpose of ascertaining whether the petitioner is really in arrears of rent as a tenant under the respondent, the Court has to decide the relationship between the parties.

4. The learned Counsel for the petitioner Sri Urval N. Ramananda contended that since the application under Section 29 of the Act is in the nature of interlocutory application, considering the question of jural relationship between the parties at this stage would amount to considering the said question as a preliminary issue.

5. It is true that Section 29 application, cannot be sustained independent of the main petition, but the mere fact that that application emanates from the main petition, would not make it an interlocutory application in its ordinary connotation. The provisions of Section 29 of the Act is subsidiary to the main provisions in the Act. It is an integral part of the main provisions but remains dormant till it is activated, as is evident fromseveral provisions of the Act including Section 21(2)

of, the Act, which inter alia provides, that no order for recovery of possession of any premises shall be made on the ground specified in clause (a) of the proviso to sub-section (1), if the tenant complies with the provisions of Section 29.

6. If the contention of the learned Counsel for the petitioner were to be accepted it would render the provisions of Section 29 of the Act nugatory in all cases where the tenant denies the jural relationship/title of the landlord to the premises in question.

7. For the foregoing reasons, this petition is rejected at the admission stage. It is open for the petitioner to approach this Court again if the order on Section 29 application goesagainst him.

8. Order accordingly.

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