

Basappa and ors. Vs. Shrishailappa Shivappa and ors.

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Court : Karnataka

Decided On : Nov-21-1967

Reported in : AIR1969Kant200; AIR1969Mys200; (1968)1MysLJ234

Judge : Somnath Iyer, J.

Acts : Indian Limitation Act, 1908 - Schedule - Article 110; Bombay Rents, Hotel & [Lodging House Rates Control Act, 1947](#) - Sections 7, 11 and 11(1)

Appeal No. : Regular Second Appeal No. 723 of 1962

Appellant : Basappa and ors.

Respondent : Shrishailappa Shivappa and ors.

Judgement :

1. The appellants are the plaintiffs who brought a suit for recovery of rent in respect of a period of five years commencing from the year 1953-54 and ending with year 1957-58. The suit for the recovery of this rent was brought on October 28, 1959. In respect of the rent payable for the years 1953-54 and 1954-55, the defence was a plea of limitation.

2. The court of first instance negatived that plea and recorded a finding that the suit was within time. But in the appeal preferred by the tenants, the District Judge dismissed the plaintiff's suit with respect to these two years upholding the plea of limitation advanced by the defendant.

3. The plaintiffs appeal.

4. It is undisputed that the fixation of the standard rent payable by the tenants was finally made only on August 4, 1959 by the District Judge in appeal. That was the ground on which the court of first instance came to the conclusion that the cause of action for the recovery of rent for the entire period arose only when the fixation of the rent was finally made on that day. But the District Judge was of the contrary view and thought that the rent became due with respect to the first two years at the end of each respective year and it is the correctness of this view which Mr. Desai assails in this appeal.

5. The suit was governed, when it was brought by the Indian Limitation Act, 1908 and Article 110 of Schedule 1 to that Act prescribed the period of limitation within which the suit could be brought. That article reads :

Description of suit Period of Limitation Time from which period begins to run.

110. For arrears of rent Three years When the arrears became due.

The question is whether the arrears of rent for the recovery of which the suit was brought became due only when the standard rent was finally fixed on August 4, 1959 or at an earlier point of time. I am of the opinion that the court of first instance was right in taking the view that rent became due only after the standard rent was finally fixed. That conclusion receives support from the relevant provisions of the Bombay Rents, Hotel & [Lodging House Rates Control Act, 1947](#), by which the suit was governed. Section 5(10) of that Act defines standard rent and clause (b)(iv) of that section states that in cases referred to by section 11, standard rent means the rent fixed by the Court. The case before me was a case falling within Section 11(1)(e) which says that where there is a dispute between the landlord and the tenant regarding the amount of standard rent, the court shall fix the standard rent having regard to the circumstances of the case.

6. There was no such dispute between the landlord and tenant which arose in Civil Suit No. 182 of 1953 when the landlord brought a suit for possession and for arrears of rent due for an earlier period. In that suit defendants asked for fixation of

standard rent and under Section 11(1)(e) it became the duty of the court to assess the standard rent. That standard rent was assessed finally only on August 4, 1959 when the District Judge rendered his decision in appeal.

7. Section 7 of the Act prohibited the landlord from recovering any rent from the tenant in excess of the standard rent and so, when the tenant disputed his liability to pay the rent claimed by the landlord and insisted upon the fixation of the standard rent, it became impossible for the landlord to bring a suit for the recovery of any rent from the tenant until the standard rent was fixed. The ascertainment of the standard rent became a condition precedent to any claim which could be made by the landlord for its recovery and it is only on such ascertainment that the rent could become due to the landlord. That being so, August 4, 1959 when the standard rent was finally determined was the date on which the arrears became due within the meaning of the third column of Article 110 of the First Schedule to the Indian Limitation Act, 1908.

8. The view that I take conforms to the principle enunciated by the Privy Council in *Rangayya Appa Rao v. Bobba Sriramulu*, (1903) ILR 27 Mad 143 (PC). That case involved the interpretation of Article 110 of the First Schedule to the Indian Limitation Act, 1908. The question was whether the rent became due within the meaning of that Article only when it was settled under the provisions of the Rent Recovery Act (Madras Act VIII of 1865).

9. Section 3 of that Act provided that certain landlords and others shall enter into written engagements with their tenants to be embodied in pattas and muchalikas. Section 4 directed that these pattas and muchalikas shall incorporate among other matters, the amount and the nature of the rent. Section 7 prohibited suits and legal proceedings for rent until such pattas and muchalikas were exchanged, or the patta was tendered to the tenant which the tenant was bound to accept or the parties agreed to dispense with such documents. Section 9 authorised the landlord to institute a summary suit before the Collector to enforce the acceptance of the patta and in that suit, it was the duty of the Collector to settle the terms of the tenancy including the rent in accordance with the provisions contained in the Act.

10. The Privy Council made the elucidation that under these provisions, no arrear of rent could become due within the meaning of the Limitation Act until the rent was settled by the Collector in the suit brought under Section 9 of the Act. In that context the Privy Council said this:

'Under this procedure it seems clear that as long as proceedings are pending before the Collector and, on appeal from him, before the Civil Courts, the rate of rent is in suspense, for no one can say what it will prove to be, and that therefore no arrear of rent can be said to have become due within the meaning of the Limitation Act.'

11. It is plain that the same principle governs the present suit which is regulated by the provisions of the Bombay Rents, Hotel and [Lodging House Rates Control Act, 1947](#) the provisions of which are analogous to the provisions of the Madras Rent Recovery Act interpreted by the Privy Council. In my opinion, the whole of the rent claimed by the plaintiffs did not become due until the decision was finally rendered by the District Judge in appeal on August 4, 1959. That being so, the view taken by the District Judge that any part of the arrears had become time barred cannot be sustained.

12. I, therefore, allow this appeal, set aside the decree of the District Judge and restore that of the Civil Judge with costs throughout.

13. Appeal allowed.