

Meer NazimuddIn Vs. Harinarayan

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Court : Karnataka

Decided On : Aug-04-2000

Reported in : ILR2000KAR4623; 2001(3)KarLJ10

Judge : Chidananda Ullal, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 21(1)

Appeal No. : House Rent Revision Petition No. 616 of 1999

Appellant : Meer Nazimuddin

Respondent : Harinarayan

Advocate for Def. : Sri K. Manohar, Adv.

Advocate for Pet/Ap. : Sri R.B. Sadasivappa, Adv.

Judgement :

ORDER

Chidananda Ullal, J.

1. This is a tenant's revision petition filed under Section 50(1) of the Karnataka Rent Control Act, henceforth in brief referred to as the 'Act' to challenge the order dated 11-3-1999 in HRC No. 1257 of 1993 passed by the XIX Additional Judge, Court of Small Causes, Bangalore, henceforth in brief referred to as the 'Trial

Court'. In passing the said order, the Trial Court, while allowing the eviction petition as against the petitioner-tenant, it had granted 3 months time to vacate from the petition schedule's shop premises.

2. The revision petitioner herein is the tenant, whereas the respondent herein is the landlord.

3. The petitioner-tenant is represented by the learned Counsel, Sri R.B. Sadashivappa, whereas the respondent-landlord is represented by the learned Counsel, Sri K. Manohar.

4. The parties henceforth are referred to as the landlord and the tenants as they were before the Trial Court.

5. The facts leading to the filing the instant revision petition in brief are as hereunder:

6. That, the landlord had filed the eviction petition as against his tenant under Section 21(1)(b), (f), (h) and (o) of the Act. That, the composite premises bearing No. 8, Nagappa Street, Seshadripuram, originally belonged to one P.K. Vittal Rao, the father-in-law of the landlord, who had executed the registered Will prior to 1988 and as per that registered Will, the ground floor bearing No. 8/3, came to be bequeathed to the landlord, the adjacent portion thereof bearing No. 8/1 came to be bequeathed to the wife of the landlord (daughter of the said P.K. Vittal Rao), whereas the first floor of the premises came to be bequeathed to his wife, one Susheela Bai. That, the original owner, P.K. Vittal Rao, had granted lease evidence by Ex. R2-Receipt for Rental Advance, dated 1-4-1983 and Ex. R3-Receipt for Goodwill, dated 26-3-1983. According to the landlord the tenant for some time made use of the premises for running a business in Optical and that, subsequently, he had sublet the said premises to different persons. That, the landlord had since retired from Government service and therefore he wanted the subject premises i.e., No. 8/3 for the purpose of running a Clinic by enjoining the adjacent premises bearing No. 8/1 belonging to his wife and by doing that, he wanted to augment his income as he was getting a paltry pension of Rs. 3,600.00 p.m. and that, there were 6 members in the family and that he was only the bread-

earner for the family since his daughter was pursuing her degree in EDS, whereas the son elder to her, was pursuing his MBBS degree. It was averred by him in the eviction petition that there was no accommodation for the purpose of running a Clinic. Based on the above averments, the landlord had filed the eviction petition under Section 21(1)(b), (f), (h) and (o) of the Act.

7. That the tenant had contested the eviction petition and had contended in filing the objection statement that the eviction petition filed by the landlord was frivolous and vexatious and that he had filed the same with an ulterior motive to harass him and further to make unlawful gain. He further contended that the landlord had no locus standi to file the eviction petition inasmuch as he had no authority to file the eviction petition, He had also contended in the objection statement that there was no relationship of tenancy between them and that on the demise of the original owner, P.K. Vittal Rao, that it is his wife, Smt. P.V. Susheela Bai, who had succeeded his estate and that it is she, who was collecting the rent from him. He further contended that there was no bona fide on the part of the landlord in filing of the eviction petition as against him. He further contended that the property bearing No. 34, Narayanaswamy Iyengar Street, Seshadripuram, Bangalore, and the property bearing No. 34/1, belonging to his mother-in-law and three other properties bearing Nos. 6, 7 and 7/1, also situated in the said road and as such there was no need for the landlord to file the eviction petition as against him for the purpose of securing accommodation to run a Clinic by him.

8. Before the Trial Court, the landlord had examined himself as P.W. 1 and his son as P.W. 2. He had marked in his evidence Exs. P-1 to P-9 and they include legal notices P-1, Ex. P2-certificate of posting for service of legal notice Ex. P-1, Exs. P-4 to 7-tax paid receipts and Ex. P. 8-Khatha Certificate, all in respect of petition schedule premises. On the other side, the tenant had examined himself as R.W. 1 and produced 3 documents and that included Ex. R. 1-prescription, the landlord had given at KGF to person set up by the landlord. Based on the evidence both oral and documentary adduced by both the sides, the Trial Court while rejecting the eviction petition under Section 21(1)(b), (f) and (o) of the Act, it had allowed the same under Section 21(1)(h) of the Act and further directed the tenant to vacate from the premises within 3 months from the date of the impugned order.

9. The learned Counsel for the tenant, Sri Sadashivappa, had taken me through the original eviction petition filed by the landlord and further the objection statement that came to be filed in the hands of his party. At the outset, it was argued by Sri Sadashivappa that, when the case of the landlord that the subject premises bearing No. 8/3 was needed by him for the purpose of running a Clinic and that it had to be enjoined to the adjacent premises bearing No. 8/1 belonging to his wife, he would have clubbed HRC No. 1257 of 1993 filed by him culminating with the impugned order, along with the other eviction petition filed by his wife of the landlord by name, Smt. Usha as against her tenant by name, Rama Murthy and that unless and until the said eviction petition is allowed, the question of eviction of his party by the Trial Court did not arise at all. That argument was advanced by him for the reason that it was the specific case of the landlord that the subject premises had to be enjoined to the other adjective premises for the purpose of running the Clinic by him. It was argued by him that the landlord for the reasons best known did not choose to get other case to be clubbed along with the instant HRC to have a common order in the said two cases. It was also argued by him that the first floor of the premises had fallen vacant during the pendency of the proceedings and that portion, according to him, was totally sufficient for the purpose of running the Clinic by the landlord and that the very fact that he did not make use of that portion for the purpose of running the Clinic goes to show that there was no bona fides on the part of the petitioner in filing the eviction petition as against his party. In this contest, Sri Sadashivappa, had cited *Amarjit Singh v Smt. Khatoon Quamarainp* .

10. Nextty, Sri Sadashivappa had argued that the subject premises since measured 6' x 7', the same could not be used by the landlord for the purpose of running his clinic at all.

11. Sri Sadashivappa had moved to his stronger point. He had argued before me with regard to the non-production of the registered Will before the Trial Court to base the right, title and interest of the landlord on the petition schedule premises to maintain the petition under Section 21(1)(h) of the Act. According to him, the Trial Court would have rejected the eviction petition for non-production of the registered Will admittedly then in his custody. He further argued that the Will came to be

executed only for the purpose of filing the eviction petition as against his party. In this context, he had also argued that, when the landlord had, in fact, the possession of disputed Will, he would have naturally produced the same before the Trial Court and that the very act of non-production of the said will before the Trial Court makes his case totally impermissible inasmuch as an adverse inference had to be drawn as against him. In this regard, he had also cited a reported decision of the Supreme Court in *Devi Dass v Mohan Lal* . In that case, the Apex Court held that it was very much available for the tenant to challenge the disputed deed of sale upon which, the title was based by the landlord to file the eviction case. While drawing an analogy in the facts of the case in hand and the facts of the case in the reported case Sri Sadashivappa had also submitted that the ruling of the Apex Court has got total application to the instant case in hand. While taking me through the evidence adduced by the landlord examined as P.W. 1, it was submitted by Sri Sadashivappa that it was only self-interested assertion on the part of the landlord to say that the original owner, P.K. Vittal Rao had executed the registered Will in favour of him to bequeath the subject premises and to show that he has got title in the petition schedule premises to maintain the eviction petition, one under Section 21(1)(h) of the Act. While taking me the evidence adduced by P.W. 1-landlord further, it was also argued by Sri Sadashivappa that the landlord had based the right, title and interest only on the tax paid receipts, P-4 to 7 and further Ex. P. 8-order of transfer of the khatha in respect of the petition schedule premises in his name. He further argued in this context that the revenue entries may assist one to show the possession and it is well-known to law that could for the purpose of establishing one's title. To substantiate the said argument, he had also cited before me a decision in *Das A.R. v D. Sargunam* and *Kamal Chopra v Commissioner, Corporation of the City of Bangalore*. When the first decision is on the point that in a case where the settler had reserved right to settle the life interest, the question of filing the eviction petition by the ultimate beneficiary under Section 21(1)(h) of the Act in the hands of that settle did not arise, whereas the other decision is on the point that in the matter of transfer of khatha, it was not open for the Corporation Authority to adjudicate upon the title in respect of the property and further that the registration of khatha in respect of the property was only an executive act not conferring any

title in the party in whose name the khatha came to be registered, but only evidence with need to the possession of the property, To sum up his argument on this point, Sri Sadashivappa submitted that it is that point the Trial Court had totally missed to take note and that has to be now appreciated by this Court in allowing the revision petition and further setting aside the impugned order passed by the Trial Court.

12. Sri Sadashivappa, had also argued that the subject premises being 6' x 7', at any stretch of imagination, it could not be said that the same was bona fide and reasonably needed by the landlord for the purpose of running his clinic and in this context, he had also drawn my attention to the high educational status of the landlord. Therefore, he submitted that in the instant revision petition merits consideration in the hands of this Court and he therefore prayed for setting aside the impugned order passed by the Trial Court. Sri Sadashivappa had also submitted that the Trial Court had not properly weighed the comparative hardship of the parties and it is because of that further reason, it had entered into errors in passing the impugned order. He had also submitted that the impugned order passed by the Trial Court was based on the oral evidence of P.W. 2-son of the landlord that the first floor of premises had fallen vacant and that the same had been used for running a Laboratory by him.

13. The learned Counsel for the respondent-landlord, Sri K. Manohar, on the other side while supporting the impugned order passed by the Trial Court, argued that at the outset that the Trial Court had rightly and properly weighed the material evidence adduced by the parties and according to him, the impugned order was the apt order passed by the Trial Court and as such it is not called for to be interfered with by this Court in entertaining the instant revision petition.

14. To counter the argument of Sri Sadashivappa that the eviction petition filed by the landlord had to fail mainly on the ground that the landlord did not produce the registered Will under which he claimed the title, Sri Manohar had argued that the public authority as that of the Corporation City of Bangalore having entertained the registered Will had given bifurcated number as 8/3 to petition schedule premises, 8/1 to the adjacent premises in the name of his wife and 8/2 to the first floor

premises in the name of the mother-in-law of the landlord and the composite premises No. 8 came to be bifurcated in tune with the registered Will. According to him, the tenant had not challenged the Ex. P. 8-the order of Corporation changing khatha in respect of the petition schedule premises at all and in the said facts and circumstances of the case, there was no need in his party to produce the registered Will before the Trial Court, no matter that his party had claimed right, title and interest on the subject premises, upon the Will. He had also pointed out that the Corporation, City of Bangalore had not only given bifurcated numbers to the 3 different partitions of the premises, one to the subject premises, another to the adjacent premises belonging to his wife, Smt. Usha and further the first floor belonging to the wife of the original owner by name Susheela Bai. He further argued that the Corporation, City of Bangalore had also assessed the subject premises belonging to the landlord for the purpose of tax and for that reason, his party had also paid tax in respect of the petition schedule premises evidenced by Exs. P-4 to 7. It was also argued by him that it is only by recognising the Will in question 3 different portion of the original premises came to be given different bifurcated numbers and in the said facts and circumstances, according to him, it was not at all available for the tenant to challenge the title of his party. It was also argued by him that it was not available for the tenant to challenge the validity of the registered Will and as such the non-production of the same before the Trial Court was of no consequence in the matter of settling the right of his party in the subject premises. He further added in this context that Exs. P-4 to 7-tax paid receipts and Ex. P. 8-khatha transfer order passed by the Corporation changing his khathas have to be read together to say that his party was the owner of the subject premises. Sri Manohar had also argued that based on the evidence on record in the case filed his mother-in-law, Susheela Bai, the first floor premises bearing No. 8/2 was ordered to be vacated by the Court of Small Causes, Bangalore City and it is therefore the tenant, Vijayalakshmi Industries vacated from that portion and in that P.W. 2-son of the landlord had started a Laboratory to the knowledge of the tenant. While turning to the case of the other side that his party would have started the Clinic in one of the premises situated at Narayanaswamy Iyengar Street, Seshadripuram, Bangalore or in the first floor of the composite premises No. 8, it was argued by Sri Manohar that it was not

available for the tenant to direct the landlord where he has to start his Clinic. In this context, he had also pointed out that the subject premises is situated in a junction is a prime place at Seshadripuram and it is for that reason, the landlord wanted to start the Clinic in the subject premises by enjoining the premises belonging to his wife. He had also argued that his party was not having other premises other than the subject premises that came to be bequeathed by his father-in-law and therefore it was not available for the other side to argue that there was no bona fides on the part of the landlord to file the eviction petition as against the tenant. With reference to Ex. R. 1-prescription given by the landlord to a patient stated to have been set up by the tenant himself, it was submitted by Sri Manohar that his party was going from Bangalore to KGF whenever there were calls from the old patients at KGF as he was working as a consulting Surgeon in Kolar Gold Mines for quite some time and that he was going to KGF only to treat the old patients and that he argued for the reason that the other side had also incidentally pointed out that the landlord had well-settled in KGF and there was no need for him to have a premises in Bangalore.

15. To meet the argument of Sri Sadashivappa that the landlord would have clubbed the case of his wife, who had filed the eviction petition as against the tenant, Ramamurthy, in respect of the adjacent premises bearing No. 8/1 along with the case filed by him inasmuch as the said premises did not belong to him. Therefore, he had submitted before this Court that landlord would not have clubbed and adduced common evidence in both the cases. According to Sri Manohar, there was no substance in the said argument of the learned Counsel for the tenant. Therefore, he submitted that the instant revision petition does not merit any consideration viewed from-any angle.

16. Now in the light of the above argument advanced, the question that arises for my consideration is whether the impugned order passed by the Trial Court in any way be termed as erroneous and as such called for to be interfered with in the instant revision petition or not.

17. Before starting the dictation today, I have gone through the records of the Trial Court meticulously; Virtually, I did scan the evidence adduced by the parties. By

that statement, I hope none will mistake me in any way that I am speaking high of myself in the matter of my doing the job as a Judge of this Court.

18. As I see, in filing the eviction petition before the Trial Court, the landlord had claimed that he required the petition schedule premises for his bona fide and occupation of the petition schedule premises for the purpose of running the clinic by enjoining the adjacent portion bearing No. 8/1 belonging to his wife, Usha. The tenant had vociferously contended that the eviction petition was frivolous and vexatious and that he had no locus standi to file the eviction petition and that there was no relation between the tenant on the one side and the landlord on the other. But in filing the detailed objection statement, the tenant did not whisper anything about the registered Will upon which the landlord had based his title. It appears as if even by mistake he did not want to refer to the Will. On going through the evidence adduced by the tenant examined as R.W. 1, it also appears to me that the above case of his set up by him in his objection statement had virtually been given go-by for material evidence adduced by the landlord with regard to his title based on the Will had not been challenged at all. In the oral evidence of the landlord examined as P.W. 1, he had deposed as follows :

'I got the schedule premises under a Will by father-in-law Dr. V.K. Vittal Rao. He died in 1988. After his death khatha is transferred to my name and I am paying the tax to Corporation and I am owner of the schedule premises. Before filing the petition, I got issued a notice to the respondent ask him to vacate. The registered post came back. But the notice sent by certificate of posting is served on him'.

19. From the above evidence, it is clear that P.W. 1-landlord specifically asserted in tune with the petition averments that he had secured the subject premises under the Will executed by his father-in-law and he had become the owner. It is pertinent to note that in the cross-examination of the landlords-P.W. 1, in no part it was suggested to him that such a Will was not executed by Vittal Rao and that the landlord had not become the owner. It is that case what the tenant had specifically made out in filing the objection statement had, not been put even by a suggestion to the landlords-P.W. 1 in cross-examination. Let apart, as argued by the learned Counsel for the landlord, Sri Manohar, I do not find any challenge by the tenant in

respect of Ex. P. 8-order that came to be passed by the Bangalore City Corporation to change khatha in respect of the premises bearing bifurcated numbers given by the Corporation including the premises number given to the subject premises bequeathed to the landlord by his father-in-law, in passing that order. As I further see, the matter did not stop at that, for, even in the evidence of R.W. 1 before the Trial Court, with reference to the execution of the Will in question his evidence was one of ignorance, for, he had deposed as here-under;

' . . . It is true that Vittal Rao died about 10-12 years back. I do not know that he has left a Will behind him. I do not know that as per the Will the schedule premises came to the petitioner. I do not know that in Corporation records his property stands in the name of petitioner. I have not seen the documents produced in this case by the petitioner to show that he is the owner. After his evidence I have not inquired in the Corporation Office in whose name the property stands. . . . '.

20. I should point out here that in filing the objection statement, it was clearly contended by the tenant that the landlord had no locus standi to file the eviction petition and that the landlord was not the owner of the subject premises in question.

21. Therefore, in the said state of affairs, it appears to me that there was no need for the landlord to produce the Will. The learned Counsel for the tenant, Sri Sadashivappa, found fault with the landlord in that regard. According to me, it is late in the day for the tenant to argue before this Court where there was no challenge to the evidence of the landlord before the Trial Court that he had right, title and interest in the petition schedule premises under the Will and that Will had been very well-acted upon by the Corporation in ordering bifurcation of the khatha as per Ex. P. 8.

22. Therefore, it appears to me that non-production of the Will by the landlord before the Trial Court was not fatal to his case and that in fact was the observation of the learned Trial Court at para 17 of the impugned order.

23. At this stage, the learned Counsel for the tenant, Sri Sadashivappa, had drawn my attention to the explanation below Section 21(4) of the Act. That explanation

reads as hereunder:

'Explanation.--For the purpose of clause (h) of the proviso to sub-section (1), the expression 'landlord' shall not include a rent farmer or rent collector or estate manager'.

24. I have carefully applied my mind to the said aspect of the case too. But I do not think that has got any application in the instant case in hand, for, the case of the landlord was that he had become the owner based on the registered Will. It appears to me therefore that the failure on the part of the landlord in not producing the Will before the Trial Court was not fatal to the case of the landlord since the evidence of the landlord thereto remained unchallenged by the tenant as pointed out as above. That I say, at the cost of repetition that there was no challenge by the tenant the evidence of the landlord-P.W. 1 in that regard and furthermore in his evidence, he had given a go-by to his case thereto. It is to be pointed out in this context that when he had specifically contended in filing objection statement that it was false to claim the title under the Will, in his evidence all that the tenant did was only to plead his ignorance with reference to the execution of Will by the original owner, Vittal Rao. Therefore, it appears to me that it is futile for the learned Counsel for the tenant to argue now before this Court that non-production of the Will cuts the case of the landlord. That being the position, I do not think that the decision in Ummilal v State of Madhya Pradesh, cited by the learned Counsel for the tenant, Sri Sadashivappa, has got any application to the instant case in hand. Sri Sadashivappa had also cited before the decision in the case of Devi Dass, supra. The said case is in respect of the registered sale deed that came to be executed immediately earlier to the filing of the eviction petition. But in the instant case that was not the position at all, for, the registered Will came to be executed by the original owner in the year 1983, whereas the executor-original owner died in the year 1988. Both the execution of the Will and the death of the executor were at points of time when there was no lis between the parties. Therefore, it appears to me that the said decision cited by the learned Counsel for the tenant has got no bearing to the instant case in hand.

25. Now I come to the point of bona fide on the part of the landlord in filing the eviction petition, It is the specific case of the landlord that the subject premises No. 8/3 at measuring 6' x 7' came to be bequeathed to him and that premises he wanted to enjoin to the adjacent premises bearing No. 8/1 that came to be bequeathed by the original owner to his wife. If the subject premises had been bequeathed by the original owner in the name of the landlord, it is a legal necessity for him to file the eviction petition in his own name to have the subject premises for himself. It is pertinent to mention here that the adjacent owner, the wife had admittedly filed the eviction petition as against the tenant, one Rama Murthy in respect of that premises and the same is now pending adjudication before the Trial Court and that premises was also sought for bona fide use and occupation for the purpose of running the Clinic by the landlord herein. If that is so, I do not think, the petitioner-tenant in any way can complain as against the impugned order on the ground that the subject premises was too small and as such not required by him for the purpose of running the Clinic. It is also an admitted fact before the Trial Court as well as before this Court that the landlord had retired from service and he is without avocation for the present.

26. It was the specific case of the landlord that he was getting pension of Rs. 3,600.00 p.m. and that there was no other member of his family to 'earn and he wanted to open a Clinic in the petition schedule premises and the adjacent premises. It had emerged in the evidence that the tenant had set up a so-called patient to approach the landlord in KGF and that the landlord had issued a prescriptions. Ex. R-1 to him and based on that, it was argued both before the Trial Court as well as this Court that the landlord had well-settled in KGF and there was no need for him to come down to Bangalore to start the Clinic in the subject premises. Having gone through the evidence of P.Ws. 1 and 2, I have observed that both the witnesses had deposed before the Trial Court that the landlord was visiting KGF for the purpose of treating his old patients. Therefore, it appears to me that there was bona fide on the part of the landlord to file the eviction petition as against his tenant for eviction. In para 17 of the impugned order, the Trial Court had observed as hereunder:

'17. Looking to the circumstances in which petitioner and his children are placed, looking to the need, to us, it appears that their claim is urgent, it is immediate, it is legitimate. We do not find any mala fides much less capriciousness in it. The claim of the petitioner is not mere wish or desire. It is since coupled with honest. Their claim is not absurd much less fanciful. It is not preceded with dishonest intention. It is both bona fide and reasonable. This circumstance would spell that the schedule premises is really required by the petitioner for his bona fide personal use and occupation'.

27. As I stated as above, having gone through the evidence on record adduced by both the parties, I am in total agreement with the Trial Court with regard to the conclusion it had reached as above.

28. I should not miss to state yet another aspect of the case that the tenant was a Government servant working as Refractionist and he was drawing a sum of Rs. 7,000.00 p.m. It is in his evidence that he was doing the business in the subject premises for some time as a Refractionist. Admittedly, the tenant herein had taken the premises for the purpose of his doing the optical business. It is also in his evidence that he was doing the business along with his brother and son; probably, the tenant was knowing the consequence of his conduct in taking the second avocation by doing the business in the petition schedule premises in taking the same on lease in his son's name; obviously a disciplinary action would have ensued as against him in the hands of his employer as per C.C.A. Rules governing him had the employer had the knowledge thereto.

29. It is in this context relevant to quote what he had stated in para 12 of the objection statement; the same reads as hereunder:

'12. The respondent submits that the petition schedule shop premises is under his personal occupation and he is carrying-on the business in electrical goods with his son and brother, who are all living together and under one roof and having a common kitchen and therefore, this respondent has not committed any illegal act as alleged'.

30. I do not want to make any further comments on the conduct of the tenant, who admittedly is a Government servant.

31. Therefore, I do not find any merit in the instant revision petition.

32. The revision petition stands dismissed.

33. In the facts and circumstances, I feel it is appropriate to grant 6 months time to the tenant to vacate from the subject premises, I order accordingly. The said time is granted subject to the condition that the tenant shall pay the rental arrears, if any, within 15 days from this day and further subject to the condition that the tenant shall pay regularly the future rentals to the landlord as and when it falls due.

34. In the peculiar facts and circumstances of the case, I direct the parties to bear the cost in this revision.

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