

Doddappa and ors. Vs. Basavanneppa Basappa Chinniwalar

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Court : Karnataka

Decided On : Jan-31-1978

Reported in : AIR1978Kant143; 1978(1)KarLJ414

Judge : G.N. Sabhahit, J.

Acts : [Registration Act, 1908](#) - Sections 17, 49 and 77; [Transfer of Property Act, 1882](#) - Sections 106; Karnataka Rent Control Act, 1961 - Sections 21 and 21(1); Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 - Sections 111

Appeal No. : Civil Revn. Petn. No. 1535 of 1975

Appellant : Doddappa and ors.

Respondent : Basavanneppa Basappa Chinniwalar

Advocate for Def. : K.I. Bhatta, Adv.

Advocate for Pet/Ap. : W.K. Joshi, Adv.

Judgement :

ORDER

1. This Revision Petition is instituted by the tenants against the judgment and order dated 10-6-1975, passed by the Second Additional District Judge, Belgaum, in H. R. C. Appeal No. 60 of 1973 on his file, allowing the petition of the landlord

for eviction of the tenants from the suit premises, on reversing the order dated 31-3-1973, passed by the Munsiff, Bailhongal, in H. R. C. No. 2 of 1971 on his file.

2. The landlord instituted action for eviction of the tenants from the suit premises under Clause (h) of the proviso to Section 21 (1) of the Kamataka Rent Control Act, 1961, before the Munsiff, Bailhongal, claiming possession from the tenants for the purpose of starting a Bakery. He required the suit premises bona fide and reasonably for his personal occupation.

3. The tenants resisted the petition. They contended that the petition was not maintainable as the landlord had not validly terminated the tenancy. They also contended that the requirement of the landlord was not bona fide and reasonable and that greater hardship would be caused to them if they were evicted from the suit premises.

4. The learned Munsiff, appreciating the evidence on record, held that the petition was not maintainable as there was no notice to quit issued to the tenants, though he found that the requirement of the landlord was bona fide and reasonable.

5. Aggrieved by the order of the learned Munsiff, the landlord went up in appeal before the District Judge and the learned District Judge, in the course of his judgment held that the tenancy was determined by efflux of time and as such, no notice to quit was necessary. He agreed with the finding of the learned Munsiff that the claim of the landlord was bona fide and reasonable. He further held that greater hardship would befall the landlord if he were not restored possession of the suit premises and in that view, ordered eviction of the tenants from the suit premises. It is against that order, that the tenants have instituted the present Revision Petition.

6. The learned Advocate appearing for the Revision Petitioners strenuously urged that the learned District Judge was not justified in holding that no notice to quit was necessary before instituting action under Section 21 (1) of the Rent Control Act. He did not choose to argue on merits.

7. The learned Advocate appearing for the respondent-landlord argued supporting the finding of the learned District Judge that no notice to quit was necessary as the tenants continued as statutory tenant.

8. The sole point, therefore, that arises for my consideration in this Revision Petition is, whether the learned District Judge was justified in holding that no notice to quit was necessary on the facts of this case as the tenancy was determined by efflux of time.

9. The relevant facts that are necessary to appreciate the contention raised before me are as under:

The present landlord purchased the suit property from the original landlord by a registered sale deed on 20-4-1967 under Ex. P-I. Even when he purchased the suit property, the tenants were already in occupation of the suit property. The vendor had executed Exhibit D-2 in favour of the tenants granting them a term lease for a period of 12 years commencing from 29-6-1959.

10. It is the case of the landlord that this lease expired on 29-6-1971 and soon thereafter, he called upon the tenants to vacate the suit premises and since they did not vacate, he instituted action for eviction of the tenants on 28-7-1971. In that view, he submitted that no notice to quit was necessary as the tenancy was determined by efflux of time on 29-6-1971 and the landlord made his intention clear to the tenants not to continue the tenancy. It is on that basis that the learned District Judge has held that no notice to quit was necessary as the tenants were continuing on the land as statutory tenants after the expiry of lease on 29-6-1971.

11. As against this, the learned counsel appearing for the revision petitioners strenuously argued that the vendor of the present landlord had executed, under Exhibit D-3 dated 5-7-1965, a lease till 1981, that is, for a period of 10 years after the expiry of the earlier lease on 29-6-1971. As such, he submitted that it could not be said that the tenants became statutory tenants after 29-6-1971 when the period fixed under Exhibit D-2 expired. It was in that view he submitted that notice to quit was a sine qua non for the institution of the petition under Section 21 of the Act.

12. It is not in dispute that Exhibit D-3 purports to create a lease for a period of 10 years from 29-6-1971. The rental also is stipulated in the deed. Such a deed obviously requires registration under Section 77 of the Indian Registration Act. It is not registered. The point, therefore, that arises for my consideration is, whether the Court could look into Exhibit D-3 to hold that such a lease was created or at any rate to hold that it created a tenancy as contemplated under Section 106 of the Transfer of Property Act from month to month.

13. The learned Counsel for the revision petitioners relied upon a decision of the Supreme Court in the case of Rana Vidya Bhushan Singh v. Rati Bam, (1969) 1 SCWR 341. That was a case where a suit was brought against the defendant on the footing that he was a trespasser. The defendant contended that he was a tenant and that the jurisdiction of the Civil Court was ousted to entertain the suit because of Section 111 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953. The defendant relied upon an unregistered agreement of lease dated 21-8-1951. That was for a period of 15 years and since it was not registered, the Courts did not admit the same into evidence to look into the terms of the lease. But the Courts, all the same, relying on the deed, held that the defendant was not a trespasser. In other words, the document was used to know the character of the possession of the defendant. The matter was ultimately taken up to the Supreme Court and the Supreme Court observed thus on that aspect:

'The agreement was unregistered. It could not create in favour of the defendant the right of a tenant for a period of fifteen years. The agreement was on that account inadmissible in evidence to support that claim. But in support of the plea that his possession was that of a tenant the defendant was entitled to rely upon the recitals contained in that agreement of lease

A document required by law to be registered, if unregistered, is inadmissible as evidence of a transaction affecting immoveable property, but it may be admitted as evidence of collateral facts, or for any collateral purpose, that is, for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immoveable property.'

The Supreme Court in that case quoted and relied upon an earlier decision of the Supreme Court in the case of Padma Vithoba v. Mohd. Multani, : [1963]3SCR229 , wherein it was specifically ruled that such an unregistered deed was admissible in evidence to show the character of possession of the occupant. Thus, the ruling relied upon by the learned Counsel would not help him to establish that the unregistered lease deed could be looked into to hold that the revision petitioners were tenants. At best, it can be looked into to find out that they are in permissive possession. The Supreme Court has clearly observed that it cannot be used for a purpose of creating, declaring, assigning, limiting or extinguishing a right to immoveable property. It is obvious that a lease creates an interest in immoveable property. Therefore, the deed cannot be looked into to hold that the revision petitioners are tenants. It can certainly be looked into to hold that they are in permissive possession.

14. In the aforesaid case of the Supreme Court, the tenancy in question was a statutory tenancy under the Land Reforms Act and the Supreme Court held that for holding that the defendant was not a trespasser, but, was protected under the Land Reforms Act, being in permissive possession, the unregistered deed could be looked into.

15. The aforesaid ruling of the Supreme Court is no doubt relied upon by this Court in the case of Abdul Razack v. H. K. Gopal Shetty, 1973 (1) Mys LJ 541 : (AIR 1974 Mys 7). All that is observed in this case is that the unregistered lease deed also should be looked into to find out the character of possession of the respondent in that case. In fact, this Court remitted the case to the learned Munsiff with a direction to take into consideration the deed also along with other evidence to find out the status of the respondent in that case.

16. On the other hand, the learned Counsel for the respondent invited my attention to a ruling of this Court in the case of H. Mohanunad Khan v. H. K. Gopal Shetty, 1963 (2) Mys LJ 494, wherein this Court has held that a person in occupation of property under an unregistered, but compulsorily registrable lease does not become a tenant from month to month and a notice terminating the tenancy under Section 106 of the T. P. Act is not necessary. That ruling was followed in a recent

decision, of this Court in the case of Ranga Naika v. Saraswathi, 1971 (1) Mys LJ 447. That is also the view taken by the Supreme Court of India in the case of Delhi Motor Co. v. U. A. Basrurkar, : [1968]2SCR720 .

17. Thus, it is a well-established proposition of law that a deed which is compulsorily registrable under Section 17 of the Registration Act, cannot be looked into, if it is not so registered, to create, declare, assign, limit or extinguish any right in immoveable property. That is what Section 49 of the Indian Registration Act lays down. It is equally well established that such a document could be looked into as evidence for collateral transactions or for a collateral purpose. Examining the facts of this case in that perspective, it becomes manifest that the unregistered lease deed at Exhibit D-3 cannot be looked into to hold that the said document *proprio vigore* creates any interest in the property, leased in this case, because, that would be using the document for the direct purpose for which it is executed. It can certainly be looked into for the collateral purpose, for example, to understand the character of possession of the person in whose favour the document is executed, to show, for example that he is not a trespasser and that he is in permissive possession.

18. It is also well established that if any person inducted into possession under a non-registered lease deed, pays rent and the same is accepted by the landlord, a lease is created and is terminable under Section 106 of the T. P. Act from month to month or year to year, as the case may be. In the instant case, therefore, all that can be said is that the tenants are in permissive possession by virtue of Exhibit D-3 and that they are not trespassers. It cannot be held on the basis of Exhibit D-3 that they are tenants, without more, as that would infringe the express provision of law in Section 49 of the Registration Act. Even after the expiry of the lease under Exhibit D-2, the tenants would continue as statutory tenants, which also amounts to permissive possession in law and it can-not be said that a person in permissive possession is entitled to any notice to quit under Section 106 of the T. P. Act. His position is nothing better than that of a statutory tenant. It may at once be observed that apart from Exhibit D-3, there are no other circumstances brought on record to establish that the pre-sent 'revision petitioners have become contractual tenants.

19. It may also be mentioned in this context that when Exhibit D-3 came to be executed on 5-7-1965, the period of lease under Exhibit D-2, was not still over. It was valid up to 29-6-1971; and before that period was over, the original landlord sold his rights, in favour of the present landlord on 20-4-1967 under Exhibit P-I. As such, when the lease under Exhibit D-2 expired on 29-6-1971, the original landlord was no longer the- landlord and there was no chance of his doing anything to bring about the relationship of landlord and tenant after the period of lease under Exhibit D. 2 expired. In the circumstances. I hold that the revision petitioners remained as mere statutory tenants after the expiry of lease under Exhibit D-2 from 29-6-1971 and it is well established that no notice to quit is necessary in the case of a statutory tenant. That being so, I hold that this revision petition is devoid of merits and has to be dismissed and I dismiss the same. No costs.

20. The tenants, however, are granted six months' time to vacate the suit premises.

21. Revision dismissed.