

K. Subbaraju Vs. Dattamurthy

K. Subbaraju Vs. Dattamurthy

SooperKanoon Citation : sooperkanoon.com/378239

Court : Karnataka

Decided On : Jun-20-1988

Reported in : ILR1989KAR792

Judge : Balakrishna, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 45 and 62

Appeal No. : C.R.P. No. 1515 of 1985

Appellant : K. Subbaraju

Respondent : Dattamurthy

Advocate for Def. : H. Rangavittalachar, Adv. for R-1 and ;G.S. Narayana lyengar, Adv. for R-2

Advocate for Pet/Ap. : K.S. Ramesh, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Balakrishna, J.

1. This is a Civil Revision Petition filed by the two tenants who are aggrieved by the order passed on I.A.II In H.R.C. No.2228/84 dated 42-4-1985. The 1st

respondent in this case was allotted the petition schedule house by the 2nd respondent.

2. The facts of the case, which are essential for the purpose of disposal of this revision petition, are, briefly, as follows:

In an earlier eviction petition filed in H.R.C. No. 19/83, the 1st respondent was the sole petitioner suing respondents-1 and 2 for eviction in respect of the same premises which is the subject matter of the subsequent eviction petition in H.R.C.No.2228/84. So far as the respondents are concerned, they are common to both H.R.C.Nos.19/83 and 2228/84.

3. At some stage of the proceedings, the 1st respondent, who was the petitioner in H.R.C. 19/83 filed a memo on 16-7-1934 in Court (before the Court of Small Causes, Bangalore City) to the effect that the petitioner may be permitted to withdraw the petition. This memo was allowed by the Court and the aforesaid eviction petition in H.P.C.19/83 came to be dismissed as withdrawn. Subsequently, the 1st respondent brought another eviction petition in H.R.C.2228/84 along with the 2nd respondent as the co-petitioner for the purpose of eviction of the two tenants. As already stated, the two tenants are the petitioners in this revision petition.

4. When the proceedings in H.R.C. 2228/84 were in progress, the present petitioners filed an application in LA-II before the Court below under the provisions of Section 11 read with Order 23 Rule 1 C.P.C. and Section 45 of the Karnataka Rent Control Act, 1961 questioning the maintainability of the eviction petition in H.R.C.2228/84. The main contention in the said application was that the eviction petition filed in H.R.C. 2228/84 is not maintainable in law in view of the fact that an earlier petition for eviction in H.R.C. 19/83 had been dismissed as withdrawn as far back as on 16-7-1984 and that, therefore, the subsequent eviction petition is barred by principles of resjudicata.

5. This LA. was disposed of on merits on 12-4--1985 by rejecting the same. It is this order that has been challenged in this revision petition by the two tenants.

6. This revision petition was filed in 1985 relating to an order passed on an LA. When the case was called today at about 3 P.M., neither the petitioners, nor the Advocate for the petitioners appeared before the Court. However, the learned Counsel for respondent-1 was present in Court and, on being asked by this Court, submitted his arguments. In a matter of this nature, I do not think it would be reasonable to procrastinate and thereby delay the proceedings by granting an adjournment. On the other hand, I consider it more reasonable and necessary to dispose of the case on merits on the basis of not only the arguments submitted by the learned Counsel who has appeared before the Court, but also on the material available on record.

7. The only point for consideration is whether the withdrawal of the earlier eviction petition by the landlord in H.R.C. 19/83 stands in the way of a fresh eviction proceeding brought up alongwith another co-petitioner in H.R.C. 2228/84.

8. Strong reliance was placed by the applicants In I.A-II before the Court below on the provisions of Section 45 of the Karnataka Rent Control Act, 1961. For the sake of convenience, the said section is reproduced below:

'45. Decisions which have been final not to be re-opened - The Court or the Controller shall summarily reject any application under this Act which raises, between the same parties or between parties under whom they or any of them claim, substantially the same issues as have been finally decided in a former proceeding under this Act or under any of the enactments repealed by Section 62.'

9. An analysis of the provisions of this Section would disclose the following constituent elements for the purpose of application of this statutory bar:

(1) substantially the same issues should arise for consideration;

(2) such issues should have been finally decided in a former proceeding under the Karnataka Rent Control Act, 1961;

(3) In the alternative, substantially the same issues should have been finally decided under any of the enactments repealed by Section 62.

10. 'What was contended by the applicants in I.A.II was that the earlier eviction petition in H.R.C.19/83 involved substantially the same issues and that the same had been finally decided as a result of the withdrawal of the eviction petition by the landlord.

11. For two reasons, this contention cannot be accepted. Firstly, the withdrawal of the earlier eviction petition and the order permitting the withdrawal do not fall within the ambit of the words 'finally decided in a former proceeding'. It is an undisputed fact that the issues were not really contested and there was no disposal on merits on the issues involved in H.R.C. 19/83 and it would be fallacious to hold that the said issues had been finally decided in such a situation. If a view has to be taken that even withdrawal amounts to a final decision, it would be contrary to the very object of the law as could be seen through Section 45 of the Rent Control Act. In the context of the interpretation of Section 45, while having due regard to not only the words in the Section, but also the purpose behind the Section, the line actually lies in the balance to be struck between the two by being true to both the letter and the purpose in reaching the conclusion that what Section 45 postulates is a decision on merits substantially on the same issues. All that has happened in H.R.C. 19/83 is only the withdrawal of the eviction proceedings and not a determination of the issues involved on merits. There is no merit in the plea of res judicata.

12. Secondly, in H.R.C. 19/83, there is only one petitioner and the 2nd respondent was not a co-petitioner. In the subsequent eviction petition filed in H.R.C. 228/84, not only the allottee of the 2nd respondent is the 1st petitioner, but also the 2nd respondent as the co-petitioner.

13. In these circumstances, I am of the view that the withdrawal of the earlier eviction petition does not stand as an impediment to the subsequent eviction petition, because the statutory bar of Section 45 is not attracted to the facts and circumstances of this case.

14. One more principle which persuades me to hold that Section 45 of the Rent Control Act does not bar the second eviction proceeding is that in the earlier case there was no final termination of proceedings. Particularly, in a matter of eviction, it

is difficult to accept the proposition in circumstances like this that a second eviction petition is not maintainable.

15. The learned Counsel for Respondent-1 had drawn my attention to a decision rendered in THOGATA-VEERA SANGHA v. R.M. SHENOY : ILR 1987 KAR940 wherein it was held as follows:

'It cannot be disputed that on two earlier occasions, substantial issue between the parties namely, fixation of fair rent has not been tried on merits. The first application was rejected on the ground that five years had not elapsed from the date of construction of the building and the second application was rejected on the ground that earlier application has been rejected and Section 45 was a bar. It is seen, on both occasions, the authorities did not go into the question whether the petition was maintainable for fixation of fair rent, which could be determined in accordance with law. Therefore there is no adjudication on merits. The dismissal of the application on earlier occasions was at the threshold, in that, they were held not maintainable. Section 45 will be a bar only when an issue has been tried and a finding is recorded and not otherwise. The words 'finally decided' indicate that such decision should be a judicial determination on the matter in issue, what has not been so determined cannot operate as a bar.'

I am in respectful agreement with the principle laid down in the said case and the same principle is applicable to the facts of this case also.

16. The decision in P. VENKANNA and ORS. v. VENKANNA SETTY and ORS 1984(2) KLJ 35. deals with a different factual situation. The distinguishing feature between the case on hand and the said decision is that in the subsequent or the second eviction proceeding, not only the allottee is the petitioner but also the Karnataka State Co-operative Housing Federation Ltd., Bangalore, which allotted the petition premises in favour of the first petitioner as the co-petitioner- In other words, both of them are co-petitioners to the subsequent proceeding. In the earlier eviction proceeding, only the allottee had sued for eviction. The nature of right that was enjoyed by the first petitioner independently of the second petitioner in the earlier proceeding of H.R.C. 19/83 is different from the nature of right together enjoyed by the first and the second petitioner in the subsequent eviction petition in

H.R.C. 2228/84. In the context of such a change of rights, it will not be difficult to say that it has a vicarious effect on the nature of the cause of action also.

17. For the reasons stated above, I do not find any merit or substance in the contentions raised by the petitioners in this revision petition. Therefore, the revision petition is dismissed. Parties to bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com