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Court : Karnataka

Decided On : Mar-11-1987

Reported in : ILR1987KAR1145

Judge : Murlidher Rao, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 10, 21 and 21(1) - Rule 14;
;Code of Civil Procedure (CPC) , 1980 - Sections 7 and 23 - Order 18, Rule 13 -
Order 20, Rules 4(1), 4(2) - Orders 50

Appeal No. : C.R.P. No. 2955 of 1983

Appellant : Shankarappa

Respondent : Puttamma

Advocate for Def. : G.S. Visweswara, Adv. for Respondents No. 1

Advocate for Pet/Ap. : H.B. Datar, Senior Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Murlidher Rao, J.

1. This is a tenant's revision petition challenging the decree for eviction, under Clauses (f) and (h) of Section 21(1) of the Karnataka Rent Control Act, in HRC No. 1273 of 1973 (renumbered as 1431/1981), dated 22nd April 1983, on the file of VIII Additional Small Causes Judge, Bangalore. The tenant was granted six months time to vacate, by virtue of stay order, he continues to stay. Second respondent in this petition is the alleged sub-tenant, who is admittedly in possession of portion of the disputed premises. He claims to be a partner with the petitioner, on the basis of an unregistered partnership deed dated 2nd May 1977. These proceedings, initiated on 11th October 1973, having completed thirteen years, are in their fourteenth year.

2. Original land lord, though fortunate to see his claim being decreed, died on 18-5-1984, without realizing its fruits. His wife is brought on record as his legal representative.

3. Petitioner originally sought eviction only on the ground of bona fide and reasonable requirement, i.e. under 21(l)(h). He pleaded that he required the premises to start his own business. The tenancy is admitted ; so also the monthly rent at Rs. 180/-. Petitioner filed I.A.VII seeking amendment, which is allowed on 9-11-1982. An argument is constructed to contend that the eviction is sought for 'his own occupation' i.e. the relief is personal ; therefore the wife who is brought on record, as legal representative, has to establish independently that she also needs it for her occupation. Only to ascertain the correctness of this assertion, I quote below a portion of the amendment petition, which reads thus :

'The petitioner wants the petition schedule premises for starting his own business in provision items and he has got sufficient experience in the said business. Besides experience, the petitioner has got the necessary funds to start the said business. He proposes to invest the capital to the tune of Rs. 7,000/- to Rs. 8,000/- in the business in question. He is also capable of raising some amount as loan towards the said capital if it is necessary to do so. He is idle without any job or work to do at present and he wants to engage himself in the business activity by opening a shop in the petition schedule premises, as already stated above. Besides this he wants to augment his income for the benefit of himself and the

members of his family by opening the shop in the schedule premises. It is submitted that in these facts and circumstances, he reasonably and bona fide requires the schedule premises for his own use and occupation and as such the respondents are liable in law to be evicted from the said premises on this count alone.'

4. Petitioner-tenant filed his statements denying all the allegations. By I.A.II, filed on 17-6-1977, the owner sought amendment seeking relief on the ground of sub-lease in favour of 2nd respondent under Clause (f) of Section 21(1) of the Act. He filed I.A.IV under Order 1 Rule 10 C.P.C. to implead the alleged sub-tenant. I.A.III was allowed on 25-7-1977 ; accordingly petition was amended. The tenant filed objections to the amended petition and second respondent (alleged sub-tenant) adopted the same. On the pleadings, the Court raised the following points for determination : --

'a) Whether the petitioner is entitled to recover the possession of the petition schedule premises Under Section 21(1)(f) of K.R.C Act ?

b) Whether the petitioner requires the petition schedule premises for his bona fide use and occupation ?

c) To whom the greater hardship would cause '.

In support of his case landlord examined four witnesses (more about this in the paragraphs to follow) and tenant examined himself as RW-1 and the alleged sub-tenant is examined as RW-2. Several documents are filed by the landlord and the tenant. On consideration of the material, the Court has recorded findings in favour of landlord and has decreed the claim ; hence this petition.

5. Mr. H. B. Datar, Senior Counsel for the petitioner urged the following :-

i) The Court below was not justified in granting a decree under Section 21(1)(f) as there is no sub-lease ; even if there is such a sub-lease, the same is confined to a portion of the premises and therefore decree could not have been granted for the entire premises ;

ii) The Court below has erred in holding that the requirement of the landlord is bona fide and reasonable ; and

iii) The original landlord having expired, during the pendency of this C.R.P., the cause pleaded does not survive and the legal representative must establish her own bona fide and reasonable requirement ; in other words, the finding of the Court below does not enure to the benefit of the L.R. and the latter has to independently plead and establish her bona fide and reasonable requirement.

6. On the first point, reliance is placed on the following:--

G. Rangamannar v. Desu Rangaiah, : AIR1954 Mad182 ;

Punjab-Rajasthan Goods Carrier v. Onkar Mal, 1976 RCR 700;

R. V. Shanbhogue v. M. Venkatswamy, 1970(2) Mys. L.J, 360

Madras Bangalore Transport Co. v. Inder Singh, : AIR 1986 SC1564

7. On the third point, reliance is placed on the unreported decision in Abdul Gaffarsab v. Abdul Razak, CRP No. 3333 of 1982 DD. 27-5-1986 and Rajagopala v. P. Revanna, 1974 (1) KLJ 425. Per contra, Mr. G. S. Visweswara, supported the findings ; he further argued that the death of the original petitioner having occurred after the decree, the legal representative need not establish her need once again ; even otherwise the extracted portion in the application for amendment makes it clear that the requirement, pleaded, was not only for himself but also for the benefit of the family. Regarding sub-lease, he strongly relied on Exhibit P-6, the contents and execution of which is admitted by RW-2 (subtenant). He cited the following decisions :--

Mohd. Ghouse v. Janab Haji Syed, 1984(1) KLC 482

Smt. Phool Rani and Ors. v. Sh. Naubat Rai Ahluwalia, : [1973]3SCR679 ; and

Melepurath Sankunni v. Thekittil Geopalankutty Nair, : AIR 1986 SC411 .

8. On merits, the points that arise for my consideration are

1. Whether there is a sub-lease by the petitioner-tenant in favour of respondent-2 Ashwathanarayan ; whether a sub-lease of a portion of the premises entitles the landlord to seek eviction under Clause (f) of Section 21(1) of the Karnataka Rent Control Act for the entire premises ?

2. What is the effect of death of original landlord during the pendency of this C.R.P.?

3. Do the findings of the Court below call for interference?

In the matter of procedure in cases under the Rent Control Act, what is the correct procedure and in this case, what is its effect ?

9. Point No. 1 Sub-lease and applicability of Clause (f)

Clause (f) of Section 21(1) enables a landlord to seek eviction, if the tenant has unlawfully sub-let the whole or part of the premises, or has assigned or transferred in any other manner his interest therein. Section 23 makes it unlawful for any tenant to sub-let whole or any part of the premises let out to him. Therefore sub-letting is unlawful and person who contravenes the provisions of Sub-section (1) of Section 23 shall on conviction be punished with fine.

Clause (b) of Sub-section (3) of Section 21 reads thus:

'.....(b) in any case where such premises have been let for non-residential purposes if the Court is satisfied that the tenant without obtaining the consent in writing of landlord has allowed any person to occupy the whole or any part of the premises ostensibly on the ground that such person is a partner of the tenant in the business or profession but really for the purpose of sub-letting such premises to that person.'

This provision enables the Court to presume that the premises have been sub-let if the partnership pleaded is found to be ostensible and in reality the purpose is sub-letting. So the relevant question is whether the partnership firm called 'Manjunath Typing Center' constituted on 2nd May 1977 is an ostensible firm or real firm. It is not disputed that the petitioner-tenant had taken the entire premises on lease and

he was running a concern by name 'Sri Shankar Industrial and Textile Factory'; he has described himself as its proprietor. He had lathe, milling and drilling machines. He used to manufacture and supply door latch, and other components, for industrial units. During the pendency of these proceedings, he has entered into partnership in respect of a portion of the premises, as per the deed dated 2nd May 1977. In regard to this firm, it has been elicited that 'respondent-2 looks after the management of job typing work every day'; RW-1 does not know 'how much is invested in this firm.' Admittedly the machines belong to respondent-2. While RW-1 claimed that stationery expenses are met by him, there are no accounts to evidence this aspect. Clauses 7, 8 and 9 of the partnership deed require them to maintain accounts. Clause 13 requires the preparation of balance sheet at the end of accounting year, no such balance sheet is produced. While he stated that there is no stipulation of profit and loss, in the partnership deed, indeed, such a stipulation is found in Clause 10. In the deed, there is no mention that RW-1 should finance the stationery, as claimed by him in his deposition. It is admitted that the firm has not opened any bank accounts. No licence is obtained either from the Corporation or the authorities functioning under Shops and Commercial Establishment Act. Though two witnesses have signed the deed, none of them is produced. RW-2, admits that he does not know English language; he does not know the terms of partnership; he admits that he has not maintained any accounts. Though he states that he has receipt book and counter foils, none is produced. Except the self serving statement of RW-1 and RW-2, there is no material to support the theory that the partnership concern is running the 'Manjunath Typing Center.' These circumstances do justify the drawing of a presumption that the premises are sub-let. The partnership is a make believe agreement. The terms and conditions mentioned therein have not been acted upon. Added to all this, there is clear admission by RW-2 in Exhibit P-6 regarding the assertion of his status. He claims to be the tenant of Thimmadasappa the deceased landlord. He has disowned RW-1 and states that RW-1 has no right whatsoever in the premises. As stated earlier, RW-2 has admitted the execution and contents of Ext. P-6. Having considered the evidence, I am inclined to affirm the finding of the Court below. The contention, to the contrary, is rejected. The conclusion is inescapable that respondent-2 Ashwathanarayana is a sub-tenant. Petitioner had

no control over that portion; he had transferred his interest in favour of RW-2. Mr. Datar's contention is that only the sub-leased portion would form the basis of the decree and it cannot cover the entire premises. Admittedly the tenancy is one and indivisible. It is not the case of petitioner that what was occupied by second respondent was severable from the premises in his occupation. Further under Section 21, landlord can seek eviction of whole of the leased premises if a part of it is unlawfully sub-let. Partial sub-letting gives right, a cause of action to sue for the eviction of whole premises. It affects the entire lease, because what is done is unlawful and against the terms of contract, the purity of contract is polluted in its entirety; hence the landlord is entitled to get an eviction decree for the entire leased premises. Finding of Court below is confirmed.

10. Point No. 2 -- Effect of death of original petitioner during the pendency of C.R.P.

This contention was urged on the basis that cause of eviction was personal to the landlord and with his death, the cause disappears. On fact it is not so. The deceased was the only bread earner; he is survived by his wife and two grand children of predeceased daughters. In the amendment application it is clarified that the premises are required for himself and for the benefit of other members of family. The cause pleaded was not personal. The crucial test to find out whether the right of action survives or not is to examine whether the relief sought could be enjoyed by the survivors or would it be nugatory. It is in this context, a distinction is drawn between cases where the death occurs before the decree and cases where death occurs after decree. In the former cases the cause pleaded is in a fluid stage and has not crystallised, while in the latter case cause has crystallised and it is crystallised form or substance, which is in the hands of legal representative. The Supreme Court in *Melpurath Sankunni v. Thekittil Gopalankutty Nair*, : AIR 1986 SC411 , has pointed out thus.

'.....The position, however, is different where a suit for defamation has resulted in a decree in favour of the plaintiff because in such a case the cause of action has merged in the decree and the decretal debt forms part of his estate and the appeal from the decree by the defendant becomes a question of benefit or detriment to

the estate of the plaintiff-respondent which his legal representative is entitled to be substituted in place of the deceased respondent-plaintiff.'

In Mohammed Ghouse v. Janab Haji Syed Ibrahim, 1984(1) KLC 482, Justice P.A. Kulkarni, after considering several rulings, held thus :

'In this case, as already stated above, the landlord, who had lost his litigation in the Munsiff Court, had succeeded in District Court and obtained an order of eviction in his favour. He died while the proceedings have been pending in this Court. Therefore, his estate was already benefited by an order of eviction passed by the District Judge. Therefore, in view of the principle laid down by the Supreme Court in para 4 of its judgment in Phool Rani's case, the legal representatives are entitled to the benefits of that order of eviction.'

Therefore the contention of Mr. Datar that the legal representative will have to establish her own requirement is rejected both on fact and on law.

11. Point No. 3

On going through the depositions of PWs 1 to 4 and RW-1 and RW-2, I do not find any good ground to interfere with the findings of the Court below. The said finding is confirmed. Though no arguments were advanced regarding comparative hardship, on material, the conclusion of the Court below being just and correct, needs to be confirmed; hence it is confirmed.

12. For the foregoing reasons, this revision petition has no merits. It is accordingly dismissed.

13. Regarding the procedure followed, I must place on record my amazement and astonishment. These proceedings are initiated in October 1973. The judgment is pronounced on 22nd April 1983 (six months short of a decade). On an interlocutory order, matter had come to this Court in CRP 184/1981, which was allowed and a direction was issued to dispose of the main matter in three months; this direction has remained on paper and case is finally decided after two years. This has necessitated to have a look into the practice that is prevailing and find out whether it should be approved or should be immediately stopped.

14. The orders passed by the Court below under the Act are revisable under Section 50 and are not appealable. The evidence to be recorded in appealable case is prescribed in Order XVIII Rule 5 C.P.C.; recording of memorandum of evidence is prescribed in cases in Order XVIII Rule 13 C.P.C. This distinction is obviously intended to achieve the speedy trial of cases, which by their nature, warrant a quick disposal. In the instant case, how the trial is conducted can be demonstrated by this table :

Eviction Petition filed on 11-10-1973

Written statement filed on 16-3-1974

Evidence Recording

PW/RW

Pages of deposition

Dates on which Exam-in-chief conducted

Dates on which Exam or Re-Examination Conducted

PW-1

12 pages

25-6-1982

6-7-1982 and 24-8-1982 (further Exam-in-Chief)

PW-2

9 pages

29-8-1982

29-8-1982

(Photographer)

PW-3 (Sub-Ins-

7 pages

18-10-1982

19-10-1982

factor of Police)

PW-4 (Neighbour)

9 pages

20-10-1982

21-10-1982

RW-1 (tenant)

58 pages

13-8-1982

3-12-1982

22-9-1982

6-12-1982

7-12-1982

14-12-1982

18-12-1982

3-1-1983

RW-2(sub-tenant)

29 pages

10-1-1983

12-1-1983

15-1-1983

20-1-1983

Depositions recorded are as contemplated by Order 18 Rule 5 C.P.C. which is meant for appealable cases. Recording of evidence has taken 7 months and its volume is 120 pages. Witnesses have been recalled several times. PWs-1 and 4 who were recalled for further cross examination were discharged because on 30-11-1982, their Counsel was not present. Thrice applications were filed under Section 29 of Rent Control Act complaining of nonpayment of rents.

15. The object of entrusting these matters to Small Causes Court or Munsiff's Court is to strictly follow the procedure under Order 18 Rule 13 C.P.C. because the final order is not appealable. By adopting unintended procedure which is specifically excluded by Order 50 C.P.C., the Courts are defeating the object and intent of legislation. Rule 14 of the Karnataka Rent Control Rules prescribes the procedure. It reads thus :

'Procedure in applications made to the Court under the Act. In applications made under the Act to the Court, the Court shall follow, as far as may be and with the necessary modifications, the procedure applicable to small cause suits prescribed in the Code of Civil Procedure, 1908, when such suits are tried by Courts invested with the jurisdiction of a Court of Small Causes under any law relating to Small Cause Courts in force in any area of the State.'

Section 10 of the Karnataka Small Causes Court Act, 1964, which prescribes the practice and procedure reads thus:

'Application of the Code - (1) The procedure prescribed in the Code shall, save in so far as is otherwise provided by the Code or by this Act, be the procedure followed in the Court of Small Causes in all suits cognizable by it, and in all proceedings arising out of such suits.'

Section 7 C.P.C. excludes certain provisions. It reads thus :

'7. Provincial Small Cause Courts:--The following provisions shall not extend to courts constituted under the Provincial Small Causes Courts Act, 1887, or under the Berar Small Cause Courts Law 1905, or to Courts exercising the jurisdiction of a Court of Small Causes under the said Act, or Law or to Courts in any part of India to which the said Act does not extend exercising a corresponding jurisdiction, that is to say, - -

(a) so much of the body of the Code as relates to - -

(i) suits excepted from the cognizance of a Court of Small causes ;

(ii) the execution of decrees in such suit ; (iii) the execution of decrees against immoveable property ; and

(b) the following sections, that is to say - - Section 9, sections 91 and 92, Sections 94 and 95 so far as they authorize or relate to --

(i) orders for the attachment of immovable property,

(ii) injunctions,

(iii) the appointment of a receiver of immoveable property, or

(iv) the interlocutory orders referred to in Clause (e) Section 94 and Sections 96 to 112 and 115.'

Order 50 C.P.C. deals with Provincial Small Cause Court and corresponding Courts exercising like jurisdiction. Therein certain provisions have not been

extended to small causes Courts. It reads thus:

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