

Shivaram Vs. Chinnanna

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Court : Karnataka

Decided On : Mar-27-1987

Reported in : ILR1987KAR1827

Judge : Kulkarni, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 2, Rule 2

Appeal No. : R.F.A. No. 234 of 1987

Appellant : Shivaram

Respondent : Chinnanna

Advocate for Def. : C.V. Nagesh, Adv.

Advocate for Pet/Ap. : N.P. Moganna, Adv.

Disposition : Appeal dismissed

Judgement :

Kulkarni, J.

1. This is a defendant's appeal against the judgment and decree dated 23-1-1987 passed by the XII Additional City Civil Judge, Bangalore, in O.S. 2710 of 1984, decreeing the suit.

2 Plaintiff's case is that the defendant is a tenant under him in respect of the suit premises on a monthly rent of Rs. 501/- and that defendant has not paid rent for the period from 1-12-1982 to 31-7-1984. Notwithstanding the issue of notice, the defendant did not pay the rental arrears to the turn of Rs. 10,020/-. Hence the suit.

3. The defendant resisted the suit.

4. The Trial Court decreed the suit. Hence, this appeal.

5. The plaintiff - P. W. 1 has stated that the defendant had not paid rent from 1-12-1982 to 31-7-1984. The receipt book at Exhibits P.2(a) to (f) and the receipt book Exhibit P. 4 would go to show that the defendant has paid the rent for the period till 1-12-1982. Therefore, it is not as if the landlord was not issuing receipts to the defendant tenant for the payment of rent. These documents read along with the evidence of P.W.1 show that the defendant has not paid the rent from 1-12-1982 to 31-7-1984.

6. The learned Counsel Sri Moganna submitted that the plaintiff had filed a suit for ejectment in O.S. 2017 of 1983 on 2-7-1983 and prior to that he had issued a notice dated 3-6-1983 and he had not claimed any arrears of rent in that notice. After all the notice was issued to terminate the tenancy of the defendant and the question of claiming arrears of rent in that notice did not arise. Therefore, the non-mention of arrears of rent in the notice will not help the defendant in the least.

7. He then urged that the present suit filed for recovery of arrears of rent was barred by Order 2 Rule 2 of the Code of Civil Procedure. Order 2 Rule 2 of the Code of Civil Procedure, reads as - -

'(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs ; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.'

O.S. 2017 of 1983 was filed for possession and mesne profits. The cause of action for a suit for possession is entirely different from the cause of action necessary for filing a suit for recovery of rent. The learned author Sri Mulla in his Code of Civil Procedure, Fourteenth Edition, Volume II, on page 889 has stated as - -

'If the cause of action in the subsequent suit is different from that in the first suit, the subsequent suit is not barred. What the rule requires is that every suit shall include the whole of the claim arising from one and the same cause of action, and not that every suit shall include every claim or every cause of action which the plaintiff may have against the defendant. As observed by their Lordships of the Privy Council in *Payana v. Pana Lana* (1914) 41, the rule is directed to securing the exhaustion of the relief in respect of a cause of action and not to the inclusion in one and the same action of different causes of action, even though they arise from the same transaction. One great criterion, when the question arises as to whether the cause of action in the subsequent suit is identical with that in first suit, is whether the same evidence will maintain both actions. Cause of action for accounts against an agent for each year is separate and so separate suits for each year can be brought.'

The cause of action for the suit for possession namely O.S. 2017 of 1983 is entirely different from the cause of action that would arise in the case of recovery of rent. The cause of action for recovery of mesne profits is on the basis that the defendant is in wrongful possession of the property, while the cause of action for recovery of rent is on the basis that the defendant is in lawful possession as tenant. Therefore the causes of action for mesne profits and for suit for recovery of rent would be entirely different. Even the cause of action for the recovery of possession would be different from the cause of action for a suit for recovery of rent. Therefore, Order 2 Rule 2 of the Code of Civil Procedure will not come in the way at all.

8. The defendant examined himself as D.W. 1 and one witness D.W. 2. He has produced his account books Exhibits D. 1 to D. 3, which show that every month Rs. 500/- has been deducted in his account. They are in his own hand-writing and at the most and worst they would be self-serving statements. Therefore, the trial Court has rightly rejected the said account books. Therefore, in the result, the trial Court was justified in declining to accept the evidence of D.Ws. 1 and 2 and the documentary evidence produced by the defendant. The trial Court has rightly accepted the evidence of the plaintiff and the documentary evidence adduced by him.

9. Thus, there is no merit in the appeal and it is dismissed. No costs.

10. Sri Moganna at this stage submits that his client i.e., defendant-1 may be given three months time to pay the amount. Taking into consideration that the rental arrears are nearly to the tune of Rs. 10,000/- and odd, I think that the interest of justice demands that he should be given some time. He is given time till the end of May 1987 to pay.