

K. Gurusiddaiah Vs. A. Vittal Bhat

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Court : Karnataka

Decided On : Aug-30-1983

Reported in : AIR1984Kant66

Judge : P.A. Kulkarni, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 21

Appeal No. : C.R.P. No. 2707 of 1978

Appellant : K. Gurusiddaiah

Respondent : A. Vittal Bhat

Advocate for Def. : D.L.N. Rao, Adv.

Advocate for Pet/Ap. : T. Venkanna, Adv.

Judgement :

ORDER

1. The revision by the landlord is directed against the order dated 28-6-1978 passed by the District Judge, Bellary in H. R. C, Revision Petition 25 of 1977, reversing the order of eviction dated 28-1-1977 passed by the Prl. Munsiff, Hospet in H. R. C. 16 of 1975.

2. The petitioner-landlord filed the eviction 'petition under Section 21(1) (f), (h) and (i) of the Karnataka Rent Control Act, alleging that this opponent No. 1 had sublet

portions of the petition premises to opponents Nos. 2 to 4 and others and that he requires the petition premises bona fide and reason ably for his own use and that he also requires the petition premises for the immediate purpose of repairs and that the re pairs cannot be carried out without the tenant vacating the same.

3. The petition premises was leased out to opponent No. 1 on a monthly rent of Rs. 180/- under a registered lease deed dated 29-7-1965 and the period of lease contracted under the said lease deed was 20 years. On account of opponent No. 1 subletting the, portions of the property the, landlord gave a notice to opponent No. 1 in June 1969. Opponent No. 1 at that time assured that he Will not sublet it hereafter. Notwithstanding the said undertaking, the opponent No. 1 has sublet the portions of the premises even now. A notice dated 13-9-1973 terminating the tenancy of the opponent No. 1 at the end of Jan. 1973 has been served on the opponent No. 1-tenant.

4. The opponent No. 1 tenant contended that as the lease was for a fixed term of 20 .years with effect from 29-7-1965, the present eviction is premature. He denied all other allegations, like subletting. He also denied the petitioner's. contention that he required the petition premises bona fide and reasonably for his own use and also for effecting repairs.

5.The other opponents do not appear to have filed any objections.

6. The Munsiff, on scrutiny of the evidence, ordered the eviction. The opponent No. 1 tenant being aggrieved by the said order of eviction passed by the Munsiff, approached the District Judge, Bellary with Revision Petition No. 25 of 1977. The learned District Judge, on a reappraisal of The evidence, allowed the revision and set aside the order of eviction and in the result dismissed the eviction petition. Hence the revision by the landlord.

7. The learned counsel Sri. D. L. N. Rao for the opponent No. 1 urged that as the contractual lease was for a period of 20 years with effect from 29-7-1965, the present eviction petition filed in 1975 was premature and thus incompetent.

The learned counsel Sri. Venkanna for the landlord urged that whether the lease was for a fixed period or not it does not make any difference in a petition filed under the Karnataka Rent Control Act. According to him, even though, the lease might be for a fixed period, the eviction petition could be maintained on any one of the grounds mentioned in Section 21, even during the contractual period of tenancy.

8. Learned author Sri. Dalal in the Bombay Rent Act, 4th edition, page 281 has stated :-

'Under Section 12 (1), 'the right to possession' is to be distinguished from 'the right to recover possession'. The 'right to possession' arises and gets vested in the landlord when the tenancy is determined. So long as the contractual tenancy continues, under the terms of the contract, a tenant could not be evicted till his tenancy was determined. 'The right to recover possession' follows 'the right to possession'. When the tenant does not hand over Possession on termination of his tenancy, 'the right to recover possession' arises. 'What sub-section (1) provides is that although a landlord may be entitled. to 'possession', he shall not be entitled to 'recover possession' so long as the tenant complies with the conditions prescribed therein, The sub-section (1). therefore. deals with the second stage, viz., 'right to recover possession'.'

(Underlining is mine)

The said author has further stated at p. 289 'Once a contractual tenancy has expired, it is the tenant with another notice quit.' In Bhaiya Punjalal Bhagwanddin v. Dave Bhagwatprasad Prabhuprasad, : [1963]3SCR312 the Supreme Court held at page 715 (of Mys LJ) : (at p. 123 of AIR):-

'When a tenancy is created under a contract between the landlord and the tenant, that contract must hold good and continue to be in force till, according to law or according to the terms of the contract, it comes to an end. Section III of the Transfer of Property Act states the various circumstances in which a lease of immovable property determines. Clause (h) provides for the determination of the lease on the expiration of a notice 'to determine the least, or to quit, or of intention

to quit, the property leased, duly given by one party the other. There is nothing in the Act which would give a right to the landlord to determine the tenancy and thereby to get the right to evict the tenant and recover possession. This Act was enacted for the purpose of controlling the rents and repairs of certain premises and of eviction due to the tendency of the landlords to take advantage of the extreme scarcity of premises compared to the demand for them. The Act intended therefore to restrict the rights, which the landlords possessed either for charging excessive rents' or for evicting tenants. A tenant stood in no need of Protection against eviction by the landlord so long as he had the necessary protection under the terms of the contract between him and the landlord. He could not be evicted till his tenancy was determined according to law and therefore there was no necessity for providing any further protection in the Act against his eviction so long as his tenancy continued to exist under the contract.'

The Supreme Court further stated at page 715 (of Mys LJ) : (at p. 123 of AIR) that sub-section (1) of Section 12 of the Act provides that a landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of the Act. It creates a restriction on the landlord's right to the recovery of possession. When ' the landlord will have such a right is not provided by it. Ordinarily, the landlord will have a right to recover possession from the tenant when the tenancy was determined. The provisions of this section therefore will operate against the landlord after the determination of the tenancy by any of the modes referred to in Section III of the Transfer of Property Act. What this section of the Act provides is that even after the determination of the tenancy, a landlord will not be entitled to recover possession, though a right to recover possession gets vested in him, so long as the tenant complies with what he is required to do by this section. It is this extra protection given by this section which will be useful to the tenant after his tenancy was determined. The section does not create a new right in the landlord to evict the tenant when the tenant does not pay his rent. It does not say so, and therefore, it is clear that a landlord's right to evict the tenant for default in payment of rent will arise only after the tenancy is determined and the continued possession of the

tenant is not on account of the contractual terms but on account of the statutory right conferred on him to continue in possession so long as he complies with what sub-section (1) requires of him. The landlord is restricted from evicting the tenant till the tenant does not do what he is required to do for peaceful possession under sub-section (1) of Section 12. We are therefore of opinion that where a tenant is in possession under a lease from the landlord he is not to be evicted for a cause which would give rise to a suit for recovery of possession under Section 12 if his tenancy has not been determined already.' Similar is the view expressed in *Raghubir Narayan Lotlikar v. Fernandes*, : AIR1953 Bom76 . This Court in *Prahlad Hucharao Chitgupi v. Hubli Ginning and Trading. Co. Ltd.*, (1974) 2 Kant U 416 held that 'where permanent lease-hold rights were granted in favour of the tenant in the land, a clause That it was open to the lessee to surrender the lease at his option did not confer a corresponding right on the landlord to terminate the lease at his will.' It further stated that the landlord must have a right of re-entry before he can seek eviction under Section 21 and where there is no right reserved to the landlord to terminate the lease, he cannot seek eviction under Section 21. Similar is the view taken by this Court in *B. Sundara v. Purushothama Baliga*, (1964) 1 Mys LJ 8. Similar is the view taken in *Karsandas v. Karsanji*, AIR 1953 Saurashtra 113. It has been held therein that a tenancy must be duly determined either by a notice to quit. or by efflux of time or under one OF the other of the clauses of Section 111, T. P. Act, before a landlord can sue 'to evict big tenant on any one of the grounds contained in the clauses of Section 13(1), Bombay Rent Act. The learned counsel Sri. Venkanna stated that in view of the decision reported in *V. Dhanapal Chettiar v. Yesodai Ammal*, : [1980]1SCR334 , notice to quit under Section 106 of the Transfer of Property Act, was not a condition precedent to the initiation of the eviction proceedings under the Rent Control Act. The principle laid down in the said case by the Supreme Court is that the quit notice is not necessary in the case of eviction proceedings under the Rent Acts. On the other hand, it further says that even if the lease is determined by forfeiture under The T. P. Act, the tenant continues to be a tenant, that is to say, there is no forfeiture in the eye, of law. The tenant becomes liable to be evicted and forfeiture comes into play only if he has incurred the liability to be evicted under the State Rent Act, not otherwise.

9-10. Section 21 of the Rent Act speaks that no order or decree for the recovery of possession of any premises shall be made by Court in favour of the landlord against the tenant. Section 21 enumerates the grounds contained in Section 21(1)(a) to 21(1)(p), on which the landlord can get the tenant evicted. As already stated above, the question of recovery of possession would come into picture only after the landlord is entitled to possession. The landlord becomes entitled to possession only on the expiry of the period mentioned in the registered lease deed. So long as the contractual period of tenancy is subsisting, the question of the landlord recovering the possession of the premises does not arise.

'Section 21 of the Act starts with the words : Protection of tenants against eviction :- (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any Court or other authority in favour of the landlord against the tenant.'

The non obstante clause only means that even if the landlord might have got a right to possession under any other law or act. Still he is not entitled to dispossess the tenant until he satisfied any one of the grounds mentioned in Section 21 (1) (a) to (p).

11. In this case, the registered lease deed does not show that the landlord had got any right of re-entry into the property on the happening of any incident. There is no clause of re-entry at all in the lease deed. Therefore, under these circumstances, the lease will come to an end only by the expiry of 20 years and not at any time prior to it.

12. The learned counsel Sri. Venkanna submitted that under the lease deed, the tenant had undertaken to demolish' the verandah lying to the west of the house and to put up a structure with R. C. C. roofing. According to him, this was an express condition and non-compliance with the same amounted to forfeiture of the tenancy. The said recital in the lease deed, reads : 'on ' removing the verandah lying to the west of the house in the schedule, I will get constructed a hall with R. C. C. roofing'. This recital, in my- opinion, only gave a right to the tenant to demolish the present verandah and to put up a structure with R. C. C. roofing, at

his own cost, if be liked, it is a concession given to the tenant. The non-compliance with the same cannot forfeit the tenancy, it is not an Express condition at all. Therefore, under these circumstances, the contractual tenancy entered into between the parties under the lease deed dated 29-7-1965' would come to an end by 29-7-1975 only. Therefore present eviction petition which is filed in J975 is premature and incompetent. Therefore the present eviction petition merits to be dismissed.

13. I do not-propose to enter into the question as to whether the opponent No. 1 has sublet the premises to opponents numbers 2 to 4 and others. I would not like to enter into the question as to whether the landlord require the petition premises bona fide and reasonably for his own use and occupation or repairs. Any expression of opinion on these points is likely to jeopardise the interests of the landlord or the, tenant, hi case the landlord were to file an eviction. petition on the expiry of the contractual period of 20 years. Whatever has been said by the Munsiff and the District Judge on these points, should not be taken as determining these points in dispute. In view of the conclusion that the present eviction petition filed prior to the expiry of the contractual period of 20 years is premature and thus incompetent, the eviction petition merits to be dismissed. The landlord, if be chooses, is at liberty to file a fresh eviction petition after the expiry of the period of lease, on any one of the grounds under Section 21.

14. In the result, the revision by the landlord is dismissed. All the parties are ordered to bear their own costs throughout.

15. Revision dismissed.