

Narayansa Vs. Meerabai and ors.

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Court : Karnataka

Decided On : Jun-17-2004

Reported in : ILR2004KAR3312; 2004(6)KarLJ99

Judge : V. Gopala Gowda, J.

Acts : Code of Civil Procedure (CPC) - Sections 100 - Order 41, Rule 27

Appeal No. : R.S.A. No. 518/2004

Appellant : Narayansa

Respondent : Meerabai and ors.

Advocate for Def. : Padmanabha Mahale, Sr. Adv. for ;H.H. Kaladgi, Adv. for R1-4

Advocate for Pet/Ap. : Hemanth R. Chandanagoudar, Adv.

Disposition : Appeal dismissed

Judgement :

V. Gopala Gowda, J.

1. This second appeal is filed by the first defendant in O.S.No. 269/ 2002 on the file of the Prl.Civil Judge (Jr.Dn) Gadag, being aggrieved by the Judgment and Decree dated 6-3-2004 in R.A.No. 141/2003 confirming the Judgment and Decree

dated 29-10-2003 passed by the Trial Court in the suit.

2. Respondents 1 to 4 herein were the plaintiffs and the Appellant was the first defendant in the Trial Court. The other respondents were the defendants. For the sake of convenience, the rank of the parties is referred to as in the original suit.

3. The Plaintiffs filed the suit for eviction of the defendants and for possession of the suit schedule property. According to the plaintiffs, the property in question was taken by one Hanamantasa Yellosa Sidling on yearly rent for business purpose after his death the defendants continued the business in the schedule premises. It is stated that since eviction proceedings initiated for their eviction culminated in abatement of proceedings on account of repeal of Karnataka Rent Control Act, 1961 and Karnataka Rent Act, 1999 was enacted. The suit was resisted by the defendants by filing written statement admitting the inherited tenancy and questioning the locus standi of the plaintiffs. A stand is taken that in view of the compromise decree in L.C.No. 178/65 between the previous owner and original tenant, plaintiffs can claim only rent and they cannot seek for eviction. On the basis of the pleadings, the trial Court framed issues and went for trial. Parties adduced evidence and produced documents in support of their respective case. Upon consideration of the material brought on record, the trial Court decreed the suit evicting the defendants by granting three months time. The appeal preferred against the judgment and decree of the trial Court was also dismissed by the first Appellate Court confirming the judgment and decree of the Trial Court. Being aggrieved, by the same, the present second appeal is filed.

4. In this Court, the Appellant/first defendant has filed an application under Order 41 Rule 27 C.P.C seeking permission to produce the compromise decree in L.C.No. 178/65 to contend that the same is binding on the plaintiffs. Learned Counsel for the first defendant contends that since no evidence was adduced by the defendants in the Trial Court and the document produced now is very relevant to determine the rights of the parties, permission may be accorded to produce the same and remand the matter to the Trial Court to adduce evidence. He further contends that as per paragraph 4 of the compromise decree, the lease was a permanent lease and hence, termination of the tenancy invoking the right Section

106 of Transfer of Property Act is bad in law. According to the learned Counsel, though a plea was raised in this regard, the same is not considered and hence the findings of the Courts below are bad in law. Placing reliance upon the decision reported in A.I.R 1995 SC 2024, it is contended that termination of tenancy by issuing 15 days notice is bad in law.

5. Learned Counsel for the plaintiffs made submissions justifying the judgments and decrees of the Courts below and praying for dismissal of the appeal.

6. Now, the Court proceeds to examine whether the application filed for production of compromise decree should be allowed or not. In my view, the application need not be allowed for the following reasons:-

(a). Admittedly the petitioners purchased the property in question on 11-2-1980 from the owner. The compromise decree sought to be produced is dated 13.7.1967. The plaintiffs were not parties to the same. Hence, the same is not binding upon them. Therefore, the 6th defendant cannot use the said document against the plaintiffs.

(b). In paragraph 4 of the compromise decree what is compromised is that the original tenant shall pay rent of Rs. 751/- every year to the schedule premises and in case if he fails to pay the same, possession of the premises could be taken by executing the same decree. By virtue of such a compromise decree, 6th defendant cannot claim that plaintiffs have no right to evict the defendants. The compromise decree ceases to operate soon after the original owner parted with his right, title and interest over the schedule property. The 6th defendant cannot enforce the compromise decree against the plaintiffs.

(c) The 6th defendant cannot assume that by virtue of the compromise decree the defendants acquired right to continue in the premises for ever by paying the yearly rent and that they have the immunity from eviction. As long as the relationship of 'Landlord' and 'Tenant' exists, the Landlord has every right to evict the tenant in accordance with law. The compromise decree sought to be produced will not give right to the tenants to be in possession of the premises permanently without the threat of eviction. I

(d) If the compromise decree is interpreted in the manner claimed by the 6th defendant, then the landlord have to receive yearly rent of only 751/- for ever as long as the tenants continue in possession of the premises as if it is their ancestral property. Such a right cannot be conferred upon the tenants and knowingly or unknowingly if such a condition is agreed, it has to be termed as arbitrary and unconscionable in law.

(e). The 6th defendant's attempt is to continue in possession of the premises under the shelter of compromise decree thereby depriving the right of the true owner. A tenant cannot assert right over the owner nor take away the right of the owner. The compromise decree cannot be construed as a permanent tenancy.

7. For the reasons stated in paragraph 6, there is no need to allow the application and remand the matter to the trial Court to give opportunity to the defendants to adduce evidence. The opportunity given in the trial Court was not utilised by the defendants. Hence, the compromise decree sought to be produced to rely upon, cannot be accepted and the application for production of the same is rejected. 8. The findings of the Courts below are concurrent. That apart, the plaintiffs though succeeded in obtaining an order of eviction earlier, the same stood abated and hence they had to file suit for eviction of the tenants. The plaintiffs are struggling for the last 17 years to evict the tenants and to secure possession of the schedule premises. Hence, no interference is warranted in this case. The judgments and decrees of the Courts below are perfectly justified and there are no grounds to interfere with the same. The substantial questions of law framed in the memorandum of appeal do not arise and the appeal is devoid of merit.

8. The appeal stands dismissed.

9. In view of dismissal of the appeal, learned Counsel for the Appellant seeks one year time to vacate the premises. Learned Senior Counsel for the plaintiffs opposed the same and agrees to grant six months time. Taking into consideration that the defendants are doing business in the schedule premises, nine months time is granted to vacate and deliver vacant possession of the premises to the plaintiffs subject to the condition that the Appellant shall within two weeks file an undertaking that the premises will not be sublet to anybody; that the rents will be

paid regularly and that the premises will be vacated and vacant possession will be handed-over to the plaintiffs on or before the expiry of the stipulated period.

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