

Sarojamma Vs. Shankar

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Court : Karnataka

Decided On : May-13-1993

Reported in : ILR1993KAR2427

Judge : N.D.V. Bhat, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 3, 4 and 44; Karnataka Rent Control (Retrospective Extension of Duration) (Amendment) Act, 1993; [Specific Relief Act, 1963](#) - Sections 38; Transfer of Property Act - Sections 108

Appeal No. : M.F. As. 820, 821 and 953 of 1993

Appellant : Sarojamma

Respondent : Shankar

Advocate for Def. : R. Suryanarayanaswamy, Adv.

Advocate for Pet/Ap. : S.K.V. Chalapathy, Adv.

Judgement :

N.D.V. Bhat, J

1. These three Appeals are preferred against a common order dated 7.4.1993 passed by the VII Additional City Civil Judge, Bangalore in O.S. No. 1869/1993 on I.A.Nos. I, III and V respectively. M.F.A. No. 821/93 is directed against the order passed on I.A.No. I, M.F.A. No. 820/93 is directed against the order passed on

I.A.HI and M.F.A. (FR) No. 902/1993 is directed against the order passed on I.A.No.V. All these appeals are preferred by the defendants in the aforesaid suit.

2. Since common questions of facts are involved in all these three Appeals and with the consent of the learned Counsels appearing on either side, all these three Appeals have been taken up for final disposal together.

3. The facts relevant for the disposal of these three Appeals, briefly stated, are as under:

Plaintiff-respondent filed O.S.No. 1869/93 against the defendants-appellants (hereinafter referred to as plaintiff and defendants) praying for a judgment and decree for permanent injunction restraining them from interfering with plaintiff's possession and enjoyment of the schedule premises and from carrying on minor repairs to the schedule premises at his cost, during the continuance of the tenancy of the premises. Among other things, plaintiff has, in the course of his plaint, alleged that he is a tenant in respect of the schedule premises, consisting of shop premises in the front portion and the godown in the rear portion. According to him, he has been carrying on the business of sales of glass and plywood sheets since 1975 in the schedule premises and that he has earned goodwill and reputation in the whole of Karnataka State, in respect of his business. Defendants-1 and 2 are the purchasers of the premises in question from defendant-3, who was one of the owners of the premises. According to the plaintiff, defendants were not happy with the plaintiff and they were thinking in terms of exorcising him. With that end in view, they are preventing the plaintiff from carrying on even minor repairs, like closing the holes in the roof. It is the version of the plaintiff that defendants have removed the roof of the first floor and damaged the roof of the ground floor while removing the roof of the first floor, with the result, the rain water and the drainage water are leaking through the holes in the ceiling of the godown and the shop premises and are damaging the plywood sheets. According to the plaintiff, he suffered a damage of nearly two lakhs rupees. It is the case of the plaintiff that as a lawful tenant of the premises in question ever since 1975 he is entitled to effect repairs at his own cost and the defendants have no right to prevent him from lawfully carrying on the repairs and from enjoying the property peacefully.

However, defendants, according to him, are not allowing him to live in peace. On these allegations, in substance, he prayed for the reliefs referred to earlier.

4. In the course of the said suit, plaintiff filed an application at I.A.No. I praying for an order of temporary injunction restraining the defendants from interfering with the plaintiff's possession and from quiet enjoyment and from carrying on minor repairs. He also filed an application at I.A.No. III praying for, in substance, an order for temporary injunction restraining the defendants from interfering with the plaintiff carrying on minor repairs to the ceiling of the godown portion of the schedule premises. Plaintiff also filed an application at I.A.V. praying for an interim mandatory injunction directing the defendants to permit the plaintiff to carry on the minor repairs by unlocking the southern door, leading to the roof of the schedule premises from the staircase existing on the southern side. Each of the applications referred to hereinabove was supported by an affidavit. The allegations reflected in the affidavit more or less are in line with the allegations made in the plaint.

5. Defendants resisted the suit of the plaintiff as also the interim applications. They denied the allegations made in the plaint that plaintiff is a tenant in respect of the entire suit schedule premises, They took up a contention that he is a tenant in respect of the front portion and is a mortgagee in respect of the hind portion. According to defendants, defendants-1 and 2 purchased the schedule premises under two separate sale deeds dated 12.11.1988. They have denied the sins of commission and ulterior motive attributed to them. They have denied the allegations that they have removed the roof of the first floor and damaged the roof of the ground floor while removing the large chunk. They took up a contention that the debris were removed in the year 1990 itself as per the order passed by the Court (City Civil Court) in O.S.No. 3665/89. They also took up a contention that subsequently an application was also made by the defendants for the appointment of a commission to inspect the schedule building and to give a report, but the plaintiff resisted the same, since according to the defendants, plaintiff was afraid about the outcome of the commission report. They have stated that both the application for injunction filed by the plaintiff and the application for the appointment of a commission in the said suit were rejected by the Court. They also took up a contention that the plaintiff is not entitled to carry out the repairs,

according to his whims and fancies and if any repairs are required to the building, plaintiff has to issue a notice as per the provisions of the Rent Control Act, calling upon the defendants to carry out the repairs and it is only, in the event of their failing to carry out such repairs after such notice having been given, plaintiff can take appropriate action as per the provisions of the Rent Control Act. They also took up a contention that plaintiff is guilty of suppression of material facts by not disclosing to the Court about his having filed the earlier suit viz., O.S.No. 3665/89 and about his similar application for temporary injunction having been rejected. On these grounds, in substance, they prayed for the dismissal of the application for temporary injunction.

6. Defendants also resisted the interim applications at I.A.Nos. I, III and V on grounds more or less similar to those reflected in their written statement and alluded to earlier. They prayed for the dismissal of the application for temporary injunction.

7. The lower Court on a consideration of the materials on record and for the reasons reflected in its impugned order allowed all the applications at I.A.Nos.I, III and V by its common order dated 7.4.1993. Being aggrieved by the said consolidated order, the defendants have preferred the aforesaid three Appeals.

8. I have heard the arguments of Sri S.K.V. Chalapathy, learned Counsel for the appellants in each of these Appeals and Sri. R. Suryanarayanawamy, learned Counsel for the respondent.

9. The point for consideration is as to whether the orders on I.A.Nos. I, III and V passed by the lower Court are sustainable.

10. Sri S.K.V. Chalapathi, learned Counsel for the appellants contended that the orders of the lower Court are bad in law for reasons more than one. In so far as the order on I.A.No.I is concerned, the learned Counsel contended that the said order was passed without an opportunity being given to the defendants to make their submissions. It is pointed out by Sri Chalapathi, learned Counsel that I.A.No.I was not in fact, posted for hearing along with I.A.Nos.III and V and the learned Judge, in fact, heard the arguments on behalf of the respective parties only on

I.A.Nos. III and V. But while passing the consolidated order, the learned Judge passed an order on I.A.No.I also. In this connection, the learned Counsel invited the attention of this Court to the proceedings reflected in the order sheet on 3.4.1993 wherein it is recorded as under:

'To hear on I.A.Nos. III, V and VI'.

It is therefore contended by the learned Counsel that the order on I.A.No.I is bad in law on that count alone. In so far as the order on I.A.No.III is concerned, the learned Counsel submitted that it was not permissible for the lower Court to grant an order of temporary injunction restraining the defendants from interfering with the plaintiff in effecting the repairs. Dilating on this aspect, the learned Counsel argued that in so far as the question relating to repairs is concerned, Section 44 of the Karnataka Rent Control Act, 1961 (hereinafter referred to as the Act) is self-contained and a special proviso enacted by a special statute and that therefore, the Civil Court exercising its ordinary jurisdiction is not competent to pass any order in that behalf. In otherwords, the learned Counsel submitted that the jurisdiction of the Civil Court in this behalf is barred by necessary implication. In this connection, the learned Counsel has placed reliance on the Decision in DIGAMBAR NARAYAN TAGORE v. FIRM GADMAL MOTIJI MARWADI AND ORS., 1972(1) KLJ 576 as also on the Decision in S. VENKATESH PRABHU v. K. THEJAPPA SHETTY, 1986(2) RCJ 311. The learned Counsel also placed reliance on certain observations made by the Supreme Court in the Decision in FIRM SETH RADHA KISHAN v. ADMINISTRATOR MUNICIPAL COMMITTEE, LUDHIANA, AIR 1963 SC 1547. In so far the order on I.A.No.V is concerned, the learned Counsel contended that in the context of the submissions made with reference to I.A.Nos.I and III, the order passed on I.A.No.V is also bad in law. The learned Counsel also contended that plaintiff-respondent had on earlier occasion filed a suit at O.S.No. 3665/1989 against the present defendants-1 and 2 on the same allegations and claiming similar reliefs and in the said suit, he had also filed an application for temporary injunction and the same came to be dismissed by an order dated 6.11.1990 by the XIV Additional City Civil Judge and the same having become final, plaintiff is precluded from filing a similar suit and also filing a similar application for temporary injunction. The learned Counsel also argued that the

plaintiff in the present suit has not even remotely disclosed, his having filed a suit at O.S.No. 3665/89 or for that matter his application for temporary injunction having been rejected by the concerned Court and that therefore, plaintiff is guilty of 'suppressio veri'. The learned Counsel submitted that the plaintiff having failed to come to the Court with clean hands in this suit is not entitled to the equitable remedy of injunction also. Summing up his submissions on these lines, the learned Counsel argued that the orders passed by the Court below are liable to be set at naught.

11. Sri Suryanarayanawamy, learned Counsel for the respondent-plaintiff, however, argued that the lower Court in fact, heard on the applications viz., I.A.Nos. I, III and V as is reflected from the tenor of the order passed by the Court below. In so far as the order on I.A.No.III is concerned, the learned Counsel pointed out that it is not as if the Civil Court in its ordinary jurisdiction has no power to issue an injunction like the one prayed for by the plaintiff. Dilating on this aspect, the learned Counsel argued that Section 44 of the Act cannot be invoked to a situation like the one in hand for reasons more than one. The learned Counsel contended that Section 44 of the Act will come into operation if and if only the tenant wants the repairs to be effected at the cost of the landlord. The learned Counsel pointed out that in the instant suit the plaintiff has made it clear beyond a pale of doubt that he has prayed for injunction to restrain the defendants from interfering with his effecting minor repairs to the premises in question at his own cost and that therefore, the question of invoking the provisions of either Section 44(2) and/or (3) of the Act did not arise at all. The learned Counsel submitted that in the context of the facts of this case, the Decision in DIGAMBAR NARAYAN's case, 1972(1) KLJ 576 or for that matter the Decision in S. VENKATESH PRABHU's case, 1986(2) RCJ 311 does not apply at all. The learned Counsel also pointed out that the Decision of the Supreme Court pressed into service by the learned Counsel for the appellants and referred to earlier also does not at all apply to the facts of the instant case. It was also argued by Sri Suryanarayanawamy, learned Counsel for respondent that at the time when the suit was filed the duration of the Karnataka Rent Control Act (Karnataka Act No.22/1961) had died itself and that therefore, on the date on which the suit was filed, the Karnataka Rent Control Act was nonest, with the result, the provisions pressed into service

by the learned Counsel for the appellants are of no avail. It is also pointed out by the learned Counsel Sri Suryanarayanawaswamy that the defendants, in the course of their own written statement, contended that in so far as the hind portion of the premises is concerned, the plaintiff is a mortgagee and that therefore, it cannot lie in their mouth to contend that Section 44 of the Act is a bar for the relief relating to injunction with reference to the repairs. The learned Counsel further submitted that the earlier suit viz., O.S.No. 3665/89 was based on a different cause of action and the reliefs claimed there were not similar to those claimed in the instant suit and that therefore, it cannot be said by any stretch of imagination that the present suit is barred. The learned Counsel also submitted that even otherwise an interlocutory order passed on an earlier occasion in a different suit, viz., at O.S.No. 3665/1989 cannot operate as resjudicata. In this connection, the learned Counsel has placed reliance on the Decision in NEELAKANTAPPA v. LAXMAN, 1983(1) KLJ Sh.N. 36 Page 14. The learned Counsel has also placed reliance on the Decision in Dr. M.V. RAMANNA v. M.N. NAGAPPA, 1992(3) KLJ 729. Reliance is also placed by the learned Counsel on the Decision in NAND LAL AND ORS. v. SUKH DEV AND ANR., 1987 Supp SCC 87. In the said case it is pointed out by the Supreme Court that on redemption by the mortgagor-owner, tenancy rights of the mortgagee-tenant would continue and as such the owner is not entitled to the recovery of possession. Support is also sought from the Decision in M/s. MAGNUM FILMS AND ANR. v. GOLCHA PROPERTIES PVT. LTD., AIR 1 983 Delhi 392. In the said Decision, it is pointed out that a third party who is not a party in main petition cannot be added in an application for injunction. In the said case, it is also explained as to under what circumstances temporary mandatory injunction can be granted. The learned Counsel has also placed reliance on the Decision in SHIV RAM SINGH v. SMT. MANGARA AND ORS., : AIR1989 All164 to contend that injunction can be granted in exercise of the inherent powers of the Court. In so far as the submission made by the other side that there is a suppression of truth on the part of the plaintiff in not disclosing the filing of a suit on an earlier occasion and the developments in the said suit, the learned Counsel contended that it was not at all necessary for the plaintiff in the instant suit to have made a reference to the earlier suit at O.S.No. 3665/89, since the instant suit is based on an entirely different cause of action. It is pointed out by Sri Suryanarayanawaswamy, that the

earlier suit was, among other things, filed with a prayer relating to the removal of debris and that the relief relating to repairs as such was not claimed. The learned Counsel, therefore, submitted that there is no substance in the submission made by the learned Counsel for the appellants that there is any suppression of facts by the plaintiff in the instant suit. The learned Counsel has emphasised that even on defendants' own showing an injunction relating to repairs can be granted in the instant suit. Making his submissions on these lines, the learned Counsel Sri Suryanarayanawamy submitted that the appeals filed by the instant appellants are liable to be dismissed.

12. I have given my anxious consideration to the submissions made on either side.

13. At the very outset it is necessary for this Court to remind itself that this Court is hearing an appeal against an order purported to have been passed under Order 39, Rules 1 and 2 of CP.C. In that view of the matter, it is obvious that the scoops of hearing of this appeal is limited, simply because this Court can on the materials placed before the trial Court, reach a conclusion different from the one taken by the trial Court, the same would not be a ground for this Court to interfere with the order passed by the Court below. If, however, it is noticed that the lower Court has committed a manifest mistake with reference to its finding on any of the aspects, the same would be a ground for this Court to interfere with the same and to correct or reverse, as the case may be, the order passed by the Court below. The question as to whether the order of the Court below should be confirmed or should be reversed or should be modified is a question which will have to be considered in the facts and circumstances of a particular case.

14. In the instant case, plaintiff has come out with certain specific allegations. The allegation that is reflected in the plaint is that he is a tenant of the entire suit premises, that is to say, the front portion of the premises as also the hind portion of the premises. His grievance appears to be that the defendants with a view to drive him away from the suit premises are adopting several tactics. It is his version, as pointed out earlier, that they removed the first floor of the building, in the process of accomplishing their objective to drive him out. It is his version that while doing so they caused damage to the roof of the ground floor which has

resulted in the holes to the ceiling of the ground floor which in turn rendered the repairs necessary. Defendants on the other hand, as can be seen from their written statement, contended that plaintiff is a tenant only with reference to the front portion and he is only a mortgagee with reference to the hind portion. They have also denied the fact that the premises occupied by the plaintiff requires repairs. It is required to be seen as to whether the orders passed by the Court below on the three applications, viz., I.A.Nos.I, III and V are in order.

15. In so far as the order on I.A.No.I is concerned, the main thrust of the submission made by Sri Chalapathi, learned Counsel for the appellants is that the said I.A.I was not posted for hearing at all and that therefore, the lower Court was wrong in passing an order on I.A.No.I also. It is true that in the order sheet relating to 3.4.1993 proceedings were recorded as indicated earlier. However, on that count alone it is not proper to reach a conclusion that i.A.No.I was not heard at all. It is necessary to notice here that the arguments appeared to have been concluded on 3.4.1993 and the order is pronounced within a short time. Further, having regard to the totality of the order, it is also not possible to say that I.A.I was not heard. It is also necessary to bear in mind that I.A.Nos. I and III are inextricably mixed up with each other. Looked at from that point of view also, it is not possible to say that order on I.A.I was passed without hearing the Counsels. Further it should be borne in mind that the main grievance of the plaintiff appears to be with reference to the repairs relating to the roof and ceiling of the ground floor; injunction restraining the defendants, from interfering with plaintiff's possession has also a bearing with reference to that aspect. Taking into consideration all the circumstances, I am of the view that it is not possible to agree with the submission made by Sri Chalapathi, learned Counsel for the appellants that order on I.A.I was passed without hearing the arguments with reference to the same.

16. If that be so, it would be convenient at this juncture, to see as to whether the order passed in the earlier suit on I.A.No.I in O.S.No. 3665/89 would be a bar for a similar application in the instant suit. From the copy of the plaint, in O.S.No. 3665/89, made available for the perusal, it is seen that the reliefs in the said suit were as under:

'Therefore, the plaintiff prays for judgment and decree against the defendants for:

(a) Permanent injunction against the defendants restraining them their workmen, henchmen, others etc., from interfering with the plaintiff's peaceful possession and enjoyment of the schedule property or from damaging the roof or other structures in or over the schedule property.

(b) Mandatory injunction directing the defendants to remove the debris on the first floor of the schedule property and also to set-right the leakage in the roof of the schedule property and make it teak proof, and on their failure permit the plaintiff to do the same at the cost of defendants.

(c) award costs of the suit and

(d) grant such other reliefs as this Hon'ble Court deems it fit to grant under the circumstances of the above case'.

I have already referred to the reliefs claimed in the instant suit. While it cannot be gain-said that the reliefs in the two suits appear to be similar in certain aspects, the question as to whether they are the same so as to attract the provisions of Section 11 of C.P.C. is a question which requires further probe and is a matter which will have to be decided at the time of the trial of the suit. Any finding with reference to that aspect at this stage is likely to prejudicially affect the rights of one party or the other on the merits of the case at the trial of the suit. In that view of the matter, the Decision in DATTATRAYA v. SRINIVASA BHAT THAMMANNA, : ILR 1985 KAR1946 cannot be made applicable. It is also necessary to point out here that in the said case, it is pointed out by this Court that it is well settled that interlocutory applications in a suit cannot themselves be regarded as suit but for the purpose of Section 11 C.P.C. a finding thereon which has become final at an earlier stage of the proceeding would become res judicata and cannot be reagitated at a subsequent stage of the same proceedings.

17. It is necessary to point out here that in the instant case, the order that is pressed into service in support of the bar of res judicata is the order passed on an interlocutory application in O.S.No. 3665/89. It is not an order passed in the instant

suit. Even otherwise as pointed out by the Division Bench of this Court in NEELAKANTAPPA's case, so far as interlocutory matters are concerned, the principles of res judicata do not strictly apply. Looked at from any point of view, therefore, it appears to me that it is not possible at this stage to agree with the submission made by Sri Chalapathi, learned Counsel for the appellants that the application at I.A.Nos. I and III are barred by the provisions of Section 11 of CPC. However, I hasten to add here that the question as to whether the suit is barred by the principles of res judicata is a question which is left open to be considered at the time of the trial and the finding given by this Court with reference to this aspect at this stage is purely for the purpose relating to the disposal application at I.A.Nos. I and III.

18. If that be so, the more important question that is required to be considered by this Court is to see as to whether it is permissible for the plaintiff to get a relief of injunction with reference to the repairs of a premises of which plaintiff claims to be a tenant. The respective submissions made by the learned Counsels appearing on either side are already alluded to earlier. In substance, the submission of Sri Chalapathi, learned Counsel for the appellants is that the said question relating to repairs is completely covered by the provisions of Section 44 of the Act and that therefore any relief in that behalf cannot be granted by a Civil Court exercising its ordinary jurisdiction. On the other hand, the submission, in substance, made by Sri Suryanarayanawamy, learned Counsel for the respondent is that the question of having recourse to the remedy provided under Section 44 of the Act would crop up if and if only the tenant wants to recover the costs from the landlord and not otherwise. It is also the contention of Sri Suryanarayanawamy, as pointed out earlier, that it is not open to the defendants (appellants) to raise such a contention having regard to the fact that they themselves have taken a contention that the plaintiff is a mortgagee with reference to the rear portion of the premises. It is also the contention of Sri Suryanarayanawamy, learned Counsel that at the time when the suit was filed, that is to say, as on 15.3.1993 the Karnataka Rent Control Act had outlived its life and that therefore at that point of time the only remedy which was available to the plaintiff was to file a suit in the way and manner as he has done even in relation to the reliefs relating to the repairs to the premises in question. As pointed out earlier, the Counsels have relied on the Decisions already

referred to earlier.

19. It would be convenient to see in the first instance as to whether the submission made by Sri Suryanarayanadaswamy that the Karnataka Rent Control Act had outlived its duration and that therefore there was no impediment for the Court to pass the order which it has passed relating to repairs is correct. It is necessary to point out here that the Karnataka Act No. 13/93 has been passed by the Legislature giving a retrospective effect to the same. Sections 1, 2, 3 and 4 of the said Act would give an idea as regards the scope and ambit of the said enactment. The said Sections read as under:

'1. Short title and commencement -

(1) This Act may be called the Karnataka Rent Control (Retrospective Extension of Duration) Act, 1993.

(2) It shall be deemed to have come into force on the thirty first day of December, 1992.

2. Amendment of Section 1 of the Karnataka Act 22 of 1961.- In Section 1 of the Karnataka Rent Control Act, 1961 (Karnataka Act 22 of 1961) (hereinafter referred to as the principal Act), in Sub-section (4), for the figures '1992' the figures '1997' shall be substituted.

3. Savings. - Nothing in this Act shall render any person liable to be convicted of any offence in respect of anything done by him or omitted to be done by him, during the period commencing on the first day of January 1993 and ending on the date of publication of this Act in the Official Gazette, if such act or omission was not an offence but for the retrospective extension of duration of the principal Act by this Act.

4. Removal of doubt. - For the removal of doubt, it is hereby declared that the principal Act, which expired after the 31st December 1992, having been retrospectively extended from that date upto and inclusive of the 31st December, 1997 by this Act, shall be deemed never to have expired at any time and all its provisions as amended and extended by this Act, shall, subject to the provisions of

Section 3 of this Act, be deemed to be continuously in force'.

A perusal of the said Proviso would indeed go to show that the said Act has been given a retrospective operation that is to say, the said Act is deemed to have come into force on the 1 st day of December 1992 itself. Further the provisions of Section 4 of Karnataka Act No. 13/1993 are self-explanatory. The same would go to show that the principal Act shall be deemed never to have expired at any time and all the proceedings as amended and extended by Act No. 13/93 shall be deemed to be continuously in force, subject of course, to the provisions of Section 3 of Karnataka Act No. 13/93. It is also necessary to point out here that Karnataka Act No. 13/93 was published in the Karnataka Gazette Extraordinary on the 3rd day of April, 1993 and that it received the assent of the President on the 30th day of March 1993. It is pertinent to note here that the order of the Court below is passed on 7.4.1993. Looked at from any point of view therefore, it is clear that the submission made by Sri Suryanarayanawamy, learned Counsel for the respondent cannot be countenanced. In otherwords, the Karnataka Rent Control Act, 1961 shall be deemed to have been in force even on the date on which the suit was filed. In the context of what is stated hereinabove, it is not necessary to dilate further on this aspect.

20. The next aspect which deserves consideration is as to whether plaintiff could have, prima facie, come to the Civil Court with a prayer to restrain the defendants from interfering with the carrying on of minor repairs to the schedule premises at the cost of the plaintiff, At this juncture, it would be in fitness of things to refer to the provisions of Section 44 of the Karnataka Rent Control Act, 1961. It reads as under:

'Repairs and improvements -

(1) Every landlord shall be bound to keep the building in reasonably good repair.

(2) If the landlord neglects to make, within a reasonable time after a notice by the tenant is served upon him by registered post, any repairs which he is bound to make under Sub-section (1), the tenant may make the repairs himself and deduct the cost of such repairs from the rent or otherwise recover it from the landlord.

Provided that where the tenant makes the repairs himself the amount so deducted or recoverable in an year shall not exceed one-twelfth of the rent payable by the tenant for that year. (3) Where the cost of such repairs exceeds one twelfth of the rent payable by the tenant for that year or where the building is directed to be leased under Section 5 or Section 6, the Court may, by order, direct the landlord to execute such repairs which he is bound to make under Sub-section (1), and as may be specified in the notice within such reasonable time as may be mentioned therein; and if the landlord fails to execute repairs in pursuance of such order the Court may permit the tenant to cause the repairs specified in the order, to be executed at the expense of the landlord and the cost thereof may, without prejudice to any other mode of recovery, be deducted from the rent payable to the landlord'.

A perusal of the said provision would go to show that the Legislators in their wisdom have thought in terms of bringing into being a self-contained proviso relating to repairs. It is not as if there was no provision relating to repairs under the general Law, that is to say, under the Transfer of Property Act. In fact, Section 108 of the T.P. Act enumerates the rights and the liabilities of the lessor and lessee and the various provisions thereunder are self-explanatory. It is not necessary to dilate on those provisions. It will suffice if it is pointed out that notwithstanding the same, the Legislature in its wisdom thought in terms of incorporating a special provision relating to repairs in Section 44 of the Act. In fact, this Court in DIGAMBAR NARAYAN's case, 1972(1) KLJ 576 has, in the course of its Judgment pointed out, among other things, as under:

'These provisions make it abundantly clear that in matters of repairs to a building, the Court under the Act is given complete powers with its summary jurisdiction. The legislature probably intended that the parties should not be driven to a protracted litigation by way of suit with regard to repairs to any premises when the immediate attention of the landlord is required.

In the view that I have taken, the suit brought by the plaintiff must be held to be not maintainable'.

Then again this Court in S. VENKATESHA PRABHU's case, 1986(2) RCJ 311 has among other things pointed out that when there is a specific provision made under Section 44 of the Karnataka Rent Control Act the tenant is not permitted to resort to Section 151 of C.P.C. for appropriate directions to be issued to the landlord who has made the premises untenantable by demolishing the premises during the pendency of eviction proceedings.

21. Sri. Suryanarayanawamy, learned Counsel for the respondent, as pointed out earlier, contended that neither Section 44 of the Karnataka Rent Control Act nor the Decisions referred to immediately hereinabove can be called in aid in a case where the tenant would like to get the repairs done at his own cost as in the instant case. I am afraid that it would be indeed, difficult to gulp down the submission made by Sri Suryanarayanawamy. If the said proposition is accepted as an absolute proposition without any exception the same is likely to enable the tenant to circumvent the provision of Section 44 of the Act. It is indeed necessary to remember that a duty is cast by the Rent Control Act on the landlord to keep the building in a reasonably good repair. Further, If the landlord is found wanting in keeping the building in reasonably good repair, the tenant is given a remedy under the said provision. In the first place, he has to issue a notice to the landlord by registered post and if the landlord within a reasonable time neglects to make the repairs which he is duty bound to effect under Section 44(1) of the Act, then the tenant may take upon himself to effect the repairs provided the same does not exceed one month's rent. If, however, the cost of such repairs exceeds one month's rent (1/12th of the rent payable for the year), then the tenant has to approach the Court and the Court may by its order direct the landlord to execute such repairs which he is bound to make under Sub-section (1), and as may be specified in the notice within such reasonable time as may be mentioned therein. If one reads the provisions of Section 44(1), (2) and (3) of the Act between the lines, one cannot fail to discern the fact that the precise modus operandi is contemplated with reference to matters relating to repairs. It is also necessary to point out here that under Sub-section (3) of Section 44 of the Act the Court may direct the landlord to execute such repairs which he is bound to make under Sub-section (1) of Section 44 of the Act. In otherwords, under Section 44(3) of the Act, the Court is required to see as to what are the repairs that the landlord is bound to make and

that the tenant has demanded in the notice. Further it is for the Court to grant reasonable time to the landlord to effect such repairs which according to the Court, the tenant is bound to effect under Section 44(1) of the Act, if the submission made by Sri Suryanarayanawaswamy is accepted as 'an absolute proposition, I am afraid that the same would enable a tenant to circumvent the provisions of Section 44 of the Act. Further, it is indeed necessary to remember that a tenant cannot even effect such repairs as would cost him even only a month's rent without giving a notice to the landlord by registered post. It is necessary to mention here that it is not the case of the plaintiff-respondent that he had issued a registered notice to the defendants and they had failed to effect necessary repairs. Nor any such submission has been made by Sri Suryanarayanawaswamy, learned Counsel for the plaintiff-respondent. Further it is also not stated in the plaint that the cost of repairs would not exceed one month's rent. Further, the fact that plaintiff has averred that he is ready and willing to bear the entire cost relating to repairs cannot be taken as a circumstance to hold that the provisions of Section 44 of the Act cannot and would not come, into operation, Further, the fact that the said relief is one of the reliefs or that the same is styled as an ancillary relief by the learned Counsel for the respondent also will not make any difference to the legal proposition that would emerge as indicated hereinabove,

22. Sri Suryanarayanawaswamy, learned Counsel for the respondent, however, pointed out that the fact that the defendants have themselves contended that the plaintiff is a tenant only in respect of the front portion and that he is a mortgagee in respect of the hind portion is a circumstance which will weigh in favour of holding that the Civil Court has jurisdiction to grant the relief prayed for. In my opinion, prima facie, while deciding the question relating to jurisdiction it is the allegation made in the plaint, which will have to be taken into consideration and the fact that the defendants had raised some other contentions challenging the allegations made by the plaintiff will not make any difference to the issue.

23. Looked at from any point of view therefore, I am of the view that prima facie, temporary injunction prayed for at I.A.No.III is not tenable.

24. If that be so, it will have to be seen as to whether the order on I.A.No.1 to the extent of restraining the defendants from interfering with plaintiff's peaceful possession and quiet enjoyment is in order. There does not appear to be any dispute that plaintiff has been in possession of the suit premises. However, having regard to the tenor of the contentions raised on either side it appears that all is not well with the plaintiff and defendants. It is true that one of the important aspects relating to the grant of injunction is interference on the part of the defendants. However, interference, prima facie, can be inferred also. Further there are various modes of interference. Having regard to the totality of the facts reflected from the records, I am indeed of the view that plaintiff should be allowed to, have quiet enjoyment of the premises in question by directing the defendants not to interfere with the peaceful possession and enjoyment of the plaintiff. Further it is needless to say that the same would include fulfilment of the statutory obligation on the part of the defendants - landlords to keep the building in a reasonably good repair and not to make the premises in question uninhabitable. Sri Chalapathi, learned Counsel for the appellants, however, contended, as pointed out earlier, that plaintiff is guilty of suppression of material facts and that therefore he is not entitled to equitable remedy of injunction. I have already alluded to the submission made by Sri Suryanarayanawamy, learned Counsel for the respondent with reference to this aspect. In the facts and circumstances of this case and having regard to the submissions made at the Bar by Sri Suryanarayanawamy, I am of the view that it is too early to give a finding as to whether there was any animus on the part of the plaintiff in failing to disclose the factum of having filed a suit at O.S.No. 3665/89 and orders passed on interim application therein. In that view of the matter, I am of the view that the same cannot be made the ground to reject the applications in toto.

25. From the foregoing discussions and conclusions, the following position would emerge. It cannot be said that the lower Court is wrong in restraining the defendants from interfering with the peaceful possession and enjoyment of the premises. In that view of the matter, the lower Court is right in allowing the application at I.A.No. 1 to that extent only. However, the lower Court has erred in restraining the defendants by temporary injunction from preventing the plaintiff from carrying on the minor repairs to the building in question. In view of what is

stated hereinabove, I.A.No.V also does not survive at all. At the same time it is also necessary to observe that allowing the plaintiff to enjoy the premises peacefully would also include the fulfilment of the obligation on the part of the defendants to keep the premises in question under good repairs as required of them under Section 44(1) of the Act.

26. For the reasons stated hereinabove, I pass the following order:

Order passed by the tower Court restraining the defendants (instant appellants) by means of a temporary injunction from interfering with the plaintiff's possession and enjoyment of the schedule premises is confirmed. For the sake of clarification it is hereby ordered that the defendants are prevented from making the premises uninhabitable or untenantable. However, the order of the Court below in issuing temporary injunction restraining the defendants from interfering with the plaintiff carrying on repairs to the premises in question is hereby set aside, and the application at I.A.No. III in O.S.No. 1869/93 is hereby dismissed. It is further ordered that in view of the same, the order on I.A.No.V in O.S.No. 1869/93 is set aside as the said application does not survive for consideration.

27. The three Appeals stand disposed of as above.

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