

Ramakrishna Aithal Vs. Varadappa

Ramakrishna Aithal Vs. Varadappa

SooperKanoon Citation : sooperkanoon.com/380542

Court : Karnataka

Decided On : Oct-18-1984

Reported in : ILR1985KAR551

Judge : Kulkarni, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 25 to 29; Code of Civil Procedure (CPC) - Sections 2(2)

Appeal No. : C.R.P. No. 115 of 1984

Appellant : Ramakrishna Aithal

Respondent : Varadappa

Advocate for Def. : G. Lingappa, Adv.

Advocate for Pet/Ap. : C.R.V. Swamy, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Kulkarni, J.

1. This is a revision by the Judgment-debtor (Jdr.) against the order dated 11-1-984 passed by the IXth Additional Judge, Court of Small Causes, Bangalore City in

execution case No. 3656 of 1983 holding that the execution Petition is maintainable and that the Court has got jurisdiction to execute the decree.

2. The Jdr. filed an eviction Petition in HRC Case No. 355/68 in the Court of the I Munsiff, Bangalore City for recovering possession under Section 21 (1) (j). It was dismissed by the Trial Court. Then the matter was taken up by the landlord to the District Judge in HRC Appeal No. 23/1974. The District Judge allowed the appeal and ordered the eviction under Section 21 (1) (j). The tenant approached this Court in CRP 774 of 1976. In CRP 774/1976, they entered into a compromise. On 25-7-1980, a decree in terms of the compromise was ordered to be drawn up, by this Court.

3. After the compromise decree was drawn up, the land-lord obtained a sanctioned plan. It is undisputed that he has put up a cellar and a row of four shops and a first floor on the said four shops after demolishing a portion of the building. It is undisputed that the landlord is still keeping intact a major portion of the building, even though he obtained a decree for demolition and reconstruction, Notwithstanding the notice issued by the tenant to the landlord to put him in possession of any one of the four shops, the landlord did not comply with his request. Therefore, the tenant sued out the execution praying that he should be put in possession of any one of the four shops constructed by the landlord.

4. The landlord contended that the order sought to be executed does not amount to a decree and thus it could not be executed at all. He, further, urged that the Civil Court had no jurisdiction to execute the order in question.

5. Learned Counsel Shri Swamy for the landlord referred me to Section 25 of the Karnataka Rent Control Act, which reads :

'25. Recovery of possession for occupation and reentry -:

(1) Where a decree for eviction has been passed by the Court on the ground specified in clause (h) of the proviso to sub-section (1) of Section 21 and the premises are not occupied within a period of three months from the date the landlord recovers possession, or the premises are relate within one year of the

said date to any person other than the original tenant the Court may, on the application of the original tenant, made within thirteen months of such date ,order the landlord to place such tenant in occupation of the premises on the original terms and conditions, and on such order being made, the landlord and any person who may be in occupation of the premises shall give vacant possession to the original tenant.'

(2) Any landlord who recovers possession on the ground specified in clause (h) of the proviso to sub-section (1) of Section 21, and keeps the premises unoccupied without reasonable excuse for a period of three months from the date he recovered possession and any landlord or other person in occupation of the premises who fails to comply with the order of the Court under sub-section (1) shall, on conviction, be punished with fine which may extend to five hundred rupees.'

Learned Counsel Shri Swamy submitted that Section 25 dealt with a situation where the landlord obtained possession under Section 21(1)(h) and he did not occupy the same.

According to him, if such a situation arises, Section 25 speaks that the original tenant should make an application in the HRC Case. According to him, the application at the most may amount to an application within the meaning of Section 151 CPC in the HRC case itself. According to him, Section 25 does not contemplate the execution proceedings at all.

6. Learned Counsel Shri Swamy then referred me to Section 26 of the KRC Act, It reads :

'26. Recovery of possession for demolishing building and re-entry:-

(1) Where a decree for eviction has been passed by the Courts on the ground specified in clause (j) of the proviso to sub-section (1) of Section 21 and the work of demolishing the premises has not been commenced by the landlord within the period specified in the decree, the tenant may give the landlord a notice of his intention to occupy the premises from which he has been evicted and if the

landlord does not forth-with deliver to him vacant possession of the premises on the same terms and conditions on which he occupied them immediately before the eviction the tenant may make an application to the Court within six weeks from the date of expiry of the period specified in the decree.

(2) If the Court is satisfied that the landlord has not substantially commenced the work of demolishing the premises within the period of one month in accordance with his undertaking, the Court shall order the landlord to deliver to the tenant vacant possession of the premise on the terms and conditions on which he occupied it immediately before the eviction. On such order being made, the landlord shall forthwith deliver vacant possession of the premises to the tenant. Such order shall be deemed to be an order within the meaning of clause (14) of Section 2 of the Code of Civil Procedure, 1908.'

According to him, the sub-section (2) treats such an order as an order within the meaning of Section 2(14) of CPC So he urged that the Legislature knew fully well that it is only the decree that could be executed by the Civil Court and accordingly it made a reference to Section 2(14).

7. Then he referred me to Sections 27 and 28 of the Rent Control Act. According to him, there is nothing in Sections 27&28 of the Rent Control Act to show that if the landlord demolished the building and did not reconstruct the same or refuses to put the tenant in possession of the property after reconstruction, he can sue out the execution for putting him back in possession of a portion of the reconstructed building. According to Shri Swamy, Sections 27 and 28 do not enable the Court to treat such an order as a decree and execute the same. According to him, at the most, the tenant should file a suit or may file an application under Section 151 CPC.

8. The argument of Learned Counsel Shri Swamy at the first blush appears to be rather interesting. In Sections 25 to 27, the word 'decree' has been used. Therefore, what the Legislature meant was that any order passed under the Rent Control Act should be treated as a decree within the meaning of Section 2(2) of the CPC. Otherwise the Legislature would not have used the word 'decree' in Sections 25 to 27. Therefore, the said argument does not appeal to me in the least

Section 28 (2) (b) of the Rent Act reads as :

'(b) If the landlord fails without reasonable excuse to comply with the provisions of sub-section (1), or to place the tenant in occupation of the building he shall without prejudice to his liability to place the tenant in vacant possession of the building', on conviction, be punished with fine which may extend to five hundred rupees' The prosecution is without prejudice to the right of the tenant to be placed in vacant possession of the building. It cannot be said that the prosecution is the only remedy available in such cases. It is only an alternate remedy.

9. Learned Counsel Shri Swamy then referred me to the commentary on Rent Control Act by the Learned author Shri Sabhahit at page 351. The author has stated :

'Deficiency in law : Section 28(2) (b) indicates that the landlord is liable to place the tenant in vacant possession of the building after its construction if the tenant is willing to occupy the same and has given his willingness to the landlord as contemplated under Section 28 (2). But then the legislature has failed to provide a specific provision by which the tenant can obtain vacant possession from the landlord in case he is not willing to put the tenant in possession.

It may be observed in this connection that specific provision is made in case the landlord fails to put the tenant in occupation of the premises after repairs (vide sub-section (4) of Section 24). There is also a specific provision made to put the tenant in possession in case the landlord does not commence the work of demolition in accordance with his undertaking. That is to be found in Section 16 (2)*. But, there is no specific provision at all to enable the tenant to make an application to the Tribunal complaining that the landlord has failed to put him in possession after completion of the building, though he made a demand in accordance with Section 27 of the Act and that, therefore, he should be put in possession by the Tribunal. There is no specific provision also made in the Act enabling the Tribunal to make enquiry on such an application made by the tenant and to pass an executable order against the landlord compelling him to put the tenant in possession in suitable cases. This, it is needless to point out, is a serious defect in law which needs to be remedied immediately. Since however the

intention of the legislature is made clear, the omission can be supplied by court'.

Section 16(2) used in the above passage appears to be a printing mistake-it ought to be Section 26(2).

It is unfortunate that the legislature even inspite of the view of the author in the present edition and also in the earlier editions, has not taken any steps in bringing about an amendment. It is rather disturbing because the necessary lacuna, though pointed out, has not been remedied by the legislature even after a long lapse of time. But, it is clearly stated by the author that the intention of the legislature is quite clear and the omission should be supplied by the Court.

10. Learned author Shri Dalal has stated in Bombay Rent Act, fourth edition, page 438 as :

'Execution of decree : Where a decree has been passed for recovery of possession of an open plot of land on which the tenant-judgment-debtor has erected a permanent structure, such a decree can be executed-under O. 21, R. 35 of the Civil Procedure Code, if necessary, by removal of any person bound by the decree'. The author has made it clear that the orders passed under the Rent Control Act would amount to a decree and they are executable.

11. Rule 35 of the Karnataka Rent Control Rules reads as:

'The provision on the Civil Procedure Code to be generally followed In deciding any question relating to procedure not specifically provided for by these rules, the Court shall as far as possible be guided by the provisions contained, in the Code of Civil Procedure, 1908.' It is no doubt true that there is no specific provision made in the Rent Control Act as to how the orders or the decrees passed by it should be executed. When there is no provision made in the Rent Control Act, the Courts will have to follow the provisions of the C.P.C. to give effect to the orders or decrees passed by them. It has been held in *Meenakshamma -v.- Modur Rangamma*, I.L.R. 1968 Mysore 952 as :

'When once it is possible to come to the conclusion that the power exercised under the Act by a Court qua Civil Courts the order would become-executable by virtue

of the provisions of the Civil Procedure Code, even in the absence of the specific provision regarding the application of the Civil Procedure Code for such proceedings."The Court functioning for the purpose of Part V of the Mysore Rent Control Act 1961, functions as a Civil Court and it is entitled to exercise jurisdiction under the provisions of the Civil Procedure Code. Hence an order for recovery of possession can be executed by the Court under Civil Procedure Code.'In Mathew M.M. -v.-Prafulchand Amritlal & another, 1980(1) K.L.J. 234 held :

'Though the Act has not made any express provision for execution of decrees for eviction, the Civil Court has jurisdiction to execute them.

(1968) 2 Mys. L.J. 255 & (1970) 2 Mys. L.J. 560 followed, and held are not rendered not good law by the Amendment of the definition of 'Court' by Act 31 of 1975.

The fact that the Court exercising jurisdiction and power under Section 21 of the Act, is a Court of exclusive jurisdiction, does not necessarily mean that it is not a Civil Court and that the decree made by it under the Act cannot be executed by it because there is no specific enabling provision for the same.'

Further a similar question came up for consideration before a Division Bench of this Court reported in 1980(1) Karnataka L.J. Short notes item No. 169. It has been held therein as :

'Once a decree for eviction is passed by Munsiff under the Act, here is no reason why the Munsiff should not execute that decree under Section 38 C.P.C. An order passed by the Munsiff in a Petition for eviction under Section 21 of the Act is a formal expression of adjudication conclusively determining the rights of a landlord and the tenant in the Petition for eviction so far as that Court is concerned and is a decree within Section 2(2) C.P.C.' Similar principle has been laid down in 1969 R.C.J. 1036 and 1969 R.C.J. 742. There is a catena of decisions holding that the orders passed under the Rent Control Act are decrees within the meaning of Section 2(2) C.P.C. and they should be executed under the Civil Procedure Code.

12. Thus, in the result, the order passed by the Court below that the order in question is a decree and it can be executed under the provisions of the C.P.C. and that the execution Petition is maintainable, is justified and it needs no interference. The revision is accordingly dismissed.

13. Learned Counsel Shri Swamy at this stage stated that his client would require some time for handing over possession of the premises to the tenant. His request is reasonable. Taking into consideration that the parties are at each other's need since 1968, and taking into consideration the peculiar features obtaining in the case, I think that the interest of justice would be met if the landlord is given time till 18-2-1985 to handover the possession,

14. Learned Counsel Shri Swamy for the landlord-J.dr. gives an undertaking to the Court that by 18-2-1985 the landlord would put the tenant in possession of a portion which would be approximately equal to the area which was in possession of the tenant or any one of the four shops which would be approximately equal to the area which was in possession of the tenant.