

Jainabhi Vs. Krishna

Jainabhi Vs. Krishna

SooperKanoon Citation : sooperkanoon.com/381479

Court : Karnataka

Decided On : Oct-24-1984

Reported in : ILR1985KAR1923

Judge : Hakeem, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 21, 21(1), 45, 61 and 115

Appeal No. : C.R.P. No. 38 of 1981

Appellant : Jainabhi

Respondent : Krishna

Advocate for Def. : S.W. Arabatti, Adv. for R-1(a) and (b)

Advocate for Pet/Ap. : R.V. Jayaprakash, Adv.

Disposition : Revision petition allowed

Judgement :

ORDER

Hakeem, J.

1. This is the tenants Revision Petition under Section 115 of the Code of Civil Procedure against the judgment dated 10th October 1980 in H.R.C. (Revision) No. 18 of 1978 passed by the District Judge, Uttara Kannada, Karwar.

2. The landlord sought for eviction of the tenants on the grounds under Section 21(1)(a)(b)(f) and (o) of the Karnataka Rent Control Act, 1961 (hereinafter referred to as the Act). Upon consideration of the material on record the Trial Court i.e., the Principal Munsiff, Sirsi, dismissed the Petition by his order dated 17th August 1978 in H.R.C. No. 14 of 1962. Aggrieved by the said order of dismissal the landlord preferred a revision under Section 50 of the Act to the District Judge, Uttara Kannada, Karwar, who set aside the decision of the Trial Court and allowed the eviction Petition under Clauses (b) and (f) of Section 21(1) of the Act and ordered eviction of the tenants, viz., the petitioners herein.

3. The facts of the case in so far as they are relevant for the present purpose are that the Petition premises was leased on mulgenibasis basis to the father of the petitioners as far back as on 1st December 1939 ; that at the inception of the lease the premises was a vacant site and according to the terms of the lease the petitioners were to pay the stipulated rent and to put up construction on the site and use the same for their purposes.

4. It appears that earlier the tenancy of the petitioners was terminated and a suit in O.S. No. 46 of 1952 was filed before the Trial Court for possession of the premises on the ground that the terms of the lease were contravened. The Trial Court held that the notice of termination was not valid in law and dismissed the suit. The appeal to the District Judge, Karwar, also met the same fate and the revision to the High Court was also rejected on the same ground. It appears that in the said proceedings the Trial Court on the basis of the material on record had arrived at certain findings of fact. However, on account of the technical defect in the suit viz., the invalidity of the termination notice, the suit had been dismissed. As such there was no occasion or necessity for the tenants to have approached the higher Courts either in appeal or in revision to challenge the findings of fact which were in any event in fructuous on the suit having been dismissed for want of proper notice.

5. In the present Petition i.e. H.R.C. No. 14 of 1962, the Learned Munsiff has on the material on record and documents produced, negated the claim of the landlord. He has held that the landlord has failed to prove all the grounds taken under Clauses (a), (b), (f) and (o) of Section 21(1) of the Act.

6. The Learned District Judge, has on reappreciation on of the evidence and also taking into consideration the findings recorded in the earlier proceedings between the parties referred to above, held that there is subletting of the buildingstanding on the leased premises. He has also held that prior to 1952 the tenants had cut the trees standing on the premises bringing the case within the mischief of Clause (b) of Section 21(1) of the Act as being in contravention of Clause (o) of Section 108 of the Transfer of Property Act.

7. The approach of the Learned District Judge, in my opinion, is erroneous. He proceeded to consider whether the tenants committed breach of the terms of the lease warranting an eviction order being passed. What Section 21 requires is that notwithstanding anything to the contrary contained in any other law or contract, no order for recovery of premises can be made by the Court except under the grounds enumerated under Clause (1) of Section 21 of the Act. As such the Learned District Judge had to consider the matter de hors the alleged terms of the lease entered into between the parties in 1939 and to see whether the landlord has made out a case under any one of the grounds mentioned in Section 21(1) of the Act.

8. I have been taken through the judgment of the Learned District Judge. On a careful consideration of the same, it appears to me, that the Learned District Judge has relied more upon the findings in the previous proceedings rather than on the evidence adduced in the instant case. In any event it is difficult to say whether the finding in the previous proceedings or the evidence on record in the present case has influenced the mind of the Court in arriving at the conclusions. In the concluding portion of the judgment, while expressing his doubt regarding the probative value of the oral evidence on the question of subletting etc., the Learned District Judge has stated thus :

'Therefore, from the evidence of P.Ws. 1 to 3 coupled with the finding in Civil Appeal No. 84/1953 it can be safely said that respondents 1 and 2 committed waste of the property. So, there has been a breach of the Clause of the lease.'

It is also seen that the Learned District Judge has not considered the effect of Section 61 of the Act on the question of subletting. As such the proceedings

before the Learned District Judge, in my opinion, are tainted with illegality and they are manifestly perverse and not based on the evidence on record. It is well settled that this Court in its revisional jurisdiction under Section 115 of the Code of Civil Procedure can interfere with such orders.

9. In view of the above, I allow the revision petition, set aside the order of the District Judge and remit the matter to the District Judge for fresh disposal after hearing the parties and in accordance with law. The consideration of the District Judge will be confined to the grounds under Section 21(l)(b) and (f) of the Act under which he had allowed the eviction petition.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com