

Gulabi Hengsu Vs. Vasu Kottari

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Court : Karnataka

Decided On : Sep-02-1985

Reported in : ILR1986KAR3559

Judge : K.A. Swami, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 47

Appeal No. : C.R.P. No. 1731 of 1985

Appellant : Gulabi Hengsu

Respondent : Vasu Kottari

Advocate for Def. : B.V. Acharya, Adv.

Advocate for Pet/Ap. : A. Keshava Bhat, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K.A. Swami, J.

1. This Civil Revision Petition under Section 115 of the Code of Civil Procedure is preferred against the order dated 5-6-1986 passed by the 1st Additional Munsiff, Mangalore, in Execution Case No. 151 of 1985 filed for execution of the order of

eviction passed in H.R.C No. 61 of 1973. Learned Munsiff has held that the execution petition is maintainable and it need not be stayed pending consideration of the application in Form No. 7 filed by the petitioner (Judgment-Debtor) before the Land Tribunal, Mangalore, under the provisions of the Karnataka Land Reforms Act, 1961, and has, accordingly, over ruled the objections raised by the petitioner and has ordered the execution to proceed.

2. Facts necessary to appreciate the contentions raised by both the sides, are not in dispute. The property involved in this case is a tiled-house bearing Door No. 3-1343 situated in eastern portion of Sy.No. 50-E7, Nanja land measuring O. 17 1/2 cents of Padavu Village in the Kadri Ward of the Corporation of the City of Mangalore. The respondent is the landlord of the premises. He filed H.R.C.No. 61 of 1973 in the Court of the 1st Additional Munsiff, Mangalore, for eviction of the petitioner on the grounds falling under Section 21(1)(a) and (h) of the Karnataka Rent Control Act, 1961 (hereinafter referred to as the Act). In that proceeding the petitioner-tenant raised an objection that she is an agricultural tenant and the open site in Sy. No. 50/E7 measuring 17 1/2 cents is an agricultural land, therefore, it is necessary to refer an issue relating to. agricultural tenancy to the Land Tribunal. She also specifically filed an application (I.A.IV) for this purpose. On 5-6-1976 the Trial Court passed an order referring the issue of tenancy to the Land Tribunal, Mangalore. That order was challenged before the District Judge, Mangalore, in C.R P.No. 76 of 1976. Learned District Judge, by his order dated 20-7-1976, came to the conclusion that the Trial Court should first decide the preliminary question as to whether the property involved is or is not a 'premises' as defined in the Act and if it comes to the conclusion that the property is not a 'premises' as defined in the Act, then only it would not have jurisdiction to try the eviction petition. Accordingly, the District Judge allowed the revision petition and remitted the matter to the Trial Court with a direction to decide the question in the light of the observations made in the order. This order of the District Judge was challenged before this Court in Writ Petition No. 7514 of 1976 and the same was dismissed as infructuous.

3. In the meanwhile, it is also brought to my notice that the petitioner had filed an application in Form No. 7 before the Land Tribunal, Mangalore, for registering him

as an occupant in respect of the property which was the subject matter in the aforesaid proceeding under the Act. It is that property which is involved in the subject matter of this Civil Eviction Petition. Form No. 7 was rejected on 27-4-1977 by the Land Tribunal in proceeding No. LRC/1258/75-76 holding that the petitioner was not an agriculturist and the property was not an agricultural land at all. This order of the Land Tribunal was not challenged until Writ Petition NO. 7514 of 1976 was disposed of on 14-10-1977 as having become infructuous in view of the fact that the application filed in Form No. 7 was rejected by the Land Tribunal in No. LRC. 1258 of 1975-76 by its order dated 27-4-1977. This order of the Land Tribunal was not challenged until 18-1-1978. The Writ Petition was filed by the petitioner challenging the order of the Land Tribunal dated 27-4-1977 rejecting the application filed by the petitioner in Form No. 7, only after Writ Petition No. 7514 of 1976 was dismissed by this Court on 14-10-1977 as having become infructuous. The order dated 14-10-1977 passed in Writ Petition No. 7514 of 1976 was also not taken up in appeal under Section 4 of the Karnataka High Court Act, 1961.

4. In the meanwhile, the Trial Court decided the question whether the property involved in H.R.C. No. 61 of 1978 is a 'Premises' as defined in the Act and held that the property involved is a 'Premises' as defined in the Act and that there existed a relationship of landlord and tenant between the respondent and the petitioner. this order was challenged by the petitioner tenant in C. R. P. No. 46/78 before the District Judge, Mangalore, who set aside the order of the Trial Court dated 28-1-1978 on the ground that the Trial Court was in error in not giving an opportunity to the tenant to cross-examine P.W. 1 and to adduce evidence and remitted the case to the Trial Court with a direction to decide the preliminary points in accordance with law. The Trial Court again, by its order dated 1-9-1978 came to the conclusion that the property in question is a "premises" and there existed a relationship of landlord and tenant between the parties. Again the tenant preferred C.R.P. No. 117 of 1978 before the District Judge, who, dismissed the same keeping open all the contentions on holding that the revision as against the findings recorded on the preliminary point was not maintainable and it was open to the petitioner to challenge the findings after the final decision of the Learned Munsiff.

5. Thereafter, the Trial Court recorded further evidence and came to the conclusion that the ground raised under Section 21(1)(a) of the Act, was not established ; that the landlord had established that he required the premises for his bona fide use and occupation and he would be put to greater hardship and inconvenience if an order of eviction was refused accordingly, allowed the application of the landlord and ordered for eviction. There was a C.R.P. No. 49 of 1980 filed against that order before the District Judge, Mangalore, who again considered the following points :

(1) Whether the Learned Munsiff was right in holding that the property in respect of which eviction has been sought is 'premises' within the meaning of the Act and there existed relationship of landlord and tenant between the parties ?

(2) Whether the Learned Munsiff was right in holding that the petitioner reasonably and bonafide required the premises in question for his own use and occupation ?

(3) Whether the respondent tenant will be put to greater hardship, if order of eviction is passed ?

All the aforesaid points were held in favour of the respondent-landlord by learned District Judge. Accordingly, he dismissed the revision by his order dated 9- 3- 1981. This order of the District Judge was challenged before this Court in C.R.P. No. 1308 of 1981 which was dismissed on 23-14984 holding that the concurrent findings of the Courts below were not liable to be interfered with.

6. It may also be stated here that, in the meanwhile, there was also another contention raised by the petitioner-tenant that the respondent-landlord had no title to the property and it was hit by the provisions of the Karnataka Schedule Castes and Schedule Tribes (Prohibition of Transfer of Certain Lands) Act, 1978. That contention was also decided against the petitioner by the Trial Court and it was upheld by the District Judge.

7. While dismissing C.R.P. No. 1508 of 1981 this Court granted time to the petitioner-tenant till the end of January, 1985. Thereafter, before the expiry of that period, the petitioner filed another application on 30-1-1985 and got the time

extended till the end of April, 1985 for vacating the premises. Thereafter as the petitioner-tenant did not vacate the premises, the respondent-landlord has filed the present execution petition. Thus, more than 12 years have elapsed from the date of the original Petition.

8. In the execution the petitioner-tenant, has again raised the very same grounds which were raised in the original proceeding and has requested the Munsiff to stay the execution proceeding and refer the issue of tenancy to the Land Tribunal, Mangalore, which is seized of the application filed by the petitioner in Form No. 7 pursuant to the direction of this Court in Writ Petition No. 3442 of 1978. By the order under revision Learned Munsiff has held that the property in question has been held to be a 'premises' as defined in the Act, therefore the issue of tenancy under the Karnataka Land Reforms Act does not arise hence the question of referring such an issue to the Land Tribunal does not arise, and as such the execution proceeding is maintainable, therefore it need not be stayed pending consideration of the application (Form No. 7) filed by the petitioner before the Land Tribunal. Consequently Learned Munsiff has overruled the objections and has directed the execution to proceed.

9. Sri A Keshava Bhat, Learned Counsel for the petitioner, contends that in view of the fact that this Court, in exercise of its jurisdiction under Articles 226 and 227 of the Constitution, in Writ Petition No. 3442 of 1978 has remitted the matter to the Land Tribunal, Mangalore, issue of the tenancy exists between the parties, therefore, learned Munsiff is not right in not staying the execution proceeding pending consideration of the application filed by the tenant in Form No. 7 before the Land Tribunal ; that the decree obtained by the landlord becomes inexecutable in case it is held that the "property" is a house and the land is an agricultural land, having regard to the provisions contained in Section 44 of the Karnataka Land Reforms Act, 1961, as, in such an event, the land vests in the State Government and the occupancy right has to be granted in favour of the petitioner. In support of these contentions Learned Counsel has placed reliance on the decisions of the Supreme Court in Gundaji Satwaji Shinde v. Ramachandra Bhikaji Joshi, : [1979]2SCR586 ; Bhimaji Shanker v. Dundappa Vithappa, : [1966]1SCR145 , State of Uttar Pradesh v. Nawad Bussain, : [1977]3SCR428 ; Mathura Prasad

Sarjoo Jaiswal and ors. v. Dossibai N.B. Jeejeebhoy, : [1970]3SCR830 ; Noor Mobd. Khan Ghouse Khan Soundagar & Anr. v. Fakirappa Bharmappa Macbenahalli and ors., : [1978]3SCR789 ; E. Keshava Bhat v. K.S. Subraya Bhat, : AIR1980 Ker40 and Laxmichand and Ors. v. Ram kumar and Ors., .

10. On the contrary, Mr. B.V. Acharya, Learned Counsel for the respondent-landlord, contends that it is not open to the execution Court to go behind the findings recorded in the original proceeding and hold that the decree is a nullity; that it is not open to the petitioner to raise the contentions which are once raised and decided against him in the original proceedings ; that even though invalidity of a decree can be set up at the execution stage, but that can be gone into only when the invalidity is apparent on the face of the record and not on recording a fresh finding in the case. It is also further submitted that the petitioner who had already raised all sorts of contentions which were overruled in the original proceeding, cannot be permitted to raise the same contentions once again in the execution Court; that more than ten years have elapsed, therefore, it is not just and proper to permit the petitioner to raise the very contentions which were negatived and that the petitioner-tenant took time to vacate the premises, but did not vacate ; that inspite of the fact that the respondent-landlord has succeeded in all the Courts, he is not able to obtain possession of the premises ; that under these circumstances, the petitioner should not be allowed to raise the very same contentions once again.

11. I have been taken through the previous orders passed in the case. In support of the contentions raised by learned Counsel for the respondent, he has also relied upon the rulings of the Supreme Court in Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and Ors., SIR 1970 SC 1475 and Noorjehan v. Radhakrishna Shenoy, ILR (Karnataka) 1979 (1) 192.

12. Having regard to the various contentions raised by the parties the points that arise for consideration are :

(1) Whether the Executing Court is right in holding that the Execution Petition is maintainable ?

(2) If so whether it is right in holding that it need not be stayed pending consideration of the application in Form No, 7 filed by the petitioner before the Land Tribunal ?

Points 1 and 2. I will take up for consideration both these points together. In the earlier portion of this order I have stated the facts in detail which go to show that the contentions which have been raised by the petitioner in the present execution were also raised by him in the original proceeding. There was a full fledged contest in the trial Court in H.R.C.No. 61 of 1973 in the Court of the 1st Additional Munsiff, Mangalore. The order of the trial Court was confirmed by the District Judge, Mangalore who held that the property in question was a 'premises' as defined in the Act, that there was a relationship of landlord and tenant between the respondent and the petitioner. These findings were also affirmed by this Court in C.R.P.1508 of 1981, disposed of on 23-1-1984. Thus, the petitioner raised the grounds that the property in question was not a 'premises' as defined in the Act, and it was an agricultural land and he was an agricultural tenant. These grounds were negatived in the original proceeding. That being so, it is not at all now open to the petitioner to raise the very same grounds in the execution. No doubt, the validity and the executability of the decree, can be set up in the course of the execution and the executing Court is entitled to go into the same, but that must be apparent on the face of the record such as the decree having been passed by a Court which has no inherent jurisdiction to make it. So also, an objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record. But, where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of questions raised and decided at the trial or requires determination of facts afresh to determine the question raised and where the jurisdictional facts are raised and decided at the trial or which could have been raised but have not been raised in the original proceeding, the executing Court in such a situation will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction. (See: Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman & Ors., AIR 1970 SC 1475.) In this case, as it is already pointed out, the contention as to the lack of jurisdiction has been gone into by the trial Court, and it has been accepted by the District Court and this Court also. That

being so, it is not open to the Executing Court to go behind the order of eviction. At the same time, there is no fresh circumstance which can be said to have come into existence subsequently, so as to make the order of eviction passed in the Original proceeding inexecutable or invalid on the face of it. The fact that the Writ Petition 3442 of 1970 was allowed on 8-3-1982 and the application (Form No. 7) was remanded to the Land Tribunal for fresh disposal, does not change the situation inasmuch as the result of it is only to revive the application which was also pending when the original proceedings were decided. In addition to this, it is relevant to notice that C.R.P. 1508 of 1981 filed before this Court against the order of eviction passed by the Courts below was decided on 23-1-1984. By that time, Writ Petition 3442 of 1978 had already been allowed on 8-3-1982 and Form No. 7 had been remitted to the Land Tribunal for fresh disposal. When the Civil Revision Petition was decided by this Court, it was open to the petitioner to bring this fact to the notice of this Court and to have the matter considered by this Court. The earlier order of the District Judge, Mangalore, in C.R.P. 76 of 1976 dated 20-7-1976 holding that the property is 'premises' though challenged in Writ Petition No. 7514 of 1976, but it was allowed to be dismissed on the ground that the application filed by the petitioner in Form No. 7 before the Tribunal was rejected. Thus, it is clear that the Executing Court is right in holding that the execution is maintainable. The Executing Court is also right in holding that the question raised by the petitioner that the property in question is not a 'premises' as defined in the Act, has been decided in the original proceeding and it has been held against him. That being so, the decision relied upon by the petitioner in *Mathura Prasad Sarjoo Jaiswal and Ors. v. Dossibai N.B. Jeejeebhoy*, : [1970]3SCR830 has no application to the facts of the present case. The question involved in the present case is not one of *res judicata*. The question is whether it is necessary to direct the Executing Court to try the issue which has been decided in the original proceeding, once again because it is raised once again in execution proceeding. The decision of the Supreme Court in *Kiran Singh and ors. v. Chaman Paswan & Ors.*, : [1955]1SCR117 is also of no assistance to the petitioner. This Court in *Noorjehan v. Radhakrishna Shenoy*, ILR (Karnataka) 1979 (1) 192 has held that it is for the Court exercising jurisdiction under the Act, to decide jurisdictional facts. Accordingly, on the original side, jurisdictional facts as to whether the property in

question is a 'premises' as defined in the Act, or not and as to whether there exists a relationship of landlord and tenant between the parties have been decided. That being so, the Executing Court was justified in holding that it is not open to it to go into the same questions once again and refer the issue for decision to the Land Tribunal and stay the proceedings till the disposal of Form No. 7 by the Land Tribunal, Mangalore. Accordingly, Points 1 and 2 are answered in the affirmative.

13. In view of the aforesaid conclusions raised by me, it is not necessary to consider the decisions relied upon by Sri Keshava Bhat, Learned Counsel for the petitioner as all those decisions are with regard to the question of tenancy involved in the proceeding and referring of the same to the Land Tribunal having jurisdiction to decide the same. Therefore, the same are not considered in detail.

14. For the reasons stated above, this Civil Revision Petition fails and the same is dismissed.