

Hemavathi Vs. Vasudeva Bhat

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Court : Karnataka

Decided On : Apr-08-1986

Reported in : ILR1986KAR3007

Judge : Kulkarni, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 21, 26 and 28

Appeal No. : C.R.P. No. 1502 of 1986

Appellant : Hemavathi

Respondent : Vasudeva Bhat

Advocate for Def. : Padubidri Raghavendra Rao, Adv. for R-1 and ;V.V. Upadhyaya, Adv. for R-2

Advocate for Pet/Ap. : U.L. Narayana Rao, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Kulkarni, J.

1. This is a revision by judgment debtor No. 2 against the order dated 6-3-1986 passed by the I Additional I Munsiff, Mysore in Execution Case No. 217/83 over-

ruling the objection of the revision petitioner-second judgment debtor and ordering the issue of the delivery warrant in respect of the ground floor portion of the premises described in the execution petition.

2. It is an unfortunate litigation between the landlord and the tenant who in the initial stages had agreed only to disagree at a later stage.

3. The revision petitioner-judgment debtor No. 2 is the daughter of Gowramma-judgment debtor No. 1. Judgment Debtor No. 2 is the owner of the old building which bore No. 1225 situated in Irwin Road, Mysore. The decree-holder was a tenant in the said old building. On 31-1-1975, there was an agreement between the decree-holder-tenant and the judgment debtor No. 1 Gowramma (mother of JDR No. 2 who was then a minor) that the decree-holder should handover possession of the building bearing No. 1225 for the purpose of reconstruction and that as an interim measure he was to be put in possession, of a nearby building bearing No. 509. It was also agreed between them that after reconstruction he would be put back in possession of the property. The decree holder was doing business as a Chemist and Druggist in a portion of the old building bearing No. 1225 and was residing in the remaining portion of that building.

4. After reconstruction, now there are two shop premises in the ground floor. At this stage, Sri U. L. Narayana Rao submits that one of the shop premises was given the number as 1225/M1 and the other portion as 1225/M2. In addition to the two shop premises put up in the ground floor, it appears that judgment debtor No. 2, has put up two floors there and she has occupied both of them.

5. After reconstruction, it appears that there was a misunderstanding between the landlord Judgment debtor No. 2 and the tenant. Therefore, in order to give effect to the agreement dated 31-1-1975 entered into between the decree-holder and the Judgment-debtor No. 1-Gowramma the guardian mother of Judgment debtor No. 2-Hemavathi, the decree-holder filed on Original Suit No. 57/1976 seeking a declaration that he was the tenant of the premises, for possession of the premises and for permanent injunction restraining the Judgment debtors from leasing cut the property to others. The suit was dismissed. The decree-holder approached the lower Appellate Court with R.A. No. 20/1980. The lower Appellate Court set aside

the Judgment and decree passed by the Munsiff, allowed the appeal and decreed the suit. The judgment debtor No. 2 approached this Court with R. S. A. No. 849/1981. It was disposed of on 12-11-3982. This Court passed the following order :

'The landlord is directed to put the tenant back in possession of the earlier shop which was occupied by him with the other portion in the ground-floor excluding the upstairs.'

6. After the R.S.A. was disposed of, the Judgment-debtor did not put the decree-holder in possession of the property. Hence, the decree-holder sued out Execution in execution case No. 217/1983.

7. After the execution was sued out, the Judgment debtors resisted the execution.

8. The trial Court over-ruled all the objections of the Judgment-debtors and ordered the delivery of possession. Judgment debtor No. 2 being aggrieved by that order has come up with the present revision.

9. Learned Counsel Sri U. L. Narayana Rao raised before me the following points :

(i) Whether the relief sought in the execution' is in excess of the decree passed in R.S.A No, 849/1981?

(ii) Whether the question of identity of the property will have to be gone into ;

(iii) Whether the conduct of the decree holder-tenant now disentitles him to get the eastern non-residential premises ?

(iv) Whether the decree sought to be executed was in violation of the Rent Control Act and thus was a nullity and thus the execution petition was incompetent ?

10. Under Section 21 of the Rent Control Act (for short 'the Act'), the landlord is entitled to file an application for possession of the property on the ground that it is bona fide and reasonably required for the purpose of immediate demolition and re-construction. The Law in its wisdom by incorporating Sections 26 to 28 of the Act, provided that in the event of eviction under Section 21 (i) (j) of the Act, the tenant

had a right to move the Court to put him back in possession of the property. It is undisputed that the provisions of the Act were and are applicable to the City of Mysore where the property is situated. Merely because the Act has made a provision and given a right to the landlord to get possession of the property for the purpose of immediate demolition and reconstruction, it does not follow that the parties cannot take possession of the properties outside the Court by entering into mutual agreement. Section 21 of the Act does not exclude an agreement between the parties. If there is an eviction petition filed under Section 21(1)(j) of the Act, then only Sections 26 to 28 would come into force. But if the tenant has handed over possession of the property to the landlord under an agreement between themselves voluntarily and outside the Court for the purpose of enabling the landlord to demolish and reconstruct or repair the property and if both the parties agreed that after repairs or reconstruction the tenant should be put back in possession of the property, then Sections 26 to 28 of the Act would not come into play at all. Such an agreement, if entered into between the parties, and if not given effect to by any one of the parties, can be enforced by filing a suit for specific performance of the agreement. That is exactly what has been done in this case. The agreement dated 31-1-1975 entered into between the parties and was sought to be specifically enforced by the decree-holder by filing Original Suit No. 57/1976. Therefore, the argument of Sri U.L. Narayana Rao that the decree for possession passed in R.S.A.No. 849/1981 would be in violation of the provision of the Act and that the decree itself would be a nullity, only merits to be rejected.

11. Learned Counsel Sri Narayana Rao nextly contended that here was only one shop premises measuring 10ft. x 12ft, in the old building bearing No. 1225 and the decree holder was running his business in that portion and was residing in the remaining portion. According to the learned Counsel, the very fact that the decree-holder knowingly allowed the judgment debtors to put up the eastern shop premises, disentitled him to seek possession of the eastern (another) non-residential shop premises. In short, he relied on the principle of estoppel by conduct. When the agreement between the parties was that the decree holder-tenant should be put back in possession of the entire construction, the question of the plaintiff standing by and allowing the landlord to put up a second shop premises, does not arise at all in this case. The question of estoppel would have

arisen if there was an agreement between the parties that only a portion of the building where he was formerly carrying on the business, should be put back in his possession. Therefore the argument of the learned Counsel that the present decree-holder is barred by the principle of estoppel by conduct, does not appear to be correct.

12. He relied on R.S. Maddanappa (deceased) After him by his Legal Representatives -v.- Chandramma & Anr. : [1965]3SCR283 . In the said matter one of the sisters who had a share in the property stood by and allowed the other sister to deal with the property as if the entire property belonged to her. Under these circumstances, the question of interference of estoppel by conduct was not accepted by the Supreme Court. The facts narrated in the above cited case are quite different from the facts obtaining in this case. Therefore, the said argument of Sri U. L. Narayana Rao is rejected. Sri Narayana Rao further submitted that the tenant had no right to claim that he should be put back in possession of the same area in the same place. For that purpose he relied on the ruling of this Court in Janab A. Abbubucker & Ors. -v.- Mai De Deus Church & ors. 1982(2) KLJ 598. It was a case wherein an eviction Petition was instituted under the Act. In the said case there was compromise between the parties to the effect that the tenant should be put back in possession of an area measuring not less than 200 sq. ft. There was no compromise between the parties that a particular portion only should be given back to the tenant. While interpreting the provisions of the Act, this Court held that the tenant had no right to insist that he should be put in possession of the same area which he occupied earlier. In the present case there is no such compromise between the parties. But the agreement that was entered into between the parties was that the tenant should be put back in possession of the entire building. Therefore, the said ruling will not be of any help to the revision petitioner in this case.

13. Learned Counsel Sri Narayana Rao argued that the relief sought by the tenant in this case was in excess of the decree passed. The decree that has been passed in R.S.A. No. 849/81 is that the landlord is directed to put the tenant back in possession of the earlier shop which was occupied by him with the other portion excluding the upstairs. It is undisputed that there are only two shop premises in

the ground floor with a staircase in between in order to enable the landlord to go to the first storey and the second storey. When there are only two premises i.e. shop premises in the ground floor, the identity is beyond doubt. There is no scope even to entertain a doubt about the identity of the property. Therefore the attempt of the learned Counsel Sri Narayana Rao to create doubt in the mind of the Court about the identity of the property, is fruitless and without any substance.

14. It is no doubt laid down in *Jayantilal Mohanlal -v.- Narandas & sons*, AIR 1983 Bombay 227 that the executing Court should go into the question of identity. But when there is no doubt about the identity, I am really unable to understand as to how the said ruling would be of any help to Sri U.L. Narayana Rao. Therefore, his argument that the relief sought in the execution is in excess of the decree, is without substance. His argument regarding the identity of the property is also without any substance.

15. The question as to whether the decree-holder was formerly in possession of the first storey or not does not assume any importance or relevance in the present execution because, the decree-holder's right to get possession is restricted only to the premises that are now situated in the ground floor. The decree-holder is entitled to get possession of the two shop premises which are situated in the ground floor and he has no right to claim possession of the first storey and the second storey, in view of the clear decree passed in the second appeal. Learned Counsel Sri. P. Raghavendra Rao also submits that his client is not in the least interested in asking for possession of the first storey and the second storey.

16. Under these circumstances, there is no substance in the revision. The revision is therefore dismissed.

17. Learned Counsel Sri U. L. Narayana Rao submitted that his client was entitled to get proper return by way of rent for the two shop premises as she has spent good deal of money over the reconstruction. She is at liberty to approach the necessary forum for fixation of the rent.