

Cicilia D

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Court : Karnataka

Decided On : Sep-07-1990

Reported in : ILR1991KAR2848

Judge : K.A. Swami, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 80 - Order 1, Rule 10;
Karnataka Rent Control Act, 1961

Appeal No. : R.S.A. No. 786 of 1990

Appellant : Cicilia D

Respondent : Rent Controller

Advocate for Pet/Ap. : Udaya Holla, Adv.

Disposition : Appeal dismissed

Judgement :

K.A. Swami, J.

1. At the stage of admission, the learned Government Pleader is directed to take notice for the respondent. Accordingly he has entered appearance on behalf of the respondent

2. As the Appeal can be disposed of on a short ground, it is admitted and heard for final disposal. The records of the Appeal are not necessary because on the basis of the findings recorded by the learned II Additional Civil Judge, Mangalore, the Appeal can be disposed of.

3. This Appeal is preferred against the Judgment and decree dated 24-2-1990 passed by the learned II Additional Civil Judge, Mangalore in R.A.No. 106/1985 affirming the Judgment and decree dated 22-11-1985 passed by the I Additional Munsiff, Mangalore in O.S.No. 106/1980.

4. The appellant is the plaintiff and the respondent is the defendant in the suit. The appellant filed the aforesaid suit O.S.No. 106/1980 for a declaration that he is entitled to be in possession of the Plaint-A schedule property and for permanent injunction restraining the defendant-respondent, his men, agents, assigns and/or persons ordered or authorised from in any way trespassing into Plaint 'A' Schedule premises and/or dispossessing the plaintiff forcibly or otherwise and for costs etc.

5. The respondent-defendant is the Rent Controller, Mangalore, Dakshina Kannada. The Schedule 'A' property is a residential premises bearing Door No. 2-12-945 situated at Bejai, Mangalore, Dakshina Kannada. The trial Court as well as the lower Appellate Court have dismissed the suit on the ground that it was filed without issuing notice under Section 80 C.P.C. and the State Government is a necessary party to the suit.

6. Therefore, the following points arise for consideration in this appeal:

1) Whether the suit, as brought without issuing notice under Section 80 C.P.C., is maintainable in law?

2) Whether the State Government is a necessary party to the suit?

POINT NO. 1

7. The Plaint averments as summarised by the trial Court, the correctness of which is not in dispute are as follows:

"The plaintiff is the owner of the premises bearing Door No. 2-12-945 situated at Bejai, Mangalore, O.K. The said premises was leased out by the plaintiff earlier to the tenant and the plaintiff filed an eviction petition in H.R.C.95/74 on the file of the Munsiff, Mangalore and obtained an order of eviction under Section 21(1)(a) and (h) of the Karnataka Rent Control Act. Subsequent to the obtaining of order of eviction, the possession of the premises was also recovered from the said tenant by the plaintiff. After having thus recovered the possession, it appears that the plaintiff started occupying the said premises. In the meantime, the Rent Controller started proceedings against the plaintiff and however, subsequently, the same was suspended. It appears that the defendant on or about 28-9-1979 sent an intimation to the plaintiff stating that the action under Section 10A of the Karnataka Rent Control Act would be initiated as the plaintiff has leased out the premises in favour of Suresh unauthorisedly without the permission of the Rent Controller though the said building has fallen within the purview of the Karnataka Rent Control Act. Having felt aggrieved by the said letter sent by the Rent Controller, the plaintiff sent a reply dated 13-11-1979. In spite of the said reply as given by the plaintiff, for a considerable length of time there was no response in the matter. After the plaintiff gave the said reply to the Rent Controller, the proceedings before the Rent Controller stood adjourned from time to time and ultimately an order was passed against the plaintiff and also the said Suresh under Section 10A of the Karnataka Rent Control Act. The plaintiff has contended that the action of the Rent Controller in initiating the proceedings are violative of principles of natural justice. The action of the defendant is clearly illegal and the so-called proceedings are in contravention of the provisions of the Karnataka Rent Control Act and are ab initio void. The building never fell vacant and therefore the Rent Controller never had jurisdiction under Section 4 or 10A of the Rent Control Act. The present Act of the defendant causes a threat to the plaintiff and the said act of the defendant, which is illegal, and ultra vires requires to be restrained. The plaintiff as such has sought for a declaratory relief and consequential injunction as stated supra."

Thus from the aforesaid averments, it is clear that what is challenged by the plaintiff is the initiation of the proceedings by respondent-defendant against the plaintiff in respect of suit 'A' Schedule premises under Section 10A of the Karnataka Rent Control Act, 1961 (hereinafter referred to as the 'Act') and the

direction of the Rent Controller issued in discharging his official duty as Rent Controller. Thus the relief sought for by the plaintiff is with reference to the acts done by the Rent Controller in the discharge of the official duties and performance of the official functions.

8. Section 80 of the Code of Civil Procedure specifically provides thus:

"Save as otherwise provided in Sub-section (2), no suit shall be instituted against the Government (including the Government of State of Jammu and Kashmir) or against the public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to or left in the office of -

(a) and (b) xxx xxx xxx

(c) in the case of a suit against any other State Government, a Secretary to that Government or the Collector of the District, and in the case of a public officer, delivered to him or left at his office stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left."

In the instant case, admittedly no notice had been given by the plaintiff to the defendant under Section 80 C.P.C. That it is the settled position of law that the provisions of Section 80 C.P.C. are mandatory (See AMARNATH DOGRA v. UNION OF INDIA,). The Supreme Court has also further ruled in GANGAPPA GURUPADAPPA GUGWAD v. RACHAWWA AND ORS., that "where the plaintiff's cause of action is against the Government and plaint does not disclose that notice under Section 80 C.P.C., claiming relief was served in terms of the said Section, it would be the duty of the Court to reject the plaint recording an order to that effect. In such a case the Court should not embark upon a trial of all the issues involved and such rejection would not preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

9. Thus in the light of the relief sought by the plaintiff and the averments made in the plaint, there is no escape from the conclusion that the plaintiff has founded his relief in respect of the action initiated by the respondent-defendant under Section 10A of the Act. In other words, the plaintiff wants to avoid the proceedings taken by the respondent-defendant in his official capacity. Therefore, it was necessary for the plaintiff to issue a notice to the defendant under Section 80 C.P.C.

10. However, it is contended on behalf of the appellant-plaintiff by Sri Udaya Holla that the Rent Controller is neither a Government nor a Government servant, because he is a statutory authority. Therefore, it is not necessary to issue notice as required by Section 80 of the C.P. Code. Reliance is also placed on a Decision of the High Court of Andhra Pradesh in CHUNDURU CHENCHURAMAIAH SETT v. DEPUTY COMMISSIONER, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS, wherein it has been held that Section 80 CPC does not apply to a suit under Section 62 of the Hindu Religious and Charitable Endowments Act as the order passed by the Deputy Commissioner under Section 68 and by the Commissioner under Section 61 of the Act are Judicial Orders and the right of suit is provided under Section 62 to set aside the Judicial Orders passed by the Commissioner. Therefore, the Commissioner is not sued in his capacity as a public officer but only as a statutory body. In such a case, notice under Section 80 CPC is not necessary. An earlier Decision of the same Court in STATE OF MADRAS (NOW ANDHRA) REPRESENTED BY THE COLLECTOR, EAST GODAVARI v. CHITTURI VENKATA DURGA PRASADARAO AND ORS., AIR 1957 Andhra Pradesh 675 has also been relied upon. It is not possible to apply the ratio of the aforesaid Decisions to the case on hand.

11. The provisions similar to those contained in Section 68 of the Hindu Religious and Charitable Endowments Act, providing a right of suit against the order of the Deputy Commissioner and the Commissioner passed under the said Act, are not found in the Karnataka Rent Control Act, with which we are concerned. Where a statute gives a right of suit by making an explicit provision, even though such a suit may be against a public officer, Section 80 of the C.P, Code may be excluded. But it is not necessary to consider this question in this case as the Act does not contain a provision similar to Sections 61 and 68 of the Hindu Religious and

Charitable Endowments Act.

12. In the instant case, the suit is filed under the general law. The Rent Controller is a public officer. Even though he performs the functions and discharges the duties under the Act, he does not cease to be a public officer. Further there is no specific provision contained in the Act conferring a right of suit, against the order of the Rent Controller. In any suit action of the Rent Controller under the Act is challenged, Section 80 of the C.P. Code is attracted. As such the suit cannot be proceeded with as no notice is issued to the defendant as required by Section 80 C.P.C. Accordingly, point No. 1 is answered in the negative.

POINT NO.2

13. It is not possible to agree with the Courts below that for the relief sought in the suit, State Government is a necessary party. Having come to the conclusion that notice under Section 80 C.P.C. was necessary, the Courts below should not have embarked upon the question as to whether the State Government was a necessary party. Further, the Courts below are not correct in holding that the State Government is a necessary party because no relief is sought against the State Government. Presence of the State Government is not necessary for granting the relief sought for in the suit. Hence, Point No. 2 is answered in the negative.

14. For the reasons stated above, the Appeal is dismissed. The finding of the Courts below that the State Government is a necessary party to the suit is set aside. It is open to the plaintiff to institute a fresh suit after complying with the provisions of Section 80 C.P.C.

15. Sri Umakanth, learned Government Pleader; is permitted to file his Memo of Appearance on behalf of the respondent in six weeks.

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