

Kumar Vs. Vinod K. Chawla

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Court : Karnataka

Decided On : Jan-18-1995

Reported in : ILR1995KAR640

Judge : G.C. Bharuka, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 2(2) and 21

Appeal No. : HRRP No. 2950 of 1992

Appellant : Kumar

Respondent : Vinod K. Chawla

Advocate for Def. : Y.K. Narayana Sharma, Adv.

Advocate for Pet/Ap. : Shailesh, Adv. for Jaypee Associates

Disposition : Petition allowed

Judgement :

ORDER

G.C. Bharuka, J.

1. This Revision Petition has been filed by the tenant against the impugned order passed under Section 29 of the Karnataka Rent Control Act, 1961 (hereinafter in short the Act only). By this order, the Court below has directed the petitioner -

tenant to pay Rs. 7,720/- as arrears of rent within one month from the date of the order and continue to pay future rent at the rate of Rs. 950/- p.m.

2. The petitioner is a tenant in an old structure, which was subsequently purchased by the landlord. At the request of the landlord, the petitioner vacated the said premises with an understanding that he would be reinducted in the new structure which was to be constructed by the landlord, for running his business. An Agreement to that effect was entered between the parties on 17.2.1984. Subsequently, when the premises was about to be completed, parties entered into another Agreement dated 8.2.1985 (Ex.P.1). Clause (k) of the condition No. 7 of the said Agreement reads as under:

'(k) The lease could be renewed on the expiry of 11 months by mutual consent. However, in case of renewal of the lease beyond 3 years then the rent payable to the first party shall be enhanced by the second party at 12 1/2% per month of the then existing rent and upon such renewal the second party shall be liable to pay the enhanced rent to the first party accordingly. This procedure of enhancement of rent every 3 years will be continued.'

3. Pursuant to the said Agreement to Lease on completion of the building, the petitioner was given possession of site No. 130 with effect from 1.4.1985. Ex.P2 evidences the delivery of possession and payment of security, as also an Agreement for payment of rent at the rate of Rs. 750/- p.m. at the first instance, which the petitioner continued to pay to the respondent-landlord.

4. Subsequently, the landlord filed an eviction suit against the petitioner under Clause (h) to the Proviso to Sub-section (1) of Section 21 of the Act, which is still pending. In the said suit, an application was filed by the landlord under Section 29 of the Act claiming arrears by computing rent in terms of Clause (k) of Ex.P1 referred to above and for a direction to pay future rent computed on the basis of the said clause. The Court below by holding that the petitioner is bound to pay rent as stipulated in Clause (k) above and accordingly passed the impugned order as already noticed.

5. The learned Counsel for the petitioner has raised his contention to assail the impugned order. His submission is that since the petitioner had occupied the new building as a tenant of the old structure which has been demolished, therefore the provisions of the Act are applicable to the facts of the present case and the Court below could not have directed for payment of higher rent except in accordance with the provisions of the Act. In my opinion, this submission cannot be accepted for the simple reason that admittedly the building in question was constructed in 1985. Accordingly, as provided under Section 2 of the Act, the provisions regarding rent as provided under Parts II and III of the Act had no application. As there is no provision under the Act which provides that if a tenant of the old structure is allowed to occupy a premises in the new building constructed after demolition of the old one, he will still be governed by the provisions of the Act in respect of rent, therefore, even in such cases, provisions contained in Sub-section (2) of Section 2 will have its application. It was then contended on behalf of the petitioner that in the present case, the Court below had directed for payment of higher rent on the basis of above quoted Clause (k), as contained in the agreement Ex.P1 which is an un-registered document. According to him, since under Section 17(1) of the Registration Act, 1908 it was compulsorily registerable and the same having not been done, in view of Section 49 of the Act, the conditions contemplated therein cannot be looked into.

6. On the other hand, the learned Counsel for the respondents submitted that the said document does not by itself create a lease rather it is an Agreement to Lease i.e. it only gave right to the parties to enter into a lease document thereby creating interest over the property and therefore it was not required to be registered under Section 17 of the Registration Act. His submission is that since pursuant to the said document the parties had acted and possession was delivered to the petitioner as is evidenced by Ex.P2, he cannot resile from his promise and is bound to pay the rent as undertaken by him under Clause (k) referred to above. He also brought to my notice that as per the evidence led by the petitioner himself as RW-1, the execution of Ex.P1 & 2 are not in dispute. A fair reading of the document Ex.P1 clearly shows that it is merely an agreement conferring a right to the parties to enter into a contract of lease on a future date i.e. on completion of the building. This document by itself does not create a lease so as to invest the

petitioner with an interest in the building.

7. In the case of *TRIVENIBAI AND ANR. v. SMT. LILABAI* : AIR 1959 SC620 , in paragraphs 12 & 13 it has been held thus:

'12. The legislative history of the provisions of Section 17(2)(v) may perhaps be of some assistance in this connection. Section 17(h) of Act III of 1877 which corresponds to the present Section 17(2)(v) did not appear in the earlier Registration Acts of 1864, 1866 and 1871. Its introduction in Act III of 1877 became necessary as a result of the decision of the Privy Council in *Fati Chand Sahu v. Lilambar Singh Das*, 9 Beng LR 433 : 14 Moo Ind App 129 (PC) in which it was held that an agreement to sell immoveable property in Rs. 22,500 coupled with an acknowledgment of the receipt of Rs. 7,500 and a promise to execute a sale deed on the payment of the balance was compulsorily registrable under Section 17 of the Act. Section 17(h) was therefore enacted in 1877 to make it clear that a document which does not itself create an interest in the immoveable property does not require registration even if it expressly contemplates and promises the creation of that interest by a subsequent document; in other words, contracts of sale and purchase of which specific performance would be granted under certain circumstances fall within this provision and would no longer be governed by the said decision of the Privy Council in the case of 9 Beng LR 433 : 14 Moo Ind App 129 (supra). Thus the policy of the Legislature clearly is to exclude from the application of Clauses (b) and (c) of Section 17(1) agreements of the said character. On principle, there is no difference between such agreements of sale or purchase and agreements to lease. Under both classes of documents no present or immediate demise is made though both of them may lead to a successful claim for a specific performance, That is why the Privy Council observed in the case of *Hemanta Kumari Debi*, 4'5 Ind App 240 : (AIR 1919 PC 79) (supra) that the context and the scheme of the statute justified the view taken by Jenkins C.J., in the case of *Panchanan Bose*, ILR 37 Cal 808 (supra).

13. It may also be relevant to bear in mind that the other documents which are included within the word 'lease' by Section 2(7) of the Act supported the same conclusion. A counterpart, as it is usually understood, is a writing by which a

tenant agrees to pay a specified rent for the property let to him and signed by him alone. It is thus in the nature of a counterpart of a lease and as such it is included within the meaning of the word 'lease' under Section 2(7). Same is the position of a kabuliyat and an undertaking to cultivate or occupy. In other words, it is clear that all the four instruments which under the inclusive definition of Section 2(7), are treated as leases satisfy the test of immediate and present demise in respect of the immoveable property covered by them. We must, therefore, hold that the expression 'an agreement to lease' covers only such agreements as create a present demise.'

8. Therefore, it has to be accepted that Ex.P1 required no registration and had rightly been admitted. But, that does not solve the problem. This document merely provided as to on what terms the parties will enter into an agreement of lease, in the present case, though as stated above the petitioner was inducted in the premises as a tenant on acceptance of security deposit and fixation of monthly rent at Rs. 750/- p.m., but beyond this no written agreement of lease was executed between the parties, in order to inform as to whether the lease was month to month or was intended to be for a particular period or that the rent was to be increased after the lapse of the given period. So far Ex.P1 is concerned as I have already stated, it merely vested a right in the parties for its specific performance i.e. the landlord could have interfacial insisted for entering a lease deed incorporating the condition like Clause (k). But the same has not been done in the present case. Section 107 of the Transfer of Property Act provides that a lease of immoveable property from year to year or for a term exceeding one year or reserving a yearly rent can be made only by a registered instrument. All other leases of immoveable properties may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. In the present case, lease was created by delivery of possession without there being any registered instrument. Therefore, as submitted on behalf of the landlord, there is no difficulty in accepting that the lease was created for 11 months initially on a rental of Rs. 750/- p.m. But there is nothing on record to show that on expiry of 11 months, it was sought to be renewed by execution of a lease deed though the petitioner continued in possession of the premises as a tenant paying monthly rent of Rs. 750/-. Therefore, Section 116 of the Transfer of Property Act came into operation

which reads as under.

'116. Effect of holding over: If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in Section 106.'

9. Accordingly, as provided under Section 106 of the Transfer of Property Act, the premises not being used for agricultural or manufacturing purposes, the lease became one for month to month. That being the position, Clause (k) of Ex.P1 became irrelevant for determination of future rents, since it could have become operative only in a situation where the parties were to enter into an agreement of renewal of the lease for a period of three years.

10. Learned Counsel for the landlord placed reliance on three Decisions of this Court in the case of T. SEENAPPA v. J. MOHANLAL 1968(1) MLJ 307, PANCHAKSHARAPPPA v. VIJAYAKUMAR : ILR 1985 KAR2904 and ZAHIRA BEGUM v. VISALAKSHI : ILR 1991 KAR2092 to substantiate his submissions. But, in my opinion, those cases have no bearing on the facts of the present case.

11. For the discussion as above, the impugned order is set aside. Revision Petition is accordingly allowed. But without costs.

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