

Mohanlal Vs. M. Subramani

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Court : Karnataka

Decided On : May-28-2008

Reported in : 2008(6)KarLJ581; 2008(4)KCCR2326; 2008(5)AIRKarR345; AIR2008NOC2825

Judge : K. Ramanna, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 21(1); Karnataka Rent Act, 1999 - Sections 2(3) and 27(2); Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 - Sections 11(1)

Appeal No. : House Rent Revision Petition No. 550 of 2005

Appellant : Mohanlal

Respondent : M. Subramani

Advocate for Def. : Chandan S. Rao, Adv. for ;Rao and ;Rao, Adv.

Advocate for Pet/Ap. : P.D. Surana, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K. Ramanna, J.

1. This revision petition is filed by the unsuccessful tenant to set aside the order dated 5-10-2005 passed by the II Additional Small Causes Judge, Bangalore in HRC No. 1059 of 2000.

2. The brief facts of the case is that the respondent/landlord had filed the eviction petition against the revision petitioner herein under Section 21(1)(h) of the Karnataka Rent Control Act, 1961 which came to be considered under Section 27(2)(r) of the Karnataka Rent Act, 1999 seeking eviction of the revision petitioner/tenant, on the ground of requirement of the petition schedule premises for his bona fide use and occupation, the said eviction petition was resisted by the revision petitioner before the Court below, the Court below after considering the case of the parties and the evidence placed on record, passed the order under challenge, allowing the said eviction petition filed by the respondent herein, granting 3 months time to the revision petitioner/tenant to vacate and hand over vacant possession of the petition schedule premises. Being aggrieved by the said order of eviction passed by the Court below the revision petitioner/tenant has come up with this revision petition.

3. It is argued by the Counsel for the revision petitioner that eviction petition filed by the respondent herein is not at all maintainable in law and that all the owners of the petition schedule premises are not made as a party and the petition filed by only one of the co-owner without the permissions of the other co-owners is not at all maintainable. It is argued that the respondent's sister Smt. Vijayalakshmi filed a suit O.S. No. 3357 of 1991 on the file of the City Civil Court, Bangalore seeking partition and separate possession of their joint family properties which includes the petition schedule premises. The said suit was disposed of. Against the said judgment and decree RFA No. 488 of 1998 was filed and the same was allowed on 17-7-2001 decreeing the suit granting 1/4th share to the sisters of the respondent herein. Therefore it is argued that the respondent-landlord has no right to maintain the eviction petition and he has no right to act on behalf of all other co-owners in view of the decree of partition. It is further contended by the revision petitioner-tenant that the schedule premises is more than 14 sq. mtrs. Therefore, the Trial Court has no jurisdiction to maintain the eviction petition. The revision petitioner-tenant requires the petition schedule premises to carry on his business

in the name and style of 'M.K. Fancy Stores'. The petitioner has denied running two other businesses in the ground floor and first floor of property No. 162, O.K. Road and contended that the respondent is in the habit of evicting the tenants with the sole intention to get more rent.

4. In support of his contentions the learned Counsel for the revision petitioner relied on the following decisions:

(a) Abdul Hamid v. Bhuvaneshwar Prasad AIR 1953 Nag. 18, wherein it has been held as follows:

A tenant cannot be ejected at the instance of only one of the landlords where the tenancy has been created by several landlords. All the joint landlords must join in giving notice to the tenant before terminating his tenancy.(b) M.M. Quasim v. Manohar Lal Sharma and Ors. : [1981]3SCR367 , wherein it has been held as follows:

While taking advantage of the enabling provision enacted in Section 11(1)(c) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, the person claiming possession on the ground of his reasonable requirement of the leased building must show that he is a landlord in the sense that he is owner of the building and has a right to occupy the same in his own right. A mere Rent Collector, though may be included in the expression landlord in its wide amplitude, cannot be treated as a landlord for the purpose of Section 11(1)(c), the Legislature manifested its intention namely that that landlord alone can seek eviction on the ground of his personal requirement if he is one who has a right against the whole World to occupy the building himself and exclude any one holding a title lesser than his own.(c) G. Shoukath v. V. Chandraprakash : ILR 2004 KAR3288 ;

(d) Suresh v. State of Uttar Pradesh : 1981 CriLJ746 .

5. On the other hand the learned Counsel for the respondent/landlord contended that the respondent was working in the NGEF. Due to certain problems he resigned the said job with effect from 1-12-2000. After acceptance of his resignation by his employer, the respondent became unemployed. Therefore in

order to have some avocation, he decided to start his own business in the petition schedule premises, to earn his livelihood. It is further case of the respondent that the petition schedule premises is situated in a commercial area which is suitable in all respects to the requirement of the respondent-landlord. The proposed business to be undertaken by him is a small scale business and he is able to finance the same. It is further contended that the respondent is running his business under the name and style of M.K Fancy Stores. Further the respondent is running business in the ground floor and first floor of premises No. 162, O.K Road under the name and style of 'Mohan Sons and M.K Textile Agencies'. Therefore it is further contended that if the present petitioner-tenant is not vacated, the respondent herein will be put to great hardship.

6. In support of his contentions the learned Counsel for the petitioner relied on the following decisions:

(a) Habib v. Smt. Jayamma and Ors. : ILR 2004 KAR3408 ;

(b) S.K. Sabir Ahmed v. Rajiv Gandhi University of Health Sciences, Bangalore : ILR 2004 KAR3419 ;

(c) M. Javerilal v. N. Achalraj Jain : 2005(1)KarLJ76 ;

(d) Bombay Tyres International Limited (now known as Modistone Limited), Bombay and Anr. v. K.S. Prakash (since deceased) by L.Rs and Anr. : AIR1997 Kant311 ;

(e) Mohinder Prasad Jain v. Manohar Lal Jain : AIR 2006 SC1471 .

7. During the pendency of this revision petition, the revision petitioner before this Court filed a memo with a prayer for referring the matter to the Division Bench for being heard along with RFA No. 1234 of 2006 or the hearing of the above case be deferred till the controversy is resolved by the Division Bench for which the respondent herein filed a detailed objection.

8. Heard the arguments of learned Counsel for both parties. The points that arise for my consideration is that:

(a) Whether the respondent can maintain the eviction petition, when there is already a decree passed by this Court partitioning the properties of the family of the respondent wherein the respondent is having only 1/4th share?

(b) Whether the petition schedule premises measures more than 14 sq. mtrs. and whether the provisions of Karnataka Rent Act is not at all applicable to the petition schedule premises? and

(c) Whether the order of the Court below is incorrect illegal perverse and capricious?

9. Admittedly the petition schedule premises is a non-residential shop premises bearing No. 161 (Old No. 16/1), Old Kasai Road, Bangalore-2 measuring approximately 6' x 16.5'. The revision petitioner herein took the schedule premises on rent from the mother of the respondent i.e., late Smt. Bhagyalaxmamma in December 1977 on monthly rent of Rs. 250/- exclusive of electricity charges. The rent was enhanced with consent as and when required. Now the rate of rent of the schedule premises is Rs. 460/- per month and the revision petitioner-tenant paid up to date rent to the deceased Smt. Bhagyalaxmamma-the mother of the respondent and after her death he is paying rent to the respondent, the revision petitioner-tenant himself has admitted that he was paying rents to the respondent herein. Further, the respondent herein who was the co-owner of the petition schedule premises filed the eviction petition against the present revision petitioner-tenant on the ground that the petition schedule premises is required for his bona fide use and occupation and the respondent has not denied that one of his sisters filed a suit for partition seeking 1/4th share came to be decreed and final decree proceedings are pending. Therefore the respondent being a co-owner and who is collecting rents from the petitioner can certainly maintain the eviction petition against this petitioner and the petitioner cannot restrain the respondent from maintaining the eviction who is seeking eviction of the petitioner on the ground of requirement of the petition schedule premises for his bona fide use and occupation.

10. The contention of the petitioner with regard to the plinth area of the petition schedule premises is concerned, Section 2(3)(g) of the Karnataka Rent Act, 1999, is very clear that where a premises is used for commercial purposes which

measures more than 14 sq. mtrs. then the provisions of the Karnataka Rent Act, 1999, is not applicable to the said premises. Of course, the co-ordinate Bench of this Court by its order dated 21-6-2006 passed in R.F.A. No. 1234 of 2006 admitted the appeal by raising a point namely, 'whether the plinth area as described under Section 2(3)(q) of the Karnataka Rent Act, 1999 includes the thickness of the walls of the shop let out to a tenant or not?'

There are conflicting views expressed by learned two Single Judges in the following cases:

(a) P.R. Radhakrishna Setty and Sons Company, Bangalore v. A.N. Satish Babu : 2004(2)KarLJ223 , wherein it has been held that the plinth area has to be calculated by excluding the walls of the premises;

(b) Smt. P. Vatsala Upadhyaya and Ors. v. Srikanth Keshav Raikar : ILR 2004 KAR1637 , it has been held that for the purpose of calculating the plinth area, the thickness of the wall and the open area which provides entrance to the premises has also to be taken into consideration.

11. In the instant case initially the respondent filed the eviction petition showing the measurement of the petition schedule premises as measuring 9' x 12'. However a Commissioner was appointed to measure the petition schedule premises including thickness of the walls and vacant sit who submitted his report stating the measurement of the petition schedule premises as 6.5' x 16'. Subsequently the respondent herein, has filed an application seeking amendment of the measurement of the petition schedule premises which came to be allowed on 21-6-2002 and as per the amended schedule to the eviction petition, measurement of the petition schedule premises is shown as 6.5' x 16' which is equivalent to 11.25 sq. mtrs. only. The petitioner has not seriously disputed about the width and breadth of the premises and thickness of the wall and has not seriously disputed the Commissioners report nor challenged the order of allowing the amendment application passed by the Court below. The petition schedule premises which is in occupation of the revision petitioner-tenant measures less than 14 sq. mtrs. Therefore the question of referring this matter to the Division Bench to decide whether the plinth area as described in Section 2(3)(g) of the Karnataka Rent Act

of 1999 includes the thickness of the walls of shop let out to a tenant or not, does not arise for consideration.

12. In the facts and circumstances of the case and taking into consideration the fact that a co-owner can maintain an eviction petition against the tenant and in view of the fact that the thickness of the walls of the petition schedule premises will not exceed 14 sq. mtrs., I do not find any incorrect, illegal or perverse finding recorded by the Court below in allowing the eviction petition, thereby directing the revision petitioner to vacate and hand over the premises to the respondent.

13. For the foregoing reasons, this revision petition is dismissed. Accordingly, the memo filed by the petitioner to refer the matter to the Division Bench or defer the matter until the Division Bench disposes of RFA No. 1234 of 2006 does not require consideration. However, the revision petitioner-tenant is granted time till 31-8-2008, to vacate and hand over peaceful possession of the petition schedule premises to the respondent and he shall pay rents regularly to the respondent till then.

14. The petitioner shall file an affidavit within 2 weeks from today, undertaking that he will vacate and hand over vacant possession of the petition schedule premises to the respondent on or before 31st August, 2008 and pay the rents regularly.

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