

Chowdaiah Vs. Nagaraj

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Court : Karnataka

Decided On : Jan-16-1995

Reported in : ILR1995KAR850

Judge : G.C. Bharuka, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 3

Appeal No. : HRRP No. 1381 of 1994

Appellant : Chowdaiah

Respondent : Nagaraj

Advocate for Def. : K.L. Jagadeeswaran, Adv. for R-1 and ;K.R. Nagendra, Adv. for R-2

Advocate for Pet/Ap. : A.Y.N. Gupta, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Bharuka, J.

1. The impugned order passed is pursuant to an application filed by Respondent No. 2 under the provisions of Order 21 Rule 99 of C.P.C. whereby the Court has

held that she is entitled to be put back in possession of the schedule premises since on the date of dispossession i.e., on 6.1.1994 she was in possession of the said premises in the capacity of a tenant.

2. The schedule premises was originally owned by Smt. Parvathamma. The petitioner has purchased the said premises on 2.7.1992 under a registered Sale Deed. After purchasing the said premises the petitioner filed an eviction petition being HRC No. 811/1993 impleading Respondent No. 1 only who happens to be the husband of Respondent No. 2. Since all efforts to serve respondent No. 1 failed, steps were taken for effecting substituted service. But, Respondent No. 1 did not appear in the proceeding to contest the eviction petition and accordingly an ex parte decree was passed. Consequent to that, Ex.Case No. 10133/1993 was filed and with the help of police on 6.1.1994, Respondent No. 2 was thrown out of the premises along with her children. Aggrieved by the said action Respondent No. 2 filed an application under Order 21 Rule 99 of CPC seeking restoration of possession.

3. The Court-below keeping in view the pleadings of the parties and evidence on record has held that it was Respondent No. 2 who was in possession of the schedule premises as a tenant and since she was not impleaded in the eviction proceedings, the decree passed by the Court does not bind her and accordingly she is entitled to restoration of possession in her favour. While coming to that conclusion, the Court has taken note of the fact that earlier the previous owner Parvathamma had filed an eviction petition being HRC No. 416/1987 for eviction of respondent No. 2 from the schedule premises by admitting her as the only tenant, under various clauses of Section 21(1) of the Karnataka Rent Control Act, 1961 which came to be dismissed on 20.7.1990. Certified copy of the Judgment passed in the said case has been filed as Ex.P1. It has been further noticed from Exs.P3 to P5, which were Money Order coupons dated 9.2.1991, 8.4.1992 and 21.1.1992 that the rents remitted by Respondent No. 2 had been duly received by the previous owner Smt. Parvathamma. Ex.P6 is the Money Order coupon sent by Respondent No. 2 to the petitioner remitting Rs. 800/- as rent which has been refused by the petitioner. Ex.P2 is the ration card produced by Respondent No. 2 which shows her to be the occupant of the premises where she had been living

with her three children.

4. Mr. Gupta appearing for the petitioner has assailed the impugned order by submitting that the vendor had intimated to the petitioner that it is Respondent No. 1 who is the tenant of the premises and a letter of attornment to that effect was only sent to Respondent No. 1, but the Court below has failed to give due weightage to this aspect of the matter. According to him, Parvathamma, his vendor, in her deposition which was recorded on commission has denied to have filed any eviction petition against Respondent No. 2 and therefore no credence can be given to the judicial order placed at Ex.P1. He also submits that in any view of the matter since Respondent No. 1 is the husband of Respondent No. 2 therefore, in the eye of law he can also be deemed to be the tenant and any order of eviction passed against him will bind Respondent No. 2 as well.

5. On the other hand, Sri Nagendra appearing for Respondent No. 2, has submitted that the submission made on behalf of the petitioner cannot be accepted either on facts or in law.

6. Learned Counsel appearing for the parties apart from making submissions on the issues involved, have taken me through the evidence on record. I find that Respondent No. 2 in her deposition has clearly stated that her husband had deserted her long back and she had been living in the schedule premises as a tenant in her own rights and remitting the rent to the landlord. In support of her case she had produced the ration card Ex.P2 from which it transpires that the name of her husband had been deleted on 16.6.1983 which goes to support her plea of desertion. The ration card also shows that she had been living in the premises along with her three children. The voters list had also been brought on record which also shows that she was living in that premises. M.O. Coupons which have been produced in the case also proves that it was she who had been remitting the rent to the landlord. On the other hand, the petitioner has miserably failed to bring any material on record to show that she was never the tenant and it was Respondent No. 1 who was inducted and accepted as the tenant of the schedule premises.

7. Even according to Section 3(r) of the Karnataka Rent Control Act, it cannot be accepted that if the wife be the tenant then by the necessary implication or any statutory fiction the husband will also be deemed to be a tenant. This matter of the aspect has been considered by this Court in the case of CHANDRAVADANA BAI v. MANI 1991 (3) KLJ 679 , wherein it has been held thus:

'In this petition, the main contention raised is that the definition of 'tenant' includes the husband and the wife and therefore the claim of the petitioner should have been accepted. It is not possible to agree with this contention. 'Tenant' is defined under Section 3(r) of the Rent Control Act whereunder 'tenant' means any person by whom or on whose account rent is payable for a premises and includes the surviving spouse etc. Therefore, unless it is established that the rent was being paid by the respondent or on her account, it cannot be said that she was a tenant. In case the respondent's husband is the actual tenant who was paying the rent, the respondent will fall within the definition of 'tenant' only after the death of her husband.'

By referring to the said Judgment the learned Counsel for the petitioner has submitted that a heavy onus lay on respondent No. 2 to prove that the rent she was remitting was being remitted on her behalf and not on behalf of her husband.

8. In my opinion it was too a heavy onus sought to be cast on respondent No. 2. It is a established Rule of evidence that the onus of proof lies on a person who intends to establish a particular fact. In the present case since the petitioner had pleaded that Respondent No. 1 was the tenant the onus lay was upon him to prove that fact. No doubt some alleged Counterfoil of rent receipts have been produced to show that the previous owner had issued those receipts in favour of Respondent No. 1 but, in my opinion that cannot have much bearing in view of the unimpeachable documents of payment of rent produced by respondent No. 1, like Exs P3 to P5.

9. Before parting, I may mention that an application has been filed on behalf of the petitioner under Order 41 Rule 27 for admission of additional evidence being an alleged Certificate of Birth which shows that Respondent No. 2 has given birth to a child on 13.12.1992 and the tenant Respondent No. 1 is shown as the father of the

child. This document is sought to be relied on to disprove the story of desertion as pleaded by Respondent No. 2.

10. Mr. Nagendra appearing for Respondent No. 2 strongly challenged the genuineness of this document since according to him Respondent No. 2 has not given birth to any child as alleged and it is a malicious concoction.

11. In my opinion, at this belated stage the disputed document like the Certificate of Birth now produced cannot be taken into evidence. Moreover the said document cannot have much bearing on the main issue involved in the case. Accordingly, the application for additional evidence is rejected.

12. From the discussions made above, in my opinion the impugned order needs no interference. The Revision Petition is accordingly dismissed with costs assessed at Rs. 1000/- to be paid by the petitioner to Respondent No. 2.

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