

Dasappa Vs. Seetharam

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Court : Karnataka

Decided On : Dec-16-1994

Reported in : ILR1995KAR1683

Judge : Hari Nath Tilhari, J.

Acts : [Specific Relief Act, 1963](#) - Sections 5, 6 and 34; [Limitation Act, 1963](#) - Sections 58 and 65; Karnataka Rent Control Act, 1961 - Sections 3

Appeal No. : R.F.A. No. 629 of 1989

Appellant : Dasappa

Respondent : Seetharam

Advocate for Def. : V. Tarakaram, Senior Adv.

Advocate for Pet/Ap. : Ravindra L. Patil, Adv.

Disposition : Appeal dismissed

Judgement :

Hari Nath Tilhari, J.

1. This Regular First Appeal arises out of Judgment and decree dated July 3rd, 1989, delivered in Regular Suit 5208/1986, whereby the VII Addl. City Civil Judge, Bangalore, has decreed the plaintiff's claim, holding the plaintiff to be the absolute

owner of the property in dispute, as well as the defendant to be in unauthorised occupation thereof without having perfected title by adverse possession and further granted the decree of possession in favour of the plaintiff-respondent and directed the defendant to vacate and hand over possession of the suit property to the plaintiff-respondent within three months from the date of decree. Further, the Court directed that the enquiry, as regards mesne profits, claimed by plaintiff under Order 20 Rule 12 of the Civil Procedure Code, for short, 'Code', be made. Thus, a preliminary decree has been passed by the Trial Court decreeing the plaintiff's claim.

2. Brief facts of the case are that the plaintiff claimed himself to be the owner of the property bearing Nos. 57 & 57(1) (formerly 57A), 7th Main Road (present 3rd Main Road), Srirampuram, Bangalore-21, by virtue of the partition made under a registered Partition Deed dated 29.5.1969, amongst his father, his sister's daughter and himself. The plaintiff alleged that khata was also transferred in the Corporation register in his name. The plaintiff, has given an exchequer history of the litigation between the parties, in the plaint.

Plaintiff has stated in the plaint giving the description and the location of that land bearing Old No. 57(A) and has alleged that the properties bearing Old No. 57A and 57 are adjacent to each other and are situate in the compound. The plaintiff's case is that in the year 1975, a small shed was constructed and same was leased out to defendant in 1975. Thereafter, he asked the defendant to vacate the suit property, but, the defendant filed a Original Suit No. 2024 of 1980, which was later on numbered as O.S. 10011 of 1980. In that suit, the present defendant, who was the plaintiff claimed that he has been in long standing adverse possession, thereby, perfected his title and denied the present plaintiff's title as well as the present defendant -appellants was in possession of the property in his own right and plaintiff had no right in the property. The defendant of that suit, (that is, the present plaintiff) denied the present defendant's plea, i.e. the plea of plaintiff of the suit of O.S.No. 10011 of 80 that the said suit's plaintiff was not the tenant. The present defendant further mentioned that an exparte decree was originally passed in that suit, but Misc. Case No. 8/82, had been filed and the said exparte decree was set aside vide order dated 24.8.1985. After restoration of the suit, the plaintiff

of that suit, that is, the present defendant - appellant sought the declaration of his title on the basis of adverse possession by amending the plaint of that suit.

The present plaintiff - respondent has asserted in the plaint that as the present defendant - appellant has denied the plaintiff's title as well as his own possession as the tenant of the suit property, the possession of the defendant is that of a trespasser, therefore, the cause of action has accrued to him (plaintiff) to file this suit for possession as well as declaration. Plaintiff has also sought the relief for mesne profits till the date of recovery of the possession. In the plaint, the plaintiff has asserted in para 4 as the defendant has denied the title he is nothing but a trespasser hence the plaintiff is entitled to get back the possession of suit property from the defendant. The plaintiff respondent has asserted in plaint that cause of action accrued to him on 10.10.1980, that is, date of filing of O.S.10011/80 by the present defendant - appellant and easily in 1986 when that suit was amended by present defendant - appellant. The plaintiff alleged said denial of title of the plaintiff - respondent by defendant's case and show cause to plaintiff to file this suit on the basis of title, for possession and not on the basis of the claim of relationship of landlord and tenant for the reliefs claimed in the plaint.

3. The defendant - appellant filed the written statement in the present suit and asserted that the plaintiff is not the owner of the suit property. The defendant further took the plea that the suit to be time barred. The defendant further stated in the written statement that it is wrong to say that there was any contract of tenancy between himself and the plaintiff. The defendant admitted the filing of Suit No. 10011 of 1980, against the plaintiff. The defendant having denied his status as a tenant claimed himself to have acquired title by adverse possession. That a perusal of the pleading reveals that the plaint per se shows that the plaintiff has based his cause of action for the suit on the basis of his title, thereby, claimed the decree for possession. The assertion to the effect that defendant was a trespasser and he was in an unauthorised possession was false, while defendant - appellant's case is he never was the tenant, that no contract of tenancy was even entered into with him by the plaintiff, instead, the defendant claimed to have perfected his title by adverse possession.

4. The Trial Court on the basis of the pleadings of the parties, framed the following issues :

1. Is the plaintiff owner of the plaint schedule property?

2. Has the defendant perfected his title to the plaint schedule property by adverse possession?

3. Is the suit barred by limitation?

4. To what relief is the plaintiff entitled to?

5. It may be mentioned here that on behalf of the plaintiff, plaintiff examined himself as P.W.1 and produced 39 documents marked as Exs.P1 to P39. On behalf of the defendant, defendant examined himself as D.W.1 and examined another witness, namely, Kuppanayya as D.W.2 and filed the documentary evidence marked as Exs. D1 to D8.

It may also be mentioned here that during the pendency of the Suit No. 10011/1980, the Trial Court dismissed the present defendant-appellant's suit for declaration and injunction. The copy of the Judgment and decree of that suit was filed as Ex.D10. The defendant-appellant filed Appeal from that Judgment and that Appeal has been dismissed by this Court on 27.7.1988, confirming the decree of the Trial Court in the present defendant appellant's suit.

6. The learned Civil Judge has tried the present suit giving rise to this Appeal, has recorded the following findings in decreeing the plaintiff's suit:

a) That in the present suit, the defendant has failed to prove that he is residing continuously from 1961, in the suit schedule property. On the other hand, plaintiff has proved his title to the property by producing Exs.P1 to P6 and P12 to P37 and therefore. 'I have no hesitation to hold that the plaintiff is the absolute owner of the suit property in question.'

(b) that defendant has failed to prove or to make out a case that he has acquired title by adverse possession.

(c) that the suit filed by the plaintiff is within 12 years under Article 65 and as such, is within limitation. The Trial Court further held that the cause of action accrued to plaintiff respondent on 10.10.1980 and the present suit had been filed on 15.12.1986, interalia after a lapse of 6 years. The learned Trial Court did not accept the contention of the defendant-appellant that Article 58 of Limitation Act would have governed the limitation of the suit. It held the suit to be within time. The Trial Court finally held that the plaintiff has been entitled to be declared to be the absolute owner of the property in dispute and he has further been entitled to get decree for possession of the property in question being passed in his favour and against the defendant, i.e., present appellant.

7. After having recorded the above findings, the Trial Court decreed the plaintiff's claim for possession in suit and granted the decree for declaration and possession in his favour and against the defendant.

Having felt aggrieved from the Judgment and decree of the Trial Court, i.e., VII Civil Judge, Bangalore City dated 3.7.89, the defendant-appellant has come, with this First Appeal, before this Hon'ble Court.

I have heard Sri Ravindra L. Patil, learned Counsel for the appellant and Sri Tarakaram, Senior Advocate assisted by Sri Shailesh, an Advocate of this Court. Two contentions have been advanced by the learned Counsel for the appellant: Sri. Ravindra L. Patil submitted that the present suit filed by the plaintiff-respondent was barred by limitation, in view of the provisions of Article 58 of the Limitation Act and the learned Trial Court committed an error of law in holding the suit to be within time by applying a wrong Article to the same, namely, Article 65 of the Limitation Act and by a wrong application of law and the provisions of Limitation Act, the learned Trial Court illegally held the suit to be within time and said finding is erroneous and on the basis thereof the Trial Court by exercising the jurisdiction not vested in it illegally by decreeing the plaintiff's claim in a suit which was time barred. As such, Sri Ravindra Patil, submitted that the Trial Court's decree passed without jurisdiction is bad in law and is liable to be set aside. Sri.Patil further submitted on the plaint allegations specifically contained in paragraphs 3, 4 and 6 of the plaint, the plaintiff's suit was not maintainable in view

of the provisions of Section 21 of the Karnataka Rent Control Act, for short, 'Rent Control Act'. That no decree could be passed, unless there existed any one of the grounds mentioned in Section 21, was alleged and established to have existed on the date, the suit had been filed, no decree could be passed against the defendant-appellant. Elaborating his contentions, Sri. Ravindra Patil submitted that Section 21 of the Act provides that no suits shall be filed for eviction of a tenant, except on the grounds mentioned in Section 21, irrespective of any other provision of law, That plaintiff has pleaded in the plaint that defendant was a tenant and later on, the defendant denied the tenancy and his status as a tenant and claimed right of title and that the defendant has forfeited his right and has become trespasser. So, the plaintiff has filed the suit treating him as tenant and trespasser by forfeiture. Sri Patil, urged that there could not be any forfeiture under Section 111(g) of the Act, firstly, secondly, there could not be any forfeiture unless the landlord issues a notice determining the lease, no suit could be filed by the landlord, as, no notice as required under Section 114(g) of Transfer of Property Act has been alleged by the plaintiff to have been issued to the defendant. That even inspite of denial of the defendant about his status as a tenant and it is taken for a moment that lease has been determined, it does not affect the defendant, because, in view of Section 3(r) of the Act, the expression tenant includes a tenant, who has continued his possession, though his tenancy has been terminated and in such a view of the matter, the tenant's position even if denied by the defendant, the suit for possession against him (defendant) could not be entertained by the Court concerned and as such, the decree of the Trial Court is illegal, null and void and is liable to be set aside.

Sri Patil, in support of his contention placed reliance on MOHAMMED KHASIM v. MOHAMMED AMEER 1974(1) KLJ 316, also made reference to a Division Bench Decision of this Court in the case of GOVINDAMMA v. MURGAMMA : AIR1991 Kant290 and invited my attention to Section 3(r) of the Karnataka Rent Control Act, for short, 'Act' as well as Section 135 thereof.

8. That the above contentions made by the learned Counsel for the appellant have hotly been contested on behalf of the respondent by Sri Tarakaram, learned Senior Advocate. Shri Tarakaram submitted that firstly, the suit is within time. That

the defendant -appellant's contentions that the suit is barred by limitation in view of Article 58 is unsubstantial. That the principal relief in this case is the relief for decree for possession. Decision of the question of plaintiff's title is ancillary for the purpose of granting relief of possession and if a suit for bare possession would have been filed, would have been maintainable, particularly, when the plaintiff himself is not in possession is concerned, a decree for possession cannot be passed in favour of the plaintiff in a suit based on title, with assertion and proof of title by plaintiff. That the Trial Court has rightly held that the suit to be governed by Article 65 of Limitation Act and to be within time, so, Mr. Tarakaram made reference to a Division Bench Decision of this Court in the case of FRANCIS v. LINGAMMA 1987(1) KLJ 94. That the suit is not a simple suit for declaration, really, it is a suit for possession and the nature of the suit will remain as a suit for possession, because, the principal and effective relief that is claimed in the suit is relief for possession.

The decision of the issues involving questions of title is always implied in a suit for possession. Therefore, the nature of the suit is to be determined on the basis of the allegations and the substantive relief that is claimed in the suit. So, the contention of the appellant is that the suit is barred by time is wrong and unsubstantial.

9. Dealing with the second question, the learned Counsel for the respondent-plaintiff Sri Tarakaram, learned Senior Counsel submitted that firstly there has been no case of either of the parties that defendant is a tenant. He submitted that there is no doubt that some history has been given, but, the basic cause of action on which the suit has been based is the fact that defendant really threw away and surrendered his possession as a tenant and started claiming title in himself as a trespasser. That no doubt, the defendant has denied the plaintiff's title to the suit property and that defendant - appellant has denied that there was any contract of tenancy between him the plaintiff or any predecessor to the plaintiff. That the defendant in the present suit has asserted to be in possession of the property as a trespasser and claimed for himself that he has perfected title by adverse possession. No plea has been taken by the defendant in the present case, even as an alternative plea that if defendant - appellant is taken to be tenant, the suit is

barred under Section 21 of the Rent Control Act. He further submitted that, firstly, when no such plea has been taken either in the written statement, the suit under Section 21 of Act has been barred nor he pressed an issue on that point and no argument was addressed in the Trial Court as it appears from the Judgment, now it is not open to the defendant to take such a plea, as questions of fact have got to be decided. He elaborated his contentions and submitted that this plea was raised by the present respondent-plaintiff in the earlier suit, wherein, the present appellant has denied the allegation of fact to the effect he was tenant and asserted himself to be in possession illegally without any consent of the present plaintiff and the Trial Court, in that suit, has recorded finding as to the effect that the present plaintiff-respondent has failed to prove any contract of tenancy and there is no evidence to prove that there was relationship of landlord and tenant between plaintiff and defendant. He also pointed out that as per Ex.P.10, which is printed at pages 65 to 73 of the paper book, the Trial Court has come to the conclusion that defendant has been a trespasser and he has not perfected his title by adverse possession. Really, those findings were binding on the parties including the present plaintiff-respondent, even if he has narrated the history, these allegations are of no material value. That once the findings have been recorded in earlier litigation same being binding, then plaintiff had no recourse, except to file the fresh suit treating the defendant to be a trespasser or a person in unauthorised illegal possession of suit property and as there is no question of suit being barred by Rent Control Act's Section 21, particularly, when defendant himself given up his tenancy itself. Sri Tarakaram, learned Counsel for the respondent further submitted on the basis of the Decisions in Mohammed Khasim v. Mohammed Ameer and Govindamma v. Murgamma which have been relied by appellant's Counsel are distinguishable and do not apply to the facts of present case, He submitted that as such the decree in the suit has rightly been passed by the Court below and it does not suffer from any error of law or of fact.

10. I have applied my mind to the contentions made by the learned Counsel for the parties and I have perused the record. Before proceeding to discuss the matter, it is necessary to keep in mind and to refer to Sections 5 6 and 34 of the Specific Relief Act. Section 5 of the Specific Relief Act reads as under.:-

'5: A person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure.'

That Section 6 of Specific Relief Act provides for suit for possession by a person dispossessed of immovable property. Section 6 of the Specific Relief Act reads as under:

'Section 6(1); If any person is dispossessed without his consent of immovable property otherwise, than in due course of law, he or any person claiming through him may by suit recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under the section shall be brought:-

(a) after expiry of six months from the date of dispossession or against the document.

(3) No appeal shall lie from any order or decree passed in any suit under this section nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suit to establish his title to such property and to recover possession thereof.'

11. That Section 34 of the Specific Relief Act provides for declaratory decrees, which reads as under:

'Any person entitled to any legal character or to any right as to any property may institute a suit against any person denying or interested to deny his title to such character or right and Court may in its discretion make therein a declaration that he is so entitled. Plaintiff need not in such a suit ask for any further relief.

Provided that no Court shall make any such declaration, where the plaintiff being able to seek further relief than mere declaration of title omits to do so.'

Article 58 of the Limitation Act provides as under:

Article 58 To obtain declaration 3 years When the right to

sue first accrues

Article 65 of the Limitation Act provides as under:

Article 65 For possession of 12 years When the

immovable property possession of the

or any interest therein defendant becomes

based on title adverse to plaintiff

12. A reading of the above provisions, particularly, indicates that under Section 5 of the Specific Relief Act, that a person, who has been deprived of his immovable property or its possession, he can file a suit for recovery of that property and possession thereof claiming the decree for possession, of the property on the basis of his title even.

Under Section 6 of the Act, suit for possession by a person who has been dispossessed from the possession of immovable property may be filed even without pleading or asserting title, provided it is filed within a period of six months from the date of dispossession and after the expiry of six months period remedy by suit under Section 6 of Specific Relief Act is not available, But, on the basis of long standing possession on the basis of possessory title, the person dispossessed may file suit for recovery of possession of immovable property within twelve years of his dispossession against one who has dispossessed the plaintiff as well on the basis of which a person alleges to be entitled to the decree. So, in the suit for possession, otherwise than under Section 6 of Specific Relief Act or for injunction, plaintiff no doubt, has to assert and state the basis of his claim and the title in the plaint may be as a owner or the like. Thereafter, he may have to further assert the cause on the basis of which he is filing the suit. But, in such a suit, plaintiff is not bound to claim a relief of decree for declaration. The plaintiff's suit for possession would not be barred simply for the reason plaintiff does not claim a declaratory decree as well i.e., declaration. The Court has to see what is the principal relief the plaintiff has claimed and after that another question has to be decided which Article of Limitation Act is to be applied to determine if suit is barred by time, ie., by

Limitation or not.

A perusal of Article 58 per se shows that it applied to the suits to obtain a declaration other than those referred in Articles 56 and 57, and Articles 64 and 65 of Limitation Act deal with the suit for possession.

13. Suit for decree for possession based on title is itself a specific substantive relief. That a person entitled to possession of specific immovable property as of right, is entitled to file the suit for recovery of possession of property on the basis of his right, title or interest therein and to recover possession of immovable property in the manner provided by Civil Procedure Code 1908 i.e., in other words, by filing the suit for recovery of immovable property and its possession on the basis of title or right or interest therein may be possessory title and as per language of Sub-section (4) of Section 6 of the Specific Relief Act itself nothing in Section 6 shall bar such a suit to establish title and to recover possession.

A comparative reading of Sections 5 and 6 of Specific Relief Act along with Section 34 thereof including the Proviso to Section 34 per se reveals that the mandate of law is that no declaratory decree shall be granted by the Court if the plaintiff in the suit could claim further relief than mere declaration but he has omitted to claim that further relief, but there is no such provision or Proviso attached to either Sections 5 or 6 of the Act as is attached or enacted with Section 34. This being the position i.e., that Legislature in its wisdom did not provide or enact any such Proviso with Sections 5 or 6 as it has done with Section 34, it cannot be held that the simple suit for decree of recovery of immovable property or possession is not maintainable unless declaratory decree is claimed. If I accept the contention of the learned Counsel for the defendant - appellant that the declaratory relief should be deemed to be essential relief and if the declaratory relief is not sought for, then the plaintiff's suit is to be dismissed, I think it will be tantamount to entering or trespassing into the field of legislation than interpretation of law. The jurisdiction of the Court ordinarily is to interpret the law. The decision on the question of title, possessory title or title otherwise, is ancillary in the proceedings and unless that title or interest of the person is determined in the suit and unless plaintiff proves his interest right or title in respect of the property, in

relation to which the suit for injunction or possession is filed, the plaintiff is not entitled to the decree. It is the trite principle of law, no doubt, that in a suit for possession or injunction, the plaintiff has to stand on his own legs and not on the weakness of defendant's case. When the cause of action for the suit is illegal or unauthorised dispossession of the plaintiff from the property, he is entitled to decree for possession on the basis of his title. It is the main or principal relief claimed by the plaintiff be it the relief for possession that may determine the exact nature of the suit. It is the allegation made in the plaint coupled with the relief claimed as principal or main relief that determine the nature of suit and decide forum (see ABDULLA BIN Ali v. GALAPPA : AIR 1985 SC577 .

14. This being the position of law as appears from the reading of that Decision and as Article 65 deals with suit for possession, and Article 58 governs suit simplicitor for declaration, then, it has to be determined what is the exact nature of the suit on the basis of the allegations made in the plaint including the cause of action and the relief. In my opinion, the suit giving rise to this Appeal is a suit for essentially relief of possession and therefore, such a suit will be governed by Article 65 as submitted by the learned Counsel for the respondent, though, plaintiff has to allege and prove his right, interest or title in suit property, but he is not required to seek decree for declaration of title. When I so opine, I find support from the view expressed by Madras High Court reported in MUTHYALAMMA v. NARAYAN : AIR1936 Mad936 . The material observations were made in the context of the suit for injunction restraining the defendant from interfering with the plaintiff's possession and enjoyment of the defendant's property as under:

'The learned District Munsiff, holding that the suit was in effect to have right of the plaintiffs 1 to 4 and defendant-10 as Managers in respect of these properties declared directing the plaintiff to amend the plaint by adding a prayer for a declaration to the effect and to pay additional Court-fee. The plaint was accordingly amended, but, no additional court fee was paid. As the learned District Munsiff, found that the plaint as amended was beyond the pecuniary jurisdiction, returned it for presentation to proper Court. On appeal to the Subordinate Court, observed that order as already made rebuts the Subordinate Judge was holding that it was not necessary for the plaintiff to add a prayer for declaration and the

suit as originally framed was maintainable. The Trial Court was therefore, directed to re-entertain the suit. Hence, this petition. On merits, I have no doubt that the learned Subordinate Judge was right in holding that suit as originally framed was maintainable. It is true in establishing their rights to have injunction against defendants, the plaintiff will have to prove that plaintiffs 1 to 4 and defendant-10 were properly appointed Managers in respect of all the properties and the other plaintiffs are the lessee under them, but, it does not follow from this that plaintiffs are suing for declaration of title of plaintiffs 1 to 4 and defendant-3 as Managers. Their allegations is that they are in lawful possession of the property and their possession was threatened to be interfered with by the defendants.'

A reading of this Decision per se supports the view which I have taken that in a suit for possession or injunction, a person has to allege his title, interest or right in suit property to make a claim of relief and to prove it. even if he does not claim any relief for declaration, the suit for possession and injunction cannot simply on the ground of non-claiming of declaratory decree be said to be not maintainable. When that is the position, the suit for possession is to be held, to be in time.

In my opinion, the contention of the learned Counsel for the appellant to the effect that the suit has been barred by time under Article 58, has got no substance and as such, the contention of the learned Counsel is rejected.

14-A. That as regards the second contention relating to the question of bar of Section 21 of the Karnataka Rent Control Act, in my opinion, that contention of the learned Counsel for the appellant has also got no substance for the following reasons:

The Decisions relied upon by the learned Counsel for the appellant are distinguishable as being indicated hereinafter in brief. In the present case, no doubt, it is well settled principle of law that the plaint allegations have to be looked into and what has to be looked, gathered and examined from the plaint allegations is the title on which the plaintiff is claiming relief and the cause of action. In the plaint of the present case, plaintiff has asserted that he is the owner of the property as per allegations made in paragraph-1. He has no doubt given a history to the effect that the property was leased sometimes in the year 1975 and

thereafter, the defendant paid rent etc. and then, the defendant filed his suit for declaration of his title as owner claiming himself to be the owner on the ground that he acquired possession adversely as a trespasser. In that Suit No. 10011 of 1980, he denied that there was any contract of lease or tenancy between the plaintiff and the defendant. He claimed that the plaintiff has got no title. But, the plaintiff's allegations are that the defendant lost that suit, and further that defendant surrendered his tenancy rights etc., in view of his plaint allegations made by defendant in O.S.No. 10011/80 to the effect that present defendant had become a trespasser. The own allegations of the present defendant-appellant that the defendant has been claiming himself to be the trespasser and as such to be continuing to be in illegal possession, so the plaintiff became entitled to have cause of action accrued to claim a decree for possession against the defendant as trespasser on the ground of that he is a trespasser.

15. That as such it is not a suit nor can said to be a suit filed for decree of ejectment of the tenant by plaintiff - respondent really, the cause of action of the plaintiff's suit has been his title and not any such thing as relationship of landlord or tenant. When I so observed, I find support from the observations of their Lordships in *Abdulla Bin All v. Galappa*, paragraphs 5 and 6 are as follows:

'There is no denying the fact that the allegations made in the plaint decide the forum. The jurisdiction does not depend upon the defence taken by the defendants in the written statement. On a reading of the plaint as a whole it is evident that the plaintiffs-appellants had filed the suit giving rise to the present appeal treating the defendants as trespassers as they denied the title of the plaintiffs-appellants. Now a suit against the trespasser would lie only in the civil Court and not in the revenue Court. The High Court, however, took the view that the plaintiffs appellants had not claimed a declaration of title over the disputed plots and all that has been set up by them in the plaint is the relationship of landlord and tenant.

6. In our opinion the High Court was not quite correct in observing that the suit was filed by the plaintiffs-appellants on the basis of relationship of landlord and tenant. Indeed, when the defendants denied the title of the plaintiffs and the tenancy the plaintiffs filed the present suit treating them to be trespassers and the suit is not on

the basis of the relationship of landlord and tenant between the parties. It is no doubt true that the plaintiffs had alleged that the defendant No. 2 was a tenant but on the denial of the tenancy and the title of the plaintiffs-appellants they filed a suit treating the defendant to be a trespasser and a suit against a trespasser would lie only in the civil Court and not in the revenue Court.'

The observations contained in paragraphs 5 and 6 of the above Decision are complete answer to the contentions of learned Counsel for the appellant to the effect that in the plaint of the present case, the plaintiff-respondent though has mentioned that there was for something as letting out and thereafter denial etc., but, when I did put the question as to defendant's stand as per defendant's pleading to the learned Counsel for the appellant, he said that there is denial of possession by defendant as tenant, instead, the defendant-appellant claimed his possession based on right or title by adverse possession. Before considering the question, whether there was a surrender or a forfeiture, it will be proper to make a reference to Ex.P10 - a Judgment inter se between the present appellant and the plaintiff -respondent in O.S.No. 10011 of 1980. As I have mentioned earlier, that in that suit, the Trial Court has given a finding to the effect that the plaintiff of that suit, namely, the present defendant - appellant had failed to prove the accrual of title by adverse possession and further, that the present plaintiff - respondent, who was a defendant in that suit failed to prove that there existed a relationship of landlord and tenant between the parties, and the plaintiff - respondent had failed to establish a contract of lease of tenancy between the present plaintiff -respondent and defendant - appellant. The tenancy of lease is defined under Section 105 of the Transfer of Property Act. In Section 3(r) of the Karnataka Rent Control Act, 1961 (Karnataka Act No. 22 of 1961), the expression 'tenant' has been defined as under:

'Tenant means any person by whom or on whose account, rent is payable for a premises and includes the surviving spouse or any son or daughter or father or mother of a deceased tenant, who had been living with the tenant in the premises as a member of tenant's family, upto the death of the tenant and a person continuing in possession after determination of tenancy in his favour, but, does not include any person, a person placed in occupation of the premises by its tenant or

a person to whom the collection of rents or fees in a public market, cart stand, or slaughter house or of rents for shops has been framed out or leased out by a local authority.'

There are two material expressions used in this Section. In Section 21 of Karnataka Rent Control Act, 1961, expression 'tenant' has been used and it has to be interpreted in the light of Section 3(r) of the Act. Initially, the Section refers to the original and principal tenant namely, the person, by whom or on whose account, rent is payable for the premises. Thereafter, the Section becomes illustrative and under that term, it also includes a person who continues in possession after determination of his tenancy in his favour.

16. A reading of Section 3(r) per se appears to take into consideration the definition of a lease, lessor and lessee as contained in Section 105 of the Transfer of Property Act, because, unless tenant by lease or contract of tenancy i.e., the original, tenancy by contract of tenancy i.e. lease is shown to have existed, other persons or portion referred cannot come into picture. Section 105 of the Transfer of Property Act defines the tenancy a lease etc, as under:

105. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money share, service or other thing to be so rendered is called the rent.'

A reading of these provisions per se shows there should be either as an admitted fact or if it is disputed fact, it has to be shown and established, and the Courts below have to find that initially there had been relationship of landlord and tenant, between the parties under a contract of tenancy and when it has been so proved then if his tenancy has stood or has been determined, and, inspite of determination of lease, lessee continues in possession thereof, then, no doubt,

lessee might be said to be a tenant under the second part to Section 3(r) of the Act. Where, initially parties admit and both of the parties come to the Court with the case that there has been no lease or relationship of landlord and tenant between parties, the question of application of Section 3(r) of Karnataka Rent Control Act may not arise. The plaintiff - respondent's case is that there is no relationship of landlord and tenant between the plaintiff and the defendant. In the earlier suit, i.e., O.S.No. 10011/80, the present plaintiff might have alleged that defendant - appellant of this suit and appeal was a tenant, but, the Courts below in that case have found as a fact that the contract of tenancy has not been proved and, relationship of landlord and tenant has not been established by the present plaintiff, who was defendant in that earlier suit. There in earlier suit, the trial Court refused the relief of injunction to the present defendant -appellant, that is, the plaintiff of that suit on the ground that he has been trespasser, no injunction can be granted in his favour. When a finding of fact had been arrived at to the effect that the status of present defendant - appellant is not and has not been of a tenant, but of a trespasser, in my opinion really, it was not open to him, i.e., to raise any such plea again either as history or as defence and even if it was alleged, but it does not make any difference in view of Section 11 of the Code of Civil Procedure containing the doctrine of res judicata, as in that suit an issue in regard to present defendant's status as a tenant was there as a substantial issue for being decided and was decided between the parties. The findings had been recorded by the Court to the effect that the present defendant has not been a tenant instead, he was trespasser and the same is binding on all the parties including the respondent. Once a finding in O.S. No. 10011/1980, had been arrived at as one binding on all the parties and the present respondent - plaintiff, who has based his title treating the defendant as a trespasser the suit cannot be held to be one barred under Section 21 of the Karnataka Rent Control Act the provision of Section 3(r) of the Act will not apply, to the present case because earlier, there was no contract of tenancy nor any such contract had been proved. Therefore, opposite parties have proceeded with the trial of the suit on the basis that defendant has been a trespasser, while, defendant claimed title on the ground that he has acquired title by adverse possession.

16(a). The learned Counsel relied on two Decisions, which in my opinion are clearly distinguishable. The first Decision referred by the learned Counsel for the appellant is YEDUYELLAPPA v. SOMAPPA 1968(1) Mys. L.J. 221, in which it has been found by the Appellate Court as a fact that contract of tenancy had been proved, though tenant had denied the tenancy in that suit, consequently, the Appellate Court directed eviction of the tenant. In that context, this Court held that even if there was forfeiture or like, and the tenancy had been determined, on the defendant having denied the plaintiff's title, but that would not affect the status of the defendant of that case as tenant. It may be observed that Section 111(g) of the Transfer of Property Act there is a requirement of notice being issued by landlord of his intent to determine the lease and to take possession, but no notice had been issued in that case and so, therefore, claiming of title itself in himself on the part of the lessee did by itself not put an end to the lease, without giving of notice of requisite intent to determine lease so as to enable the landlord to enter into possession. On this ground, the petition was allowed. Whereas, in that case the tenancy was proved while here, it is neither a case of proved tenancy nor admitted tenancy, instead, it has been found that there was no contract of tenancy between parties and there was no relationship of landlord and tenant. In the case of Mohammed Khasim v. Mohammed Ameer, the plaintiff's case was that defendants 1 and 2 were original owners and the 3rd defendant was a tenant, but, defendant forfeited his tenancy rights as he denied the plaintiff's title and pleaded his own title itself. The defendant in that case set up title by adverse possession, and in the Courts below the defendant sought permission to take plea that the defendant was a tenant and the defendant wanted to raise that plea in the alternative, to the effect that even if he was a tenant that suit was barred by Section 21 of the Act but was not allowed to be raised by the subordinate Courts. The learned Single Judge of High Court permitted that plea to be raised. It is in context of the facts of that case, emerged the Decision. Whereas, in the present case, what I find is that no such effort was made by the present defendant to take plea in that manner in the Trial Court, instead, it was pleaded and contended on his behalf that he was a trespasser and has perfected title by adverse possession. So, firstly, it is not open to him at this stage to say that this plea has got a weight to be considered. Secondly, an earlier finding there in O.S. 10011/80 that no tenancy or contract of

tenancy has been established and further that the defendant has been a trespasser, so, it was not open to either to parties to raise or to the Court below at all to go into those questions. In my opinion, the second Decision is not of any help or assistance to the defendant. The next Decision relied on by Sri Patil, to support his contention is that of Govindamma v. Murgamrna.

That as regard the Decision of Govindamma, there can be no dispute, as a bare proposition of law, where contract or tenancy is proved in between the parties to the litigation and tenancy has been determined, but, the tenant even thereafter is continuing in possession other party also admits that position, then, in such a case lessee can be said to be covered by the expression 'tenant' as defined under Section 3(r) of the Act. In that case, Section 21 of the Karnataka Rent Control Act would no doubt come into play. The material portion of paras 5 and 6 of Govindamma's case read as under:

'The 2nd respondent purchased the suit schedule premises from the previous owner Sri A. Doraiswamy Naidu under a registered sale deed dated 14.4.1979. After the purchase, the plaintiff filed H.R.C.No. 50/1979 for possession against the defendants but they denied her title and set up title in themselves. Therefore, the plaintiff treated the tenancy as forfeited and filed O.S.No. 54/1981 for a declaration of her title to the suit properties described in plaint schedule - B, C and D and for possession of the same. She specifically averred in the plaint that the defendants were the tenants of the premises; that she had filed H.R.C.No. 50/1979 against the defendants wherein they denied her title, therefore, their tenancy stood terminated by forfeiture and hence she pleaded that she had filed the suit for a declaration of title and for possession of the suit schedule premises.

6. The defendants also contended that the plaintiff was not the owner of the suit schedule premises and that they were not the tenants of the schedule premises.'

In Govindamma's case, the Courts below i.e., Courts of fact concurrently held that plaintiff has acquired title to the suit premises and defendant was tenant of the premises at the time when plaintiff purchased the premises. It in context of this finding the High Court took the view even if there has been forfeiture of tenancy and its determination, even then the defendant of the case continued to be the

tenant in view of Section 3(r) of the Act and further there had not been forfeiture of tenancy by the tenants denying the landlord's title or by his act of denying his own status as tenant unless landlord had given notice and as there was no notice given by landlord as required under Section 111(g) of the T.P. Act.

17. The present case stands on different footing as defendant -appellant himself had denied his status as tenant firstly in earlier suit filed by him in which the finding of fact had been arrived at that there was no relationship of landlord and tenant, and the defendant of that case, i.e. present plaintiff - respondent in that suit failed to establish the contract of tenancy or relationship of landlord and tenant and that finding is now final. In this view of facts of the present case which are quite distinct from Govindamma's case said Decision does not apply to the case before me and is distinguishable.

Thus, considered the defendant - appellant's Counsel's contention based on Section 3(r) and Section 21 of Karnataka Rent Control Act that present suit was not maintainable is based on misconception and is without any substance.

Thus considered, I find that the judgment and decree as well as decision of the Courts below does not suffer from any error of law or jurisdiction nor does it suffer from any substantial error of law or an error of fact. Therefore, the Appeal is hereby dismissed. The Judgment and decree of the Court below is hereby confirmed.

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