**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**

**Gangadhara Setty Vs. Thirukappa Setty**

**Gangadhara Setty Vs. Thirukappa Setty**

**SooperKanoon Citation** : sooperkanoon.com/383232

**Court** : Karnataka

**Decided On :** Jun-13-1985

**Reported in** : ILR1985KAR2653

**Judge** : Chandrakanta Raj Urs, J.

**Acts** : Karnataka Rent Control Act, 1961 - Sections 21(1)

**Appeal No.** : C.R.P. No. 2850 of 1983

**Appellant** : Gangadhara Setty

**Respondent** : Thirukappa Setty

**Advocate for Def.** : N. Santosh Hegde, Adv. for R 1 and 2

**Advocate for Pet/Ap.** : M.S. Gopal, Adv.

**Disposition** : Petition allowed

**Judgement** :
ORDER

**Chandrakantaraj Urs, J.**

1. This Revision Petition is by the tenant (by Legal Representatives) under Section 115 of the C.P.C. It is directed against the order of the Learned District Judge, Chitradurga, in CRP. No. 27/1980 made in exercise of his jurisdiction underSub-

section (2) of Section 50 of the Karnataka Rent Control Act, 1961, (hereinafter referred to as the Act). The facts leading to the revision before the Learned District Judge may be stated and they are as follows : The tenant is inoccupation of a corner premises on Shimoga-Harihar Road in Harihar Town as a tenant under the landlords who are Respondents in this Court. That premises measures 8 x 4/8 indicating that it is angular, probably triangular, in shape. The tenant took it on lease sometime in the year 1973 and continued thereafter as a statutory tenant. The landlords who occupied the rest of the building presented a Petition in the Court of the Munsiff at Davanagere seeking eviction of the tenant from the Petition premises on two grounds. The first ground urged was that they belong to the trading community of Vyshyas and they wanted to begin trade in Kirana (Provision Stores) and that they were already in possession of two adjacent shops and therefore tenanted portion was also required for their bona fide use andoccupation. They also pleaded an additional ground alleging that the petitioner had built a house close by and there wassufficient accommodation in the house and further that it was so designed that his shop activity as a book and stationery depot could be carried on from the house itself.

2. The first of the grounds is available to the landlords under clause(h) of Sub-section (1) of Section 21 of the Act while the latter ground is available at clause(p) of Sub-section (1) of Section 21 of the Act.

3. The tenant resisted the eviction Petition on the ground that the requirement of the portion of the premises inoccupation was not genuine or bona fide; that the petitioners were not Kirana merchants and that their claim on that ground was not real; that they filed the eviction Petition in order to get higher rent from the tenant and therefore it was with an oblique motive and not for any genuine requirements forown use and occupation. He also contended that the house which he had built nearby was residential and was not designed to run a book shop. The situation of the house was far away from the main road and not suitable therefore to carry on the vending of text-books and stationery for school students; that is in his residential area; there were butcher shops etc., which also would render that area un-suitable for his trading activities. On the evidence produced before him, the Learned Munsiff formulated the following necessary points for consideration :

(1) Whether the landlords had proved that their requirement was bona fide ?

(2) Whether the building, admittedly, built by the tenant was suitable for his trade ?

4. On both the points he held against the landlords and dismissed the Petition. Aggrieved by the same, the landlords preferred the Revision Petition against the order rejecting the Petition on both the grounds.

5. The Learned District Judge also considered the same points formulated by the Learned Munsiff and held against the landlords in regard to their bona fide requirement but allowed the Petition and directed eviction on the ground that under clause(p) of the proviso to Sub-section (1) of Section 21 of the Act. The tenant was bound to vacate the premises, as he had built a house of his own. Aggrieved by that order of eviction passed by the District Judge inrevision, the present revision is preferred in this Court by the tenant.

6. Shri M. S. Gopal, Learned Counsel for the petitioner-tenant has stated that the District Judge totally misdirected himself to the evidence on record and came to the wrong conclusion that the tenant's own house was suitable to carry on the trade which he was carrying on in the tenanted premises which a reasonable prudent man would not have soconcluded on the evidence available. He, therefore, contended that there had been material irregularity in the passing of the order of eviction. More so, when the Learned District Judge had come to the conclusion on the first point that the premises was not required for the bona fide use and occupation of the landlords which would render the application on the ground available to the landlords under clause(p) of Sub-section (1) of Section 21 of the Act as above rather perverse.

7. It is needless to state that the Counsel for the land-lords has strenuously contended that this Court under Section 115 of the C.P.C. cannot go into and appreciate evidence as its jurisdiction is limited to correcting errors of jurisdiction, illegality and material irregularity only and not in regard to the conclusions or findings recorded on proper appreciation of evidence. He has also contended that in any event having regard to the report of the Commissioner appointed by the Trial Court, the existence of the building, the accommodation available and its

situation being established the District Judge correctly came to the conclusion that the space available in the residentialbuilding of the tenant was suitable for sale of text-books and stationery.

8. The landlords have not preferred any separate revision Petition challenging the findings recorded by both the Courts below on the question of bona fide use andoccupation of the landlords. Therefore, the only question which this Court would consider in this Revision Petition is whether the landlords made out a case for eviction of the tenant under clause(p) of Sub-section (1) of Section 21 of the Act and no more.

9. At the outset, I must confess that the said clause is not as plain and simple as the language makes it out to be. Indeed, that very clause has fallen for consideration in morethan one case in this Court. Corresponding or similar provisions in corresponding Statutes in other States have fallen for consideration before the respective High Courts as well as the Supreme Court. Yet I am troubled.

10. It would be useful to refer to the case decided by this Court in the case of R. Anantha Rao v. Indumathi Alias Lakshmi Bai, 1973(1) KLJ 31. In that case in somewhat identical position the Learned Judge came to the conclusion that the tenant having built a house before or after the commencement of Part-V of the Act was liable to be evicted at the instance of the landlord even though the landlords had failed to make out a case on the ground of bonafide use and occupation by them, on the sole ground that suitability was a matter which could not be exhaustively defined or demarcated in the absence of any legal definition in the Act of that term and having regard to the dictionary meanings of the term a person who had built 'a residential house' could not be allowed to contend that it was suitable for his tenants but not for himself. He, however, took the precaution to state that it was not possible to make an exhaustive enumeration of the factors which could be taken into consideration for the purpose of ascertaining as to whether a particularbuilding was suitable for a residence or not. But nothing else was considered in that case. In Bettiah v. H.Gaagashankar Anand Gopichand Raj Urs, CRP No. 1419 of 1973 DD. 8-4-75. Nesargi, J., also came to the same

conclusion in almost identical circumstances. Only significant thing that should be noted in both the cases, is the premises in question were residential and did not deal with non-residential premises.

11. Similar provision as is made in clause(p) of sub-section (1) of Section 21 of the Act fell for consideration before the Supreme Court in the case of Dr. Gopal Dass Verma v. Dr. S.K.Bhardwaj and another, : [1962]2SCR678 . The facts in that case were also similar and in order to understand the problem they must necessarily be stated. The appellant before the Supreme Court was the landlord who had built a composite premises on Barakhamba Road, New Delhi. While the ground floor consisted of commercial complex, first floor had four residential flats which were let out to different tenants. One of the tenants was the respondent before the Supreme Court and he was a Doctor by profession. He lived in a portion of the flat andpractised his specialty of ear, nose and throat diseases in the remaining portion using it as his clinic. In the proceedings which originated in the Court of the Trial Judge, the landlord failed toestablish the first of the grounds urged by him; i.e., his own requirement under Section 13(l)(e) of the Delhi and Ajmer Rent Control Act, but succeeded under Section 13(l)(h) of the Delhi Act which corresponds to clause(p) of sub section (i) of Section 21 of the Karnataka Act. On appeal to the Senior Sub-Judge at Delhi it was held on the fact proved that respondent Bhardwaj having built a residential house in the Golf Link Area of New Delhi was not sufficient ground to order eviction from the flat occupied by him as the residence built by him could not be held to be suitable for practising his profession as a matter of inference. Therefore, the order of eviction was set aside. On appeal to the High Court, the Subordinate Judge's order was affirmed. Therefore, the appellant had to take his case to the Supreme Court. Gajendragadkar, J., (as he then was) on page 340 as reported in the All India Reporter held as follows :

'In our opinion, even this argument is fallacious. Section 13(l)(h) applies to tenancies which are created for essential purposes, and itprovides that in the case of such tenancies even if the landlord may not be able to prove his case under Section 13(1)(e) he would nevertheless be entitled o eject the tenant once it is shown that the tenant has acquired another Suitable residence. The requirement

is that thetenant must have suitableresidence. Both words of the requirement are significant; what he has acquired must be residence, that is to say the premises which can be used for residence and the said premises must be suitable for that purpose. If the premises from which ejectment is sought are used not only for residence but also for profession how could Section 13(l)(h) come into operation? One of the purposes for which the tenancy is acquired is professional use, and that cannot be satisfied by the acquisition of premises which are suitable for residence alone, and it is the suitability for residence alone which is postulated by Section 13(l)(h). Therefore, in our opinion, it would be unreasonable to hold that tenancy which has been created or used both for residence and profession can be successfully terminated merely by showing that the tenant has acquired a suitable residence.'

12. From the passage extracted above it is clear that clause(p) of Sub-section (1) of Section 21 of the Karnataka Act is not exactly in pan materia with Section 13(l)(h) of the Delhi Act which was before the Supreme Court though as a ground it is similar. The relevant provision in the Karnataka Act reads as follows :

'21(l)(p) that the tenant whether before or after the coming into operation of this Part has built, or acquired vacant possession of, or been allotted, a suitable building....'

13. A cursory reading of the Section indicates that if the tenant has built or acquired vacant possession of or has been allotted a suitable building before or after the coming into force of Part-V of the Karnataka Act, the landlord may sue for eviction of the tenant. The only defence open to the tenant is to plead that such a building acquired by him in the manner indicated in the provision is not suitable. By using the word 'building' which is a defined term in the Act, it includes part of a building, a hut not being a farm house let or to be let separately for residential or non-residential purposes and includes-the garden, grounds and out-houses, if any, appurtenant to the building etc,

14. In other words, the Karnataka Act does not restrict to either any special kind of tenancy or to residence only as in the Delhi Act and the Bombay Act. The result is that acquisition of any kind of building by the tenant either by allotment, purchase,

gift, mortgage with possession, byconstruction or by allotment by the Controller will give cause of action to the landlord to sue for eviction whether the landlord requires the house in question for his own use and occupation or on any of the other grounds under the Act. In other words, by arrangement and intent the Legislature appears to have put this provision rather as on dependent ground available to the landlord. In this view of the matter, it will not be possible for the Court to treat the ground available at clause(p) of the Act as a complimentary ground to any one of the other grounds enumerated in clause(a) of Sub-section (1) of Section 21 of the Act. Therefore, the only way to construe the provision is on the basis of the defence built in the provision for the tenant. What is also not clear in the Section is whether a building built by the tenant should be vacant at the time the landlord seeks eviction. I would be inclined to consider that it shouldbe vacant having regard to the other two modes by which vacant possession of a building is to be obtained by the tenant to give rise to the cause of action to the landlord. There cannot be adistinction between one of the modes set-out as against the other modes. I am of the view that if the building built by the tenant is not vacant at the time the petition is presented then the landlord cannot seek eviction of the tenant from the tenanted premises. This is in regard to the construction possible of the provision itself. This case need not bedecided on such interpretation. It has been discussed so that Legislature will have a second look at the provision.

15. But on the evidence of the case on hand, what undisputedly was established is that the tenant's house is essentially a residential one, which he constructed some 150feet away from the tenanted premises, but, on one of the cross roads at the back but not on the main Shimoga-Harihar Road. In that area where the building has been built, there are a few establishments including butcher shops. According to the Commissioner's report the tenant who owns the building has his residence at the back, in two front rooms there is storage of goods. There appears to be a basement in the middle as there is an indication in the sketch 'stores leading to underground.' The front room measuring about 12x10 ft. is said to have 'a Mileage shutter' (shutter used in godowns). The situation of the building is quite close to High Schools. It is on this evidence that the District Judge's reasoning that the building is suitable for carrying on the trade of selling text-books and stationery by the tenant at a place other than the tenanted premises. He has not taken into

consideration that since 1973 the tenant has established his trade in the tenanted portion of the land-lords' premises. He has also failed to notice that on the road close by, the other book sellers also carry on the same trade. He has failed to take into account that the trading in the house where the trader resides is not desirable. He has not weighed the evidence for and against the suitability as a reasonable and prudent man ought to have. He has been inclined to favour the landlord merely because of the report of Commissioner that the door of the front room is a godown shutter. I do not think that approach could be called a reasonable and proper approach. On the other hand, the Learned Munsiff had taken care to analyses every bit of evidence and found in favour of the tenant and I am more in agreement with the view taken by the Munsiff.

16. Lastly, I must not fail to mention that Part-V of the Act should be read as a whole in construing any prevision in a statute, the object sought to be achieved by the Act must be kept in mind. The primary object of construing the provision is to ensure its smooth functioning. A constructionwhich leads to create chaotic condition and distress on a large scale must be abstained from as not being infurtherance of the objects sought to be achieved by that part of the Act. Part-V of the Act is essentially a protection which extends to the tenant except the last ground enumerated in Sub-section (1) of Section 21 of the Act. It also regulates the conduct of the landlord and provisions are made for his benefit in case there is a breach of the conditions of the lease. In other words, the object is to create harmony in the landlord-tenant relationship. If, on the date of the filing of the Petition by the landlord against the tenant under clause(p) of Sub-section (1) of Section 21 of the Act, the house built by the tenant on or before the commencement of the Act is not vacant but tenanted, there is no machinery provided for the automatic eviction of the tenant who is in the occupation of the house built by the ten-ant. It should necessarily be so. Because the person who has occupied as a tenant in a building built by another tenant elsewhere has the same protection from eviction. In such cases the tenant under threat of eviction under clause(p) of Sub-section (l) of Section 21 of the Act must necessarily seek his own building for his bona fide use and occupation. That means, he has to commence separate proceedings and that too only after he has failed to satisfy the Court that that building is not suitable for him. That is time consuming as is

common knowledge. If an eviction order is passed what should happen to the tenant who cannot have his ownbuilding forthwith and who has to await eviction of his tenant and that tenant also has no building available to him. Similarly, a chain reaction is set in motion which may not see an end at all and a series of evictions necessarily follow though over a period of years. I do not think that was the intention of the Legislature in providing clause(p) of Sub-section (1) of Section 21 of the Act. In addition to suitability of the building available to the tenant under threat of eviction,that the building built by him or acquired vacant possession of, allotted must necessarily be so acquired, so built and so available for immediate occupation. If that construction is not read into 'has built' then the confusion which I have indicated above must necessarily follow.

17. In the case on hand the building in question undoubtedly is in the control of the tenant, but it is occupied in the sense he has occupied it for his residence. Having regard to the observations of the Supreme Court in Dr. Gopal Dass Verma's case supra, I think, the learned District Judge was clearly in error in considering that the house of the tenant was suitable for carrying on the trade in the sale of text-books and stationery. I have already adverted to the fact that there is a total misdirection by the District Judge in looking at the evidence.

18. I, therefore, think that this is a fit case in which this Court under Section 115 of the C.P.C. should set aside the order of the District Judge and restore that of the Munsiff.

19. In the circumstances of the case, there will be no order as to costs. The petition is accordingly allowed.

**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**