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Court : Karnataka

Decided On : Jun-18-1985

Reported in : ILR1985KAR2664

Judge : Chandrakantaraj Urs, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 21

Appeal No. : C.R.P. No. 1398 of 1985

Appellant : Thimmappa

Respondent : Kousalya

Advocate for Pet/Ap. : M. Shivappa, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

Chandrakantaraj Urs, J.

1.This Re-vision Petition is by a tenant who has suffered an order of eviction of the Munsiff, Mandya in the proceedings initiated under the Karnataka Rent Control Act (herein-after referred to as 'the Act'). The respondent-landlord presented the eviction Petition on two grounds available to her under the Act. One was that the

premises in question was bone fide required for use of her son to start his business. It was pleaded that the building was 50 years old and it has only a country tile roof. It was further pleaded that the landlord's son was at loggerheads with his father who was a fairly wealthy person and the two could not get on together in joint family business and therefore, they intend to start a business for their son away from the family business carried on by her husband and the second son. The Petitioner-tenant denied that the building was old, that it required immediate demolition and that it was required for bona fide use of the landlord. He, in fact, disputed her title to the property alleging that the real owner was the husband of the respondent and the whole transaction of sale was benami in order to get vacant possession of the building because the husband of the respondent had numerous shops and buildings in that town.

2. Learned Munsiff formulated two points for consideration. They were :

(1) Whether there is relationship of landlord and tenant ?

(2) Whether the land-lord has made out a case under Section 21(l)(h) and (j) of the Act, that is, for her own use and occupation and for immediate demolition respectively.

After determining those points, the learned Munsiff also considered the comparative hardship of the tenant and the landlord. What has been unfolded in the evidence produced by the landlord is that her first son had left the family and joined as driver for sometime having quarreled with his father. But later on had left the job of driver and wants to start his own business and he is now married and living with his wife and child. It is for that purpose that the premises was purchased and they intend to re-model the premises to suit the business proposed for the 1st son. The evidence in defence by the tenant was in support of the benami nature of the transaction and that the husband of the respondent was already in business and the family was joint and there was no need for a separate business for her first son and the family owns sufficient buildings to carry on. Learned Munsiff, after elaborately discussing the evidence came to the conclusion that there is relationship of landlord and tenant and the schedule premises was required by the landlord for bona fide use and occupation of her first son to start a separate

business. On that basis, he has held infavour of the landlord and directed eviction after considering the comparative hardship particularly with regard to the 1st son's condition of not being able to live compatibly with his father and brother. Learned District Judge affirmed those findings Hence this Civil Revision Petition.

3. Before me three grounds were urged by Sri M. Shivappa Learned Counsel for the Petitioner tenant. He contended that there is jurisdictional error committed by the Munsiff and the District Judge alike in not raising a point specifically for consideration as to whether there was a bona fide intention on the part of the landlord to demolish the building for the purpose of reconstruction. He placed strong reliance on the decision of this Court in the case of Abdul Subhan v. Sathyanarayana Setty, : ILR 1984 KAR110 . In the said decision, it has been pointed out that when the two grounds, as in the instant case, that is one under clause (h) and another under clause (j) of Section 21 of the Act are simultaneously urged by the landlord, then bona fide requirement for immediate demolition as well as for use and occupation must be together considered, failure of which would result in not exercising jurisdiction properly. Undoubtedly it may be so. But, whether such consideration should be simultaneous depends upon the pleadings and the manner in which the resistance has been put forward by the tenant. I have carefully gone through the pleadings. There is expression of clear intention to demolish the building after purchase made out by the landlord. The tenant has baldly denied that statement asserted in the Petition. He has nowhere averred that the landlord has no intention to demolish the building and construct one more building in its place suitable for business. When there is no specific plea, then no issue or point can be raised for consideration. By vague pleading it must be taken that the tenant has not seriously contested the intention of the landlord. If a specific point on that account was not raised for consideration, this Court only has to see whether the same has been considered while passing the order. I have seen that they have taken that aspect also into consideration. Non-formation of a specific point in that behalf, does not, in my opinion, constitute error of jurisdiction. In any event, I must notice that in para-34 of the Judgment of the Division Bench, the Bench has taken care to add that they were interfering only because the approach of the Trial Court on the facts and circumstances of that case was not correct. I do not think it lays down any law more than what has already been

stated. Therefore, it is not of much assistance to the tenant.

4. The second point urged was that there is no evidence for the bona fide requirement for use and occupation of the 1st son of the landlord. It is found that the landlord has got herself examined together with three other witnesses who have spoken to the conditions prevalent in the family and need for establishing an independent business for the 1st son. Nothing in their cross-examination has been useful to the tenant. In that circumstance, there is no reason why the bona fide requirement should not be held to have been established. In any event, this is a finding of fact recorded by the Trial Court and affirmed by the Learned District Judge with which this Court ought not to interfere unless the conclusions reached or the findings recorded are perverse or based on no evidence at all, while exercising jurisdiction under Section 115 of C.P.C.

5. It was lastly urged that the Courts should have referred the matter to a competent Civil Court in regard to the status of the respondent (landlord). I do not think that third parties get any legal right to assert whether the landlord is only a benami or an ostensible owner and not the real owner. Once the sale deed is produced in Court which prima-facie establishes the ownership of the purchaser mentioned there in, it is only for the true-owner to question such a kind of ownership of the ostensible owner and not third parties. In any event, it is in evidence that the vendor of the property in question had personally talked with the tenant and requested him to at torn to the new purchaser which was agreed and later refused to do so when the legal notice was issued. In that circumstance, to merely go by the self serving testimony of the tenant who claims that the transaction is benami, to deny the ownership would not be permissible. I, therefore, do not see any merit in this Revision and the petition is liable to be dismissed and it is so dismissed.

6. Sri M. Shivappa, Learned Counsel for the tenant requested time for vacating the premises. The litigation upto date has lasted for 4 years. He has even cited an authority to support the proposition that this Court has power to grant extension of time. However that may be, assuming that this Court has power to grant time beyond what has been given by the District Judge, this Court has to exercise that

power with due caution, due regard to all the circumstances of the case. In the Court the tenant, has taken every possible defence not only to resist eviction but also to deny title of the landlord and the need of her first son to establish his own business. Such conduct does not deserve sympathy from this Court or the landlord. However, I am of the view that the landlord who has acquired a legal right under the orders of the Court below cannot be put at disadvantage without giving an opportunity of being heard over the matter of extension of time. As this case has been dismissed without notice to the other side, it is not a fit case where this Court should lean in favour of the tenant.

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