

Silva UddIn Vs. Nagaraju

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Court : Karnataka

Decided On : Sep-03-2004

Reported in : ILR2004KAR4782; 2004(7)KarLJ484

Judge : H.G. Ramesh, J.

Acts : [The Transfer of Property Act, 1882](#) - Sections 109; Karnataka Rent Act, 1999 - Sections 3 and 46(1)

Appeal No. : HRRP No. 557/2003

Appellant : Silva Uddin

Respondent : Nagaraju

Advocate for Def. : M. Ramaswamy, Adv.

Advocate for Pet/Ap. : N.G. Javed Ahmed Khan, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

H.G. Ramesh, J.

1. By consent of learned Counsel, I have heard the petition finally on merits and is being disposed of by this order.

2. This Revision Petition by the tenant is directed against the interlocutory order of the trial Court dated 22.07.2003 allowing the application-I.A. No. 15 filed by the landlord/respondent under Section 45 of the Karnataka Rent Act, 1999 ('the Rent Act' for short) in HRC No. 730/1998 by directing the petitioner/tenant to pay or deposit a sum of Rs. 20,000/- being the arrears of rent from 27.11.1996 to 27.6.2003 within a period of one month. The petitioner was also directed to be regular in payment of future rents as and when they fall due and on default, the landlord is given liberty to take steps for the petitioner's eviction.

3. Mr. Javed Ahmed Khan, learned Counsel for the petitioner submitted that the petitioner has denied the jural relationship of landlord and tenant between him and the respondent and there was no attornment of tenancy in favour of the respondent. Therefore, according to the learned Counsel, the trial Court ought to have referred the parties to Civil Court for declaration of their rights as contemplated under Section 43 of the Rent Act instead of directing the petitioner to pay arrears of rent relating to the premises.

4. On the contrary, Mr. Ramaswamy, learned Counsel for the respondent/landlord submitted that the respondent is the transferee of the previous landlord/less or as he became the owner of the petition premises by virtue of two registered sale deeds dated 27.06.1996 which were produced before the Trial Court as Exs.P1 & P2. He further submitted that by operation of Section 109 of the Transfer of Property Act, 1882 the transferee steps into the shoes of the lessor and becomes entitled to all the rights of the lessor. In support of his submission, he relied on two judgments in M/s. HAJEE K. ASSAINAR AND CO. v. CHACKO JOSEPH, : AIR1984 Ker113 and RAM CHANDRA SINGH v. RAM SARAN, : AIR1978 All173 .

5. In view of the above, the sole question for determination in this petition is as to whether the finding of the Trial Court that there exists jural relationship of landlord & tenant between the parties is correct or requires to be interfered with?

6. The Trial Court, on a consideration of the evidence on record, has found that there exists jural relationship of landlord & tenant between the parties. To come to that conclusion, the Trial Court had relied on the sale deeds Exs -P1 & P2 and the Khatha certificates - Exs. P9 & P10. It is relevant to state that the aforesaid

documents would evidence transfer of ownership of the premises to the respondent from the previous landlord/ lessor of the petitioner.

7. In view of transfer of ownership of the premises to the respondent by the previous lessor, the respondent- becomes the lessor and becomes entitled to receive rent in terms of the lease by operation of Section 109 of the T.P. Act. It is relevant to state that in India no attornment of tenancy is necessary in law as Section 109 of the T.P. Act creates a statutory attornment. The section does not insist that transfer of the lessor's rights can take effect only if the tenant attorns. Attornment by the tenant is unnecessary to confer validity to the transfer of the lessor's rights. However, the section protects payment of rent by the tenant to the transferor without notice of the transfer. The transfer of ownership of the premises to the respondent by the previous lessor has resulted in statutory attornment by the tenant in favour of the lessor's transferee , i.e. the respondent herein and consequently jural relationship of landlord & tenant.

8. In this context, it is also relevant to examine as to whether the right of the transferee under Section 109 of the T.P. Act is curtailed or modified by the Rent Act. The definition of 'landlord' under Section 3(e) of the Rent Act reads as follows:

'Landlord' means a person who for the time being is receiving or is entitled to receive, the rent of any premises, whether on his own account or on account of or on behalf of or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or to be entitled to receive the rent, if the premises were let to a tenant;'

The expressions 'entitled to receive the rent' and 'to be entitled to receive the 'rent' in the aforesaid definition signify that the transfer of interest of the landlord in favour of any other person is not prohibited. Hence the right of the transferee under Section 109 of the T.P. Act is not curtailed/modified by the Rent Act. Thus a transferee of a lessor is entitled to collect rent in terms of the lease as of right and becomes landlord under Section 3(e) of the Rent Act. The tenant cannot dispute the right of the transferee landlord to maintain an eviction petition under the Rent Act or to claim rent. Hence in the case of a valid transfer of the premises by the lessor by way of sale, question of referring the parties namely the transferee of the

lessor and the tenant to a Civil Court under Section 43 of the Rent Act does not arise. The judgment relied on by learned Counsel for the petitioner in *AYESHA BEGUM v. SHAHZADI*, : ILR 2003 KAR4255 is not applicable to the facts of this case or cases of the present nature i.e. cases to which Section 109 of the T.P. Act is applicable.

9. In view of the above, I do not see any error either of law or of fact in the finding recorded by the trial Court on the aspect of jural relationship of landlord & tenant warranting interference under the revisional jurisdiction of this Court under Section 46(1) of the Rent Act.

Accordingly, the respondent/landlord is permitted to withdraw the rent deposited by the tenant/petitioner with this Court.

10. Having regard to the fact that the eviction proceeding is of the year 1998, I direct the trial Court to dispose of the proceeding in HRC No. 730/ 1998 within six months from the date of receipt/ production of a copy of this order.

In the result, the Revision Petition fails and is hereby dismissed. No costs.

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