

M. Devaraj Vs. Vijayalakshmi

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Court : Karnataka

Decided On : Aug-31-1990

Reported in : ILR1990KAR4045

Judge : Shivashankar Bhat, J.

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

Appeal No. : C.R.P. No. 3987 of 1986

Appellant : M. Devaraj

Respondent : Vijayalakshmi

Advocate for Def. : M.L. Dayananda Kumar

Advocate for Pet/Ap. : P.B. Raju, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

Shivashankar Bhat, J.

1. This is a tenant's Revision Petition. The respondent-landlord filed an eviction petition under Clauses (a) and (h) of Section 21(1) of the Karnataka Rent Control Act (hereinafter referred to as 'the Act'). The trial Court found that the ground

under Clause (a) did not arise for consideration and this finding is not challenged before me. Regarding the claim under Clause (h) it was found that the premises was sought by the land lady to enable her husband-P.W.1 to start a business in electrical appliances. At the time of eviction petition he was about to retire from I.T.I, and having regard to his experience the business in electrical appliances could be carried on by him after his retirement.

2. The tenant-petitioner is having his hair cutting saloon. According to him this premises was not suitable for the business for which) P.W.1 is claiming because it measures only 8' x 6'. It was further pointed out that landlady has other shop premises which has been let out in the same building where the present premises is situated. Nextly it was pointed out that there is a garage which has been let out to run a fair price shop to one Dayalan and the said premises belong to P.W.1. The contention of the petitioner-tenant was that the requirement of P.W J was not the requirement of landlady and the claim did not fall within Clause (h) of Section 21(1) of the Act. Consequently it was contended that the petition was motivated to evict the petitioner somehow, and earlier, an eviction petition was filed on the ground that the landlord's son intended to carry on the stationery business and this was dismissed in the year 1982 and within a few months the present eviction petition was filed. Petitioner further contended that, if genuinely P.W.1 intended to carry on the business he would have selected any other premises and would have sought eviction of some other tenant because those shops are more spacious than the present schedule premises. But cumulative effect of these factors, according to the petitioner, establish that the claim was not reasonable and bonafide but was a ruse to evict the petitioner.

3. The trial Court accepted the case of the respondent-landlady. Mr. Raju, learned Counsel for the petitioner, contended before me that sub-clause (h) was not at all applicable in this case because admittedly the requirement that is sought to be made out by the landlady was not her's but that of her husband. The husband is not dependent on his wife; admittedly he is independent of his wife. This is further indicated by the fact that he owns nearby shop premises let out to one Dayalan. According to the learned Counsel for the petitioner Clause (h) can be invoked only in case the requirement of the landlord (including landlady) is bonafide or for the

benefit of some economically dependent person. The learned Counsel referred to a decision reported in K.S. APPRAMEYA IYENGAR v. H.S. RAMASWAMY 1963(1) Mys.L.J. 592. The principle stated therein was that under Clause (h) the landlord in a proper case can seek an order of eviction even if the premises is not required by him personally but may be required for those economically dependent on him. The very principle stated herein does not support the learned Counsel for the petitioner. It is stated that an eviction can be sought if the requirement is of the member of one's family also. There can be no doubt that the husband is a member of wife's family,

4. In fact the decision in K. GOVINDARAJULU v. SAVITHRAMMA 1969(1) Mys.L.J. 59 clearly establishes the fact that an eviction can be sought by making out a requirement under Clause (h) as of the spouse. In other words, a premises belonging to the wife can be obtained by her for the benefit of her husband's business provided the requirement is established as reasonable and bonafide. The provisions of the Karnataka Rent Control Act are to be understood in a practical manner since it has a far reaching effect on practical life of the landlord or the tenant. There are innumerable instances where the husband may not own any property at all though he is economically independent of his wife and in such a situation if the wife owns a premises which is quite suitable for the business of her husband, I do not find as to why the landlady should not seek eviction of her tenant so that her husband may start the business in the said premises. As observed by the Supreme Court in SRI RAM PASRICHA v. JAGANNATH : [1977]1SCR395 absolute individualism amongst relatives is not the law applicable in India. We should have an Indian approach and the subtle distinction sought to be made between husband and wife regarding economic dependence or independence cannot be applied to such a situation to deprive one of the spouses to seek eviction of the tenant from the premises to enable the other spouse to carry on his or her business. In fact, the test applied by the Bench of this Court in DR. SYED SIBGATHULLA v. L.M. ABDUL AZEEZ KHAN ILR (Karnataka) 1982, 463 @ 468 reads as follows:

'Besides, the degree of relationship or dependence; the circumstances under which the landlord's claim for the premises arises and put forward; the intrinsic

tenability of the claim having regard to the realities of life and social mores and the like have all to be put into the scales and go into the judicial verdict.'

This test was applied in the said case when eviction was sought by the landlord so that he could provide the premises for the business of his son, and it was held that the landlord was entitled to seek the eviction of his tenant on the ground) of the requirement of his son. The phrase 'by himself' under Section 21(1)(h) was referred for the consideration by the Division Bench for interpretation in the said case and the Division Bench has considered the amplitude of the said phrase. If the requirement of the major son could be made a ground for eviction, certainly the requirement of the husband can also be made a ground for eviction by the wife. The learned Counsel, however, brought to my notice another decision reported in *RADHAKRISHNAN v. THAYAPPASETTY* : ILR 1985 KAR3182 . Wherein, it was held that an eviction cannot be sought from a premises for the benefit of an economically independent son. The finding in the said case was that the son was living elsewhere, carrying on his own business and was entirely independent of his father. Thus the basic fact pleaded in the said case certainly disentitled the landlord from seeking the eviction of the tenant for the benefit of his son. The principle applicable to the case has been clearly stated in the Bench decision which I have already extracted. The particular facts of a case are to be investigated with reference to the said principle and in the case *Radhakrishnan v. Thayappasetty* (supra) the landlord failed to come out successfully in the test applied by this Court. Therefore, as a matter of principle it cannot be said that a wife cannot seek eviction of the premises belonging to her under Clause (h) on the ground of her husband's requirement to carry on the business.

5. The next question to be considered pertains to the reasonableness and bonafide nature of the requirement sought to be made out by the landlord. It was pointed out by Mr. Raju, learned Counsel for the petitioner, that P.W.1 - the husband of the landlady owns a garage, which has been leased to a tenant who is running a fair price shop. The said garage premises measures 10' x 12'; instead of evicting the tenant of the said fair price shop i.e., one Dayalan, P.W.1 obviously has instigated his wife to sue for eviction in the present petition. It was also brought to my notice that P.W.1 admitted in his cross-examination that he owned

another premises just by the side of the schedule premises. In these circumstances the requirement of the landlady cannot be termed as bona fide at all, was the contention. It is also in evidence that there are a few more tenants of the landlady in the same building and other shops are more spacious than the schedule premises. The contention of the petitioner is that the landlady has selected the petitioner out of vengeance, having failed in an earlier eviction petition, wherein she had sought possession of the very premises on the ground of her son's requirement to start a stationery business. It was contended that, if, actually P.W.1 required the premises, either he would have sought eviction of his tenant from the premises which is more spacious or atleast the landlady would have selected another tenant for eviction.

6. P.W.1 in his evidence has stated that on dismissal of the previous eviction petition the same was not taken up further because at that time his son got an appointment in State Bank of India and therefore there was no need at all for him to start the business. P.W.1 wanted to start an electrical appliances shop because of his retirement from I.T.I. According to him the schedule premises is more suitable because it is slightly elevated from the road than the garage where Mr. Dayalan is running fair price shop. Further the height of the said fair price shop was lower than the schedule premises.

7. Even R.W.1 admits that the fair price shop did not have the height of the schedule premises. The photos shown to me, which were accepted in the trial Court, also indicate that the schedule premises is in an elevated position when compared to fair price shop. This admission of R.W.1 about the height corroborates the statement of P.W.1 that the schedule premises will be more suitable for his business. The contention that the schedule premises measures only 8' x 6' and no P.V.C. pipes can be spread in the said premises is not very relevant. According to P.W.1 the schedule premises measures 8' x 9'. His intention is to carry on business in electrical appliances; whether he will be dealing with P.V.C pipes or not has not been brought out in the evidence.

8. P.W.1 admittedly has ceased to be in service. His capacity to start and run the business is not questioned. On retirement, if P.W.1 intends to keep himself

engaged in business, the said intention cannot be brushed aside as unreasonable. Apart from keeping on self active in life P.W.1 also may add to his earnings. The trial Court has accepted that the requirement is genuine and reasonable and I do not find any erroneous approach on the part of the trial Court in arriving at this conclusion. Further it cannot be said that the alleged requirement of P.W.1 to start a business cannot be held to be motivated as a ruse to evict the tenant somehow on the failure of the landlady to get an order of eviction in the earlier proceedings.

9. The two questions are quite independent here. The first one is the basic question as to whether a genuine and reasonable requirement has been made out for eviction. The second one is the choice of the premises. It is quite possible that the landlady chose the present petitioner for eviction because of some ill will against him. But I cannot say that the said ill will is the reason for creating an intended requirement in the mind of P.W.1 of running a business. When there is a genuine and reasonable requirement, either P.W.1 or the landlady will have to select one of the several tenants for eviction. An element of subjectivity in such a selection is inevitable. The choice is of the person who requires the premises to choose the same. No doubt a landlord cannot choose a premises arbitrarily to evict a tenant. Suppose there is any other vacant premises available which is suitable for the landlord's purposes he cannot seek an eviction of a tenant from a premises alleging that he requires it for his purposes. Such a selection of a tenanted premises ignoring the availability of a vacant premises would highlight the arbitrariness involved in the claim of the landlord.

10. In a practical life distinction cannot be made, between the husband and wife when they are living together, about the properties belonging to them in the matter of choosing one of the premises for the purpose of carrying on a business. There is absolutely nothing wrong if the husband selects a premises belonging to his wife and seeks an eviction through her of the tenant instead of seeking an eviction of a tenant from his own premises. Such a distinction regarding the legal title, I am of the view, has no consequence while considering the realities of life which is very pertinent to understand the scope of Section 21(1)(h) of the Act. Therefore it cannot be said that the finding of the trial Court is erroneous. The landlady has made out a case that her requirement is bonafide and reasonable, The order of

eviction will have to be upheld.

11. The tenant, as R.W.1, has admitted that hair cutting saloon can be run at any place with good business. He also admitted that he did not try for any alternative shop on rent. It is also a fact that normally there is no difficulty for the hair cutting saloon to develop business in a populous City like Bangalore. If an order of eviction is not made in the instant case, P.W.1 who has already retired from the service will have to spend his retirement in idleness, unless he once against starts eviction proceedings against some other tenant. The present proceeding was initiated in the year 1983. All these days P.W.1 must have been unemployed. The hardship that would result by such a-situation of non-eviction will be greater than the hardship that will result to the tenant-petitioner by an order of eviction. As already observed it is not difficult for the tenant to get an alternative accommodation. The temporary hardship can be reduced by grant of a reasonable time for him,

12. In these circumstances, this revision petition is dismissed. The eviction order is confirmed. However the petitioner-tenant is granted time till the end of August 1991 to vacate and handover vacant possession of the premises to the respondent-landlady, subject to payment of rents regularly and promptly.