

Habibulla Vs. Lakshani

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Court : Karnataka

Decided On : Sep-27-1985

Reported in : ILR1985KAR4079

Judge : Chandrakantaraj Urs, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 21(1) and (4), 25, 26 and 27

Appeal No. : CRP Nos. 2138 of 1983 etc.

Appellant : Habibulla

Respondent : Lakshani

Advocate for Def. : N. Santhosh Hegde, Adv.

Advocate for Pet/Ap. : Ravivarma Kumar, Adv.

Disposition : Petition rejected

Judgement :

ORDER

Chandrakantaraj Urs, J.

1. These four Civil Revision Petitions filed under Section 115 C.P.C. are disposed of by the following order :

2. It is to be stated that all the petitioners are common tenants of the single landlord (a lady) who filed the eviction Petitions under Section 21(l)(j) and (h) of the Karnataka Rent Control Act in HRC. Ncs. 27, 28, 29 and 30 of 1980 in the Court of the Munisiff, Chickmagalur.

3. The pleadings brief as they were are to the following effect:

The Petitioner has purchased the entire house property bearing Municipal No. 1808/2045/2046 from Smt. Janakamma under the Sale Deed dated : 30-11-1979. The Respondent is the tenant of the ground floor which is the portion of the entire property and is detailed in the schedule here below at a monthly rent of Rs. 25/- where he is running a petty box shop at a monthly ground rent of Rs. 25/-.

The petitioner is residing in one portion of the house and her husband is running his shop in the rented premises elsewhere.

The petitioner requires the schedule premises for the purpose of immediate demolition of the entire house property and for construction of a shop premises and residential premises on rear side for their own personal use and occupation.

(The above pleading is extracted from H.R.C. No. 27 of 1980. Pleadings are identical more or less in the other petitions also.)

3. The petitions were resisted by the tenants by stating many things but baldly denying the requirement of the premises by the landlady for the immediate purpose of demolition and reconstruction for her own use and occupation as residence and shop. Petitioner-landlord examined her husband and the vendor of the property from whom she had purchased the property and got marked some documents including the Bank pass book and closed her case. The respondents in different petitions examined themselves and closed their cases except in H. R. C. No. 29/1980. In that case the respondent did not examine any witness in support of his averments. The Learned Munsiff after formulating the necessary points for determination, and after appreciation of the evidence on record came to the conclusion that the petitioner had made out a case and therefore directed the Eviction. Aggrieved by the same, the four Revision Petitions before the District

Judge, Chickmagalur were filed in C.R.P. Nos. 16, 17, 19 and 21/1982 under sub-section (2) of Section 50 of the Act. The revisions also came to be dismissed by the Learned District Judge concurring with the Learned Munsiff. That is how the matter is now before this Court.

6. The first ground urged by Sri Ravivarma Kumar was that there was totally inadequate pleadings. Therefore, as held by this Court in more than one case, the eviction petitions are liable to be rejected.

7. I have already extracted above the pleadings in one of the Petitions. They are not the model pleadings one looks for. But the question is whether they are adequate or inadequate. The grounds urged are under Clauses (j) &(h) of Section 21(1) of the Act, the building in question is required for the immediate purpose of demolition and re-construction, which is stated. After reconstruction of shop premises and a house for residence at the back, the petitioner wants to occupy them herself. She has pleaded that her husband is carrying on business in a rented shop else-where.

8. From the facts disclosed it is clear that the residence part of it is definitely asserted to be required by the landlord herself. In regard to the shop premises constructed one has to draw an inference. That is a need for her Husband who is carrying on his business in a rented shop elsewhere. Every one of the respondents who has filed the objection has said in his objection statement that the place where the husband of the landlord was doing business was sufficient for his requirement, therefore giving room for the inference that the husband did not require the shop premises in this area where the Petition premises is situated. That clearly shows, that the Respondents did understand the pleadings. If they understood the pleadings, then it cannot be said to be in-adequate. I have in more than one cases held that what is required to be pleaded in the case like this is, that whatever is pleaded must be understood clearly by the opponent and whatever the opponent files by way of statement of objection is to enable the Court to raise the issues and points for consideration and determination. If this requirement is satisfied then the pleadings must be held to be adequate.

9. I have perused the records and the judgment of the Trial Court viz., the Court of the Munsiff and I am satisfied that the pleadings on all sides were held to be adequate to raise the necessary issues and determine them in the manner it has been done.

10. The next point urged by Sri Ravivarma Kumar was that the failure on the part of the petitioner-landlord to enter the witness box should be held to be sufficient to dismiss the eviction Petitions. I have in another case, : ILR 1985 KAR4071 - (Siddamma v. Agarwal & Co.) held that there cannot be hard and fast rule by which a rule of evidence can be said to exist by which in all cases where the party approaching the Court has not examined himself or herself, the cause should be thrown out of Court. Everything will depend upon the facts of each case, the case pleaded and the relief prayed for. What is required to be proved on the facts and circumstances of the case is the need of the landlord. Nobody has admitted that the schedule property was part of the residence which she has purchased. Therefore, the residential requirement is established. The case spoken to by her husband as P.W. 1 is to the effect that they have sufficient means to commence the demolition and construction work and in that behalf certain amount of money has been kept in his wife's name in the Bank. The Pass-Book is produced. He has also spoken to the fact that the Manager of the Bank had promised to advance money for completing the construction. There has been no serious challenge to this evidence in the cross examination by the Counsel for the tenants. They have contented themselves by suggesting that the requirement is not genuine or the landlord has no means. The pass book shows about Rs. 10,000/- to the credit of the landlord on the date it was admitted in evidence. It is in that circumstance that the Munsiff held in favour of the petitioner holding that the petitioner and her husband and means to demolish and reconstruct the premises. Plans were also produced.

11. Sri Ravivarma Kumar tried to make out favourable interpretation of the fact that the plan was applied within one day after the filing of the petition. He contended that, that indicated that the plan was obtained only for the purpose of creating evidence. I do not think such an inference is reasonable unless it is demonstrated that after presenting the petition the landlord has waited for a long time without

obtaining a plan for reconstruction of the building to be demolished. As it happened in the instant case, the purchase of the property, issuing notices to the tenants, filing of the petitions and obtaining the plan have followed one after the other in a short span of time. Instead of drawing an inference that will lean in favour of the tenants it would be more appropriate in such circumstances to draw an inference leaning more in favour of the landlord. These are things which could be done by a prudent man simultaneously or within a short time of each other.

12. The more important limb of the argument is non-appearance of the petitioner. Counsel has relied upon the decision of the Bombay High Court in *Nandala Goverdhandas & Co. -v.- Samratabaim*, : AIR1981 Bom1 . In the said case, where the petitioner landlord did not examine herself, the Learned Single Judge took the view that it was fatal to her case of bona fide requirement for own use and occupation. That decision has been followed by the Division Bench of the Orissa High Court in the case of *Vidya Dhar -v.- Onkar Nath, Siddamma*, AIR 1983 Orissa 183. I was taken through the decision of the Orissa High Court by Sri Ravivarma Kumar carefully. Undoubtedly they have endorsed the view taken by the Learned Single Judge of Bombay High Court. To my mind it appears to have been mainly persuaded with reference to the Writ Petition filed by the landlord on the findings recorded by the Courts below. The landlord therein did not step into the witness box. She sent her grandson and power of attorney holder to depose on her behalf. The evidence as such was not credible and that has been mentioned by the Learned Judges of the Orissa High Court. It is thereafter that they have gone on to discuss the effect of the plaintiff or the petitioner not examining himself or herself. As already stated. I have taken a different view in the course of this order and the view that I have taken appears to find support from the Division Bench ruling of the Bombay High Court (Nagpur Bench) reported in *Nathn Lal Gangabai Khandelwal & others-v.- Smt. Naindubai & others*, AIR 1987 Bombay 340; where they have specifically over-ruled the ruling of the Learned Single Judge of the Bombay High Court. In the circumstances, I have reiterated the principle that the Courts have to take into consideration the entire circumstance of the case to determine whether the non-examination of the parties is fatal to the case made out by the parties and not by the mere absence. If a case is proved in the instant case the need for a shop and a house which is to be reconstructed after demolition of the existing

premises then, mere failure to examine the landlord does not amount to failure to make out a case at all. That contention is therefore rejected.

13. It was lastly contended that partial eviction was not considered by the Learned District Judge. This Court has held in more than one case that the first step that the Munsiff should take as mandated in sub-section 4 of Section 21 of the Act, is to determine whether in cases covered by Clause (h) of Section 21(1) of the Act, a partial eviction would meet the requirement of the landlord. If he fails to take that first step, either there must be comprehensible circumstance in the case or he must explain as to why he has not taken that step. That mandate of sub-section (4) is not available to the case of the petitioner herein, because this is a case not only under Clause (h), but also under Clause (j) i.e. for the immediate purpose of demolition. There is no such compulsion or duty imposed on the Court to consider partial eviction as in the very nature of things partial eviction cannot be considered where the whole premises is required to be demolished and reconstructed. But the tenants are not left without remedy. Sections 25, 26 and 27 of the Act deal with the consequences of the landlord not putting into effect the ground on which he has obtained eviction under Clauses (h) and (j) within the time stipulated by the Court. In the case of Section 25, it pro-J vides for tenants re-entry when the landlord does not occupy the premises within three months from the date he has been given possession. Section 26 similarly provides for penal consequences if the landlord does not commence reconstruction within the time specified by the Court. Section 27 makes provision for tenant's re-entry to the premises if it is not fully occupied by the landlord or if it is let out to others. Such being the policy of the Act, non-consideration of partial eviction does not amount to any violation of law.

14. Sri Ravivarma Kumar further argued that the evidence disclosed seven tenements of which four only have been subjected to eviction or steps have been taken to evict the tenants while two others besides the landlord herself are still in occupation and therefore, the Petition is ill conceived as she could not possibly demolish within the time specified by the Munsiff if the other two tenants continue to be in occupation. This is not the case pleaded by any of the tenants. It does not appear to have been argued in this form either before the Munsiff or the Learned District Judge. There couldbe more than one reason as to why no steps have not

bean taken against the said two other tenants. I do not see any force in this contention.

15. Therefore, these four Petitions are rejected as no illegality or lack of jurisdiction is pointed out. Having regard to the totality of the circumstances of the case, by consent of parties, tenants are given time till the end of March 1986 to put the landlord in vacant possession of the premises.

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