

Kiran Bai and ors. Vs. K.V. Jayachandra Setty and ors.

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Court : Karnataka

Decided On : Dec-05-2005

Reported in : ILR2006KAR212; 2006(3)KarLJ165

Judge : K. Bhakthavatsala, J.

Acts : Karnataka Rent Act, 1999 - Sections 4 to 16 and 27 to 46; ;Karnataka Rent Control Act, 1961 - Sections 3 and 21(1); ;Code of Civil Procedure (CPC) - Sections 115 and 151 - Order 6, Rule 17

Appeal No. : House Rent Revision Petition No. 83/2005

Appellant : Kiran Bai and ors.

Respondent : K.V. Jayachandra Setty and ors.

Advocate for Def. : K.M. Prakash, Adv. for R-1 to 3

Advocate for Pet/Ap. : T.N. Raghupathy, Adv.

Disposition : Petition allowed

Judgement :

ORDER

K. Bhakthavatsala, J.

1. This Revision Petition filed by L.Rs., of late Mittal Lal (tenant) under Section 115 of the Code of Civil Procedure is directed against the order dated 29- 1 -2005 made in RR No. 5/2004 on the file of the I Additional District Judge, Mysore, confirming the order made on I.A-10 filed under Section 5 of the Karnataka Rent Act, 1999 (in short, 'the New Rent Act') by the Land lords in HRC No. 436/1989, on the file of 3rd Additional Civil Judge (Jr. Dn.), Mysore.

2. The Petitioners (Lrs. of the tenant) are represented by Sri T.N. Raghupathy. The Respondent Nos. 1 to 3/landlords are represented by Sri K.M. Prakash.

3. The brief facts of the case leading to the filing of the Revision Petition may be stated as under:

On 22-11 -1989, the land lords filed eviction petition against the tenant Mittal Lal under Section 21(1)(h) of the Karnataka Rent Control Act, 1961 (in short, 'the Old Rent Act') in respect of a shop premises bearing No. 1037,1012/B (New No. 77/B) in K.R. Hospital Road, Mysore, measuring 8' x 12' against the original tenant Mittal Lal, who was in possession of the shop premises, on a monthly rent of Rs. 330/-. The tenant denied the grounds of eviction. During the pendency of the eviction petition, the original tenant died. Therefore, L.Rs. of the tenant were brought on record and they filed additional statement of objections adopting the original statement of objections filed by the original tenant. In support of the case of the land lord/ Petitioner No. 2, has got himself as P. W.-1 and got marked Exs. P 1 to P16. In rebuttal, the younger brother of the tenant, as Power of Attorney Holder of the L.Rs. got himself examined as R. W.-1. The Trial Court, after hearing arguments, allowed the eviction petition under Section 21(1) (h) of the Old Rent Act by order dated 16-9-1995 and directed the L.Rs of the tenant to vacate and deliver vacant possession of the petition schedule premises to the land lords. Feeling aggrieved of the order of the Trial Court, they preferred a Revision Petition in No. 230/1995 on the file of District Judge at Mysore. On 28-1-1998 the Revision Petition was allowed and the order of eviction was set aside. Feeling aggrieved of the order made by the District Judge, the land lords preferred a Revision Petition in No. 657/1998 before this Court. The Revision Petition was allowed by this Court and the matter was remitted back to the District Court to re-consider the case on

merits after affording opportunity to the parties. Accordingly, the Learned District Judge, Mysore, on 2-3-2001, restored the file, in R.R. No. 230/1995. After the matter was remitted back to the District Court, Mysore, Petitioner No. 2/land lord died and therefore his L.Rs., were brought on record. The L.R. of Petitioner No. 2/land lord filed I.A-2 under Order VI Rule 17 of the Code of Civil Procedure, contending that the schedule premises is required for business. The amendment application was heard along with the Revision Petition by the Learned District Judge, Mysore, and by an order dated 15-11 -2001, allowed the amendment application as well as the Revision Petition, and remitted the case back to the Trial Court, with a direction to afford opportunity to the parties in the light of the amendment sought for, and dispose of the same in accordance with law. The Petitioner No. 2(a)/land lord got herself examined as P. W.-2 and got marked Exs. P17 to P25. On 16-9-2003, the Petitioner No. 2(a)/land lord filed I. A-X before the Trial Court under Section 5 of the New Rent Act read with Section 151 of the CPC seeking direction to stop all further proceedings and to direct the L.Rs., of the original tenant to vacate and hand over the vacant possession of the schedule premises. The said application was opposed by the tenants and contended that there was no jural relationship of land lord and tenant between the Petitioners and the Respondents. After hearing arguments, the Court below allowed I.A-X directing the L.Rs., of tenant to vacate and deliver vacant possession of the petition schedule premises to the land lord. Feeling aggrieved of the order of the Trial Court on I.A-X, the L.Rs., of the tenant filed Revision Petition under Section 46 of the New Rent Act, which came to be registered in R.R. No. 5/2004 on the file of District Court, Mysore. The Learned District Judge formulated two points viz., point No. 1 on the point of jural relationship between the parties, point No. 2 on the point whether the tenancy is extinguished on the death of original tenant on 10-3-1991 and answered both the points in the affirmative and answered point No. 3 in the negative holding that the impugned order of the Trial Court was sustainable. Therefore, dismissed the Revision Petition confirming the order dated 12-12-2003 made on I.A-X in HRC No. 436/1989 on the file of in Additional Civil Judge (Junior Division), Mysore. This is impugned in this Revision Petition.

4. The Learned Counsel, Sri Raghupathy, appearing for the Petitioners/L.Rs., of the tenant, submitted that Section 5 of the New Rent Act does not provide for

stopping further proceedings and the Courts below erred in directing the tenants to deliver vacant possession of the petition schedule premises to the land lords. It is further contended that Section 27 of the New Rent Act provides for eviction of the tenant under certain circumstances and there is no provision for eviction by way of interlocutory application and the Court cannot stop further proceedings and direct the L.Rs of tenant to vacate the premises and merely because the L.Rs., of the tenant have occupied the commercial premises for more than 5 years since the death of original tenant. In support of the case of the Petitioners/tenants, Sri Raghupathy cited a decision in Ambalal Sarabhai Enterprises Ltd v. Amritlal and Co. and Anr. : AIR 2001 SC3580 on the point that Section 5 of the New Rent Act, which came into force on 31 -12-2001 has no retrospective effect.

5. On the other hand, the Learned Counsel for the land lords argued in support of the impugned order and cited the following decisions:

Smt. Thilothamma and Anr. v. Rahmathunnisa : ILR 2002 KAR4846 Shahwar Basheer and Ors. v. Veena Mohan and Ors. : ILR 2003 KAR4732

Smt. Vijaya Bai v. Sri Subhas Shripad Chinchewadikar and Anr. 2003 (1) KCCR 451

Smt. K.S. Nagamma v. Mrs. M.P. Manekshah : ILR 2004 KAR2309

P. Suryanarayana (D) BY L.Rs. v. K.S. Muddugowramma ILR 2004 KAR 2398 (SC)

M. Subbarao and Sons v. Yashodamma and Ors. : [2002]SUPP2SCR448

Taradevi and Anr. v. Sakku Bai and Anr. 2003 (1) KCCR 714

6. In the light of the arguments addressed by the Learned Counsel for the parties, the following points are formulated for the purpose of consideration:

Point No. 1: Whether Section 5 of the Karnataka Rent Act, 1999, which came into force on 31 -12-2001 has got retrospective effect in so far as death of tenant who died prior to 31-12-2001?

Point No. 2: Whether the impugned order is sustainable Law?

7. My finding to the above points is in the negative for the following reasons:

Admittedly, the eviction petition was filed under Section 21(1)(h) of the Old Rent Act. The original tenant died on 10-3-1991 and the L.Rs., of the deceased tenant were brought on record as per Section 3(r) of the Old Rent Act. Section 3 (r) of the old rent Act reads as under: 'Tenant' means any person by whom or on whose account rent is payable for a premises and includes the surviving spouse or any son or daughter or father or mother of a deceased tenant who had been living with the tenant in the premises as a member of the tenant's family up to the death of the tenant and a person continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a premises by its tenant or a person to whom the collection of rents or fees in a public market, cart-stand or slaughter house or of rents for shops has been framed out or leased by a local authority.

A question had come up before the Court in Chandravadana Bai v. Mani 1991 (3)Kar. LJ679 as to whether 'tenant' includes both husband and wife when the rent was paid by the husband? This Court has held that wife cannot be a tenant, but she becomes a tenant only on the demise of her husband. In the instant case, since the original tenant/husband died, the L.R. No. 1/wife became a tenant. As per scheme of the New Rent Act, Sections 4 to 16 under Chapter-II deals regarding regulation of rent. Section 5 of the New Rent Act reads as follows:

5. Inheritability of tenancy':- (1) In the event of death of tenant, the right of tenancy shall devolve for a period of five years from the date of his death to his successors in the following order, namely:-

(a) spouse;

(b) son or daughter or where there are both son and daughter both of them;

(c) parents;

(d) daughter-in-law, being the widow of his pre-deceased son;

Provided that the successor has ordinarily been living or carrying on business in the premises with the deceased tenant as a member of his family up to the date of his death and was dependent on the deceased tenant:

Provided further that a right to tenancy shall not devolve upon a successor in case such successor or his spouse or any of his dependent son or daughter is owning or occupying a premises in the local area in relation to the premises let.

(2) If a person, being a successor mentioned in sub-section (1), was ordinarily living in or carrying on business in the premises with the deceased tenant but was not dependent on him on the date of his death, or he or his spouse or any of his dependent son or daughter is owning or occupying a premises in the local area in relation to the premises in the local area in relation to the premises let to which this Act applies, such successor shall acquire a right to continue in possession as a tenant for a limited period of one year from the date of death of the tenant; and, on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in possession of the premises shall become extinguished.

The language employed in Section 5(1) that 'in the event of death of a tenant' indicates that it does not provide for retrospective effect. In other words it says that in the event of death of a tenant, the right of tenancy shall devolve for a period of 5 years from the date of death of the tenant to his successors in the order of (a) spouse; (b) son or daughter or where there are both son and daughter both of them, (c) parents and (d) daughter-in-law being the widow of his predeceased son subject to provisos. Thus, it regulates the tenancy in the event of death of a tenant. Section 5 of the New Rent Act does not provide for eviction of a tenant. As a matter of fact, Sections 27 to 46 under Chapter-VI deals regarding regulation of eviction. Section 27 of the New Rent Act provides protection to the tenants against eviction except in the prescribed manner; whereas Sections 28, 29, 30 and 31 confers special right on certain landlords/ persons to recover immediate possession of the tenanted premises. None of these Sections viz., 27 to 31 refer to Section 5 of the New Rent Act. I have gone through the decisions reported in Shahwar Basheer's Case (Supra) and Smt. K.S. Nagamma v. Mrs. M.P. Manekshah Case (Supra). In these cases, the Learned Judge of this Court has

given retrospective effect to Sections of the new rent Act. The Learned Single Judge of this Court has not considered the right of the L.Rs. of the tenant under the old rent act, which was in force when the tenant died, hi my opinion retrospective effect cannot be given to Section 5 of the Act in the absence of provision to that effect. Therefore, in my opinion, with great respect to the learne Single Judge, the view taken by him in the decisions reported in Smt. K.S. Nagamma v. Mrs. M.P. Manekshah (Supra) and Shahwar Basheer and Ors. v. Veena Mohan and Ors. ILR 2003 KAR is not correct. Further, a tenant cannot be evicted solely on the basis of Section 5 of the New Rent Act, except following the procedure provided in Chapter VI of the New Rent Act. Therefore, the impugned order is not sustainable in the eye of law.

8. For the reasons said supra, I answer both the Points in the negative.

9. In the result, the Revision Petition is allowed, and the impugned order dated 29-1-2005 made in R.R. No. 5/2004 on the file of the I Additional District Judge, Mysore, and the order dated 12-12-2003 made on I.A-X filed in HRC No. 436/1989 on the file of III Additional Civil Judge (Junior Division), Mysore, are set aside. Consequently, I. A-X filed under Section 5 of the New Rent Act read with Section 151 of CPC by the land lords in HRC No. 436/1989 is dismissed, and the matter is remitted back to the Trial Court, with a direction to the parties to appear before the Trial Court on 23-12-2005 for further proceedings, without notice. The Trial Court is directed to dispose of the case in accordance with law, within three months, from 23-12-2005.

No Costs.

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