

The Tahsildar, Vs. Sri. D. Halappa, Retd. Supdt. Engineer

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Court : Karnataka

Decided On : Oct-22-2009

Judge : A.S. Bopanna, J.

Acts : Transfer of Property Act - Sections 106; Code of Civil Procedure (CPC) - Sections 80

Appeal No. : Regular Second Appeal No. 449/2006

Appellant : The Tahsildar, ;The Deputy Commissioner and ;The Chief Secretary to Government, Government of Karnat

Respondent : Sri. D. Halappa, Retd. Supdt. Engineer

Advocate for Def. : T. Parameshwarappa and ;K.M. Shanmukappa, Advs.

Advocate for Pet/Ap. : B.B. Gowdar, HCGP

Disposition : Appeal dismissed

Judgement :

A.S. Bopanna, J.

1. The appellant herein is the defendant in O.S. No. 148/1999. The suit in question was filed by the plaintiff seeking for ejection and also for the arrears of rent. The trial Court by its judgment and decree dated 31.8.2002 has decreed the suit. The

defendant was before the Lower Appellate Court in RA No. 107/2002. The Lower Appellate Court by its judgment dated 25.2.2005 has affirmed the findings of the trial Court and has concurred with the judgment. Against the concurrent findings and judgments rendered by the Courts below, the defendant is before this Court in this appeal.

2. The case in brief is that, the plaintiff is the owner of the premises bearing No. 1708/2 situate at Holalkere town. The said premises was leased to the Taluk Office at Holalkere since the year 1992. Initially, the rent in respect of the property was fixed at Rs. 4000/- per month. Subsequently in the year 1998, the plaintiff put up certain additional construction measuring 34 ft X 35 ft. The same was also given on lease to the defendant. The fixation of rent in respect of the premises was being made as per the estimate made by the PWD authorities. Accordingly, the rent subsequently was fixed in respect of the ground floor at Rs. 7,400/- per month and for the extended portion, a sum of Rs. 1,500/- was fixed and in all the rental payable by the defendant was fixed at Rs. 8,900/- per month which was the rent payable at the point in time when the plaintiff had sought for possession of the premises and also the arrears of rent.

3. The defendants had opposed the claim of the plaintiff and it was contended that the rent fixed was on the higher side. Even with regard to the possession which had been sought, the same was opposed by the defendants.

4. The trial Court taking note of the rival contentions framed as many as 5 issues for its consideration. Pursuant thereto, the parties tendered evidence and the plaintiff examined himself as PW. 1 and one other witness as PW.2 and marked documents at Exhs.P1 to P9. The Tahsildar examined himself as DW. 1 and documents at Exhs.D1 to D5 were marked.

5. On analysing the evidence available before it, the trial Court had come to the conclusion that the plaintiffs are entitled to vacant possession of the suit schedule premises on or before 30.11.2002 and also held that the rent payable in respect of the premises is Rs. 8,900/- per month with effect from 1.11.1998. The defendant was before the Lower Appellate Court assailing the said findings. The Lower Appellate Court also on appreciation of the evidence has come to the conclusion

that the trial Court was justified.

6. Before considering the matter on the contentions urged in this appeal, the fact that the appellant/defendant has subsequently vacated from the suit schedule premises is not in dispute. Hence, at this point in time, the present appeal is confined only to the extent of rent as determined by the trial Court based on the rival contentions.

7. Firstly one of the contentions put forth by the learned Government Advocate is that no notice as required under Section 80 of CPC was issued. Secondly it is contended that even with regard to the fixation of rent, the Courts below have erred since as indicated by the Deputy Commissioner, the rent ought to have been fixed keeping in view the population of the area and the nature of the normal rent payable.

8. In the light of the contentions which has been urged, firstly with regard to the contention regarding the issue of notice as contended is not sustainable. In the instant, case, the fact that there was an agreement, of lease between the parties dated 17.7.2002 is not in dispute and as such what was in issue was the contract between the parties and in that regard, one of the parties to the contract had exercised the right. While doing so, the notice as contemplated under Section 106 of Transfer of Property Act had been issued and marked at Ex.P5 and therefore, no further notice needs to be issued.

9. With regard to the aspect relating to fixation of rent, a perusal of the judgment of the trial Court would indicate that the said issue was considered as issue No. 1. While discussing the said issue, the trial Court has made detailed reference to the evidence tendered both on behalf of the plaintiff as well as the defendant. On noticing the oral evidence of PWs.1 and 2 and also that of DW. 1, the trial Court has analysed the matter to hold that ultimately the fixation of rent would depend on the assessment to be made by the PWD authorities. In this regard, detailed reference has been made to the documentary evidence as well. In the instant case, the clinching evidence is as contained in Ex.P4 where the report of the Executive Engineer dated 29.12.1998 had fixed the rent as determined by the Court. When the department of the Government itself had assessed and fixed the

rent and the Deputy Commissioner had not questioned the game in any other appropriate forum, the Deputy Commissioner could not have in any event tendered any opinion by way of defence in the suit to state that the fixation is on the higher side and the population of the area etc had not been taken into consideration. Therefore, these aspects of the matter would indicate that the trial Court after referring to the evidence available on record had rendered a finding of fact with regard to the quantum of rent. When the matter was before the Lower Appellate Court, the Lower Appellate Court has also reappreciated the evidence available on record in similar terms and has agreed with the findings rendered by the trial Court. Therefore, when both the Courts below have referred to the evidence and have rendered a finding of fact with regard to the quantum of rent, in my view, there is no substantial question of law for consideration in this second appeal. Accordingly, the appeal does not merit consideration, the same fails and is dismissed.

10. However, at this stage, the learned Government Advocate would point out that with regard to the payment of the amount as determined, a portion of the amount has been paid before the Executing Court, but the balance could not be paid due to certain financial stringencies. Keeping all these aspects in view, the time of three months is granted to the appellant herein to pay the balance of the amount before the Executing Court. The execution proceedings shall be kept in abeyance for a period of three months and if the amount payable is not paid by the appellant within the said period of three months from today, the Executing court would be at liberty to proceed further in the matter.

In the above terms, the appeal stands disposed of. No order as to costs.

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