

Dada and Others Vs. Basavaraj Revanasiddappa Hipparagi and Others

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Court : Karnataka Dharwad

Decided On : Mar-07-2011

Reported in : 2012(3)KCCR2135

Judge : D. V. Shylendra Kumar

Appeal No. : Regular Second Appeal No. 5697 of 2009 A/w Misc Civil No. 109606 of 2009 In Regular Second Appeal No. 5697 of 2009

Appellant : Dada and Others

Respondent : Basavaraj Revanasiddappa Hipparagi and Others

Advocate for Pet/Ap. : For the Appellants: Ravi S. Balikai, Advocate. For the Respondents: R1 to R5 - Chandrashekar for Jagadish Patil, Advocates.

Judgement :

(Prayer: This regular Second Appeal is filed under Section 100 of CPC, 1908, against the Judgment and Decree dated 08.09.2009 passed in R.A. No 15/2008. On the file of the Civil Judge (Sr. Dn) Athani, dismissing the appeal, filed against the judgment dated 19.02.2008 and the decree passed in O.S. No 155/2004 on the file of the Addl. Civil Judge (Jr. Dn) and JMFC, Athani, decreeing the suit filed for declaration and injunction.)

1. This second appeal u/s 100 by the legal heirs of original defendant-a lessee who had resisted the ejectment suit in O.S. No 155/2004 and which he could not

defend successfully as the suit came to be decreed by the trial court and further an appeal before the lower appellate court in R.A. No 15/2008 also came to be dismissed and therefore this second appeal.

2. Submission of Sri.Ravi S. Balikai, learned counsel for the appellants is that firstly the quit notice issued u/s 106 of the Transfer of Property Act is not tenable, that the notice in the instant case should have been one u/s 111 particularly as it was the admitted case of the plaintiffs that there was a written lease between the parties and from year to year.

3. It is secondly contended that the trial court as well as the lower appellate court failed to focus issue on the disputed aspects that no proper or relevant issues had been framed and as lower appellate court has affirmed such a decree, both are equally bad in law and are liable to be set aside for not even framing proper issues in the suit and the matter deserves to be remanded to the trial court to proceed from the stage of framing of issues etc.,

4. It is thirdly contended that the trial court did not have jurisdiction as the learned Judge was exercising jurisdiction as a court of Civil Judge, (Junior Division) functioning under the provisions of the Karnataka Civil Courts Act, 1964 whereas the suit should have been instituted before the court of Small Causes under the provisions of the Karnataka Small Causes Courts Act, 1964, as the subject matter of the suit namely the annual rent for the premises being a meager sum of Rs.240/- and that as the subject matter was only within the pecuniary jurisdiction of Court of Small Causes and as both questions have been decided erroneously by the courts below, the matter deserves examination in section 100 jurisdiction.

5. The first question as urged by Sri Ravi S. Balikai, is not of much significance and importance as the quit notice is issued only u/s 106 and it is only in the situations under which the lease in the absence of written contract or local usage has to be determined and comes to an end which are indicated u/s 111 of the TP Act. Therefore, the first contention does not merit acceptance.

6. The second contention relating to framing or non-framing of the issues in the courts below is concerned while it is mainly dependent on the pleadings and even

assuming for argument sake the only issue that arise for consideration is as indicated in the first question and that having been answered against the defendants, nothing further requires to be considered.

7. In so far as the third question is concerned, one of jurisdiction, while it is true that the jurisdiction conferred on a Court of Small Causes is exclusive to that court and is not interchangeable with the jurisdiction of the civil court and even when a designated officer like a Civil Judge (Junior Division) may be functioning, both as a Judge of Court of Small Causes and as a Judge in a Civil Court. Therefore, the jurisdiction exercised by the same judge while exercising jurisdiction under the Court of Small Causes and otherwise has some consequence as the proceedings move up under the respective enactments. In the given case, even if that were to be so, the suit should have been for ejectment and should have been tenable before a Court of Small Causes and it should have been tried by a Court of Small Causes, the procedure would have been a summary procedure but the procedure adopted before the Court of Civil Judge being a regular procedure, it has only provided a better protection to the defendant and at any rate, it cannot be characterized as disadvantage to the defendant but in fact is an advantage to the other party.

8. If detailed procedure was followed by the court and the defendant if at all had a better protection than what otherwise a defendant could be enjoyed before a court of small causes.

9. That apart the fact that the suit was tried as a suit before a Civil Court has on the other hand ensured to the benefit of the defendant as the defendant had the benefit of filing a regular first appeal wherein also same jurisdiction is exercised and is now in a regular second appeal whereas if it were to be before the court of Small Causes the only remedy for the unsuccessful defendant who has suffered a decree would have been to avail one revision petition in terms of Section 18 of the Court of Small Causes Act. On the other hand, availability of one regular appeal and a regular second appeal being an advantage to the defendant, the ground urged in this appeal is technical but not substantial.

10. I do not find any reason for warranting a further examination of this question in this appeal having regard to the facts and circumstances of the present appeal. The subject matter of the suit being a small premises measuring 9 ft x 5 ft and the relationship being not in dispute and a quit notice in fact having been issued and the issues answered in favour of the plaintiff, the result would not have been any different before any other court.

11. Therefore, I do not find any need to disturb the judgments and decree passed by the trial court only on the ground of jurisdiction etc., Accordingly appeal is dismissed leaving the parties to bear their respective costs.

12. After the appeal was dismissed, Sri Ravi S Balikai, learned counsel for the appellant-judgment debtor has made a request that the appellant may be given sometime to vacate and hand over the vacant possession of the premises to the respondent-decree holders.

13. Sri Chandrashekar Nagashetty, learned counsel appearing for the respondents-decree holders 1 to 5, submits that the decree holders are ready to allow time in favour of the appellant-judgment debtor till the end of July, 2011, subject to the appellant-judgment debtor filing an undertaking before this court that he will on his own quit and deliver the vacant possession of the premises to the decree holders by or before 31st July, 2011.

14. Learned counsel for the appellant-judgment debtor submits that an affidavit of undertaking of the appellant will be filed within a week's time from today.

15. Subject to filing of such an affidavit by the appellant-judgment debtor, the assurance on the part of the learned counsel for respondents-judgment debtors that the judgment debtors will not enforce the decree till such time, is recorded.

16. As the main appeal itself is dismissed, Misc. Cvl.No 109606/2009 for stay does not survive for consideration and it is dismissed accordingly.