

JOSEPH KANTHARAJ & ANR.

v.

ATTHARUNNISA BEGUM S.
(Civil Appeal No. 282 of 2010)

JANUARY 11, 2010

[R.V. RAVEENDRAN AND K.S. RADHAKRISHNAN, JJ.]

Karnataka Rent Act, 1999:

ss. 27(2)(r) and 43 – Eviction proceedings – Deferment of – HELD: A mere assertion by a tenant that he is in possession in part performance of an agreement of sale or mere filing of a suit for specific performance, by itself will not lead to deferment of eviction proceedings u/s 43 – But where tenant produces and relies upon an agreement of sale which confirms delivery of possession in part performance and a specific performance suit is pending, and there is no lease deed or payment of rent from the date of such agreement of sale, or no acknowledgement of attornment of tenancy, s.43 may apply – Unless the court is satisfied prima facie that the agreement is genuine and defence is bona fide, it should not defer the eviction proceedings – In the instant case, trial court was justified in holding that eviction petition should be deferred till the decision in the suit for specific performance – Order of High Court set aside and that of trial court restored – However, in case the suit for specific performance fails, landlord would be entitled to seek restoration of eviction petition – Suit for specific performance of contract.

Haji Iqbal Shariff vs. C. Manjula ILR 2006 Kar 2766, held inapplicable.

Case Law Reference:

ILR 2006 Kar 2766, held inapplicable

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 282 of 2010.

From the Judgment & Order dated 28.5.2008 of the High Court of Karnataka at Bangalore in H.R.R.P. No. 463 of 2006.

B S.N. Bhat for the Appellants.

Shakil Ahmed Syed, Saud A. Syed, Mohd. Moonis Abbasi for the Respondent.

C The order of the Court was delivered by

O R D E R

R.V. RAVEENDRAN, J. 1. Leave granted. Heard the parties.

D 2. The respondent claiming to be the owner of the suit premises filed an eviction petition (HRC 1247/1998) against the first appellant under section 21(1) proviso (a) and (h) of the Karnataka Rent Control Act, 1961 ('Old Act', for short). She alleged that the previous owner Anthony Swamy, sold the suit premises to her under a registered sale deed dated 25.9.1997.

F 3. The first appellant resisted the eviction petition contending that he was not the tenant of the premises under the respondent. He alleged that he was earlier the tenant of the suit premises from the year 1988, under Anthony Swamy; that the said Anthony Swamy had entered into an agreement of sale dated 11.6.1997 in his favour agreeing to sell the suit property for a consideration of Rs.1,05,000/-; and that under the said agreement, Anthony Swamy confirmed having received Rs.75,000/- as advance and permitted him (the first appellant) to continue in possession free of rent in part performance of the agreement of sale. He contended that from that date, he has been in possession not as a tenant but as a purchaser in part performance of the agreement of sale and has not therefore paid any rent in regard to the premises. The first appellant also

filed a suit for specific performance in OS No.2089/1999 on the file of the City Civil Court, Bangalore, against the said Anthony Swamy and the purchaser (respondent). The said suit is still pending. A

4. The trial court allowed the eviction petition by order dated 30.6.2001 holding that the first appellant was the tenant under the respondent and that the respondent had established that she bonafide and reasonably required the suit premises. The said order was challenged by the first appellant by filing a revision before the High Court. The High Court, by its order dated 18.10.2001, allowed the revision petition. The High Court affirmed the trial court's finding that the relationship of landlord and tenant was established between the respondent and first appellant, but held that the ground of eviction alleged, was not established. B C D

5. Feeling aggrieved by the finding that there was a relationship of landlord and tenant between the respondent and himself, the first appellant approached this Court in SLP (C) No. 8245/2002. This Court by order dated 29.4.2002 dismissed the special leave petition but, however, clarified that the finding arrived at by the High Court (about the relationship of landlord and tenant) shall be confined to the said proceedings for eviction and that the suit for specific performance filed by the appellant shall be decided on merits on the basis of the pleadings therein and the evidence adduced. E F

6. Thereafter, the respondent filed a second petition for eviction in HRC No.157/2002, against the first appellant and his wife (second appellant) under Section 27(2)(r) of the Karnataka Rent Act, 1999 ('new Act', for short). The first appellant resisted the said petition also; on the ground that there was no relationship of landlord and tenant between respondent and appellants. The trial court disposed of the said petition by order dated 13.7.2006. It held that having regard to the denial of relationship of landlord and tenant by the appellants, in the absence or any lease deed or G H

- A acknowledgement of tenancy or receipt in regard to payment of rent, the dispute relating to relationship required to be settled by the Civil Court. It therefore deferred the eviction proceedings till the disposal of OS No.2089 of 1999 filed by the first respondent for specific performance. The said order was
- B challenged by the respondent in HRRP No. 463 of 2006. The High Court, by the impugned order dated 28.5.2008, allowed the petition, set aside the order of the trial court and granted eviction subject to the decision in the suit for specific performance. The said order is challenged in this appeal by
- C special leave.

7. It is not disputed that the first appellant had filed a suit for specific performance in OS No. 2089/1999 and the same is pending. The first appellant has contended that he has not paid any rent from the date of agreement (11.6.1997) as he
- D was permitted to continue in possession of the suit premises in part performance of the agreement of sale. No acknowledgment in writing by the appellant that he is the tenant after 11.6.1997, nor any receipt or document to establish that any rent was paid by the first appellant to the respondent, was
- E produced. In these circumstances, having regard to the provisions of section 43 of the new Act, the trial court was justified in holding that the eviction petition should be deferred till the decision in the suit for specific performance.

8. We are of the view that interference with that decision of the trial court by the High Court relying upon the earlier decision of the High Court in *Haji Iqbal Shariff vs. C. Manjula* - ILR 2006 Kar 2766 is erroneous. In *Haji Iqbal Shariff*, the High Court had held that once the person in occupation of a premises, admits that he was the tenant under the previous
- G owner, that can be taken as evidence of relationship of landlord and tenant between the transferee from previous owner and such tenant. The High Court purporting to follow the said decision, held that the first appellant having admitted that he was earlier the tenant under Anthony Swamy, became the tenant
- H under the respondent, ignoring the defence.

9. There can be no dispute about the general proposition A
laid down by the High Court in *Haji Iqbal Shariff*. But the High
Court ignored the fact that though the first appellant had
admitted that he was earlier the tenant under the previous owner,
he had also specifically pleaded that the previous owner had
executed an agreement of sale and permitted him to continue B
in possession in part performance of the said agreement of sale
and that therefore he ceased to be a tenant from the date of
agreement, namely 11.6.1997, that the relationship of landlord
and tenant between him and the previous owner had come to
an end, and that as on the date of sale by Anthony Swamy in C
favour of the respondent, he was in possession in part
performance of the agreement of sale and not as a tenant. In
fact the first appellant also filed a suit for specific performance
in the year 1999 which is pending. If there was an agreement
of sale dated 11.6.1967 and delivery of possession in part D
performance, as alleged by the first appellant, then he did not
become a tenant under the Respondent and the decision in *Haji
Iqbal Shariff* relied on by the High Court would be inapplicable.

10. We may however clarify that a mere assertion by a
tenant that he is in possession in part performance of an E
agreement of sale, or the mere filing of a suit for a specific
performance, by itself will not lead to deferment of the eviction
proceedings under section 43 of the New Act. But where the
respondent in an eviction proceeding under the Rent Act denies
the relationship of landlord and tenant contending that he is not F
in possession as a tenant and produces and relies upon an
agreement of sale in his favour which confirms delivery of
possession in past performance, and a specific performance
suit is pending and there is no lease deed, or payment of rent
from the date of such agreement of sale, or no acknowledgment G
of attornment of tenancy, section 43 of the new Act may apply.
But a word of caution. Courts dealing with summary
proceedings against tenants under Rent Acts for eviction,
should be wary of defendants coming forward with defences of
agreement of sale, lest that becomes a stock defence in such H

A petitions. Unless the court is satisfied *prima facie* that the agreement is genuine and defence is bonafide, it should not defer the proceedings for eviction under the Rent Acts.

B 11. On the facts and material in this case, we are of the view that trial court was justified in its decision to defer the eviction proceedings till decision by the civil court. We therefore allow this appeal, set aside the order of the High Court and restore the order of the trial court subject to the following clarifications :

C (i) Nothing stated herein shall be construed as acceptance of the claim of the appellants that the previous owner (Anthony Swamy) had executed an agreement of sale in his favour or that he is in possession in part performance of the agreement of sale. The specific performance suit shall be decided on its merits with reference to the pleadings and evidence produced therein. Whatever observations we have made herein is only with reference to the issue of deferring the eviction proceedings.

D

E (ii) In the event of first appellant failing in the suit for specific performance, the respondent will be entitled to seek restoration of her eviction petition (HRC No.157/2002) and pursue it in accordance with law.

F (iii) Having regard to the facts and circumstances, we request the City Civil Court where the suit for specific performance (OS No.2089/1999) is pending for more than ten years, to dispose of the same expeditiously.

R.P.

Appeal allowed.