Dattonpant Gopalvarao Devakate

Vs

Vithalrao Maruthirao Janagaval

Civil Appeal No. 1180(N) of 1974

(V. R. Krishna Iyer, N. L. Untawalia JJ)

03.04.1975

JUDGMENT

UNTWALIA, J. –

1. The defendant-appellant in this appeal by special leave was a tenant of the suit premises situated in the town of Hubli when the plaintiffs-respondent purchased the property from the original owners by two sale deeds executed in August, 1968. The appellant thereafter become a tenant under the respondent. The latter gave notice purporting to terminate the former's tenancy and thereafter filed an application under Section 21(1) (a) and (h) of the Mysore Rent Control Act, 1961 - hereinafter referred to as the Act, for his eviction from the suit premises consisting of two shops. The appellant resisted the application for eviction on several grounds. The trial Court dismissed it but on appeal by the landlord the District Judge allowed the application for eviction. The tenant filed an application in revision under Section 50 of the Act in the Karnataka High Court. The High Court dismissed the revision application. Hence this appeal.

2. The issue as to the appellant's liability to be evicted on the ground mentioned in clause (a) of sub-section (1) of Section 21 of the Act was not pursued and eventually given up. The learned Additional Munsif who tried the application in the first instance held against the respondent on the question of the premises being reasonably and bona fide required by the landlord within the meaning of clause (h). He also held that having regard to all the circumstance of the case greater hardship would be caused by passing a decree for eviction than by refusing to pass it. In that view of the matter also as provided in sub-section (4) of Section 21, the trial Court refused to pass a decree. It further held that the lease was for a manufacturing purpose or at least the dominant purpose was a manufacturing one, it was an yearly lease and could not be terminated by less than six months notice or in any view of the matter the notice given even treating the tenancy to be a monthly one was illegal and invalid.

3. The learned District Judge in appeal has reversed all the findings of the trial Court. He has held that the landlord required the premises reasonably and bona fide for occupation by himself and that no hardship would be caused to the tenant by passing a decree for eviction. He also held that the lease was not for a manufacturing purpose nor an yearly one. The notice terminating the monthly tenancy was good and valid. The High Court in revision has affirmed the view of the appellate Court on all the controversial issues.

4. Mr. V. S. Desai, learned Counsel for the appellant urged three points in support of this appeal :

(1) That the findings of the lower appellate Court and the High Court in regard to the

reasonable and bona fide requirement of the suit premises for occupation by the landlord are vitiated in law.

(2) The finding on the question of comparative hardship of the landlord and the tenant has been recorded by committing errors of law.

(3) That the notice terminating the tenancy was invalid because the lease was an yearly one being for a manufacturing purpose and even if the tenancy be a monthly one, the notice was not in accordance with law.

Mr. Y. V. Chitaley controverted the submissions made on behalf of the appellant and added in the alternative that the appellant was a statutory tenant and hence no notice was required to be given before seeking a decree for eviction against him.

5. The appellant had taken the suit premises on rent for a period of one year from the respondent's predecessors-in-interest by a written document Ext. P-12 dated June 15, 1945. The tenancy commenced from April 9, 1945. The respondent purchased the property in August, 1968 and gave a notice on November 19, 1968 which was served on the appellant on November 21, 1968 terminating his tenancy and asking him to deliver possession by December 8, 1968. We have been taken through the portions of the judgments of all the three courts below and the relevant pieces of documentary and oral evidence adduced by the parties. On the question of the respondent requiring the suit premises reasonably and bona fide for his personal occupation as also on the point of comparative hardship two views were possible on the materials in the record of this case. A view in favour of the tenant was taken by the trial court but against him by the appellate court. The findings of fact recorded by the appellate court were not found to be such by the High Court as to justify the exercise of its revisional power under Section 50 of the Act. It is true that the power conferred on the High Court under Section 115 of the Code of Civil Procedure. But at the same time it is not wide enough to make the High Court a second court of first appeal. We do not think that there are such pressing grounds in this case which would justify our upsetting the views of the High Court confirming those of the lower appellate Court. It is not necessary to discuss the first two points urged on behalf of the petitioner in any detail and we reject them on the short ground mentioned above.

6. Coming to the question of notice we would like to state at the outset that on the basis of the evidence in the case the appellate Court took the view that the lease was not for a manufacturing purpose. The lease was for one year which expired on April 9, 1946. The tenant held over under Section 116 of the Transfer of property Act. Ext. P-12 did not mention the purpose of the lease. The learned District Judge was of the opinion that the appellant started manufacturing soda in a small portion of the demised premises after the lease for one year was taken. In any view of the matter the dominant purpose of the lease was not a manufacturing one but was the sale of aerated water. The High Court has affirmed this finding in revision. We do not feel inclined to upset the findings of the two courts below in this regard. If the purpose of the lease was not a manufacturing one, then the holding over under Section 116 of the Transfer of Property Act created a month-to-month tenancy terminable by 15 days notice ending with the tenancy month given under Section 106 of the said Act.

7. The appellant, however, must succeed on the last submission made on his behalf that even so, the notice was invalid. As already stated the notice purported to terminate the tenancy by December 8, 1968 treating the month of tenancy as commencing from the 9th day of a month and ending on the

8th day of the month following. The requisite period of 15 days was given but the defect in the notice was that it did not expire with the end of the month of the tenancy. The end of the month of the tenancy was the 9th day and not the 8th day as wrongly held by the High Court affirming the view of the lower appellate Court.

8. Under Ext. P-12 the appellant agreed to pay Rs. 600 as rent for one year from April 9, 1945. The tenancy obviously, therefore, commenced from that date. That being so, under Section 110 of the Transfer of Property Act in computing the period of one year the date of commencing i.e. the 9th day of April, 1945 had to be excluded. The year's tenancy ended on April 9, 1946. It is clearly mentioned to be so in Ext. P-12 in these words.

I shall make use and enjoyment of the said shops as a tenant for one year and deliver your shops so you without objections on April 9, 1946.

By holding over the tenancy from month to month started from April 10, 1946 ending on the 9th day of the following month. This view finds support from the Rent Receipts Ext. D-I and D-I(a). The evidence on behalf of the respondent that there was a mistake in those receipts is not correct as the said receipts are in conformity with Ext. P-12. On the other hand Ext. P-13 and P-14, the other two rent receipts, being controller by his order dated September 29, 1963 while fixing the fair rent of the suit premises at Rs. 1050 per year had fixed it with effect from April 10, 1963. That also shows that the tenancy month commenced from 10th day of a month and ended on the 9th day of the following month.

9. The view taken by the learned District Judge as also by the High Court that the one year's tenancy ended on April 8, 1946 when the tenant agreed to deliver possession on April 9 and hence the monthly tenancy started from the 9th day of the month ending on the 8th day of the following month is clearly erroneous in law. That being so there was no valid and legal termination of the contractual tenancy.

10. In Benoy Krishna Das v. Salsiccioni ((1933) 59 IA 414 : AIR 1932 PC 279 : 37 CWN 1 : 35 Bom LR 6) on the facts of that case Lord Tomlin delivering the judgment of the Judicial Committee of the Privy Council held the notice to be valid. A lease for residential purpose of certain property in Calcutta was expressed to be from June 1, 1921, for the ensuing four years. The tenant held-over. The monthly tenancy was sought to be terminated by the lessee stating therein that possession would be given up on March 1. The landlord's contention that the notice ended on February 29, 1928 was not accepted. The four years lease was held to have ended on midnight of June 1, 1925. The monthly tenancy began on the 2nd of the month ending on the 1st and so the notice was held to be valid.

11. We do not think that the alternative argument put forward by Mr. Chitaley that no notice was necessary in this case is correct. The appellant was a contractual tenant who would have become statutory tenant within the meaning of clause (r) of Section 2 of the Act if he would have continued in possession after the termination of the tenancy in his favour. Otherwise, not. Without termination of the contractual tenancy by a valid notice or other mode set out in Section 111, T.P. Act it was not open to the landlord to treat the appellant as a statutory tenant and seek his eviction without service of a notice to quit.

12. In support of his contention Mr. Chitaley placed reliance on two decisions of this Court namely Ganga Dutt Murarka v. Kartik Chandra Das ((1961) 3 SCR 813 : AIR 1961 SC 1067) and in Pooran

Chand v. Motilal. (1953 Supp 2 SCR 906 : AIR 1964 SC 461) Neither of these supports his contention. In the case of Ganga Dutt Murarka a passage form the decision of the Federal Court in the case of Kai Khusroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden (1949 FCR 262 : AIR 1949 FC 124) was quoted with approval. A portion of it may be usefully quoted here also. It runs thus :

> In such circumstance, acceptance of rent by the landlord from a statutory tenant whose lease has already expired could not be regarded as evidence of a new agreement of tenancy, and it would not be open to such a tenant to urge, by way of defence, in a suit for ejectment brought against him, under the provisions of Rent Restriction Act that by acceptance of rent a fresh tenancy was created which had to be determined by a fresh notice to quit.

The tenancy of the appellant in the above case was found to have been determined by efflux of time and subsequent occupation was not in pursuance of any contract, express or implied but by virtue of the protection given by successive statues. In the case of Pooran Chand, Subba Rao, J. as he then was, said at page 912, when a similar argument was advanced before him :

> It is not necessary in this appeal to express our opinion on the validity of this contention, for we are satisfied that the term of the tenancy had expired by efflux of time; and, therefore, no question of statutory notice would arise.

No notice is necessary if a lease of immovable property determined under clause (a) of Section 111 of the Transfer of Property act by efflux of the time limited thereby.

13. In the result we allow this appeal and set aside the decree of eviction passed against the appellant and in favour of the respondent by the lower appellate Court as affirmed by the High Court. In the circumstances we shall make no order as to costs.

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