

C. N. Ananthram

Vs

B. J. Ganpathy and Another

Civil Appeal Nos. 991-992 of 1991

(Dr. T. K. Thommen, R. M. Sahai JJ)

06.03.1991

JUDGMENT

R. M. SAHAI, J. –

1. Special leave granted.

2. The question in this landlord's appeal, directed against Judgment and order of Karnataka High Court, is if the High Court was justified in setting aside the finding of the Court of Small Causes on bona fide need and comparative hardship of the appellant and dismissing the application under Section 21(1) (h) of the Karnataka Rent Control Act, 1961, for eviction of the respondents.

3. Eviction of the respondents, the two brothers, lessees, of Plot Nos. 71 and 72, since 1971, for a period of ten years, for manufacturing furniture and electronic goods respectively, was sought after expiry of the period because the appellant who was only a sharer in family business needed these plots to shift and start his own business. Claim was founded on sub-clauses (l) and (p) as well but the order, for eviction, was passed by the trial court under sub-clause (h) only. In the High Court sub-clause (l) was not relied on by either of the parties. And so far as sub-clause (p) was concerned, it was conceded on behalf of appellant that it was not available against one of the tenants. Consequently the appeal fails or succeeds on proof or otherwise of requirement of sub-clause (h) only.

4. The trial court found that the appellant was an engineering graduate who had no independent place of business and therefore his need was bona fide. It did not find any substance in the claim of the respondents that the appellant was carrying on the family business even though the licence was in the name of his brother or that his need was not genuine because there was no partition in the family. It rejected the plea of respondents that the appellant had other alternative sites. It found that out of the extensive properties of the family, the appellant was the owner of only five plots, i.e. Plot Nos. 70 to 73 and 67. But he having constructed a house on Plot No. 67, and 71 and 72 being in possession of tenants, he could not shift or set up any independent business. Therefore, his need was bona fide. On comparative hardship, it was held that since the tenants had suitable alternative accommodations they would not be put to any difficulty. In revision, the order was set aside by the High Court because there was no evidence to show that the brothers and sisters of the appellant were demanding partition or that there was any 'compelling necessity' for appellant to shift. It was also found that since Plot Nos. 70 and 73 were vacant they could be used for business. Further there was no approved plan of starting industry. And the appellant having sold Plot No. 70 for substantial amount, during pendency of the proceedings, his application was liable to be dismissed.

5. Both the appellant and the respondents are educated and, well to do, rather, affluent persons. Out of five plots belonging to the appellant, he has constructed a house on Plot No. 67. Out of the four plots, namely 70 to 73 the first three are of equal size whereas Plot No. 73 is in the corner and smaller as well. Moreover the plots are in a row and Plot Nos. 70 to 73 could not be utilised due to Plot Nos. 71 to 72 being situated in between them. The High Court, therefore, in recording the finding that business could be established on Plot Nos. 70 and 73 and setting aside the finding of the trial court on this aspect, acted against the record. For the same reason sale of Plot No. 70 was immaterial. It could not be regarded in isolation. The explanation of appellant that he needed money to set up business was not considered. One of the tenants acquired property during pendency of these proceedings, the ground floor of which admittedly had been let out to State Bank of Mysore. And the garage which had originally been let out is now being used as a show room for TV sets. The tenant has admitted to have let out another portion to Food and Civil Supplies Department which is now being used, after its vacation, for designs and developments. He also admitted that by the side of the property there was a vacant site of 100 yards. The other tenant is manufacturing furniture, mostly for the State Government. But the address of the industry from where the correspondence was carried on was different from the scheduled premises.

6. None of these circumstances were adverted to by the High Court. But what is beyond doubt is that the appellant has at present no independent business. Merely because his elder brother is carrying on business and there is no dispute between them, the appellant's bona fide need to set up his own independent business cannot be doubted. And the tenants who are well off businessmen would not be affected specially when they are carrying on their business from premises other than the plots in dispute. Therefore, to do justice between parties and on the facts and in the circumstances of this case, we are of opinion that the High Court was not justified in setting aside the findings of the trial court.

7. For the reasons stated above, this appeal succeeds and is allowed. The order the High Court is set aside. The order of the trial court shall stand restored.

8. Parties shall bear their own costs.

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