

**SUPREME COURT OF INDIA**

K.Narayanappa (D) By Lrs.

Vs.

R.Prakash

C.A.No.5569 of 2014

(T.S.Thakur and C.Nagappan JJ.)

09.05.2014

**JUDGMENT**

**C. NAGAPPAN, J.**

1. Leave granted.
2. This appeal is directed against the order dated 9.2.2011 passed by the High Court of Karnataka at Bangalore in H.R.R.P. No.246 of 2010.
3. Briefly the facts are as follows : Narayanappa while alive along with his two sons namely the appellants 1 and 2 herein filed petition in HRC No.32 of 2006 under Section 27(2)(a)(c)(o)(p)(r) and Section 31(1)(c) of the Karnataka Rent Act seeking eviction of the first respondent herein on the premise that Narayanappa was the absolute owner of the premises bearing no.15, new no.20 situated at Hoovadigara Galli, Chikpet, Bangalore measuring 25 x 25 ft. with dilapidated structure and he entered into a lease deed dated 29.5.1967 permitting Ramaiah, the late father of respondent no.1 herein, to demolish the old structure and put up new structure and put him in possession for 15 years with monthly rent of Rs.35/- and with the option to renew the lease for further period on agreed terms. Ramaiah demolished the structure and built a new building and let it out to several persons and was collecting the rents. It is further averred in the Eviction Petition that Ramaiah failed to surrender possession after fifteen years even after demand and failed to pay rent also and he died

in the year 1986 and Narayanappa called upon his widow and children to vacate and they did not do so and the respondent no.1 herein admitted the arrears of rent and issued cheque for Rs.525/- towards arrear upto 2001 and it was accounted for. On calculation it was found that a sum of Rs. 3,500/- was due as arrears of rent and Narayanappa issued legal notice dated 5.12.2005 to the respondent no.1 herein and others and they failed to vacate and in their reply denied the right of the appellants to file eviction proceedings which led to the filing of the Eviction Petition by the appellants against the respondent no.1 herein and others. Respondent no.1 herein, in his counter filed therein, admitted the lease agreement dated 29.5.1967 entered into between Narayanappa and his father Ramaiah and the putting up of new structure by his father and renting it out to others. However, it was further averred in the counter that after the death of Ramaiah, respondent no.1 herein along with respondent no.2 in the main petition, were in continuous possession of the premises for over 45 years, even after the expiry of 15 years lease period and thus prescribed title by adverse possession and there is no jural relationship of landlord and tenant between the appellants and them.

4. During the pendency of the Eviction Petition Narayanappa died on 13.7.2006 and his wife namely the third appellant herein filed an application in I.A. No.7 in the Eviction Petition seeking to implead her also as a legal representative of Narayanappa. That application was contested by respondent no.1 herein by pleading that Narayanappa died as a bachelor and the appellants herein are not his legal heirs. After inquiry the Trial Court allowed the application and the third appellant herein was brought on record. In the trial the first appellant herein examined himself as PW1 and one Chandrappa was examined as PW2 and Exh.P1 to P14 came to be marked on their side. Respondent no.1 herein examined himself as RW1 and marked documents at R1 and R25 on his side.

5. The Trial Court on consideration of oral and documentary evidence by order dated 27.7.2010 allowed the petition directing the respondent no.1 herein and others to pay arrears of rent at the rate of Rs.35/- per month from 1.12.2001 to the date of the order and further directed the respondent no.1 herein and others to quit and deliver the vacant possession of the schedule premises to the appellants herein, within three months from the date of the order. Respondent no.1 herein preferred revision in H.R.R.P. No.246 of 2010 and the High Court after hearing both sides allowed the Revision Petition and stayed the proceeding in HRC No.32 of 2008 before the Trial

Court by directing the appellants herein to have their rights adjudicated before the competent Civil Court. Challenging the said order the appellants have preferred the present appeal.

6. The learned counsel appearing for the appellants contended that appellants 1 and 2 herein were arrayed as sons of Narayanappa along with him in the Eviction Petition and all the three appellants are the original petitioners therein and later third appellant Sundamma was impleaded as wife of late Narayanappa after inquiry by the Trial Court and that order was never challenged and became final and when the jural relationship is admitted it is respondent no.1 herein to approach the Civil Court seeking for decree that the appellants are not owners of the petition property and the impugned order of the High Court relegating the appellants to Civil Court is not justifiable and it is liable to be set aside. Per contra Mr. Sri Gurukrishna Kumar, learned senior counsel appearing for the respondent no.1 herein, contended that Narayanappa died as a bachelor and the marital relationship between third appellant Sundamma and late Narayanappa has not been proved and there is no proof for the claim of the appellants that Narayanappa was also called as Muneshwar Rao and these are issues that are to be decided by the competent Civil Court as rightly held by the High Court.

7. We carefully considered the rival contentions. Exh.P1 is the original lease deed dated 29.5.1967 and as per the recitals therein the petition property was let out to late Ramaiah, father of respondent no.1 herein, on a monthly rent of Rs.35/- by the owner Narayanappa. The jural relationship of landlord and tenant between late Narayanappa and late Ramaiah is thus established and it is admitted by respondent no.1 herein as held by Courts below. The Trial Court found that the appellants herein/petitioners established that they require petition premises for their own use and occupation and ordered delivery of vacant possession to them besides the direction to pay the rental arrears. Considering the contention of respondent no.1 herein that the appellants herein are not the legal heirs of original lessor Narayanappa, the High Court directed the appellants herein to have their rights adjudicated before the competent Civil Court and thereafter to proceed with the Eviction Petition.

8. The respondent no.1 herein in support of his plea produced two documents, namely, Ration card and copy of Registration certificate of Car bearing no.KA-05-EX-2037. This Registration certificate, which is now annexed with the counter affidavit, was not

part of record before the Courts below and cannot be taken into consideration more particularly when it is being disputed. The Trial Court while dealing with the entries in the Ration card, took into consideration the registered Will executed by late K. Narayanappa, wherein, it is recited that testator is K. Narayanappa @ Muneshwar Rao and rendered a finding that Narayanappa and Muneshwar Rao are one and the same person. It is also relevant to point out that the Trial Court after conducting inquiry, ordered the impleadment of third appellant Sundamma as legal representative of deceased Narayanappa in the Eviction Petition and the said order has become final. In any event, the contention of the respondent no.1 herein that appellants 1 and 2 herein are not the sons of late Narayanappa is liable to be rejected for the reason that all the three of them jointly filed the Eviction Petition against respondent no.1 herein and in the petition, appellants 1 and 2 are described as sons of late Narayanappa. In other words Narayanappa declared appellants 1 and 2 herein as his sons while seeking eviction of respondent no.1 herein. It is also pertinent to point out that respondent no.1 herein, in his counter filed in the Eviction Petition when Narayanappa was alive, did not raise any objection that appellants 1 and 2 herein, are not the sons of Narayanappa and on the other hand his only contention was that he has prescribed title to the petition premises by adverse possession. The High Court misdirected itself in relegating the appellants to Civil Court as rightly contended by the learned counsel for the appellants and the order is unsustainable.

9. The appeal is allowed and the impugned order of the High Court is set aside and the order of the Trial Court is restored. No order as to costs.