

## **MYSORE HIGH COURT**

M. Gurumurthappa

Vs

M. Chickmunisamappa

Misc. Appeal No. 36 of 1949-1950

(Mallappa and Vasudevamurthy, JJ.)

07.03.1952

### **JUDGMENT**

#### **Vasudevamurthy, J.**

1. This Miscellaneous Appeal is against an order of remand made by the Subordinate Judge of Bangalore in S.A.129 of 48-49 by which he set aside the order of the Krst Munsiff of Banealore dismissing an application I.A.II in Ex. Case No.195 of 48-49. The facts relating to this application are as follows:

2. The appellant, the landord, applied to the House Rent Controller, Bangalore and obtained an order of eviction against the respondeat, the tenant, in H.R.C. Case No.820 of 45-16 on 22-11-46. That order was finally affirmed by the Government by an order dated 20-10-47. Thereafter the appellant applied for the execution of that order and in Ex. Case 195 of 48-49 on the file of the First Munsiff of Bangalore, he was duly put in possession of the premises concerned in this case on 31-10-1948. The respondent then filed his present application I.A.II on 8-11-48 under Sections 47 and 151, Civil Procedure Code for restitution or redelivery back to him of the premises on the ground that the orders passed toy the H.R.C. and Government were passed without their having any jurisdiction so to do. According to him the original lease in his favor was only at a vacant piece of land on which he had himself put up a structure in accordance with the terms of an agreement which provided for the site as well as the superstructure being delivered back to the landlord after the termination of the lease only on certain terms; that the House Rent Controller could only deal with cases of houses which were let and not such cases of vacant sites which really had to go before the ordinary Civil Courts in the usual way. Moreover, no sufficient or proper notice to quit in accordance with the provisions of Section 111(h), Transfer of property Act had been given by the landlord. As the tenancy had not therefore been properly terminated the House Rent Controller had no jurisdiction to order eviction. The landlord opposed his application as not maintainable. The executing Court could not have

questioned the legality of the order which had been passed by the House Rent Controller and having allowed execution to proceed and the property having been delivered to the landlord in accordance with that order there was nothing more for the executing Court to do and there was no power in such cases to order restitution. There was also no lack of jurisdiction on the part of the House Rent Controller or the Government on the grounds pleaded by the Respondent.

3. The learned Munsiff dismissed I.A. II. He held that a proper notice to quit had not been given and that the properties when they were let were a vacant site to which the provisions of the House Rent Control Order had no application. But he held that he could not however order restitution relying on a case reported in - '*Abdul Aziz Khan v. Nanjundappa*', On appeal the learned Subordinate Judge disagreed with the Munsiff as regards fee last point. He was of the opinion that the Court had jurisdiction to direct restitution in proper cases in view of some recent changes in the House Rent Control Order which made applicable the provisions of the Civil Procedure Code to proceedings under that order. But as the Munsiff had not recorded any evidence before coming to conclusions as regards the nature of the property leased and its incidents and about the failure to give notice terminating the lease, fee remanded the case to the Munsiff to take evidence and dispose of the application in accordance with law.

4. It is contended here by the learned Counsel for the appellant, Sri. V. Krishnamurthy, that the order of remand is wrong. He urges that even the admitted proceedings, pleadings and documents which was before the Courts below clearly establish that a proper notice to quit had been given to the Respondent; and that the respondent is estopped in the circumstances of this case from questioning the jurisdiction of the House Rent Controller to pass an order of eviction.

5. To appreciate the appellant's contentions it is necessary to refer briefly to certain earlier proceedings in Court connected with this property. It is not disputed that the premises in question belonged to one Sampannappa and that the respondent was his tenant. Sampannappa filed a suit on 18-1-1943 against the respondent and 3 others in S.C. No.1009 of 1942-43 for possession of the premises and for two months' rent which was in arrears. He expressly stated in the plaint that the defendants had taken the property on lease from his adoptive father under a lease deed dated 29-8-1929, that they were continuing in possession as tenants from month to month after the period of that lease had expired, and that though he had given them a notice to quit and deliver possession by 29-11-1942 they had failed to do so. Defendant 1 put forward numerous defences to the plaintiff's suit; among others, he stated in para 5 of his written statement that the notice to quit was not valid and tenable, without specifying why it was so, and waived as he had received rents subsequently. In para 11 he pleaded that so far as the suit for ejectment was concerned the plaintiff was not entitled to relief in view of the waiver of notice to quit and as per the Defence of India Rules and the Mysore House Rent Control order. Defendants 2 and 4 who were represented by the same Counsel as defendant 1 pleaded that they were no longer in possession and were not lessees under the plaintiff at all. They however, admitted having received the notice to quit which they said they saw no object in replying to. Subsequently Sampannappa, died and his ancestors

and trustees brought themselves on record and filed a reply in which after reiterating that the notice to quit was valid and there was no waiver thereof, they stated that in view of the Mysore House Rent Control Order and a decision of the High Court in a second appeal they felt

<sup>1</sup>53 Mys HCR 298 (A)

themselves precluded from pressing the relief for ejection in the suit and reserved to themselves the right to adopt suitable steps in this behalf before the proper tribunal. The suit was ultimately decreed on 7-11-1945 for ₹ 52/- being the rents claimed in the plaint for the months ending 29-11-42 and 29-12-42.

6. The executors and trustees then filed another suit O.S.477/45-46 on 12-6-1946 in which they claimed all the rents due from the month ending 29-1-1943, up to 18-4-1946 on which date they had sold the property to the appellant and who they said was therefore entitled to the subsequent rents. That suit was also contested by deft.1 who set up the title of one Najappa and to whom he said he had paid up the rents and from whom subsequently he had himself bought the property on 6-1-1945. That suit was ultimately decreed on 6-9-1951. The executors after they sold the property to respondent (appellant?) gave a notice to him (respondent?) on 18-1-1946 through their advocate. Therein he was informed of the sale and he was required to pay the entire arrears of rents due till the sale to the executors and to deliver possession of the property to the purchaser, the respondent, (appellant?) forthwith'. The appellant as purchaser of the suit property afterwards applied to the House Rent Controller for eviction as already referred to above.

7. The notice of 18-1-46 has given room for a good deal of difficulty in this case. It is carelessly worded and refers to the respondent as

"having been continuing as tenancy from month to month under the executors and trustees" which obviously was never the case of the executors and trustees much less of the respondent. The latter was all along denying their right and the will and codicil of the testator Sampannappa and setting up title in one Nanjappa as nearer heir of the latter from whom he had come to purchase the property himself. In this connection Mr. V. Krishnamurthy has cited a case in '51 Mys HCR 277' at p.287 (B) where reference is made to - '*Abed v. Stocks*<sup>2</sup>', and it is pointed out that a notice to quit is necessary when a tenancy is admitted on both sides and when the tenant denies any tenancy there is no need to (sic) and what the tenant says has no existence in fact. Decree for arrears of rent had been obtained for a continuous period covered by the small cause suit and the original suit O.S.477/45-46 and Nanjappa himself had filed a suit in O.S.61/ 45-46 putting forward his own title which was dismissed on 16-1-47 as against the executors. In these circumstances there is no substance in the respondent's contention that the earlier notice of 29-10-1942 was waived or that the notice of 1946 is the one that must be looked into. That latter notice moreover was given by the executors after they had parted with their rights and sold the property to the appellant and cannot have any legal effect or bind the appellant in any way.

8. The respondent's contention that a tenancy from month to month between the appellant and respondent must be presumed to have come into existence in this case is therefore thoroughly groundless and the earlier notice of 1942 must be held to be valid and as having lawfully terminated the lease.

<sup>2</sup>(1838) 130 ER 863

9. As regards the other objection to the jurisdiction of the House Rent Controller that the property concerned in these proceedings was a vacant site and the adjudication regarding it was properly for a Civil Court and not the House Rent Controller to decide, it must be observed that there was a house or shed on the vacant site when the proceedings were started before the latter. The respondent had earlier objected to the jurisdiction of the Civil Court and pleaded that the House Rent Controller had such jurisdiction. The appellant had accepted that position, and it does not lie in the mouth of the respondent now to turn round and say that the House Rent Controller had no such jurisdiction and that the appellant should have again sought relief in the Civil Court. The respondent is clearly estopped by his own pleadings and coo-duct from so doing.

10. Mr. S.K. Venkataranga Iyengar contended that the appellant may not have been well advised in accepting the legal position put forward by the respondent and he urged that if he chose to walk into a trap laid by the respondent he had only himself to thank. Such a contention which appears to lack any merit cannot be tolerated by a Civil Court which has to do justice and equity between the parties and not merely judge which of them is cleverer. Mr. V. Krishnamurthy, learned Counsel for the appellant, contends on the strength of some decisions that the respondent cannot in law raise such objection. He has relied on cases reported in - '*Bala Lingayya v. Sunku Nallayya*<sup>3</sup>', which refers to and follows a case in - '*Govindappa v. Hanumaathappa*<sup>4</sup>', In AIR 1916 Madras 745 (2)(SUPRA), the plaintiff made an application for restitution to the executing Court under Section 583 of the old Code corresponding to the present Section 144, but the application was disallowed on an objection taken by the defendant that such an application did not lie. Then he filed a regular suit and the defendant again objected to the suit. His contention was negatived, the Court observing that it was on his objection that the plaintiff had been driven to a separate suit and he could not now be heard to say that the procedure to which he himself successfully objected was the proper one. (Vide also a similar case in - '*Uttamchand v. Saligram*<sup>5</sup>'.) In AIR 1944 Madras 62 CD), it was held that where representations are made by one of the parties to execution proceedings of facts that would necessitate some other proceedings and on which the Court acts and passes a certain order, that would operate as an estoppel against that party from contending in other proceedings that those facts were not true. In - '*Kondi Ravjiv. Chuni-lal Rupchand*', AIR 1929 Bombay 1, the plaintiff had made an application to Court to file an award and pass a decree in its terms. Later he sued to obtain a declaration that the decree was unauthorised and void. It was observed by their Lordships that the Court was one of equity as well as a Court of law and they were not bound to give relief to the plaintiff in the circumstances and that he could not be permitted to go back on his own representation and urge want of

jurisdiction. In-'*RamKhelawan Singh v. Maharajah of Benares*<sup>6</sup>', an appeal was filed before the Commissioner from an order under an earlier Tenancy Act confirming a sale. The appeal was opposed by the respondent on the ground that the case was governed by a new Tenancy Act and that the appeal should have been filed in the High Court. The appeal was accordingly returned by the Commissioner and it was presented in the High Court and the respondent then changed his position and contended that the case was not governed by the new law

<sup>3</sup> AIR 1944 Mad 62

<sup>5</sup> AIR 1929 Nag 79

<sup>4</sup> AIR 1916 Mad 745 (2)

<sup>6</sup> AIR 1930 All 15

but by the old law and that an appeal did not lie to the High Court. It was held that he was estopped from raising any question of jurisdiction inasmuch as it was on his own insistence that the appeal was returned by the Commissioner and by his objection he had accepted the jurisdiction of the High Court as the proper forum of appeal.

11. Sri Krishnamurthi has also pointed out that even in - '*Guru Rajachar v. Rangiah*<sup>7</sup>', which is relied on for the respondent as enabling him to question the jurisdiction of the House Rent Controller the remedy which is conceded by that decision is, if any, by suit and not by means of an application or objection in the executing Court. He has in this connection referred to a case in - '*D.P. Merchant v. Bank of Mysore Ltd*<sup>8</sup>!', where it has been held that as the order of the House Rent Controller is in the nature of a decree it is not open to the tenant in execution of the decree to raise the contention that the order passed by the Controller is invalid.

12. In the result we allow this appeal and set aside the order of the learned Subordinate Judge. I.A. No.II is dismissed with costs throughout (Advocate's fee ₹ 15/-).

Appeal allowed.

<sup>7</sup>52 Mys HCR 455

<sup>8</sup> AIR 1949 Mad 784