

Abbas Beary and Others - Appellants @HASH Jamia Maszid Udupi and another

Court: KARNATAKA HIGH COURT

Date of Decision: Sept. 1, 2016

Acts Referred: Civil Procedure Code, 1908 (CPC) - Section 100

Karnataka Rent Act, 1999 - Section 27, Section 32

Transfer of Property Act, 1882 - Section 106

Citation: (2016) 4 AirKarR 291

Hon'ble Judges: B. Manohar, J.

Bench: Single Bench

Advocate: K. Chandranath Ariga, Advocate, for the Appellants; S. Jagan Babu, Advocate, for the Respondent No. 1; Served and unrepresented, for the Respondent No. 2

Final Decision: Dismissed

Judgement

B. Manohar, J. - Appellant being the defendant has filed this appeal challenging the judgment and decree dated 20th March, 2013 made in

R.A.No.4 of 2009 on the file of the Additional Senior Civil Judge, Udupi dismissing the appeal and confirming the judgment and decree dated 29th

November, 2008 made in O.S.No.215 of 2002 passed by the Principal Civil Judge (Jr.Dn.), Udupi decreeing the suit filed by the plaintiff directing

the defendant to vacate and hand over the vacant possession of the plaint schedule property and arrears of rent and mesne profits.

2. For the sake of convenience and better understanding of the case, the parties are referred to as plaintiff and defendants as arrayed before the

trial Court.

3. The first respondent-Jamia Maszid in this appeal had filed a suit seeking for eviction of the defendants and also sought for vacant possession of

the suit schedule property. In the plaint, it was contended that the first defendant was the monthly building tenant under the plaintiff in respect of a

non-residential shop premises bearing Municipal D.No. 10-4-36 (hereinafter referred to as 'the suit schedule property') on an agreed rent of

Rs.600/- p.m. and electricity charges. The tenancy of the first defendant is a oral tenancy, which commences on the 1st day of each calendar

month and expires on the last day of each calendar month. The first defendant was carrying on Gujari, firewood and coal business in the said

premises for last over forty years and using the vacant space appurtenant to the plaint schedule premises to store firewood and gujari articles with

the permission of the plaintiff though it was not leased to him. The first defendant got retired from his business and he was residing in his native

place at Kasaragod, but he unlawfully sub-let the suit schedule premises to the second defendant without the permission of the plaintiff. At present

the second defendant is running the similar business and he is in possession of the plaint schedule premises and paying higher rent to the first

defendant. The first defendant is in arrears of rent from 1-9-2001 to 28-2-2002 aggregating Rs.3,600/-. In view of that, the plaintiff issued a quit

notice on 12-07-2002 terminating the tenancy, calling upon the first defendant to surrender the vacant possession of the plaint schedule premises

on 31-08-2002 free from sub-tenancy created in favour of the second defendant. The quit notice was served to the first defendant at his

Kasaragod address and the second defendant was served at the suit schedule premises. Immediately after receipt of the quit notice, the first

defendant approached the plaintiff and requested to continue his tenancy in respect of suit schedule premises on a higher rent. But, he has denied

creation of sub-tenancy in favour of the second defendant. However, the plaintiff has not agreed for the same. Subsequently, the first defendant

issued reply notice on 27-08-2002 denying the several contentions taken in the quit notice. Further contended that Sri.B.K.Abdul Khader, ad hoc

managing committee has no power to terminate the tenancy. Further he has not sub-let the suit schedule premises whereas the second defendant

working under him as a Manager and he had taken the premises initially for doing the scrap business, and he is continuing the very same business.

Further, though the first defendant offered the rent, the plaintiff has not received the same and hence sought for dropping of the proceedings.

Further it was contended that the plaintiff-Masjid is a religious institution as defined under Section 2(3)(a)(ii) of Karnataka Rent Act, 1999

(Karnataka Act No.34 of 2001) and none of the provisions of the said Act are attracted to the lease. Hence the plaintiff filed the suit with the

above prayer.

4. In response to the notice issued by the trial Court, the defendants 1 and 2 entered appearance through their advocates. However, the first

defendant alone filed written statement denying some of the averments made in the plaint. In the written statement, the first defendant has denied

that the plaintiff Jamia Masjid is a religious institution. The President of adhoc committee has no power to issue quit notice and terminate the

tenancy. The quit notice is not in accordance with the provisions of the Act. However, it was admitted that he was a building tenant of non-

residential shop premises. The premises was taken for doing gujari, firewood and coal business. Further appurtenant land measuring about 4 cents

was also leased in favour of the first defendant. The said land is being used to store the firewood, coal and gujari articles. The tenancy is a monthly

tenant. He has not sub-let the premises to the second defendant. The second defendant is a Manager working under him and he is paying salary to

him at Rs.2,500/- p.m. Though he was residing at Kasaragod he was frequently visiting Udupi and taking care of the business. The plaintiff refused

to accept the arrears of rent from 1-9-2001 to 28-2-2002 amounting to Rs.3,600/-and sought for dismissal of the suit.

5. On the basis of pleadings of the parties, the trial Court framed necessary issues.

1. Whether the plaintiff proves that the 1st defendant is residing at Kasargod by subletting the suit premises to the 2nd defendant without his

consent?

2. Whether the 1st defendant proves that the 2nd defendant is his employee and he did not sublet the plaint premises to him and therefore the 2nd

defendant is not a necessary party?

3. Whether the 1st defendant proves that along with the plaint premises vacant land appurtenant to plaint premises is also let out to him by the

plaintiff and it is a part and parcel of the plaint premises?

4. Whether the plaintiff has validly terminated the tenancy of the first defendant?

5. Whether the plaintiff is entitled to arrears of rent and mesne profits as sought for?

6. Whether the plaintiff is entitled to vacant possession of the plaint schedule premises?

7. What order or decree?

6. The plaintiff in order to prove their case, examined the Administrator of the plaintiff as P.W. 1 and got marked the documents as Ex.P1 to

Ex.P10. On behalf of the defendants, the first defendant got examined himself as D. W. 1 and got marked the documents as Ex.D1 to Ex.D3.

7. The trial Court, after appreciating the oral and documentary evidence let in by the parties taking into consideration Ex.P3 quit notice dated 12-

07-2002 and other relevant records held issue Nos. 1, 4, 5, and 6 in the affirmative and issue Nos. 2 and 3 in the negative, consequently by its

judgment and decree dated 29-11 -2008 decreed the suit filed by the plaintiff directing the first defendant to vacate and hand over the vacant

possession of the suit schedule premises including the vacant land surrounding the plaint schedule premises within six months from the date of the

order. Further directed to pay the arrears of rent of Rs.3,600/- and also to pay mesne profit at the rate of Rs. 1,000/- p.m. from 1-9-2002 with

interest at 6% p.a. The defendant being aggrieved by the judgment and decree passed by the trial Court, preferred R.A.No.4 of 2009 taking

various contentions. The Lower Appellate Court, after considering the arguments addressed by the parties framed the following points for

consideration:

VERNACULAR MATTER

8. The Lower Appellate Court on re-appreciating the oral and documentary evidence held that there is no infirmity or irregularity in decreeing the

suit filed by the plaintiff. The first defendant has sub-let the suit schedule premises to the second defendant without the permission of the plaintiff.

Further only the suit schedule premises has been leased however appurtenant land has not been leased to the first defendant. Further, the

defendant is in arrears of rent and ordering mesne profits is in accordance with law and no ground is made out to interfere with the judgment and

decree passed by the trial Court. Accordingly the dismissed the appeal. Being aggrieved by the said judgment and decree passed by the Courts

below, this regular second appeal has been filed.

9. Sri. K. Chandranath Ariga, learned counsel appearing for the appellant contended that the judgment and decree passed by the courts below are

contrary to law. The finding of the Courts below that the first defendant has sublet the plaint schedule premises along with the business to the

second defendant is contrary to law. Though the first defendant was residing at Kasaragod, he can run the business at Udupi by engaging the

Manager under his supervision. The specific case of the appellant is that he had appointed the second defendant as Manager and paying salary of

Rs.2,500/- p.m., frequently, he or his sons were visiting Udupi and supervising the business. Hence at no stretch of imagination the second

defendant can be treated as sub-tenant of the appellant. Initially the premises was taken to do the scrap business and he had obtained the licence

on 22-7-2008 for running the scrap business. The entry made with regard to the occupier of the premises in the Tax register extract of the City

Municipality Udupi is made at the instance of the plaintiff. No value can be attached to the same. Further, the quit notice was issued in the

individual capacity of Haji B. K. Abdul Khader. He has no competency to issue the quit notice. The quit notice is defective. Hence, the tenancy

cannot be terminated and the judgment and decree passed by the courts below is contrary to law. The concurrent finding recorded by the Courts

below can be interfered with by this Court, if it is a perverse finding. In support of his contention, the learned counsel for the appellant relied upon

the judgment reported in AIR 1992 SC 1604 in the case of Jagadish Singh v. Nattbu Singh and sought for allowing the appeal by setting

aside the judgment and decree passed by the trial Court.

10. On the other hand, Sri. Anantha Mandagi, learned Senior counsel appearing for Sri. S Jagan Babu argued in support of the judgment and

decree passed by the trial Court and contended that there is no infirmity or irregularity in the judgment and decree passed by the courts below. Sri.

B.K. Abdul Khader, the President of the Managing Committee of Jamia Masjid is competent to issue quit notice. After following the procedure

prescribed under Section 106 of the Transfer of Property Act the quit notice has been issued and tenancy was terminated. Without the permission

of the Committee of Jamia Masjid, the first defendant had sub-let the suit schedule premises to the second defendant for the years 2002-03,

2003-04, 2004-05. The name of second defendant was shown as occupier of the suit schedule premises in the property tax register extract

maintained by the City Municipality. In fact, the quit notice issued to the first defendant has been served at the address at Kasaragod, whereas the

quit notice issued to the second defendant is at the suit schedule premises. That itself shows that the first defendant is not doing the business at the

suit schedule premises and he has sub-let the premises to the second defendant and he is continuing the business. The first defendant is in arrears of

rent from 1-9-2001 to 28-02-2002. The first defendant has not disputed the said aspect of the matter. Under Section 106 of the Transfer of

Property Act, the monthly tenancy can be terminated by issuing 15 days quit notice. Hence, the appellant has no right to continue in the premises

after terminating the tenancy. There is no infirmity or irregularity in the judgment and decree passed by both the Courts below. The finding

recorded by the lower appellate court is purely a question of fact and there is no substantial question of law to be decided in this appeal and sought

for dismissal of the appeal. In support of his contention, he relied upon the judgment reported in (2016) 3 SCC 78 in the case of Damodar Lai

v. Sohan Devi and others.

11. While admitting the appeal, this court has framed the following substantial question of law:

Whether both the courts were justified in ignoring the admission of PW.I regarding Ex.P.3 in accepting defendant No.2 as subtenant ?

12. I have carefully considered the arguments addressed by the learned counsel for the parties, perused the judgment and decree passed by the

courts below and oral and documentary evidence.

13. The records clearly disclose that the first defendant was the tenant of the premises door No. 10-4-36 belonging to the plaintiff-Jamia Masjid.

About 40 years back, the said premises was leased to the first defendant for running scrap, firewood and coal business. The appurtenant land is

also being used to store the gujari, firewood and coal. The first defendant was paying rent of Rs.600/- p.m. The said business is being carried on

by the second defendant in the said premises. In the Municipal register, name of the second respondent has been entered as occupier of the said

premises for the years 2002-2003 to 2004-2005. The allegation is that the first defendant is collecting more rent from the second defendant and

paying only a sum of Rs.600/- p.m., to the Jamia Masjid. The Managing Committee of the Jamia Masjid after noticing the same, issued quit notice

terminating the tenancy calling upon the appellant to hand over the vacant possession to pay the arrears of rent and also mesne profits. However,

the defendant denied the same.

14. The Administrator of the Jamia Masjid was examined as P.W.1. In his evidence, he has clearly mentioned that the premises was leased to the

first defendant for doing scrap business. However, he retired from the said business and settled down at Kasaragod. Without permission of the

plaintiff, he leased out the said premises to the second defendant. The second defendant is doing the very same business and in the municipal

records, the name of the second defendant is mentioned as occupier of the suit schedule premises. As on the date of issuing quit notice, the adhoc

Managing committee was managing the Jamia Masjid, subsequently an Administrator was appointed. Being an administrator of the Jamia Masjid

he has given evidence. Nothing contrary has been elicited in the cross-examination. The first defendant in his evidence reiterated the averments

made in the written statement and denied sub-leasing the premises to the second defendant. In the cross-examination he has clearly admitted that

he is a resident of Kasaragod. After coming to Udupi, he has learnt Kannada. He has received the quit notice at his Kasaragod address. There is

no written lease deed, he was a monthly building tenant. The building is in dilapidated condition and he is using the appurtenant land for storage of

his gujari, firewood and coal with the permission of the plaintiff. For the last 15 years, his health condition is not good, hence he went to his native

place. The second defendant is his manager and he is paying him salary of Rs.2,500/- p.m. However he has no document to show that he is paying

salary of Rs.2,500/- p.m. to the second defendant. For the last 15 years, he is residing at Kasaragod. He has not maintained any register regarding

his business and also payment of salary to the second respondent. He admitted that in the Municipal records, name of the second respondent has

been shown as occupier. Hence it is clear that for the last 15 years, the first defendant is residing at Kasaragod and the business is being carried on

by the second defendant as a sub-lessee. Though the Jamia Masjid made an allegation that second defendant is occupying the suit schedule

premises as sub-lessee, the second defendant neither filed written statement nor stepped into the witness box to deny the allegation made against

him. If the second defendant is running the business as Manager, nothing prevented him to step into the witness box and dispel the contention of the

plaintiff that his occupation is as sub-tenant. Though the first defendant has taken the contention that the occupation of the second respondent of

the suit schedule premises is as a Manager, no document has been produced to establish the same. The first defendant is not doing any business at

Udupi and he has permanently settled down at Kasaragod, subsequently he died. That itself shows that the first defendant has sub-leased the suit

schedule premises to the second defendant and he is carrying on business of scrap, firewood and coal. The quit notice issued by the Managing

Committee of the Jamia Masjid is in accordance with law. In view of amendment to Section 106 of Transfer of Property Act in the year 2002,15

days clear notice is sufficient to terminate the tenancy since the first defendant is a monthly building tenant. The quit notice issued is in accordance

with law. The courts below, after appreciating the oral and documentary evidence concurrently held that the premises was sub-let to the second

defendant and he is doing business and his name has been depicted in the municipal records as occupier of the premises. Further there is arrears of

rent from 1-9-2001 to 28-2-2002. The defense taken by the first defendant is that the plaintiff refused to accept the rent. The facts clearly disclose

that the first defendant had offered the arrears of rent on subsequent dates which established that he is in arrears of rent.

15. The judgment relied upon by Sri. Chandranath Ariga reported in AIR 1992 SC 1604 (supra) is concerned, there is no dispute with regard to

proposition of law laid down by the Hon'ble Supreme Court that "where the findings by the Court of facts is vitiated by non-consideration of

relevant evidence or by an essentially erroneous approach to the matter, the High Court is not precluded from recording proper findings." In the

instant case, after issuing quit notice, the suit has been filed terminating tenancy. Admittedly, the first defendant is a monthly building tenant and it

was an oral lease. The tenancy starts from the 1st day of each calendar month and expires on the last day of each calendar month. The tenancy can

be terminated after issuing quit notice in terms of Section 106 of the Transfer of Property Act. In the instant case, both the Courts after

appreciating the oral and documentary evidence came to the conclusion that the first defendant has sub-let the premises to the second defendant

without the permission of the plaintiff and the first defendant is in arrears of rent. I find no infirmity or irregularity in the judgment and decree passed

by both the Courts below by appreciating the oral and documentary evidence. The Hon'ble Supreme Court in a judgment reported in (2016) 3

SCC 78 : (AIR 2016 SC 262) (supra) has clearly laid down a law that in second appeal, scope of interference in concurrent finding by the courts

below on pure question of fact is not permissible, unless such findings are based on no evidence or the finding is perverse. In the instant case, the

finding of the first appellate court is purely a question of act. There is no misreading of the evidence or on conjectures or surmises. The finding has

been given by the courts below purely on appreciating the oral and documentary evidence. The appellant/first defendant has not made out a case

to interfere with the judgment and decree passed by the courts below. Accordingly, I pass the following:

ORDER

The appeal is dismissed.