
(2015) 01 KAR CK 0074

Karnataka High Court (Dharwad Bench)

Case No: HRRP Nos. 136 and 137/2014

Vasantibai and Others

APPELLANT

Vs

Tarabai

RESPONDENT

Date of Decision: Jan. 21, 2015

Acts Referred:

Karnataka Rent Act, 1999 - Section 27, 27(2)(a), 3(e), 31(c), 44#Transfer of Property Act, 1882
- Section 106

Citation: (2015) 01 KAR CK 0074

Hon'ble Judges: Aravind Kumar, J.

Bench: Single Bench

Advocate: J.S. Shetty, Advocate, for the Appellant; Kiran G. Joshi, Advocate for R.H. Angadi,
Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Aravind Kumar, J.

These two revision petitions have been filed by respondents - tenants calling in question
order of eviction dated

13.04.2012 passed in HRC No. 2/2011 and 1/2011 by III Addl. Civil Judge, Dharwad
allowing petitions filed under Sections 5 and 27(2)(a) of

the Karnataka Rent Act, 1999 (for short "Rent Act") by directing the tenants to quit,
vacate and hand over vacant possession of petition schedule

premises within 60 days from the date of order and also directing respondents to pay
arrears of rent @ Rs. 400/- per month from October, 2006

came to be affirmed by the Principal District and Sessions Judge, Dharwad in Rent Revision Nos. 10/2012 and 11/2012 by order dated

10.10.2014.

2. I have heard the arguments of Sriyuths J.S. Shetty, learned Advocate appearing for revision petitioners -tenants and Sri R.H. Angadi and Sri

Kiran G Joshi, learned Advocates appearing for respondent - landlord. Records have been secured from the trial Court as well as Revisional

Court and same has been perused.

3. Parties are referred to as per their rank in the trial Court.

Petitioner initially filed suits for ejectment of tenants from petition schedule premises in O.S. Nos. 432 & 433/2007. In the said suits, defendants

appeared and filed their written statements and a specific plea was raised with regard to maintainability of the suits, as such, same was heard as a

preliminary issue and order came to be passed on 26.02.2011 rejecting the complaints and observing that such rejection would not preclude the

plaintiff to initiate proceedings under the Rent Act. Accordingly, petitioner filed present eviction petitions in HRC Nos. 1/2011 and 2/2011 under

Sections 5 and 27(2) (a) of the Rent Act seeking eviction of respondents. Said suit was preceded by issuance of legal notice whereunder tenancy

came to be terminated, arrears of rent was demanded and also payment of future damages has been sought for, said notice came to be received

and duly replied by the respective respondents. On account of non-compliance of the demand made by the petitioner in legal notices, eviction

petitions in question came to be filed before the trial Court. Both parties tendered oral and documentary evidence and trial Court after considering

the pleadings and on appreciation of evidence available on record, allowed the eviction petitions in part namely, it has allowed the petitions under

Section 5 and 27(2)(a) of the Rent Act and dismissed the petitions filed under Section 31(c) of the Rent Act by orders dated 13.04.2012. Being

aggrieved by orders of eviction passed, respondents-tenants filed revision petitions in RR Nos. 10/2012 and 11/2012. Revisional Court after

securing records from the trial Court and after considering the contentions raised by respective learned Advocates, formulated following points for

its consideration:

1. Whether the court below is legally justified in holding that there exists jural relationship of landlady and tenant between the petitioner and the

respondent?

2. Whether the court below is justified in directing the respondent tenant to vacate and handover the possession of the schedule property to the

petitioner?

3. Whether interference of this Court in the impugned order is necessary?

4. What order?

On re-appreciation of evidence and after examining contentions raised by learned advocates appearing for the parties, Revisional Court refused to

accept the plea put forward by tenants and as such rejected the revision petitions by order dated 10.12.2014 and affirmed the orders passed by

the trial Court. However, on humanitarian ground, Revisional Court extended time to the tenants to vacate schedule premises by granting time upto

31.12.2014. It is these two orders which have been assailed in the present revision petitions by the tenants.

4. Since issues involved in both revision petitions are common and Revision petitioners-tenants and respondent-landlord are also common in these

petitions and there being no different or separate and independent plea contrary to each other having been raised by respondents before trial

Court, I am of the considered view that these two revisions petitions are to be heard, adjudicated and disposed of by this common order.

Accordingly, said exercise is undertaken by me.

5. It is the contention of Mr. J.S. Shetty, learned advocate appearing for the revision petitioners/tenants that trial Court having allowed petitions

under Section 27(2) (a) of the Act, ought to have granted time to the tenants to deposit rents within one month and there being no specific direction

to the said effect, order of eviction passed by the trial Court is bad in law. He would also contend that there was no jural relationship of landlord

and tenant between the parties and this plea having been raised by the tenants and reiterated in evidence has not been considered in proper

perspective and as such, order passed by trial Court is liable to be set aside. He would further contend that Section 5 of the Rent Act is not at all

applicable to the facts on hand inasmuch as, revision petitioners had recognized Smt. Parvati Bai as their landlord and had been paying rents and as

such there was no extinguishment of tenancy rights insofar as revision petitioners are concerned and as such Section 5 of the Rent Act is not at all

attracted. He would contend that though these grounds were urged before Revisional Court by raising specific plea in this regard, same has not

been considered by the Revisional Court and thus it has resulted in great prejudice and thereby it has occasioned miscarriage in the administration

of justice. Hence, on this ground also, he prays for setting aside the orders passed by the Court and below and prays for revision petitions being

allowed.

6. Per contra, Sri R H Angadi, learned Advocate appearing for respondent-landlord would support the orders passed by Courts below. He would

also draw the attention of the Court to admission of respondents/tenants in their cross examination admitting for having paid rents to the present

landlady (Smt. Tarabai) and as such Courts below have rightly taken into consideration that there was relationship of landlord and tenants and

hence he prays for dismissal of present revision petitions with costs.

7. Having heard the learned advocates appearing for the parties and on perusal of orders passed by trial Court which has been affirmed by

revisional Court, I am of the considered view that following points would arise for consideration in these petitions:

(1) Whether plea of there being no jural relationship of landlord and tenant has been considered by the Courts below in proper perspective and

has there been any material irregularity committed by the Courts below in that regard?

(2) Whether Section 5 of the Rent Act is attracted to facts and circumstances of the case? and, as such whether trial Court was justified in passing an order of eviction?

(3) Whether order passed by the Courts below under Sections 27 (2)(a) of the Rent Act is liable to be set aside on ground of there being any infraction of statutory provision namely Section 27(2) (a) of Rent Act?

Since background of the case has already been delved upon hereinabove, reiterating facts or pleadings yet again would only be repetition of facts

and as such, they are not delved upon except to the extent required for adjudicating points formulated herein above.

BRIEF BACKGROUND:

8. It is not in dispute that one Smt. Parvathi Bai Harisingh Yanakanchi was the owner of petition schedule premises. She died issue less. During her

life time, respondents (tenants) came to be inducted nearly about 58 years back. During her life time, she had been collecting rents and

respondents also did not dispute relationship of landlord and tenant between them and Smt. Parvathi Bai. On her death, problems have started.

Petitioner Smt. Tarabai who is Smt. Parvathy Bai's sister's grand daughter on the basis of a registered Will executed by Smt. Parvathy Bai is

claiming right over petition schedule premises. As such, she got issued a legal notice terminating tenancy of the parties and demanded possession of

petition schedule premises. Said notice was duly received and came to be replied by respondents (tenants). Suits came to be filed in OS. Nos.

432/2007 and 433/2007 for ejectment of tenants from suit schedule premises by above said Smt. Tarabai. On a plea being put forward by

defendants therein namely, tenants that suits are not maintainable, complaints came to be rejected by order dated 26.02.2011 by reserving liberty to

plaintiff therein i.e., respondents herein to file eviction petitions under the Rent Act. Accordingly present eviction petitions came to be filed under

Sections 5, 27(2)(a) and 31(c) of the Rent Act. Respondents were duly served, and they appeared and filed their written statements by denying

averments made in the petitions except to the extent expressly admitted by them in their written statements.

RE: POINT (1):

9. It requires to be noticed that respondents have denied jural relationship. They have contended that petitioner is an utter stranger; petitioner has

no right over property in question and she is not entitled either to seek recovery of arrears of rent from them or possession of petition schedule

premises. At this juncture itself, it requires to be noticed that in reply to legal notice issued by petitioner on 20.08.2007 as per Ex. P-8 respondents

have contended to the following effect:--

That, the para-10 xxx client. It is fact that after the death of Parawatibai Harisingh Yankanchi your client/themselves claiming to be nearest relative

and distinctive relative of the deceased Land Lady have been receiving the rent from my client in respect of the property as mentioned above. My

client in order to save herself from becoming defaulter in payment of rent and left with no option has been paying the rent to your client. In view of

the fact that your client has got entered her name in the CTS records.

(Emphasis supplied by me)

Having said so in their reply notice, they have also admitted in their statement of objections filed to the eviction petitions, that contents of paragraph

3 of eviction petitions to be true while traversing the petition averments. In fact respondents have admitted in paragraph 6 of their statement of

objections that averments made in paragraph 3 of Eviction Petition which relates to assertion of petitioner being owner of petition schedule

premises to be true. Having admitted in the reply notice Ex. P-8 and in the statement of objections, yet respondents reiterated their plea of there

being no relationship of landlord and tenant in their evidence namely, in examination-in-Chief. However, RW1 in his cross examination dated

16.01.2012 has again admitted to the following effect.

10. In fact evidence of RW-1 would indicate that RW1 does not even know as to whom rent was being paid and who was collecting rent and she

has admitted her son is the known how of these facts and has attempted to shift the burden on her son. However for reasons best known,

respondents have not examined the son of RW1. Yet again, in further cross examination of even date, RW1 admits that present petitioner Smt.

Tarabai is none other than Smt. Parvati Bai's sister's grand daughter. RW-1 also admits that she has been staying in the schedule premises as a

tenant. She has also admitted in her cross examination about tenancy created by Smt. Tarabai in favour of her husband -deceased Sri. Shivaji Patil.

Her evidence on record would clearly indicate that originally premises was taken on lease by RW1's husband late Sri. Shivaji Patil and on his

demise RW1 has continued as tenant and she has also paid rents to the present petitioner. In view of this admission in the pleadings in reply notice

Ex. P-8 and also in the cross examination dated 16.01.2012 there cannot be any hesitation in arriving at a conclusion that there exists jural

relationship of landlord and tenant between them and it is this precise exercise which came to be undertaken by trial Court for rejecting plea of the

tenants and on re-appreciation, Revisional Court also found that there is no merit in the contention raised by the tenants in this regard.

11. It would be appropriate to notice definition of landlord as defined under Section 3(e) of the Karnataka Rent Act, 1999 which reads as under:

3. Definitions.--In this Act, unless the context otherwise requires,-

(a) xxx

(b) xxx

(c) xxx

(d) xxx

(e) "'landlord'" means a person who for the time being is receiving or is entitled to receive, the rent of any premises, whether on his own account or

on account of or on behalf of or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would so

receive the rent or to be entitled to receive the rent, if the premises were let to a tenant;

12. In the instant case, tenants in their reply notice have categorically admitted that rents were being paid to petitioner namely, Smt. Tarabai.

However, they have contended that said rents were paid to ward off the threat of eviction for non payment of rents. When there is clear admission

regarding payment of rents and there being no dispute to the fact that Sri Shivaji Patil namely, husband of R.W. 1 being original tenant and on his

demise, tenancy having devolved upon his wife as defined under Section 5(1)(a) of the Rent Act and she also having continued to pay rents to the

present petitioner i.e., Smt. Tarabai and other tenant -Smt. Gangubai also having paid rents to Smt. Tarabai they cannot be heard to contend that

there is no jural relationship of landlord and tenant.

13. In view of the aforesaid discussion, this Court is of the considered view that point No. 1 has to be answered by holding that there exists

relationship of landlord and tenant between the parties and plea raised in the present revision petitions cannot be accepted and it stands rejected.

RE: POINT No. (2)

14. It has been contended that Section 5 of the Rent Act is not attracted to the facts on hand at all and as such trial court could not have passed an

order of eviction under section 5 of the Rent Act, on the ground that revision petitioner"s husband (Respondent before trial Court) were tenants

under Smt. Parvathi Bai Harish Singh Yanakanchi and on their death legal heirs can succeed to the tendency right for a period of 5 years and

thereafter they would not be entitled to continue to reside in the petition schedule premises.

Section 5(1)(a) of the Rent Act reads as under:--

5. Inheritability of tenancy.--(1) In the event of death of a tenant, the right of tenancy shall devolve for a period of five years from the date of his

death to his successors in the following order, namely:--

- a. spouse;
- b. son or daughter or where there are both son and daughter both of them;
- c. parents;
- d. daughter-in-law, being the widow of his pre-deceased son:

On Karnataka Rent Act, 1999 coming into effect from the appointed date, provisions of Section 5 would be applicable in respect of those

proceedings which are initiated subsequent to enactment. Perusal of Section 5(1)(a) would clearly indicate that on death of a tenant, his tenancy

would be inherited in the order specified under clause (a) to (d) of sub-Section (1) of Section 5 namely, firstly on the spouse; thereafter on son or

daughter on where there are both son and daughter on both of them and thereafter on the parents of deceased tenant and lastly on the daughter in

law being widow of the predeceased son. In the instant case, R.W. 1 in HRC No. 2/2011 has admitted that petition schedule premises was taken

on lease by her husband late Sri. Shivaraj Patil and on his demise they have continued to reside in the schedule premises and were paying rents to

Smt. Parvati Bai. Likewise RW-1 in HRC 1/2011 has admitted her husband late Sri. Babu Rao Kokithkar was inducted as a tenant and petition

schedule premises and he had entered into lease agreement with late Smt. Parvathi Bai. Thus, both respondents admit in their evidence that Smt.

Parvathi Bai had inducted their deceased husband as tenant of petition schedule premises. Said Smt. Parvati Bai having expired issue less, present

petitioner Smt. Tarabai as a legatee under the Will executed by late Smt. Parvati Bai, is claiming right over petition schedule premises namely

through testamentary succession, and by virtue of said Will she has claimed right, title and interest over the petition schedule premises. As such, she

has got issued legal notice to both tenants calling upon them to quit, vacate and hand over vacant possession of petition schedule premises which

notices have been duly replied by the respondents as already noticed hereinabove.
Under Section 5 of the Rent Act, right of legal heirs over

tenancy would devolve on the spouse on the death of a tenant only be for a period of five years from the date of his death and on expiry of said 5

years period spouse or other heirs of deceased tenant as the case may be will be liable to hand over vacant possession of the tenanted premises to

the landlord or in other words, landlord would be entitled to recover possession of the premises from the successors in interest of the original

tenant.

15. The contention of Mr. J.S. Shetty, learned Advocate appearing for the Revision petitioners (tenants) that Section 5 of the Rent Act is not

applicable since right to recover possession was available only to Smt. Parvati Bai and not to Smt. Tarabai though at first blush looks attractive

cannot be accepted. Undisputedly, right of tenancy having been inherited by the tenants by virtue of Section 5(1)(a) of the Rent Act and such

tenancy having devolved on them and right continued with them upto five (5) years. The right to recover possession by invoking Section 5 of the

Rent Act which was available to Smt. Parvathy Bai devolved upon her legatee namely her grand daughter i.e., petitioner herein - Smt. Tara Bai by

virtue of the Will executed by Smt. Parvathi Bai and Petitioner being a legatee under the Will would definitely be entitled to seek eviction of tenants

of the properties which has been bequeathed. Hence, tenants cannot be heard to contend that such tenancy having devolved upon the tenants by

inheritance, it would not give cause of action for the legatee under the Will to invoke provisions of Section 5 of the Rent Act and said contention

cannot be accepted since legatee under the will having stepped into the shoes of the landlord would be entitled to recover possession of the

petition schedule premises. In that view of the matter, second contention raised by Sri. J.S. Shetty, learned Advocate appearing for tenant

deserves to be rejected and accordingly, it stands rejected.

RE: POINT No. (3)

16. Order of eviction having been passed under Section 27(2) (a) of the Rent Act is sought to be staved off by the learned counsel, contending

that there should have been positive direction issued by the trial Court directing the tenants to deposit the rents within one month from the date of

order and in the absence of such positive direction being issued, there was no need or compulsion on the part of tenants to deposit the arrears of

rent and as such, order of eviction passed under Section 27(2) (a) of the Rent Act is liable to be set aside also cannot be accepted for reasons

more than one which would follow hereunder:

Undisputedly, proceedings that are being conducted under the Rent Act are summary proceedings and strict rules of Evidence would not apply.

Section 27(2) (a) of the Rent Act mandates that where there is arrears of rent and on adjudication if it is found that tenant has failed to pay rent as

admitted by the landlord by issuance of notice within stipulated period namely, as stipulated under Section 106 of Transfer of property Act, 1882

then landlord would get right or cause of action to file a petition seeking for eviction on the said ground. In the instant case, as already noticed

herein above, notice came to be issued by terminating the tenancy, under Ex. P-5 in both cases. Said notices which are available on record is in

consonance with Section 106 of Transfer of Property Act, 1882. Said notice has been duly replied by the respondents-tenants as per Ex. P-8.

Undisputedly, after expiry of the period stipulated to quit, original suits were initially filed in O.S. Nos. 432 and 433/2007. On complaints being

rejected, by reserving liberty to file eviction petitions same came to be filed. Sub-section (3) of Section 106 of Transfer of Property Act, 1882

would clearly indicate that notice issued under sub-section (1) would not be deemed to be invalid merely because period mentioned therein falls

short of the period specified under that sub-section, where suit or proceeding is filed after expiry of the period mentioned in the sub-section.

Admittedly, in the instant case, after the period specified under Ex. P-5 namely, termination notice which was with effect from 11.07.2007, suit

O.S. No. 432 & 433/2007 came to be filed and on complaints being rejected, eviction petitions came to be filed. As such, the incidental contention

raised by Mr. J.S. Shetty, learned Advocate appearing for revision petitioners contending notice demanding arrears of rent is not in consonance

with Section 106 of Transfer of Property Act, 1882 also cannot be accepted.

17. Be that as it may. Issue of arrears of rent came to be adjudicated by the trial Court and on facts, it was found that respondents are due rents

from October, 2006 at the rate of Rs. 400/- per month and they have been directed by the trial Court as under:

The respondent is directed to pay the arrears monthly rental of Rs. 400 pm from October 2006 to till handing over of vacant possession of

petition premises.

Second proviso to clause(a) of sub-section (2) of Section 27 would indicate that where tenant is to be evicted on the ground of arrears of rent, an

order directing the tenant to vacate the premises would not be made unless he pays the landlord or deposits into Court within one month from the

date of order the amount calculated at the rate at which it was last paid. It is true that there is no positive direction issued by the trial Court

directing the respondents-tenants to pay or deposit arrears of rent within one month from the date of order. That by itself would not extinguish or

erase the rigour of Section 27(2) (a) or the liability on the part of tenant to deposit such arrears of rent. When law mandates particular thing is to be

done in a particular manner and it ought to be done in that particular manner alone. In the instant case, tenants ought to have deposited arrears of

rent within one month from date of order to take umbrage under the second proviso to clause (a) of subsection (2) of Section 27 of the Rent Act.

Had the tenants taken steps to deposit rents, second proviso would have definitely come to their rescue to ward off the order of eviction.

However, they did not choose to do so. Even after presenting revision petitions on 30.05.2012, they did not pay arrears of rent. Records of the

Revisional Court would indicate that revision petitions have been presented on 30.05.2012 and arrears came to be deposited on 08.06.2012 i.e.,

after 66 days from the date of order passed by the trial Court i.e., much beyond one month period which was at their leisure and as such, there is

no merit in the said contention raised by Mr. J.S. Shetty namely, that petition filed under Section 27(2) (a) of the Rent Act should have been

dismissed. On the other hand, order passed by the Courts below under Section 27(2) (a) of the Rent Act is in consonance with the provisions of

the Act and there is no infirmity committed by trial court whatsoever.

18. This Court, in exercise of the power vested under Section 44 of the Rent Act made an attempt to persuade the learned Advocates to inform

the parties to arrive at a negotiated settlement and all efforts made by the learned Advocates also did not yield any fruitful result and as such, this

Court having examined plea of the parties and noticing the fact that tenants of petition schedule premises have been residing in the premises for the

past 58 years, I am of the considered view that if one week time is granted, to quit and vacate the petition schedule premises it would be more than

sufficient. As such, one week time is granted to the revision petitioners - tenants from today to enable them to quit, vacate and deliver vacant

possession of petition schedule premises subject to revision petitioners depositing entire arrears of rent if already not deposited within three days

from today.

For the reasons aforestated, I proceed to pass the following:

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(1) Revision petitions are hereby dismissed with costs.

(2) Orders passed by III Addl. Civil Judge, Dharwad in HRC Nos. 2/2011 and 1/2011 dated 13.04.2012 as affirmed by the Principal District

and Sessions Judge, Dharwad in Rent Revision Nos. 10/2012 and 11/2012 dated 10.10.2014 are hereby affirmed.

(3) Each of the petitioners are directed to pay a sum of Rs. 10,000/- each as costs to the respondent-landlord within 15 days from today failing

which respondents would be at liberty to recover the same by executing this order as if it were a decree.

(4) Registry is directed to retransmit the records to jurisdictional courts forthwith.