

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 9th DAY OF AUGUST 2006

BEFORE

THE HON'BLE MR. JUSTICE AJIT J GUNJAL

REGULAR SECOND APPEAL NO.1877 OF 2005 (RES)

BETWEEN:

D.Srinivasan,  
Aged about 70 years,  
Major, S/o N.C.Devendra,  
Residing at Door No.37,  
Sridurgadevi Temple Street,  
Nazarbad  
Mysore -10. .. APPELLANT

(By Sri M.S.Rajendra Prasad, Adv.,)

AND:

G.A.Suresh Kumar,  
Aged about 65 years,  
Major,  
S/o Anantha Rajaiah,  
Residing at No.783/2,  
Bungalow Road,  
Nazarbad,  
Mysore - 10. .. RESPONDENT

( By Sri T.A.Karumbaiah, and P.C.Vinitha, Advs.,)

This Regular Second Appeal is filed u/s 100 of Code of Civil Procedure against the judgment and decree dated 20.8.2005 passed in R.A.No.115/2002 on the file of the Prl.Civil Judge (Sr.Dn.) Mysore, dismissing the appeal and confirming the judgment and decree dated 8.3.2002 passed in O.S.NO.365/1999 on the file of the Prl.I Civil Judge (Jr.Dn.) Mysore.

This Regular Second Appeal coming on for Admission this day, the Court delivered the following :-

JUDGMENT

Even though the matter is listed for admission, with the consent of the learned Counsel appearing for the parties, it is taken up for final disposal.

Sri Karumbaiah, learned Counsel has entered caveat for the contesting respondent.

2. During the course of the judgment, the parties would be referred to with reference to their ranking before the Trial Court.

3. The facts leading to the filing of this appeal could be summarised as follows:-

The plaintiff claims that he is the absolute owner of the suit schedule property. The suit schedule property measures east to west 14 feet 12 inches and north to south 18 feet. It is the case of the plaintiff that the defendant entered

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the petition. Thereafter, the plaintiff issued a notice under Section 106 of the Transfer of Property Act determining the tenancy of the defendant and to vacate the premises. The plaintiff would also further aver that from the date of termination of tenancy, the plaintiff is entitled for damages.

4. The defendant entered appearance and has contested the proceedings. The primary contention of the defendant is that the suit is not maintainable inasmuch as the schedule property is acquired by the Mysore City Corporation as the Corporation intended to develop the Makkaji Chowk had acquired structure situated there by following due process of law and the proceedings were initiated for acquisition of the said property. According to the defendant, the said acquisition proceedings has culminated in passing an award and the compensation amount has also been received by the owner of the suit schedule property that is the father of the plaintiff. Under the circumstances, a specific contention was raised

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that the suit itself is not maintainable inasmuch as the plaintiff had lost his title to the suit property. It was contended that some of the tenants who were running the business in the said shop had filed a suit against Corporation of Mysore in O.S.NO.280/1995 on the file of the I.A.F.C.J, Mysore wherein there was a compromise arrived at between the defendant and other tenants with the Commissioner of Corporation and accordingly, a compromise petition was submitted holding that the Mysore City Corporation is the lawful owner of the property. Since the plaintiff has lost his title, the question of granting a decree for ejection does not arise. The learned Trial Judge on the basis of the pleadings has framed as many as six issues, i.e., four issues and two additional issues. They read as under :

1. Whether the plaintiff proves that the defendant is a tenant under him in respect of the schedule property?
2. Whether the notice of termination of tenancy is valid?



3. Whether the plaintiff is entitled for the relief claimed?
4. What order or decree?

Additional Issues:

1. Whether defendant proves that, MCC., Mysore has recognised him as tenant and the plaint schedule property was acquired under due process of law?
2. Whether Plaintiff proves that, alleged compromise decree in O.S.No.280/1995 on the file of I Addl.Civil Judge, Mysore is not binding on him?
5. During the course of the trial, the plaintiff examined himself as PW-1 and got marked Exs.P-1 to P-7. The defendant examined himself as DW-1 and got marked Exs.D-1 to D-12. The learned Trial Judge assessing the material and appreciating the evidence on record has recorded a finding that the plaintiff has proved that the defendant is tenant in respect of suit schedule property, that the notice of termination is valid and that the plaintiff is entitled for relief as

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sought for. Insofar as additional issues regarding the maintainability of the suit, the learned Trial Judge has found that the defendant has failed to prove that the Mysore City Corporation has recognised him as the tenant in respect of the suit schedule property and the plaintiff has proved that the alleged compromise in O.S.No.280/ on the file of the I Addl.Civil Judge is not binding on him. Consequently, he has decreed the suit for ejectment and also for damages directing the plaintiff to pay the court fee on the claim for damages. The said judgment and decree of the learned Trial Judge was carried in appeal by the defendant in R.A.115/2002 and the learned Appellate Judge having reassessed and reconsidered the material on record has declined to interfere with the judgment and decree of the Courts below and has confirmed the same. As against the said concurrent findings, the defendant is before this Court.

6. Mr.Rajendra Prasad, learned Senior Counsel has raised only one substantial question of law for consideration:-







plaintiff has filed a writ petition in W.P.No.21155/05 questioning the action of the then SLAO (CITE) and also that the scheme having not been implemented within reasonable time, the same would get lapsed u/s 21 of the Urban Development Act. Under the circumstances, he would submit that at this point of time, it cannot be said that the plaintiff is not entitled for the relief sought for.

9. I have given my anxious consideration to the contentions of the learned Counsel on either side.

10. Insofar as the other questions are concerned, there is no serious dispute. It is not in dispute that the defendant has taken suit schedule property pursuant to a lease agreement dated 5.11.1990 on a monthly rent of Rs.750/-. This fact has been admitted by the defendant in the earlier proceedings under the Karnataka Rent Control Act in HRC No.30/94. It is also not in dispute that the further proceedings were withdrawn in view of section 31 having been





pursuant to such acquisition has exercised its rights and has demanded rent from the defendant. The question regarding the defendant-tenant questioning the title of the landlord has been set at rest by the Apex Court in the case of Shri Ram Pasricha Vs. Jagannath Vs. Others reported in AIR 1976 SC 2335. Head-Note(c) and 15 of the said decision read as follows-

HEAD NOTE - (c)

(C) Evidence Act (1872),  
Sec.116 - Denial of title of  
landlord - Suit for eviction -  
Tenant is estopped from  
questioning the title of landlord.

xx xx xx

15. It is only the landlord who can terminate the tenancy and institute the suit for eviction. The tenant in such a suit is estopped from questioning the title of the landlord under section 116 of the Evidence Act. The tenant cannot deny that the landlord had title to the premises at the commencement of



the tenancy. Under the general law, in a suit between landlord and tenant the question of title to the leased property is irrelevant. It is, therefore, inconceivable to throw out the suit on account of non-pleading of other co-owners as such.

12. Apparently, under Section 116 of the Evidence Act, the defendant is estopped from contending that the plaintiff is not the owner of the suit schedule property even after the termination of the tenancy. It is also noticed that when once the defendant admits that he is the tenant of the suit schedule property under the plaintiff, on this, he cannot deny that the landlord has lost title during the interregnum and he cannot be evicted. The Apex Court in the case of Shri Ram Pasricha Vs. Jagannath Vs. Others has ruled that it is not open for the defendant to question the title of the plaintiff once it is admitted that he is the tenant of the suit schedule property. Having considered the substantial questions of law raised by the learned Senior Counsel appearing for the



defendant, I am of the view that the said substantial questions of law are to be answered against the defendant-appellant.

13. Consequently, I find no merit in this appeal and the appeal stands dismissed.

14. At this stage, the learned Counsel appearing for the defendant submits that some time may be granted to deliver the vacant possession. The time is extended till the end of July 2007 subject to the defendant filing an affidavit incorporating the following conditions:-

- (i) The appellant-tenant shall not induct third party into the petition premises
- (ii) The tenant shall go on paying the agreed amount for the use and occupation of the premises
- (iii) The tenant shall not seek further extension of time



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- (iv) He shall not drive the landlord to file an execution petition.
- (v) Four weeks for compliance.

Sd/—  
Judge

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