IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 6TH DAY OF DECEMBER 2005

BEFORE

THE HON'BLE MR. JUSTICE AJIT J.GUNJAL

C.R.P.No.931/2005

BETWEEN:

G.S.Pandian,
S/o Gopala Swamy,
Aged about 52 years,
Portion of premises
No.13, Gangadhar Chetty Road,
Bangalore-42.

...PETITIONER

(By Sri.K.Ramesh and L.Lakanna, Advs.)

AND :

Sri Odukathur Swamigal Mutt
& Dandayathapani Temple,
No.13, Gangadharchetty Road,
Bangalore-42.

Rep. by its Trustees,
1) V.G.Sivaguru, vice President,

2) Sri V.K.Dorairaj,
Hon.Secretary,

3) Dr.A.N.Armugham,
President,

4) Sri.Dev Kumar,
Joint Secretary,

5) Sri.Krishna Murthy,
Treasurer,

6) Shri Dhanasegaran,
Trustee,

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7) Sri.Radhakrishnan,
Trustee,

8) Sri Sathya Kumar,
Trustee,

9) Sri Hari Haran,
Trustee,

10) Sri Anandavel,
Trustee, ...RESPONDENTS

(By Shri K.Narasimha Murthy C/R)

This CRP is filed under Section 18 of the Karnataka Small Causes Courts Act, against the judgment and decree dated 5.10.2005, passed in S.C.No.2071/2003 on the file of the Chief Judge, Court of Small Causes, Bangalore, (SCCH No.1), decreeing the suit for the relief of ejectment and possession.

This CRP coming on for Admission this day, the Court made the following:

ORDER

Even though the matter is listed for Admission, with the consent of both sides, it is taken up for final disposal.

2. During the course of this order, the parties would be referred as per their ranking in the trial Court.

3. The plaintiff has filed a suit for ejectment in S.C.No.2071/2003. The facts leading

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to the filing of the suit can be summarised as follows:

The plaintiff is a trust having a temple at premises No.13, Gangadhar Chetty Road, Bangalore-42. In the preamble of the plaint itself, it is stated that the Karnataka Rent Control Act, 1961, nor Karnataka Rent Act, 1999, is applicable, hence the present suit for ejectment is filed. It is the case of the plaintiff that the defendant is a tenant under the plaintiff on a monthly rent of Rs.250/- and corresponding lease deed is accepted by him on 1.4.1995 for a period of eleven months. The suit schedule property is a portion of the premises No.14, measuring 4 feet x12 feet wherein the defendant No.1 is carrying on business of selling flowers and pooja articles to the devotees who visit the temple. It is the case of the plaintiff that the suit schedule property was given to the defendant for the purpose of selling coconuts and flowers, but the defendant is carrying on the business of coffee and tea shops by encroaching certain portion of the temple area. It is the case of the plaintiff that tenancy commences

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on the 1st of every calendar month and ends on the last day of the month. It is their case that the lease period expired by afflux of time, which was only for a period of eleven months. It is the further case of the plaintiff that the behavior of the defendant towards devotees and temple staff was not very congeniel. There were many of complaints from the devotees as well as the temple staff against the defendant. Taking into consideration the fact that the defendant was making himself a nuisance, the present suit is filed for terminating the lease-deed dated 1.4.1985 by issuing a legal notice under the Transfer of Properties Act. The said notice was issued on 4.5.2001 stating that the tenancy will be terminated from the midnight of 31.5.2001. The said notice was served on the defendant on 5.5.2001. The defendant neither replied to the said notice nor vacated the said premises. The plaintiff would further contend that after termination of lease-deed and tenancy, the defendant has no right to continue in possession, have filed the present petition for ejectment.

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4. Initially the suit was filed seeking delivery of possession in respect of a suit schedule property along with future mesne profits from the date of suit till possession. But however, the said prayer regarding future mesne profits is deleted as per the order of the trial Judge on 18.1.2001. Consequently, the suit confirmed for ejectment. The defendant entered appearance but did not file his written statement. During the course of the proceedings, an application was filed by the plaintiff seeking amendment of the pleadings which was allowed to which additional written statement was filed by the defendant. However, the perusal of the said written statement would clearly indicate that it encompasses all the averments made in the plaint and also subsequent averments. Be that as it may, the additional written statement has been acted upon by the learned trial Judge. The sum and substance of the case of the defendant is that plaintiff is not a trust and the proceedings would come under the purview of Karnataka Rent Act. Of course, he would admit that he is a tenant on a monthly rent of Rs.250/- under the plaintiff in

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respect of a portion of the suit schedule property as per the averments made in paragraph No.3 of the plaint, but however, make a general denial of other pleadings. Of course, he would also take up a contention that since the plaintiff has accepted the rent for a period from 1.4.2001 to 30.4.2001, which would amount to waiver of termination of tenancy. The learned Judge, on the basis of the pleadings has framed following points for determination.

1) Whether the plaintiff Trust has proved that there exists relationship of landlord and tenant between the parties to the suit and if so, whether the plaintiff has terminated the tenancy of the defendant by issuing proper notice as required under law and whether the plaintiff is entitled for the relief sought for?

2) What order?

5. In respect of rival contention, the plaintiff has examined one of the trustees as P.W.1, however, defendant did not examine himself. The plaintiff has got marked Ex.P1 to P8 in support of its case. No documents are marked on behalf of the defendant. The learned trial Judge, on consideration of material on record was of the opinion that the plaintiff has proved that there

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exists a relationship of landlord and tenant between the parties and notice issued under section 106 of the Transfer of Properties Act is in conformity with Acts and the plaintiff is entitled for the relief sought for.

6. Mr.K.Ramesh, learned Counsel for the petitioner/defendant has raised twofold contentions before this Court. He would submit that the suit having been instituted in the Court of Small Causes is not at all maintainable. He would elaborate his contention stating that since notice is issued under Section 106 of the Transfer of Properties Act, the only option for the plaintiff is to institute a original suit in the Civil Court and the present proceedings under the Small Causes Courts Act is not maintainable. He would also submit that in view of Section-8 read with schedule 4 of the Small Causes Courts Act, it excludes jurisdiction of Small Causes Court. His argument is that the plaintiff being a public trust, Section 38 of the Karnataka Rent Act, 1999 would be applicable. The plaintiff being a charitable trust would have certainly initiated proceedings under

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the Karnataka Rent Act, 1999 and the present proceedings in the Court of Small Causes is not at all maintainable. He would also further submit that the plaintiff having accepted the rent after termination of tenancy, it would amount to waiver of tenancy under Section 113 of Transfer of Properties act.

7. Mr.Narasimha Murthy, learned Counsel for the caveator/plaintiff would support the order passed by the learned trial Judge. In so far as first contention is concerned, his reply would be that the suit is one for ejectment. The present suit is maintainable as the value of the suit property is less than Rs.25,000/-. He would also further submit that perusal of section 8 read with schedule 4 of the Karnataka Small Causes Courts Act, 1964, would clearly indicate that in a suit of this nature, the jurisdiction of the Small Causes Court Act is not excluded. In so far as second contantion raised by the learned Counsel for the defendant in respect of applicability of Rent Act and exclusion there of, he would contend that Section 2(3) of the Karnataka Rent Act clearly bars

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the jurisdiction of the Rent Court in as much as the plaintiff being a charitable institution and trust, it could not have initiated the proceedings under the Karnataka Rent Act. In the circumstances, he would submit that Section 38 of the Karnataka Rent Act is also not applicable to the facts of the case. To buttress his contention, he relied on a decision of this Court reported in ***ILR 2004 KAR 1299*** in the case of ***Abdul Khader, since deceased by his L.R. Vs. Dandu Mariyamman Temple Trust, by its Trustees, Bangalore and others.***

8. After having given my anxious consideration to the rival contentions of both sides, two questions would fall for consideration in these proceedings.

1) Whether in the facts and circumstances, the jurisdiction of Small Causes Court is ousted?

2) Whether in view of Section 38 of the Karnataka Rent Act, the proceedings could have been instituted under the Karnataka Rent Act, 1999?

9. In so far as applicability of Small Causes Courts Act is concerned, this Court in an identical situation in the case of M/S MOTWANE PVT LTD. Vs.

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MOHAMMAD ASIF SINCE DECD. BY HIS LRs SMT AHEEDA ASIF AND OTHERS, in C.R.P.No.385/2005, disposed of on 30.11.2005, has held that jurisdiction of the Small Causes Court is not ousted. A perusal of schedule 4 to Section 8 clearly indicate that the suit for ejectment is not exempted. It necessarily means that the suit for ejectment would certainly be filed. It would also further encompass and visualizes a notice where a tenancy is terminated by efflux of time or a notice issued under Section 106 of the Transfer of Properties Act. If that is the case, Small Causes Court do have jurisdiction to try the said suit.

10. In so far as point No.2 is concerned, it is to be noticed that Section 2(3)(a)(ii) of the Karnataka Rent Act would specifically exclude the jurisdiction of Acts, which would fall under certain category. For better understanding, the said provision is extracted.

2. Application of the Act: (1) Chapters-i to iii and Chapter-V to VIII of this Act

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shall apply to areas specified in the First Schedule.

(2) Chapters I, and IV shall apply only to areas specified in the Second Schedule.

(3) Nothing contained in this Act shall apply,-

(a) to any premises belonging to:-

(i) the State Government or the Central Government or a local authority;

(ii Muzarai or religious or charitable institution;

(iii) a Wakf.

11. A reading of the said provision would clearly indicate that the Karnataka Rent Act is not at all applicable to certain kind of institutions belonging to State Government, Central Government, Muzarai or religious or charitable institutions. Admittedly, perusal of the plaint clearly discloses that the plaintiff is a charitable institution represented by certain trusts. Consequently, the procaedings would certainly be taken out of the jurisdiction of the Karnataka Rent Act, 1999. In so far as Section 38 is concerned, it would deal with certain special provisions for recovery of

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possession in certain cases. The reading of the said provision does not give an indication that Muzarai, religious or charitable institution is also excluded under the definition of public institution. Explanation to Section 38 would also clearly state that public institution does not include any such institution set up by a private trust. Once again, if the plaintiff is a private trust it would come into the purview of explanation to Section 38 of the Karntaka Rent Act, 1999. When that is not the case, I am of the considered view that Rent Act is not applicable to the present proceedings. An identical question fell for consideration in ***ILR 2004 KAR 1299*** in the case of ***Abdul Khader, since deceased by his L.R. Vs. Dandu Mariyamman Temple Trust, by its Trustees, Bangalore and others***, this Court was of the view that in view of specific provision of Section 2(3) of the Karnataka Rent Act, 1999, provisions of the Rent Act are not applicable to the property of a Muazarai or religious or charitable institution.

12. Even though two questions of law, which were addressed by the defendant, one will have to

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examine as to whether the plaintiff is entitled for the relief sought for in the suit. Apparently, most of the facts are admitted including the tenancy, quantum of rent and also issuance of notice. If the three ingredients, which are required for disposal of the suit are satisfied, the finding recorded by the trial Court on the question of acceptance of rent, validity of termination notice and entitlement of relief cannot be faulted. Consequently, I do not find any merit in this petition. The petition stands rejected.

13. Mr.K.Ramesh, learned Counsel appearing for the petitioner submits that since the defendant has been carrying on a petty business in the premises of temple, some time may be given to quit and deliver vacant possession.

14. Shri Narasimha Murthy, learned Counsel, for the plaintiff submits that sufficient time has already been granted by the learned trial Judge and no further time be ranted.

Apparently it is to be noticed that the defendant is carrying on a business of selling

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flowers and coconuts to the devotees of the temple. He also has to find out an alternative accommodation to carry on his business. Taking into consideration the over all situation, I am of the considered view that time may granted till the end of December 2006 to quit and deliver vacant possession to the plaintiff. This grant of time will be subject to the usual undertaking to be filed by the defendant in this Court. The said affidavit shall be filed within a period of four weeks from today.

The following conditions shall be incorporated in the affidavit:

1. That the defendant-tenant shall not induct any third party into the petition schedule premises.

2. That he shall go on paying the agreed amount for the use and occupation of the petition premises.

3. That he shall not drive the landlord to file Execution petition.

4. That he shall not seek any further extension of time.

Sd/-
Judge

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