

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 12th day of December, 2005

BEFORE

THE HON'BLE MR.JUSTICE CHIDANANDA ULLAL

C.R.P.No.2971/2003

Between:

Sri L Kempanna,
S/o.Linge Gowda,
Hindu, aged about 76 years,
No.37, Ramachandra Agrahara,
II Cross, Chamarajpet,
Bangalore-560 018.

.. Petitioner

(By Sri Rameshchandra, Adv.)

And:

1. Smt.Lalitharama,
Aged about 49 years,
Working at Government Press,
No.432-C, Peenya,
Bangalore-560 058.
2. Sri M Srinivasan,
Aged about 50 years,
Father's name not know to petitioner,
Avala Halli, Bangalore.

.. Respondents

(By Sri H Thimmappa, Adv. for R1)

This C.R.P. is filed under Section 18 of the Karnataka Small Causes Court Act, praying to set aside the order dated 18.7.2003 of the learned XIII Additional, Small Causes Court, Bangalore, in SC 1959/2002 to the extent that it decline to decree the suit in entirety.

This C.R.P. coming on for final hearing before Court this day, the Court passed the following:

- ORDER -

The learned counsel for the petitioner, Sri Rameshchandra, argued that the instant case in hand, the Trial Court had totally erred in decreeing the suit of the petitioner-plaintiff, for according to him, the same was not based on evidence on record. To substantiate that argument of his, Sri Rameshchandra had drawn my attention to the observation made by the Trial Court in para-22 of the impugned judgement, wherein the Trial Court had observed as hereunder:

“..... If the signatures found in this Ex.D1 stated supra are compared with the signatures marked in Exhibits, they are one and the same. PW.1 never denies the signature on Ex.D-1. If the amount mentioned in this Ex.D-1 with regard to payment of arrears of rent from 15.11.1999 to 06.06.2002 is reckoned and calculated, it comes to Rs.16,2000/-. According to the case of the plaintiff, the defendants are in arrears of rent to the extent of Rs.18,270/- excluding the arrears of earlier months and including the electricity charges.”

To substantiate the argument of the learned counsel for the petitioner, he had drawn my attention to what was deposed by the respondents-defendants in the cross-examination. The respondent No.1-defendant No.1 had stated that in Ex.D1



'ಪ್ರಸ್ತುತನಲ್ಲ ವಾಸಿ ಸುಲಿ ಫಿಲ್ಮಿ' From that sample, I feel that the Trial Court had passed the erroneous judgment. Therefore, I am convinced to say that the Trial Court had passed an erroneous judgment in the case and the same is not based on material evidence on record. Hence, I find force in the argument of Sri Rameshchandra that the impugned judgment passed by the Trial Court be set aside and the matter be remitted to the Trial Court; I order accordingly.

Now the Trial Court is directed to dispose off the suit denovo based on the material evidence adduced by both the parties within a period of six months from the date of communication of this order.

The petitioner-plaintiff is directed to appear before the Trial Court at 11.00 a.m. on 9.1.2006. Since the respondents-defendants remained absent before this Court despite service of notice, the Trial Court is directed to issue court notice to them for their appearance on the particular day.

The C.R.P. stands allowed.



The Registry is directed to return the records together with the copy of the order herein passed to the Trial Court as expeditiously as possible.

Sd/-
Judge

Bkm.