

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 11TH DAY OF MARCH 2011

B E F O R E

THE HON'BLE MR.JUSTICE JAWAD RAHIM

C.R.P. NO. 128/2010

BETWEEN:

SRI BASAVARAJ,
AGED ABOUT 42 YEARS,
PROPRIETOR, M/S AMARESHWARA
MEDICAL STORES, NO.696,
GROUND FLOOR C.B.I ROAD,
7TH MAIN, HMT LAYOUT,
GANGANAGAR, BANGALORE - 560 032
... PETITIONER
(BY SRI AMARESH.A.ANGADI, ADV.,)

AND:

SRI M.N.YADAVADRI,
S/O LATE M.NARASIMHACHAR,
AGED ABOUT 70 YEARS,
RESIDING AT NO.696, 1ST FLOOR,
CBI ROAD, 7TH MAIN, HMT LAYOUT,
GANGANAGAR, BANGALORE - 560 032
... RESPONDENT
(BY SRI S.N.RAMAPRASAD, ADV.,)

THIS CRP IS FILED U/S 18 OF THE KARNATAKA
SMALL CAUSES ACT 1964, PRAYING TO SET ASIDE THE
ORDER PASSED ON I.A.7 IN H.R.C NO.320/2007 DATED
09-04-2010 ON THE FILE OF THE CHIEF JUDGE OF SMALL
CAUSES COURT, BANGALORE.

This petition coming on for admission this day, the court made the following

ORDER

This revision under Section 18 of the Small Causes Courts Act, is directed against the order dated 9.4.2010 in HRC.320/07 on an application filed under Order XIII Rule 8, C.P.C. read with Sections 33 and 34 of the Karnataka Stamp Act, 1957.

2. Heard learned counsel for both parties.

3. Contextual facts are:

a) Respondent-M.N.Yadavadri filed a petition under Section 27(2)(o) and (r) and Section 31-C of the Karnataka Rent Act, 1999, seeking eviction of the petitioner-Basavaraj, proprietor of M/s Amareshwara Medical Stores, on the plea that he was the owner of the premises in question having purchased the same in the manner known to law. He described the petitioner herein as tenant on a monthly rent of Rs.600/- which was enhanced periodically and the present rent is Rs.1,850/- p.m. He relied on a lease agreement dated 5.7.1992 to establish jural relationship. He further alleged after the expiry of lease on



4.7.2004, he had requested him to vacate the premises, but he did not comply. He had terminated tenancy of the petitioner through legal notice dated 16.12.2004 and then filled O.S.1337/05. He further averred he requires the schedule premises for his own use and occupation to run tuition classes with the help of his daughter and son-in-law.

b) The suit was resisted by the petitioner-tenant seeking protection under the provisions of the Rent Act and thus fresh action commenced by issuing a notice dated 6.7.2007 under the provisions of the present enactment. He denied all averments in the petition, particularly that he is tenant under the respondent. However, he did not dispute that he was inducted into the premises in the year 1992, but his defence was one Veda is the landlord of the premises and he was paying rents to her. On this basis, jural relationship was disputed.

c) To prove ownership and to establish petitioner is his tenant, respondent produced two documents, a lease-cum-sale agreement dated 9.12.1981 (Ex.P3) and a sale



deed dated 30.3.1982. When the said document was produced, petitioner filed an application referred to above seeking to impound it as insufficiently stamped. The contention is that stamp duty paid on it is much less than the amount that was payable. By the impugned order, that application is rejected.

4. Learned counsel, Sri Amaresh A. Angadi would contend that the benefit of concession, if any, granted to the members of the society has been withdrawn by the Government by virtue of the amendment to Stamp Act in the year 2009 and therefore, the document is under-stamped and cannot be received in evidence and it has to be impounded.

5. Per contra, learned counsel for the respondent referring to the application filed by the respondent herein to the competent authority under the Right to Information Act, has obtained information from the Government that a conveyance or instrument executed by a society where sale consideration is Rs.8,000/-, there is exemption from



payment of stamp duty and registration fee by virtue of Government Order No.RD 33 GST 62 dated 15/16.2.1969 at serial no.28. He relies on the copy of information sought under RTI Act and the relevant Government notification.

6. Sri Angadi has produced the Govt. notification which reads thus:

ORDER
No.RD 33 GST 62, dated 15th -
16th February 1969
Bangalore, K.G.D 27-03-1969

S.O.523 :- In exercise of the powers conferred by clause (a) of sub-section (1) of Section 9 of the Karnataka Stamp Act, 1957 (Karnataka Act 34 of 1957) and in superession of all orders issued by the State Government relating to the reduction or remission of duties with which instruments are chargeable under the said Act, the Government of Karnataka hereby specifies the instruments indicated in Table I annexed to this order as instruments in respect of which the duties chargeable under the said Act shall be remitted and the instruments specified in Table II annexed to this order as instruments in respect of which duties chargeable under the said



Act shall be reduced to the extent indicated in respect of each item in the said Table, namely:-

TABLE I

(1)

(2)

(3)

(28) Instruments to be executed by Housing Societies or by an officer or member thereof, where the amount or value specified in the instrument is not more than eight thousand rupees.

(29)....

The notification contains two Tables, I and II. In Table-I at item no.28, the relevant entry is:

(28) Instruments to be executed by Housing Societies or by an officer or member thereof, where the amount or value specified in the instrument is not more than eight thousand rupees.

Such instrument by virtue of the notification is exempt from stamp duty and registration fee. The contention is that the vendor is a housing co-operative society under the Societies Registration Act and hence, this notification is not applicable. But perusal of the notification spells out clearly it refers to instrument executed by a **housing co-**

operative society. There is no indication in serial no.28 that it refers only to a society and not to housing co-operative society. Therefore, there should be no difficulty in holding that the exemption in the notification was applicable to members of a housing co-operative society including the vendor of the respondent.

7. The second contention is that the said notification has been withdrawn by the Government by virtue of Govt. Order No.RD 22 ESR 82, Bangalore, dated 1.4.1982. Sri Angadi would submit by this notification, the Government in exercise of power conferred under clause (a) of Section 9(1) of the Stamp Act, 1957, has made the following amendment to the Govt. Order No. RD 33 GST 62 dated 15/16.2.1969 whereby item no.28 of Table I item no.5 of Table II has been omitted. Even presuming these changes have come into effect, the housing co-operative society which had sold the property to the respondent could not enjoy the benefit as item no.28 in the Govt. notification has been omitted only subsequent to the order i.e prospectively and it does not operate retrospectively.



8. The question is, whether by virtue of the notification No. RD 22 ESR 82, Bangalore, dated 1.4.1982, the document registered before such notification it could be annulled? Even if we accept that in exercise of power by notification no. RD 22 ESR 82, Bangalore, dated 1.4.1982, the Government has omitted item no.28, it is material to note that the lease-cum-sale agreement is dated 9.12.1981 and sale deed is dated 30.3.1982, much earlier to the notification is issued on 1.4.1982. Thus, as on the date of the sale deed, notification No. RD 33 GST 62 dated 15/16.2.1969 was in force. Withdrawal of such benefit is prospective. However, learned counsel relies on the amendment to Article 20 of the Stamp Act and refers to the proviso to that section which reads thus:

"Provided also that notwithstanding anything contrary contained in this Act, where a lease-cum-sale agreement was executed before 31.3.2001 in respect of a site allotted by any House Building Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959. and in furtherance of such agreement a conveyance is subsequently executed, the duty



payable on such conveyance shall be on the market value of such site as on the date of execution of the lease-cum-sale agreement."

The proviso read out by the learned counsel actually accrues to the benefit of the respondent. Interpretation of this proviso is the concession given regarding stamp duty and registration by notification No. RD 33 GST 62 dated 15/16.2.1969, though taken away but an instrument executed prior to 2001 will attract total stamp duty as on the date of execution of the instrument. The proviso refers to a lease-cum-sale agreement executed prior to 2001, and if on the basis of it conveyance is registered. Subsequently, then stamp duty payable will be on the basis of value on the date of original document and not as on the date of registration. The proviso makes it clear that the market value of the property as on the date of registration of the subsequent sale deed will not be the basis. The market value on the date of lease-cum-sale agreement has to be the basis. It does not refer to remission of stamp duty. In normal circumstances, stamp duty is chargeable on the market value of the property as on the date of



registration of the conveyance. That means, much more concession is given to a members of the housing society who have obtained lease-cum-sale agreement earlier to 2001.

9. For the purpose of clarity, the proviso has to be split into three parts:

- i) Provided also that notwithstanding anything contrary contained in this Act, where a lease-cum-sale agreement was executed before 31.3.2001 in respect of a site allotted by any House Building Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959.
- ii) and in furtherance of such agreement a conveyance is subsequently executed,
- iii) the duty payable on such conveyance shall be on the market value of such site as on the date of execution of the lease-cum-sale agreement.

10. The amendment has brought into force a benefit which was earlier not available. I am therefore unable to accept that provision of Article 20(1) compels the respondent and the vendor of the housing co-operative society to pay stamp duty as is in other cases. The benefit of notification No. RD 33 GST 62 dated 15/16.2.1969 being



available to the petitioner as on the date of registration of sale deed i.e. 30.3.1982, the amended notification issued on 01.04.1982 is of no avail. The instrument was exempted from stamp duty and registration fee by notification no.RD 33 GST 62 dated 15/16.2.1969 which fact the Government has reiterated in answer to the questions raised by the respondent under the provisions of the Right to Information Act. The petitioner has attempted or embarked upon a venture which is nothing but a futile exercise.

11. The learned trial Judge acting on notification No. RD 33 GST 62 dated 15/16.2.1969 has rightly held that the instrument as on the date of execution was exempted from payment of stamp duty and registration fee and thus was not liable to be impounded, as was requested by the petitioner. Be that as it may, it is material to note the document in question is produced by the respondent to substantiate that he had purchased the property from the housing co-operative society and to that extent only it was sought to be used. The question before the trial Court is



about *vinculum juris* of landlord and tenant between the parties. It is evident from the statement of objections filed that the petitioner herein did not dispute he was inducted as a tenant in the premises in the year 1992. All that he disputes is respondent had not inducted him, but one Smt.Veda inducted him. His tenancy undoubtedly is not in dispute. To prove that Veda was not the owner, respondent has produced two documents. In the absence of it also, the trial Court could take a decision regarding jural relationship based on the lease agreement, rent receipts filed by the parties. Therefore, the attempt made by the petitioner undoubtedly is to stall the proceedings and this is one such attempt.

12. I am satisfied the application filed by the petitioner was frivolous and intended to procrastinate the proceedings and the *lis* is continued in this revision also. In the result, the revision petition is dismissed as devoid of merit.



13. At this stage it is urged on behalf of the respondent that the issue regarding jural relationship is still pending decision by the trial Court consequent to which no positive progress is made in the case. I am persuaded to accept the contention that the respondent being senior citizen over 80 years old, is entitled for expediting the proceedings and in this regard, trial Court is directed to expedite the proceedings and dispose of the same within a period of **four months** from the date of receipt of copy of this order. Both sides are directed to co-operate with the trial Court in early disposal.

Sd/-
JUDGE

vgh*/Vg