

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8th DAY OF FEBRUARY, 2000

BEFORE

THE HON'BLE MR. JUSTICE V.P. MOHAN KUMAR

MISCELLANEOUS FIRST APPEAL NO: 5677 OF 1999

BETWEEN:

1. M/s Furnionics
(Furnishers and Interior Decorators)
a Proprietary concern having its
Office at No.61/A, Central Street,
Civil Station,
Bangalore 560 001.
represented by its Proprietor
Sri Syed Burhanuddeen.
2. Sri Syed Burhanuddeen
S/o late Sed Abdul Rehaman,
Proprietor M/s Furnionics,
No.61/A, Central Street,
Civil Station,
Bangalore 560 001.

.. Appellants

(By Sri G.L. Vishwanath, Adv.)

A N D :

1. Sri B L Narasinga Rao,
S/o late B N Lakshmi Pathy;
2. Sri B L Lakshminarayana
S/o late B N Lakshmi Pathy;
3. Smt. Sharadamma
W/o late B N Lakshmi Pathy;
4. Smt. Sathyabhama
W/o B L Lakshmi Narayana;

5. Smt. Padmavathi
W/o B L Narasinga Rao;
6. Sri B L Lakshmi Narasimha
S/o B N Lakshmipathi;
7. Smt. Sraswsathi
W/o Sri B L Lakshmi Narasimha;

No.1 to 7 are residing at
No.36, Lakshmana Mudaliar Street,
Civil Station, Bangalore.

8. Azma Tolla
S/o S Babu, major,
No.271, Thimmaiah Road,
Bangalore 560 001.

.. Respondents

(By M/s Tarakaram, Senior Advocate for R 8
Sri Shekhar Shetty, Adv. for R 1 to 7)

This M.F.A. filed under Order 43
Rule (1)(r) of the Code of Civil Procedure against
the order dated 18th December, 1999 passed by the V
Addl. City Civil Judge, CCCH No.13, Bangalore in
O.S.No.2237/1999 thereby dismissing IA No.I filed
by the plaintiffs/Appellants under Order XXXIX
Rules 1 and 2 of the C.P.C. for an ad interim
injunction etc.

This appeal coming on for hearing, this
day, the Court delivered the following:


J U D G M E N T

This appeal arises from an order passed on
an application moved by the plaintiff to restrain
the defendants from interfering with the peaceful
possession and enjoyment of the plaint schedule
property. Initially a partnership firm by name M/s

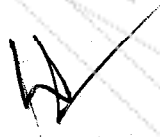
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Furnionics was the lessee of the premises in question from the predecessor in interest of defendants 1 to 7, under a registered lease deed dated 1.6.1970. Subsequent thereto it is alleged that the partnership firm was dissolved and the 2nd plaintiff became the sole proprietor of the firm and thereafter he was carrying on the business. He alleged that he has been in continuous possession. The plaintiff alleged that while the plaintiff was thus in possession, there was an attempt to interfere with the plaintiffs possession which resulted in the suit being filed. Along with the same an application for temporary injunction was also moved. It mainly directed against the 8th defendant as it was alleged that he was attempting to trespass.

2. The 8th defendant entered appearance and filed a detailed statement of objection. It was inter alia alleged that while the lease subsisted he has been in continuous possession. While so an agreement was entered into between the 2nd plaintiff and the father of the 8th defendant initially for a period of five years commencing




from 1973 permitting the 8th defendant's father to sell the furniture manufactured by him in the premises in question. This agreement lasted for five years and was renewed for further five years as and when the earlier period expired. While this arrangement was in force the father of the 8th defendant died. It was contended by the 8th defendant that the existing arrangement was continued by the legal heir namely, the 8th defendant and he was allowed to continue to carry on the same business in the premises in question. The 8th defendant denied the alleged attempt to trespass and contended that his father was in exclusive possession and thereafter, after his death, the 8th defendant continued possession. It was alleged that the plaintiff never had possession of the property ever since 1973. It was also contended that the 8th defendant's father purchased the right of the firm Furnionics when the firm was dissolved in 1973 and thus becoming the absolute owner and that the plaintiff had no right or possession over the premises in question.



3. On the 8th defendant filing the above said objections setting forth the agreement etc., the plaintiff filed a reply by way of an affidavit admitting the transaction pleaded by the 8th defendant. It was further asserted that the possession was all throughout with the plaintiff and the father of the 8th defendant was merely allowed to keep the furniture in the premises for sale. In the objection it was further stated as follows:

"The 8th Defendant is the son of Syed Hassan alias Babu. Even after the death of Syed Hassan in 1997 the plaintiffs continued to have business relationship with the eighth defendant (who is the son of late Syed Hassan)."

4. Several documents were produced by both the sides before the trial Court. The trial Court after considering the respective contentions of the parties dismissed the application for temporary injunction prayed for by the plaintiffs. Aggrieved by the said order they have come up with this appeal before this Court.



5. I have heard Mr. G.L. Vishwanath, learned counsel for the appellants, Mr. V. Tarakaram, learned Senior Counsel for respondent 8 and Sri Shekhar Shetty, learned counsel for respondents 1 to 7 at length.

6. It is submitted that originally the premises in question was leased out in favour of a firm M/s Furnionics by the predecessor of defendants 1 to 7. It is the case of the 2nd plaintiff that the firm was dissolved in 1973 and thereafter it became a proprietary concern the 2nd plaintiff being the proprietor. The 2nd plaintiff has produced a series of receipts issued in the name of the firm M/s Furnionics by the landlord for receiving the rent even after the alleged dissolution in 1973. The initial possession of the firm is admitted by the landlord. The father of 8th defendant entered in to the premises under agreement dated 25.11.1973. The said agreement has been succeeded by other agreements. In all the agreement the preamble clause reads as under:

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"Whereas the 1st party is carrying on business in sale and manufacture of furnisutre at premises No.61-A, Central Street, Bangalore-1 fully described in the schedule hereinunder and hereinafter referred to as schedule premises.

AND WHEREAS the business the 1st party is carrying on is being run under the name and style of FURNIONICS, interior Decorators and furniture, 61-A, Central Street, Bangalore 1.

AND WHEREAS the 2nd party is also carrying on business in manufacture and sales of furniture.

AND WHEREAS the parties to this agreement are desirous of entering into a contract whereby the 1st party shall exclusively sell the furniture manufactured, purchased or supplied by the 2nd party at the schedule premises."

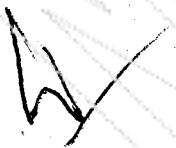
7. It shows that the 1st party has possession of the tenanted premises and the 2nd party admits the said fact. The 2nd party referred to in the agreement is none other than the father of the 8th defendant. It is clear from the recital that the 2nd party gave the 1st party exclusive right to sell the furniture manufactured, purchased or supplied by the 2nd party at the premises in the possession of the 1st party and the right of the 2nd party to gain entry to the property is only to the extent of carrying out the terms under the agreement. The last agreement period was to expire

with 1998. The agreement only permits to keep the furniture in the premises in question to be sold by the 1st party. Such entry cannot be treated as gaining exclusive possession. At best, it may only be a permissive entry to carry out the agreement. It is submitted that before the termination of the last agreement, the 2nd party died and thereafter as seen from the pleading the 8th defendant was allowed to continue to act under the agreement. Could this agreement create any interest in the land? A careful perusal of the documents prima facie indicates that it does not create any interest in the land. It only creates a licensee's interest who is permitted to use the land for the purpose indicated in the agreement. If so, what is the right of the 8th defendant after the extinguishing of the agreement period? The agreement as stated shows that the 1st party has the exclusive right over the premises in question and is appointed as an agreement to sell the furniture manufactured, purchased or supplied by the 2nd party and the 1st party who is the father of 8th respondent has no right over the premises in question. It ~~may~~^{be} a document created by the

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parties to defeat the rent control legislation to avoid eviction attempting to camouflage a sub-lease, but that does not mean that the 8th defendant's predecessor who was privy to such a transaction can claim any superior right over the property and claim any advantage under the document.

8. The contention of Mr. Tarakaram, learned Senior Counsel for the 8th defendant is that the firm to which the premises was leased has been dissolved and the 8th defendant/respondent is in actual possession of the premises in question that by a subsequent lease deed executed in 1999 this right is recognised by the landlord and as the period of the earlier lease had expired there is no right for the plaintiff to be in possession. He also contended that after the death of his father, the 8th defendant continued the business and that the 8th respondent is paying all the taxes with respect to the premises in question and hence no injunction can be granted in the present case.



9. The lease executed stands in the name of the firm Furnionics whose right now comes to vest with the 2nd plaintiff as the proprietorship concern. There is no material placed, as to how, the tenancy of Furnionics came to an end and the landlord resumed possession. Even assuming that on the dissolution of the firm in 1973, the tenancy ended, still since 1973, the 2nd plaintiff had been paying the rent as proprietor of the concern, and the 2nd plaintiff may acquire the limited right as a tenant by prescription.

10. There is yet another aspect to be looked into. The 8th defendant has stated that after the firm was dissolved in 1973, the right of the firm was purchased by his father and now the 8th respondent is exclusively running the business. That averment is totally inconsistent ~~with~~ the documents produced by the plaintiff. Because, if the father of the 8th defendant had purchased the tenancy right of the firm, there was no need for him to have executed the agreement for a period of five years renewing once in every five years since 1973.

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11. That apart in the light of the judgment of the Supreme Court reported in AIR 1965 SC 875, that as the defendant not only admitted title of the plaintiff but also admitted that he derived possession from the plaintiff as a tenant, the case must proceed on the defendant's plea who should establish the cessation of the possession of the plaintiff and induction of the possession of the 8th defendant or his predecessor. In this case prima facie the 2nd plaintiff has exclusive title over the premises in question to run the business as a tenant since 1970 and he was permitted to occupy the same by the landlord. As such it is not possible for the landlord to contend before the court that they have inducted the 8th defendant. The finding of the court below is therefore not correct. Hence, I allow the appeal. A temporary injunction as prayed for by the plaintiffs would be granted. The trial Court shall expedite the suit and dispose of the same within a period of 6 months from the date of receipt of the copy of this judgment. However, I make it clear that all the



observations made are intended for the IA, and the trial Court may dispose of the suit uninfluenced by the observations made by this Court in this appeal.

Sd/-
Judge

Vb/-

After pronouncement of the order Mr.V. Tarakaram, learned Counsel for the 8th respondent, sought for stay of operation of the judgment for a period of 90 days. This is opposed by Mr. G.L. Vishwanath, learned counsel for the appellants. Taking into account all facts and circumstances of the case the judgment is kept in abeyance for a period of 90 days.

Sd/-
Judge

Vb/-