N. R. Narayan Swamy vs B. Francis Jagan on 31 July, 2001

Equivalent citations: AIR 2001 SUPREME COURT 2469, 2001 AIR SCW 2765, 2001 AIR - KANT. H. C. R. 2894, 2001 HRR 579, 2001 (4) SCALE 621, 2001 (4) LRI 90, 2001 (6) SCC 473, 2001 ALL CJ 2 1615, (2001) 6 JT 77 (SC), 2001 (7) SRJ 518, (2001) ILR (KANT) (4) 4827, (2001) 3 SCJ 67, (2002) 1 MAD LW 810, (2002) 1 MAD LJ 9, (2001) 4 PAT LJR 84, (2001) 2 RENCR 169, (2001) 2 RENTLR 268, (2001) 5 ANDHLD 44, (2001) 5 SUPREME 594, (2001) 4 SCALE 621, (2001) WLC(SC)CVL 665, (2001) 44 ALL LR 762, (2001) 2 ALL RENTCAS 342

Bench: M.B. Shah, R.P. Sethi

CASE NO.:
Appeal (civil) 4800 of 2001

PETITIONER:
N. R. NARAYAN SWAMY

Vs.

RESPONDENT:
B. FRANCIS JAGAN

DATE OF JUDGMENT: 31/07/2001

BENCH:
M.B. Shah & R.P. Sethi

JUDGMENT:

Shah, J.

Leave granted.

It is the say of the appellant that he let out suit premises admeasuring 10ft. x 8 ft. which is part of his residence to the respondent at the rent of Rs.200/- per month. After retiring from service he started practice as an Advocate in a small room admeasuring 8 ft. x 7 ft. in the rear side of the suit premises which is let out to the respondent. He filed H.R.C. No.2757 of 1992 for bona fide requirement on the ground that his son needed it to start a new business and also for his office purposes as he required access to his chamber by providing a door in the common wall and for keeping library books. The

tenant Balraj promised that he would vacate the premises and hand over vacant possession of the premises. Therefore, by memo dated 6th December, 1994 the appellant submitted as under:

> The petitioner does not press the petition for the present and he prays that the petition may be disposed of accordingly.

> The tenant Balraj died on 3rd February, 1997 and the premises at present is occupied by his son, the respondent herein. On 24th August, 1998, appellant filed H.R.C. No. 10292 of 1998 for recovering of possession of the suit premises on the ground that as his practice has picked up, he wanted bigger office as present office premises admeasuring 8 ft. x 7 ft. was not sufficient to accommodate his books as well as clients. In the said suit respondent filed an application under section 151 CPC read with Order XXIII Rule 1(4)(b) contending that as the previous suit was withdrawn, the present suit was not maintainable and was also barred under section 45 of the Karnataka Rent Control Act, 1961 (hereinafter referred to as the Rent Act). The appellant submitted written objections contending that the said application was misconceived and the suit was neither barred under Order XXIII nor by principles of res judicata as enunciated in Section 45 of the Rent Act. Relying upon the decision rendered by this Court in Surajmal vs. Radhe Shyam [(1988) 3 SCC 18], the trial court by judgment and order dated 24th July, 1999 rejected the said application.

Against the said judgment and order, the respondent preferred H.R.R.P. No.845 of 1999 before the High Court of Karnataka at Bangalore. The High Court allowed the said revision application by holding that relief claimed by the appellant in the present and previous proceedings is same and, therefore, second petition for the same cause was not maintainable and as the previous suit was withdrawn without seeking permission of the Court, it was barred under Order XXIII Rule 1(4)(b) of the C.P.C.

Learned counsel appearing on behalf of the appellant submitted that the order passed by the High Court is, on the face it, illegal. Section 45 of the Rent Act only bars fresh application if substantially the same issues as have been finally decided in a former proceeding are involved in the second proceeding. She further contended that there is total non-application of mind by the learned Judge to the provisions of Order XXIII of the C.P.C. As against this, learned counsel for the respondent submitted that previous suit was for bona fide requirement and the present suit is also for bona fide requirement and as the previous suit was withdrawn without leave of the Court, as provided under Order XXIII, second suit is not maintainable.

In our view, the High Court ought to have considered the fact that in eviction proceedings under the Rent Act the ground of bona fide requirement or non-payment of rent is a recurring cause and, therefore, landlord is not precluded from instituting fresh proceeding. In an eviction suit on the ground of bona fide requirement the genuineness of the said ground is to be decided on the basis of requirement on the date of the suit. Further, even if a suit for eviction on the ground of bona fide requirement is filed and is dismissed it cannot be held that once a question of necessity is decided against the landlord he will not have a bona fide and genuine necessity ever in future. In the

subsequent proceedings, if such claim is established by cogent evidence adduced by the landlord, decree for possession could be passed. {Re: K.S. Sundararaju Chettiar vs. M.R. Ramachandra Naidu [(1994) 5 SCC 14 (para 10)] and Surajmal vs. Radhe Shyam [(1988) 3 SCC 18]}.

Similarly, reliance placed by the learned counsel for the respondent-tenant on section 45 of the Rent Act is also misplaced. Section 45 reads thus:

45. Decisions which have become final not to be re-

opened- The court or the Controller shall summarily reject any application under this Act which raises, between the same parties or between parties under whom they or any of them claim, substantially the same issues as have been finally decided in a former proceeding under this Act or under any of the enactments repealed by Section 62.

From the aforesaid section, it is apparent that fresh application under the Rent Act could be summarily rejected only if (i) if the proceedings are between the same parties or under whom they or any of them claim, and (ii) substantially the same issues as have been finally decided in a former proceeding under the Act are raised. Thus the section as such, incorporates principles of res judicata. The aforesaid section would have no application as the previous proceedings for taking possession of the premises was not pressed and stood disposed of without deciding any issue.

The next question would bewhether Order XXIII Rule 1 sub- rule (4) CPC is applicable to the facts of the present case. Sub-rule (4) reads thus:-

(4) Where the plaintiff

(a) abandons any suit or part of claim under sub-

rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

The aforesaid rule would have no application in a proceeding initiated for recovering the suit premises on the ground of bona fide requirement which is a recurring cause. Order XXIII rule 1(4)(b) precludes the plaintiff from instituting any fresh suit in respect of such subject matter or such part of the claim which the plaintiff has withdrawn. In a suit for eviction of a tenant under the Rent Act on the ground of bona fide requirement even though the premises remains the same, the subject matter which is cause of action may be different. The ground for eviction in the subsequent proceedings is based upon requirement on the date of the said suit even though it relates to the same property. Dealing with similar contention in Vallabh Das vs. Dr. Madanlal and Others [(1970) 1 SCC 761)], this Court observed thus:-

The expression subject-matter is not defined in the Civil Procedure Code. It does not mean property. That expression has a reference to a right in the property which the plaintiff seeks to enforce. That expression includes the cause of action and the relief claimed. Unless the cause of action and the relief claimed in the second suit are the same as in the first suit, it cannot be said that the subject-matter of the second suit is the same as that in the previous suit.

The Court further observed that the mere identity of some of the issues in two suits would not bring about identity of the subject matter in two suits.

In this view of the matter, in our view it is not necessary to decide the further contention of the learned counsel for the appellant that the Rent Act is a self-contained Code and the provisions of the CPC as a whole are not applicable to the proceedings under the Rent Act.

In the result, the appeal is allowed with no order as to costs. The impugned order dated 8.12.1999 passed by the High Court of Karnataka in HRRP No. 845 of 1999 is set aside and the order dated 24.7.1999 passed by the trial court is restored. The trial court to proceed with the matter as early as possible.

(M.B. SHAH) July 31, 2001. (R.P. SETHI)