

Smt. Bhagya vs Smt. Padmavathi on 31 January, 2023

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O.S.No.4706/2017

KABC010170192017

IN THE COURT OF THE LX ADDL. CITY CIVIL & SESSIONS
JUDGE, BENGALURU (CCH 61)

:Present :
Sri. Narashimsa M.V. B.Com., LL.B.,
LX Addl. City Civil & Sessions Judge,
Bengaluru

Dated: This the 31 st day of January, 2023

: O.S.No.4706/2017:

PLAINTIFF:-

1. Smt. Bhagya,
W/o Late Nagaraja Reddy,
Aged about 60 years,
2. Sri. N Venkatesh @ N. Venkatesh
Reddy,
S/o Late Nagaraja Reddy,
Aged about 43 years
3. Sri. Chaitanya
S/o N. Venkatesh,
Aged about 19 years,
All are r/a No. 97, 6th Cross,
N.R. Colony, Murugeshpalya,
Bengaluru - 560 017.

(Rep. By Sri. P.N. Nagaraja Reddy, Adv)

Vs.

DEFENDANTS:-

Smt. Padmavathi,
w/o Krishnappa K
Aged about 58 years,
Proprietor of Sri Balaji Enterprises,

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O.S.No.4706/2017

Shop premises No.3,
Building No. 764, New No. 13/A
Ground Floor,

New Thippasandra Main Road,
Bengaluru 560 075.

(Rep by Sri. - Adv)

Date of institution of the suit	:	11/07/2017		
Nature of the suit	:	Ejectment		
Date of commencement of recording of the evidence	:	02/04/2018		
Date on which the Judgment was pronounced.	:	31/01/2023		
	:	Year/s	Month/s	Day/s
Total duration		05	06	20

JUDGMENT

Plaintiffs have filed this suit for decree of ejectment, directing the defendant to vacate from the schedule premises and to hand over the vacant possession of the schedule premises to the plaintiffs.

2. The plaint averments in brief are as under;

Defendant is a tenant under the plaintiffs in respect of shop and godown premises of the suit schedule property, in respect of portion of property bearing No. 764, new No. 13/A, ground floor, New Thippasandra Main Road, Bengaluru - 75 on a monthly rent of Rs.19,500/-. Defendant is chronic defaulter in payment of rents as agreed terms and conditions of rental agreement, defendant occupied the schedule premises as a tenant for a period of 11 months.

3. It is further stated that entire schedule premises is in dilapidated and dangerous condition and not fit for human habitation and the same has to be demolished immediately, 2 nd plaintiff issued legal notice on 13.1.2017 calling upon defendant to vacate and deliver the vacant possession of the schedule premises within three months, which has been duly served on 17.1.2017, but defendant has given untenable reply. Defendant caused major damages to the structure of the schedule property, and not paying water bill from time to time along with other tenants, defendant along with other tenants, illegally collected water from obtaining illegal connections, for which BWSSB caused notice to plaintiffs. Defendant is illegally using the extra space in front of the schedule shop which restrains public to pass through, defendant violated all the terms and conditions. Plaintiff got issued legal notice on 13.1.2017 u/S 105 and 106 of transfer of Property Act by terminating the tenancy by granting three months time to vacate premises and also informed about termination of tenancy, for which defendant has given untenable reply, but failed to vacate the schedule premises.

4. On 12.4.2017, defendant has caused reply to notice dated 13.1.2017 reply notice issued by defendant, but has not complied with the demand made in the legal notice, hence, plaintiffs have filed present suit for granting a decree for ejectment.

5. After registration of this suit, summons were issued to defendant through Court and RPAD, summons issued to defendant is duly served.

6. Defendant engaged Sri SVK, advocate, he filed Vakalath. On 20.2.2018 Written statement of defendant was taken on record.

7. In written statement defendant has stated that the suit filed by plaintiff is not maintainable either in law or on facts of the case, it contended that defendant is tenant since from 1999 under the ownership of Late Gurrappa Reddy S/o Siddappa and subsequent to death of Gurappa Reddy under plaintiff No.2 Venkatesh Reddy. It is stated that to make huge claims plaintiffs filed suit, got enhanced the rent and additional deposit was increased to Rs.9,00,000/-.

8. Defendant was initially inducted into a portion of schedule property by Mr. Gurappa Reddy, by way of lease agreement dated 25.3.1999. Said lease was in respect of shop portion of schedule premises, came to be renewed successively by Mr. Gurappa Reddy by executing fresh rental agreement by enhancing the rent. After the demise of Gurappa Reddy, second plaintiff has executed lease in respect of shop premises by executing fresh agreement of lease dated 16.4.2008 for a period of 3 years and received an additional security deposit of Rs.1,00,000/-. Thus, plaintiffs were in receipt of Rs. 6,00,000/- as security deposit, defendant has also entered into another separate and distinct lease agreement dated 23.6.2008 in respect of godown portion on payment of security deposit of Rs.3,00,000/-. When things stood thus, plaintiffs without any cogent reason filed suit for eviction against the defendant in O.S. No. 26909/2011, at the intervention of well wishers, disputes were amicably settled and said suit came to be dismissed as withdrawn, thereafter consolidated lease agreement dated 20.3.2013 was entered between plaintiffs and defendant with agreed period of 5 years commencing from 1.4.2013 until 1.4.2018, under this lease agreement plaintiffs have received a sum of Rs.9,00,000/- as security deposit and defendant agreed to pay a monthly rent of Rs.15,000/-, subject to annual escalation of Rs.1,500/-. Ever since the execution of lease agreement dated 20.3.2013, defendant has been paying the rent regularly. Plaintiff issued legal notice dated 13.1.2017 allegedly cancelling the lease agreement dated 20.3.2013. Alleged Termination notice dated 13.1.2017 has no value in the eyes of law. In the absence of having validly terminated lease agreement, suit filed by plaintiffs would not be maintainable and same is liable to be dismissed.

9. Defendant denied the averments made in para No.3 of plaint and contended that defendant is paying rent promptly every month and there is no balance of rent, payment of rent made by cheque is being acknowledged by plaintiff No.2. With regard to averments made in para No.4 of plaint it is stated that, the very fact that plaintiffs have constructed superstructure over the existing suit schedule property in the year 2008-2009, itself suggests that schedule building was/is never in a dilapidated and dangerous condition. Further averments made in para Nos. 5, 6, 7 and 7 are denied as false. Hence prayed to dismiss the petition.

10. IA-2 was filed by defendant for amendment of written statement vide orders dated 19.12.2019, IA-2 was dismissed. Being aggrieved by order dated 19.12.2019, defendant filed W.P. No. 2103/2020 before the Hon'ble High Court of Karnataka, Hon'ble High Court allowed the said Writ Petition by imposing cost of Rs.25,000/-, payable by defendant to plaintiff, cost was paid, Hon'ble High Court of

Karnataka issued direction that this suit should be disposed off within 28.2.2023. Defendant amended the written statement, filed amended written statement. The amended portion of written statement did not call for framing of any additional issues as the amendment sought for was to elaborate the defence of defendant and about history that took place, that is prior to the date of execution of consolidated rent agreement date 20.03.2013. Hence, there is no necessity to frame additional issues.

11. Based on the pleadings of parties, on 12.2.2019, my learned predecessor has framed the following issues:

ISSUES

- 1) Whether the plaintiffs prove that, they have terminated the tenancy of defendant in respect of suit schedule property by causing quit notice on 13.1.2017?
- 2) Whether the plaintiffs prove that the defendant is due of rent and other charges?
- 3) Whether the plaintiffs are entitled for the reliefs as prayed ?
- 4) What order or decree ?

12. Plaintiffs filed affidavit in lieu of examination-in-chief, 2 nd plaintiff examined himself as PW1, Ex.P1 to P6 are marked. Ex P-

1 , is Khatha certificate, EX P-2 is Khata Extract, Ex P-3 is Water Bill, Ex P-4 is the notice issued by BWSSB, EX P-5, is office copy of legal notice issued by plaintiff's to defendant, Ex P-6 is copy of reply notice issued by defendant. During cross examination-in-chief of P.W-1, by confrontation a photograph is marked as Ex D-1. Defendant is examined as D.W-1, through her Ex D-2 agreement of lease dated 25.03.1999, Ex D-2- Rental Agreement dated 20.03.2013, Ex D-4, 6- Bank Statements and Ex D-5- Certificate under Section 65 (B) (4) of Evidence Act is marked. P.W-1 and D.W-1 have been cross examined.

13. Heard Arguments of both sides . Learned advocate for plaintiffs filed memo with following citations:

- 1) Smt. Syed Sughara Zaidi Vs. Laeeq Ahemed reported in (2017) AIR Supreme Court Cases 5829
- 2) Smt. Himangni Enterprises Vs. Kamaljeet Singh reported in (2017) AIR Supreme Court Cases 5137
- 3) Mohammed Fazal Vs. Smt. Sharadedevi reported in HCR 2019 Kant. 737
- 4) O.S. No. 4707/2017.

14. My findings on the above issues are as under:

Issue No.1 : In the affirmative Issue No.2 : In the negative Issue No.3 : In the affirmative Issue No.4 : As per final order for the following:

15. Issue No.1: One Gurappa Reddy was the owner of building bearing No. 764, new No. 13/A ground floor, New Thippasandra Main Road, Bengaluru - 75. Defendant took one of the portions on lease from the said Gurappa Reddy on 25.3.1999, since then, defendant is running a stationary shop in demised premises. After the death of Gurappa Reddy, 2nd plaintiff extended the period of lease and fresh agreement of lease dated 16.4.2008 was entered into between them, defendant paid additional security deposit of Rs.1,00,000/-, subsequently another portion was taken on lease for go-down purpose by defendant, for which, separate agreement was entered into. Plaintiffs herein filed O.S. No. 26909/2011 for eviction of defendant, said suit was settled due to intervention of well wishers. Consequently, a consolidated lease agreement dated 20.3.2013 was entered into, term agreed upon was 5 years from 1.4.2013 and plaintiff received totally a sum of Rs.9,00,000/- as security deposit, monthly rent was agreed as Rs.15,000/- . There is no dispute about the fact that plaintiffs are owners of suit schedule premises and that defendant is a tenant. Notice of Termination of tenancy u/S 106 of Transfer of Property Act has been issued vide Ex.P5, defendant has replied vide Ex.P6 dated 12.4.2017, thus it can be safely assumed that defendant is served legal notice dated 13.1.2017.

16. Contention taken up by defendant is that period of lease was to expire on 19.3.2018, plaintiff has issued a notice for termination of tenancy on 13.1.2017, which according to defendant is premature. It is to be not lost sight of , that lease agreement dated 20.3.2013 produced by defendant is marked as Ex.D3. Few of the clauses in Ex.D3 are as under:

"12. Three (3) months notice period is must on either side for termination of this rental agreement on completion of five (5) terms of eleven months and the same agreement may be extended for further terms by the Lessor on Lessee's request on same terms and conditions except monthly rent which will be fixed at the time of execution of fresh lease/rental deed. Renewal of the agreement is required for enhancement of rent after 11 months."

17. Learned counsel for plaintiff has relied upon the decision of Hon'ble Supreme Court of India, 2022 Live Law (SC) 561 (SLP (C) No. 10700 of 2022) in the case of Sri K.M. Manjunath Vs. Sri Erappa.G dead through LRs., in para Nos. 8 and 9, it is held as under :

"8. The High Court rightly observed that in a suit for ejectment filed by the landlord the material questions would be whether there was jural relationship of land lord-tenant between the parties and whether tenancy was validly terminated. Obviously, the High Court found that initially the petitioner herein had denied the jural relationship, but then he himself had setup Ex.D1 to D7 lease agreements. As a matter of fact, there is now concurrent findings on the question of jural relationship against the petitioner herein. That apart, that question need not be taken forward in

view of the further contention take up by the petitioner herein in this petition, at paragraph 5.4, to the effect that he was originally inducted as a tenant as per lease agreement dated 15.2.1989 (Ex.D1) and after the expiry of the period of the last lease agreement he has been continuing as a tenant in sufferance and had paid rent till the date of filing of the suit.

9. In the decision in Smt. Shanti Devi Vs. Amal Kumar Banerjee (AIR1981SC1550) this court held that before deciding the validity of notice under Section 106 of the TP Act the court should first decide whether Section 106 is applicable or not. Further it was held that where a lease was for a fixed term the court could not take the pleadings of the parties for determining the nature of the lease and that the parties could not by their pleadings alter intrinsic character of lease."

18. Hon'ble Supreme Court of India, in the case of Sri K.M. Manjunath Vs. Sri Erappa.G dead through LRs has referred to one of its earlier decision reported in the case of Pooran Chand Vs. Motilal & Ors. (AIR 1964 SC 461), wherein it is held as under:

"on expiry of the term fixed under the deed the tenant would not be entitled to statutory notice under Section 106 of the T P Act. It was found that on determination of the lease by efflux of time no further termination of the tenancy by issuing a statutory notice to bring termination of a lease already terminated is necessary".

19. It is pertinent to note here that as per Ex.P3 term agreed upon is five terms of eleven months = 55 months, which ends in the month of October 2017, Ex.D3 does not disclose that the term agreed upon has been extended for a further period subsequent to 28.2.2014. It is to be not lost sight of that the termination notice at Ex.P5 has been issued within period of 55 months calculated from 1.4.2013. Due to non extension of time stipulated in Ex.D3 there is no necessity for issuing statutory notice by applying the ratio laid down in AIR 1964 SC 461, but by abundant caution, plaintiffs have ventured to issue notice, suffice it to say, that plaintiffs have duly terminated the tenancy of defendant, in respect of the suit schedule premises. Notice has been served on defendant, a reply notice at Ex. P-6 has been given by defendants, which indicates that defendant has been duly served with notice of termination of tenancy dated 13.01.2017. Hence, I answer issue No.1 in the affirmative.

20. Issue No.2: Monthly rent agreed upon in Ex.D3 is Rs.15,000/- per month and annual escalation agreed upon is Rs.1,500/-, once in 11 months. As stated supra, the initial term of eleven months agreed upon has not been extended. In this suit, it is necessary to note that prayer regarding arrears of rent/ damages is not at all claimed or made by plaintiffs. During cross-examination of PW1, dated 24.4.2019 it is suggested as under:

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21. Above admission makes it clear that till the month of March 2019, regularly rent was being paid by defendant and received by plaintiffs. At this juncture, it is necessary to refer cross- examination of DW1, wherein it is suggested by plaintiff as under:

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22. Aforesaid suggestion has been put by plaintiffs to defendant, it is settled law that suggestion is reflection of case of the person who puts it. By putting above suggestion plaintiff has accepted that damages have been received. Nowhere it is suggested to DW1 that arrears has not been paid till the date of termination of tenancy and damages have not been paid during the pendency of this suit.

23. Ex.D4, Bank statement of defendant's Bank account in Oriental Bank of Commerce, for the period 1.4.2016 to 20.6.2019. Ex.D7 is Bank account statement of defendant in Punjab National Bank for the period 1.1.2021 to 1.12.2022. Perusal of Ex.D4 and D7 discloses that through cheque and bank transfer rent has been paid by defendant to plaintiff No.2. there is no dispute about Ex D4 and D7 from the side of plaintiff. Thus it is amply clear that plaintiffs have received rent as and when they fell due. Hence, I answer above point No.2 in the negative.

24. Issue No.3: Main prayer made in this suit is for decree of ejectment/ directing the defendant to vacate from the suit schedule premises and to hand over the vacant possession. One of the contentions taken up by defendant is that, in Ex.D3 clause No.10 , it is clearly stated that dispute if any has to referred/ settled before the witnesses or by Arbitration. Clause No.10 of Ex.D3 is extracted here under:

"10. The Lessor hereby covenants that the lessee will have peaceful enjoyment of his property without any disturbances or encumbrances from the Lessor or from any person/s claiming through him any violation or default in any of the terms and conditions the defaulting party shall be liable to settled before the witnesses or by Arbitration without any delay".

25. It is necessary to refer to decision of Hon'ble Supreme Court of India, in the case of Smt. Himangni Enterprises Vs.Kamaljeet Singh reported in AIR 2017 SC 5137, wherein at para No.18 and 24, Hon'ble Supreme Court has held as under:

"18. In our considered opinion, the question involved in the appeal remains no longer res integra and stands answered by two decisions of this court in Natraj Studios (P) Ltd., Vs. Navrang Studios and another, 1981 (1) SCC 523; (AIR 1981 SC 537) and Booz Allen and Hamilton Inc. Vs. SBI Home Finance Ltd., and Ors. (2011) 5 SCC 532: (AIR 2011 SC 2507) against the appellant and in favour of the respondent.

24. Keeping in view the law laid down by this Court in aforementioned two decisions and applying the same to the facts of this case, we have no hesitation to hold that

both the Courts below were right in dismissing the appellant's application filed under Section 8 of the Act and thereby were justified in holding that the civil suit filed by the respondent was maintainable for grant of reliefs claimed in the plaint despite parties agreeing to get the disputes arising therefrom to be decided by the arbitrator".

26. Ratio laid down in Himangi Enterprises case , is applicable to the facts of this case also. Hence, contention taken up by defendant that this Court has no jurisdiction and the matter is to be referred to arbitration does not holds water.

27. Section 8 of Arbitration and Conciliation Act 1996 as amended in the year 2015 is as under:

"8. Power to refer parties to arbitration where there is an arbitration agreement.--

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

[Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.] (3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

28. In paragraph 6 of the written statement, defendant has taken up contention that the dispute has to be settled before the Arbitrator. In Ex.D3, the rent agreement dated 20.3.2013 in clause

- 10 there is no mention about arbitration. A comparative table of the recitals in Ex.D3 at and para No.6 of written statement is as under:

In Ex.D3 condition No.10 of Para 3 of written statement Rental agreement dated 20.3.2013 "10. The Lessor hereby There is no cause of action to covenants that the lessee will this suit one alleged in the plaint have peaceful enjoyment of para No.9 is imaginary and his property without any wrong. Thereby this suit is not disturbances or sustainable and the plaintiff is encumbrances from the not entitled for any relief Lessor or from any person/s because in the rental agreement claiming through him any executed between the plaintiff's violation or default in any of and the defendant dated 20th the terms and conditions the March 2013, in the terms and defaulting

party shall be liable conditions that "any of the terms to settled before the and conditions the defaulting witnesses or by Arbitration party shall be liable to settle without any delay". before the Arbitration without any delay."

29. By comparison it is amply clear that defendant has modified the terms and mentioned it in her written statement. Averments in clause No.10 of Ex.D3 is to be looked into to satisfy as to whether an arbitration agreement exists between parties. In clause 10 of Ex.D3, it is mentioned as "any violation or default in any of the terms and condition, the defaulting party shall be liable to settle before the witnesses of by arbitration without any delay". Reading of the above makes it clear that it is only the defaulting party who has a remedy and not the person, who abides by the agreement. The clause does not clearly states that the dispute that may arise in between parties shall be referred to an arbitrator. There is no clear cut reference to the mode of arbitration, place of arbitration, appointment of arbitration, which Act governs the process of arbitration and the like. Mere mention of the word arbitration in clause 10 of Ex.D3 cannot be construed that the dispute between the parties shall be settled through arbitration.

30. It is necessary to note here that defendant has not filed an application u/S 8 of Arbitration & Conciliation Act, prior to filing of written statement. Section 8 of Arbitration and Conciliation Act, clearly lays emphasis that application to refer the dispute for arbitration, provided that there is an arbitration agreement between parties, should be applied not later than the date of submitting his or her first statement on the substance of dispute. The prescribed recourse and procedure has not been followed by defendant, hence, defendant has accepted that there is no arbitration agreement between plaintiff and defendant. This being the situation, question of the matter be referred to arbitration does not arise.

31. While answering issue No.1, it has been held that tenancy of defendant has been duly terminated and there is no dispute about jural relationship between plaintiff and defendant.

32. Admittedly, plaintiff has been receiving rent/ damages from the defendant periodically. Plaintiff has not produced any documents to show that the damages for use and occupation of suit schedule premises by defendant subsequent to termination of tenancy, should be higher than what is being paid by defendant. In the absence any material, being produced by plaintiff, this Court has to hold that the amount which is being paid by defendant to plaintiff after termination of tenancy, should be considered as damages payable by defendant to plaintiff. Hence, I answer point No.3 in the affirmative.

33. Issue No.4: In view of the aforesaid findings given on issue No.1 to 3, I proceed to pass the following:

ORDER Suit of the plaintiff is hereby decreed. Defendant is directed to vacate the suit schedule premises and hand over vacant, physical possession of the suit schedule premises to plaintiff's within 30.04.2023.

Defendant shall pay to plaintiffs damages at the rate of Rs.21,000/- (Twenty One Thousand) per month till the time she vacates the schedule premises.

Plaintiffs is entitled to cost incurred in this suit.

Draw decree accordingly.

(Dictated to Stenographer, transcribed by him, corrected and pronounced by me in the open court on this the 31 st day of January, 2023) (Narashimsa M.V.) LX Addl. City Civil & Sessions Judge, Bengaluru Annexures

1. List of witnesses examined on behalf of the Plaintiff/s:

PW1 Sri. N Venkatesh @ N. Venkatesh Reddy

2. List of witnesses examined on behalf of the Defendant/s:

DW1 Smt. Padmavathi

3. List of documents marked on behalf of the Plaintiff/s:

Ex.P.1	Kkatha certificate
Ex.P.2	Khatha extract
Ex.P.3	Water bill
Ex.p.4	Notice issued by BWSSB
Ex.P.5	Office copy of Notice dated 13.1.2017
Ex.P.6	Reply notice dated 12.4.2017

4. List of documents marked on behalf of the defendant/s:

Ex.D.1	Photograph
Ex.D.2	Agreement of lease deed dt: 25.3.1999
Ex.D.3	Rental agreement , dtd: 1.4.2013
Ex.D.4	Bank account statement of defendant from 7.4.2016 to 24.6.2019

LX Addl.City Civil & Sessions Judge,
Bengaluru.