

## Naseer Ahemad Khan vs B.Mohamad Ameen on 27 October, 2016

IN THE COURT OF IX ADDL.CITY CIVIL AND  
SESSIONS JUDGE AT BANGALORE (C.C.H.5)

Dated: This the 27th day of October 2016

Present: Shri Krishnamurthy B.Sangannanavar,  
B.Com.LL.B., (Special)  
IX Addl. C.C & S.J, Bangalore.

O.S. NO.8106/2011

Plaintiff: Naseer Ahemad Khan, Aged about  
45 years, S/o.Naseer Ahemad  
Khan, Residing at No.122, Shivaji  
Lane, Shambupalya, Kalasipalyam  
Bangalore 560 002.  
[By Sri.K.Narayana Swamy,  
advocate]

-Vs-

Defendant: B.Mohamad Ameen, S/o.Mohamad  
Riyaz.B, Aged about 31 years,  
Residing at No.69, Noha Street,  
Broad way Road Cross, Shivaji  
Nagar, Bangalore 560 052.  
(By Sri.AK, advocate)

Date of institution of the suit	17.11.2011
Nature of the suit	Permanent injunction

Date of commencement of recording the evidence	13.09.2012
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Date on which the judgment was pronounced	27.10.2016
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O.S.No.8106/2011

Total duration	:	Day/s	Month/s	Year/s
		10	11	04

### JUDGMENT

This is a suit filed by plaintiff for grant of permanent injunction restraining defendant from interfering with his peaceful possession and enjoyment of the schedule property.

2. On facts, case of the plaintiff is pleaded below:

The property bearing No.122, situated at Shivaji Lane, Shambupalya, Kalasipalyam, Bangalore, measuring East to West 2.30 meters and North to South 3.90 meters was allotted to Smt.Asmath Jan who is mother of plaintiff by Karnataka Slum Clearance Board on 27.8.2005 and his mother constructed small shop in the schedule property and she was in possession and enjoyment of the said property. His mother was doing tailoring works. She died on 2.2.2010. After her demise, he continued to be in possession of schedule property by running rice shop. The Slum Clearance Board has declared Shambupalya situate near Kalasipalya, Bangalore as the slum area on 13.10.1988. The Board has conducted survey for giving possession certificate in favour of residents who are residing in the slum area during 2002-03. However, defendant came near the schedule property on 13.11.2011, is trying to interfere with his peaceful possession and enjoyment of the schedule property as such, sought for grant of permanent injunction restraining him from interfering with his peaceful possession and enjoyment of the schedule property.

3. On facts, defence put forth by defendant is as follows:

He is contending that he is the owner of the property bearing No.5, New No.5/15 situated at Shivaji Lane, Kalasipalyam, Bangalore, comprises two shops. He has purchased the said property under registered sale deed dated 19.7.2001 from Mr.M.M.Zakria. Mr.Zakria purchased the said property under registered sale deed dated 3.1.1994. The khata of the said property stood in the name of Mr.Zakria which was got mutated in the name of defendant. The plaintiff is carrying on business of old motor parts in the said premise.

Electricity meters two in numbers are installed. The defendant is carrying on business of BEEF. There is common wall which bifurcates two shops namely schedule premise and shop in which defendant is carrying on business. Plaintiff was entered in the schedule premise by virtue of an agreement of rent dated 5.10.2000 on a monthly rent of Rs.600/- and an advance of Rs.20,000/-. The vendor of defendant introduced plaintiff to him and asked him to pay rents to him, since he has sold the said property to the defendant. Subsequent to purchase of the schedule property, plaintiff has not paid rents despite several requests and demands. As he has become a chronic defaulter in payment of rents, got issued a legal notice dated 3.7.2008 calling upon him to pay arrears of rent due from 1.6.2001 and filed HRC No.20/2011 wherein through oversight summons were written as Naseer Ahmed Khan instead of Wazeer Ahmed and he entered appearance before the HRC Court. Since he was neither tenant nor party to the said eviction petition, the defendant filed an affidavit stating that Wazeer Ahmed is tenant and not Naseer Ahmed Khan. In the said event, HRC Court issued notice to Wazeer Ahmed which came to be returned with an endorsement "door locked" and subsequently ordered notice to be served by way of affixture. Thereafter, he was placed exparte. In the said eviction proceedings, a decree is passed against defendant directing him to pay arrears of rent, to quit, vacate and handover the vacant possession of schedule premises in favour of the landlord. The said Wazeer Ahmed filed Misc.34/2012 to set aside the judgment and decree in HRC

No.20/2011 which also came to be dismissed and the plaintiff is fully aware of these proceedings, has filed false suit which is not maintainable. The plaintiff has filed this suit with unrighteous intentions to squat on the property and deprive defendant from payment of rents.

4. In view of the above prime pleadings, this court formulated the following issues for the purpose of trial:

- (1) Whether the plaintiff proves that he was in lawful possession of the suit schedule property as on the date of the suit?
- (2) Whether the plaintiff proves the alleged interference of the defendant?
- (3) Whether the plaintiff is entitled for the relief of permanent injunction?
- (4) What order or decree?

5. In support of the above issues, plaintiff examined himself as P.W.1 and through him, Exs.P-1 to P-9 documents got marked. On the contrary, GPA holder of defendant was examined as D.W.1 and through him, Exs.D-1 to D-32 got marked.

6. After closure of evidence on either side, having heard the learned counsels on record, this Court would prefer to record the following findings on the above issues:

Issue Nos.1 to 3 : In the Negative Issue No.4 : As per final order, for the following:

#### REASONS

7. Issue Nos.1 & 2: This is a simple suit for injunction to restrain defendant from interfering with his peaceful possession and enjoyment of the property bearing No.122, situated at Shivaji Lane, Shambupalya, Kalasipalyam, Bangalore, measuring East to West 2.30 meters and North to South 3.90 meters in which constructed shop thereon bounded on the East by Road, West by property No.121, North by road and South by private house.

8. The plaintiff herein has pleaded that such property was allotted to his mother Smt.Asmath Jan by Karnataka Slum Clearance Board on 27.8.2005. He has also pleaded that Karnataka Slum Clearance Board has declared Shambupalya situated in Kalasipalya, Bangalore, as slum area vide its notification No.KSA/CR/46/1987-88 dated 13.10.1988. Thus, according to plaintiff, suit schedule property vest with Karnataka Slum Clearance Board pursuant to Notification dated 13.10.1988. It is to be noted herein that Karnataka Slum Clearance Board is not a party in this proceedings. The plaintiff has produced Ex.P-1 possession certificate dated 27.8.2005 wherein at P.C.No.122, The Commissioner, Karnataka Slum Clearance Board, Bangalore, issued this certificate in favour of Smt.Asmat Jan, W/o. Naseer Ahmad Khan of Shambupalya. The plaintiff herein arrayed himself as Naseer Ahemad Khan, S/o. Naseer Ahemad Khan. Though he has produced certificate of death of Smt.Asmath Jan, W/o.Nazir Ahmed Khan as per Ex.P-2 certifying that she died on 2.2.2010 at No.8,

Shivaji Lane, Kalasipalya, Bangalore, has not produced satisfactory document to prove that he is the son of said woman. It is important to note here that permanent address found in Ex.P-2 is No.8, Shivaji Lane, Kalasipalya, Bangalore, but not as found in Ex.P-1 although issued on 27.8.2005. It is therefore, to locate or identify this property, plaintiff has to be said miserably failed, since he has failed to examine any of the officers of Karnataka Slum Clearance Board, since they are the competent witness to get identify this property in order to prove that such property was possessed by Smt.Asmath Jan, W/o.Nazir Ahmed Khan and the plaintiff herein is her son.

9. In this regard, Court to examine Ex.P-3 Notification No.KSA.CR.46/87-88 dated 13.10.88 originated from the office of Deputy Commissioner, Bangalore that the area specified in the schedule has been declared as Slum Areas u/s.3 of the Karnataka Slum Areas (Improvement and Clearance) Act, 1973 wherein in column No.3 could see name of the owners Mr.K.V.Karanth (Regd) Trustee of Mr.Nawab Baig, Mr.H.Abdul Sattar, Mr. Matadipathy Chinnappa, Smt.Azeemunisa, Smt. Najeemunnisa, Mr.J.Chandrashekar, Mr.Dastagiri, Mr.R.Balakrishna, Mr.Abdul Khaleel and Mr.Abdul Jabbar. Further, list of owners/residents annexed which is not produced. However, Ex.P-4 an endorsement issued by Karnataka Slum Improvement Board issued a list of inspection report for the purpose of issuance of possession certificate in KSA/CR/10/2002-03, at Sl.No.122 name of Smt.Asmath Jan could be seen. It is not known whether her husband is Nasir Ahmed Khan or her father. Further mentioned just above the name of Smt.Asmath Jan as tailor and in the column mean to mention name of husband/father as shop. It is therefore, only the Assistant Executive Engineer No.1, Sub-Division, KSDB, Bangalore, has attested this, has to explain whether such property was put in possession of Smt.Asmath Jan who is mother of plaintiff herein. Ex.P-6 is again an endorsement issued by Karnataka Slum Improvement Board dated 7.4.2011 along with statement showing the details of declared slums in Bangalore city and at Sl.No.40 could see Shambupalya, a private property measuring 1 acre 04 guntas in Survey No.212, in column No.10 - Notification No.KSA/CR/46/87- 88, notified date is 10/13/1988, number of huts- 180, population-900 of whom, 400 - Schedule Castes, 20 - Schedule Tribes and others are 480. It is therefore, dispute in respect of schedule property has to be sort out only by the Commissioner of Slum Clearance Improvement Board and not by filing a suit by plaintiff against defendant who is said to be owner of the said property. Ex.P-7 electricity sanction order dated 19.9.2011. Ex.P-8 permission to purchase meters. Ex.P-9 electricity bill for the month of October 2011 are not evidencing the proof of lawful possession of plaintiff over the schedule property.

10. The defendant has produced certified copy of order sheet in HRC No.20/2011 filed by him against Mr.Wazeer Ahmed in respect of the suit property itself. He has initiated petition u/s.27(2)(a)(r) of Karnataka Rent Act, 1999 against one Wazeer Ahmed, S/o.Ahmed Khan. According to plaintiff herein, he is not Wazeer Ahmed, but Naseer Ahmed Khan. However, facts remain found that he has participated in the said proceedings and the Court ordered to place Wazeer Ahmed as exparte and the Court passed an award on 30.11.2011 as per Ex.D-28 directing respondent therein to pay Rs.55,600/- towards arrears of rent within a period of 30 days from the date of order failing which, he is directed to vacate and handover vacant possession of the petition schedule premises in favour of the petitioner namely in favour of Mr.B.Mohammed Ameen. The plaintiff herein has filed this suit on 17.11.2011 against B.Mohammed Ameen.

11. If we go through Ex.D-28 order in paragraph-4 found "In response to the notice one Nazeer Ahmed appeared through the counsel and filed his statement of objections stating that the petition is filed by the petitioner against Wazeer Ahmed and not Nazeer Ahmed. As such again notice was issued to Wazeer Ahmed the tenant by affixture. Though the tenant Wazeer Ahmed received the notice, remained absent, therefore he has been placed exparte." Further in this order on page-7, the Court has stated that "Respondent has not come forward to participate in the proceedings so as to rebut the presumption." Further on page-6 para-8, He was called upon to pay the rentals by the petitioner by issuance of legal notice by RPAD dated 3.7.2008 and even after receipt of the said notice, he has not come forward to pay the arrears of rentals. He has paid an advance amount of Rs.20,000/- which is refundable at the time of vacating premises. Therefore, by deducting an amount of Rs.20,000/- out of Rs.76,600/-, he is held due a sum of Rs.55,600/-. The schedule premise described in the HRC is a property bearing No.5, New No.5/15, situated at Shivaji Lane, Kalasipalya, Bangalore, measuring 6½ x 12 feet bounded on the East by Conservancy, West by Portion in which Mr.B.Mohammed Ameen is carrying on Beef Stall, North by Shivaji Lane and South by Shambhupalya Mutt's property.

12. Thus, in so far as identity of the property is concerned, plaintiff and defendant are asserting their rights on this property which is one and the same, since plaintiff assert that said property is a shop property, wherein his mother was doing tailoring works and he is now doing business of rice and by the side, defendant is carrying on sale of Beef in the Stall. It is therefore, at the very outset, this Court is formed opinion that Commissioner, Slum Improvement Board or their officers alone have to intervene in their dispute and to restore possession to such of the persons entitle to be in possession of the same.

13. In HRC 20/2011, the plaintiff herein has submitted his statement of objections contending that Nazeer Ahmed Khan (vakalath holder) is in possession and enjoyment of the schedule property and doing rice business in the schedule premise and not Wazeer Ahmed. It is therefore, at the very outset, this Court is formed opinion that plaintiff to establish that he is the son of Smt.Asmath Jan Naseer Ahmed Khan of Shambupalya. As already stated that he has participated in the HRC proceedings and only when the said matter reached to its finality, approached the Court for grant of injunction restraining defendant from interfering with his peaceful possession and enjoyment of the schedule property, which cannot be entertained by the Court, since defendant has produced Ex.D-4 deed of absolute sale dated 28.12.1983 executed by Mr.Matadhipathi Chennappa, S/o. late Kempaiah in favour of Mr.M.M.Zakria, who is none other vendor of defendant herein. In fact, name of vendor in Ex. D-4 could be found in Ex.P-3 notification as Sri.Matadhipathi Chinnappa in column No.3. Ex.D-5 is true extract in respect of register maintained by BBMP in respect of the suit property for the year 1.4.1996 to 18.9.1996. Ex.D-6 is notice cum special notice issued by Asst. Revenue Officer, BBMP. Ex.D-7 tax revised order for the year 2000-01. Ex.D-8 to D-16 are taxes. In fact, they were all produced in HRC stated supra. Ex. D-17 is rental agreement is again registered rental agreement between Mr.M.M.Zakria and Mr.Wazeer Ahmed. According to defendant herein, Wazeer Ahmed - tenant was introduced by M.M.Zakria. Accordingly, after purchase of the suit property, Wazeer Ahmed, S/o. Ahmed Khan attorned the tenancy in his favour which was accepted by HRC Court while passing eviction order against Wazeer Ahmed, S/o.Ahmed Khan, after deducting advance amount of Rs.20,000/- paid under Ex.D-17. The schedule under this rental agreement is

the same schedule found under HRC schedule. Ex.D-18 is absolute sale deed dated 23.5.2001 executed by Mr.Zakria M.M. in favour of Mr.B.Mohammed Ameen in respect of this property and the remaining property which is in possession of defendant in which he is carrying on Beef sale in the Stall. Ex.D-19 is extract of house and house sites register maintained by BBMP. Ex.D-20 is certificate issued by BBMP. Ex.D-21 khata certificate. Ex.D-22 to D-25 are property tax receipts.

14. Learned counsel for plaintiff would submit that Ex.D-21 wherein found property situate in Sudhamanagar, whereas the schedule property is situate in Shambupalya, near Kalasipalya is entirely different could not be acceptable herein to grant injunction against defendant, for simple reason that the property according to plaintiff was allotted as per Ex.P-1 in favour of Smt.Asmath Jan Naseer Ahmed Khan of Shambupalya, which is the schedule property and if such possession certificate was issued in favour of such woman and if plaintiff is son of said Smt.Asmath Jan Naseer Ahmed Khan has to avail remedy under Karnataka Slum Areas (Improvement and Clearance) Act, 1973 and Rules 1975 and Rules framed there under 1975.

Section 4 of the Act provides for Registration of buildings in a slum area and to that effect, plaintiff has not produced such registration certificate for having own or occupied the schedule property as slum dweller as a son of Smt.Asmath Jan Naseer Ahmed Khan.

15. It is also to be take notice of the fact that Sec.12 of the Act provides for Obligation to clear area and demolish buildings -

When a slum area has been declared to be a slum clearance area under sub-section (1) of Section 11, the owners of the lands and the buildings in that area shall clear the area and demolish the buildings before the expiration of such period as may be prescribed.

Further, Sec.18 of the Act provides for Land acquired to vest in Government free from all encumbrances -

When a notice u/s.17 is published in the Official Gazette, the land to which the said notice relates shall, on and from the date on which the notice is so published, vest absolutely in the Government free from all encumbrances.

Sec.28 of the Act provides for Eviction of tenants not to be taken without permission of the prescribed authority.

Sec.30 of the Act provides for Restoration of possession of premises vacated by a tenant.

Sec.32 of the Act provides for Chapter not to apply to tenants of certain buildings -

Nothing in this chapter shall apply or in relation to a tenant of any building situate in slum area and belonging to the Government or the Board or any Local Authority.

Section 37-A of the Act provides for Powers and duties of the Commissioner - (a) provides for carry out the resolutions of the Board.

Thus, such specific powers have been conferred on the officers of Karnataka Slum Areas (Improvement and Clearance) Act, 1973, suit filed by plaintiff against defendant by placing such unsatisfactory documents could not be said that he is in lawful possession and enjoyment of the schedule property, entitled for relief of injunction either against defendant or any third parties.

16. It is elicited from evidence of P.W.1 that in Ex.P-1 name of husband of Asmath Jan is mentioned as Nazeer Ahmed Khan. He does not know whether suit property was given to Wazeer Ahmed Khan on rent. Smt.Asmath Jan died in the year 2010. The name of plaintiff got mutated in the register of Slum Clearance Board. He admits that Slum Board used to allot sites for residential purpose whereas the property measures 6½ feet x 12 feet shop premise. Even D.W.1 admits that Shambupalya is a slum area and he does not know whether suit property and other properties have been declared as slum area by the Deputy Commissioner and he does not know whether Board has given possession certificate to such of the persons. It is submitted that even miscellaneous petition filed by Wazeer Ahmed Khan aggrieved by the judgment passed in HRC was also came to be dismissed. He does not know whether Mr.Zakria M.M. has issued any notice to Wazeer Ahmed. Thus, in this suit except evidence of P.W.1 and D.W.1, nothing is placed on record to establish that plaintiff is in lawful possession of schedule property as legal heir of Smt.Asmath Jan W/o. Naseer Ahmed Khan, whose name could be seen in Ex.P-1 possession certificate said to have been issued by Slum Clearance Board on 27.8.2005. In other words to say that to prove that such woman was put in possession and the plaintiff herein has stepped into her shoes as her heir, only the Slum Clearance Board officers are competent and the plaintiff has failed to examine any of such witnesses to establish his lawful possession over such property. Thus, reaching to such conclusion, findings on issues 1 and 2 would be record in the Negative.

17. Issue No.3: In view of the Negative findings on issues 1 and 2, it goes without saying that plaintiff is not entitled for any relief in respect of schedule property, accordingly, record a Negative finding on this issue.

18. Issue No.4: In view of the above findings and in the result, this court passes the following:

#### O R D E R

(a) The suit of the plaintiff is dismissed with no order as to cost.

(b) Draw a decree accordingly.

(Dictated to the J.W., transcribed by her, corrected and then pronounced by me in the open court, on this the 27th day of October 2016).

(Krishnamurthy B.Sangannanavar) IX Addl. City Civil & Sessions Judge, Bangalore.

A N N E X U R E List of witnesses examined for plaintiff:

P.W.1 Naseer Ahemad Kahn List of witnesses examined for defendant:

D.W.1 B.Mohammed Riyaz List of documents exhibited for plaintiff:

Ex.P-1	Possession certificate
Ex.P-2	Death certificate of Smt.Asmath Jan
Ex.P-3	Notification
Ex.P-4	Endorsement
Ex.P-5	List of residents in respect of survey conducted by Slum Clearance Board
Ex.P-6	Endorsement
Ex.P-7	Electricity sanction
Ex.P-8	Permission to purchase meter
Ex.P-9	Electricity bill

List of documents exhibited for defendant:

Ex.D-1 Certified copy of order sheet in HRC No.20/2011 Ex.D-2 Certified copy of petition Ex.D-3 Certified copy of statement of objections Ex.D-4 Certified copy of sale deed dated 3.1.1984 Ex.D-5 Certified copy of assessment register extract Ex.D-6 Certified copy of Special Notice dated 1.3.1987 Ex.D-7 Certified copy of Tax assessment extract Ex.D-8 to 15 Certified copy of tax paid receipts Ex.D-16 Civil Court electricity bills Ex.D-17 Certified copy of agreement of rent Ex.D-18 Certified copy of sale deed dated

19.7.2001 Ex.D-19 Certified copy of assessment register extract Ex.D-20 & 21 Certified copy of khata certificates Ex.D-22 to 25 Certified copy of tax paid receipts Ex.D-26 Certified copy of UCP Ex.D-27 Certified copy of power of attorney Ex.D-28 Certified copy of judgment in HRC No.20/2011 Ex.D-29 Certified copy of decree Ex.D-30 Khata certificate Ex.D-31 Khata extract Ex.D-32 Tax paid receipt IX Addl. City Civil & Sessions Judge, Bangalore.