

Rajendra Kumar Sharma vs Smt.Manjula on 29 November, 2017

IN THE COURT OF THE III ADDL.CITY CIVIL &
SESSIONS JUDGE, BENGALURU CITY. (CCH.25)

Dated : This the 29th day of November 2017

Present : Sri.Ron Vasudev, B.Com. LL.B, (Spl),
III Addl.City Civil & Sessions Judge,
Bengaluru.

O.S.No:6314/2010

Plaintiffs

1. Rajendra Kumar Sharma,
Aged 42 years, S/o Late
Mohanlalji,
2. Smt.Kamala Bai, Aged 39
years, W/o Rajendra Kumar
Sharma

Both are residing at No.13/1, 1st
Main, 1st Cross, Valmikinagar,
Mysore Road, Bangalore-560 026.

(P1 by Sri.GJC, Advocate)

(P2 by Sri.GMC, Advocate)

V/S

Defendant

Smt.Manjula, Aged 42 years, D/o Late
B.Raje Urs, Residing at: No.13/1, 1st
Main, 1st Cross, Valmikinagar, Mysore
Road, Bangalore-560 026.

(By Sri.GC, Advocate)

Date of Institution

:

6.9.2010

Nature of Suit

: For possession and
damages

for

Date of Commencement of :
evidence

13.10.2011

Date of pronouncement of :
Judgment

29.11.2017

2

O.S.No:6314/2010

Total Duration

:

Year/s

Month/s

Day/s

7

2

23

(Ron Vasudev),
III Addl.City Civil & Sessions Judge,
Bengaluru.

JUDGEMENT

This is a suit for possession and for damages.

2. The suit schedule property is property bearing New No.13/1, 1st Main, 1st Cross, Valmikinagar, Bangalore-560026 (Old No.11/1, Rajajinagar, Mysore Road, Bangalore) measuring east-west 25 feet and north- south 25 feet in all measuring 625 sq.ft. and bounded by;

East - Property of Salam West - Property of Muniraju North - Road South - Property of Hanumappa
Schedule "A" property is first floor of the suit schedule property consisting of one hall, two bedrooms, one pooja room, kitchen, separate bath room and toilet with AEH facilities measuring 625 sq.ft.

3. The summary of the plaint averments is that, the plaintiffs purchased the schedule property under registered sale deed dt.8.11.2006 (wrongly pleaded as 13.11.2006), which came to be registered on 13.11.2006 from one Y.Govinda Raju S/o D.M.Yellappa by borrowing loan from the bank and also contributing portion of sale consideration on their own. Before that sale deed they had entered into an agreement of sale in August 2006 with their vendor. The schedule property consists of ground floor and first floor and in the ground floor there are two tenements, whereas in the first floor there is one tenant and the same is described as Schedule A property. By vacating the earlier tenants, who were in occupation of the ground floor, the plaintiffs came in possession of it. That in the month of August 2006 itself the defendant and one M.S.Shetty claiming themselves as husband and wife approached the plaintiff no.1 requesting him to let out the schedule A property and after negotiation with them plaintiffs agreed to let out the schedule A property on rent of Rs.2,500/- p.m. and security deposit of Rs.25,000/- and put them in possession of said property. But execution of rental agreement was postponed as still the plaintiffs had not taken sale deed from their vendor. However even after purchasing of that property the defendant did not show any inclination to have rental agreement and she went on gaining time on one or the other reason. Finally in the month of July 2007 the defendant agreed to have the rental agreement and after it's preparation the plaintiffs signed it and handed over it to her for her signature. Thus the defendant took away the original agreement with her and later she gave a copy of the same to the plaintiffs. That except paying Rs.5,000/- by way of cheque she did not pay the rent regularly. She was a chronic defaulter in the matter of payment of rent. There use to be frequent quarrels between the defendant and her husband M.S.Shetty and one fine day he abruptly left the schedule A property in the year 2008 and his whereabouts are not known and the defendant also did not show any interest either to pay rent or to vacate the schedule A property. Wherefore the plaintiffs issued quit notice to her on 28.6.2008, but she did not claim it. Instead she started troubling the plaintiffs, so plaintiffs approached the jurisdictional police station by lodging a complaint and being enraged by it she filed Crl.Misc.Petition No:920/2008 u/s 12 of D.V. Act on 16.8.2008 contending that she is a kept

mistress of plaintiff no.1 and her possession over A schedule property has to be protected and she has to be provided maintenance of Rs.20,000/- p.m. The plaintiff no.1 has entered appearance in the case and is contesting it. The defendant also filed another complaint at PCR No:14206/2008 for the offences p/u/s 499 and 500 of IPC alleging that her signature on the rental agreement is forged by the plaintiff no.1 and others. Regarding which a criminal case has been registered against the plaintiff no.1 and others at CC:3691/2009 and it is pending trial. In Crl.Misc. Petition No:920/2008 the defendant took inconsistent stand by saying that she has paid Rs.4 lakhs to plaintiff no.1 on one occasion, in another occasion she stated that she has paid Rs.8 lakhs and in one more occasion she claimed that she has paid Rs.12 lakhs to this plaintiff no.1 in order to purchase the schedule property. In view of her said conduct and her hostile attitude the plaintiffs have no-longer interested to continue her in the schedule A property and since she denied the jural relationship of tenant and landlord, the plaintiffs have no intention to rely on the rental agreement dt.8.7.2007, instead they seek to declare that she is an unauthorized occupant of the schedule A property; to direct her to pay the arrears of rent/damages from 1.9.2008 to 1.9.2010 amounting to Rs.60,000/- and further to direct her to pay Rs.5,000/- as damages from the date of suit till possession of A schedule property is delivered.

4. The defendant has filed written statement running for 14 pages and by filing I.A.No.1 u/o 6 Rule 17 of CPC later she also sought for counter claim. The summary of it as under;

it is true that negotiation to purchase schedule property from its vendor was held in the year 2006, but it is denied that an agreement of sale was entered with him in August 2006. It is also true that by availing housing loan from the Union Bank of India, the schedule property was purchased by the plaintiffs jointly and even before its purchase this defendant was put in possession of the schedule A property. However it is denied that she occupied that schedule A property as a tenant or that M.S.Shetty was her husband and she entered into rental agreement with plaintiff no.1 to take that property on lease basis by paying Rs.25,000/- as deposit and agreed to pay Rs.2,500/- as rent p.m. The true facts are that this defendant is daughter of late B.Raje Urs and estranged wife of K.C.Devaraj Urs. That she had a tumultuous relationship with her husband as a result she separated from him in 1990 and she is having a son and daughter through him and upon her separation from him, he took away the said children. That she was facing tough time in those days and was struggling for her existence, so she took employment in a garment factory and there her friends advised her to meet this plaintiff no.1, a self proclaimed astrologer, to ward off the evil omen looming on her family. Accordingly she met the plaintiff no.1 and at his suggestion she performed some poojas and in the course they developed intimate relationship and at his inducement she left the garment factory job and joined her hands in training the girls in marvadi customs to arrange the marriage of those girls with marvadi men and started earning handsomely with plaintiff no.1, who was engaged in that unholy business. Out of the earnings she so made she took a house at Nagarabhavi on lease of Rs.4 lakhs and plaintiff no.1 was visiting her house frequently and she was having living in relationship with him and when they felt that it is difficult for the plaintiff no.1 to come from his residence, which was at a far of place, they together decided to purchase the schedule property, which was put for sale. That after negotiation sale consideration of that house was fixed at Rs.18 lakhs and in order to arrange that sum she surrendered her lease of Nagarabhavi house collected Rs.4 lakhs and by selling her ornaments she collected another sum of Rs.4 lakhs and paid

in all Rs 8 lakhs to the plaintiff no.1. At the time of taking that amount the plaintiff no.1 had assured that he will take the sale deed jointly in her name, but at the time of registration of the sale deed by assigning the reason that she is not an income tax assessee and it would be difficult for him in raising loan from the bank for balance amount, he took sale deed in his name and in the name of his wife ie, plaintiff no.2 and signature of this defendant was taken to it as an attesting witness. Thus he cheated her and later he came up with the forged rental agreement and regarding which she filed a private complaint and after investigation charge sheet was filed against him and his men. It is true that she has filed Crl.Misc.Petition No:920/2008 under the provisions of DV Act as plaintiff no.1 was duty bound to maintain her by providing accommodation. That court fee paid on the plaint is insufficient and all other contrary plaint averments are false, frivolous and vexatious to the knowledge of the plaintiffs. It is denied that she is unauthorized occupant of the schedule A property and she is liable to be evicted from it. Thus on these grounds and other grounds she prayed to dismiss the suit with costs.

5. Then through the counter claim by introducing para-16 she prayed for recovery of Rs.8 lakhs paid by her at the time of purchasing of the schedule property by paying court fee thereon.

6. The plaintiffs have filed rejoinder to the counter claim denying her allegation that she had contributed financially to purchase the suit property and plaintiff no.1 received Rs.8 lakhs from her.

7. Based on the said pleadings following issues and additional issues are framed:

ISSUES (1) Whether the plaintiffs prove that the defendant is an unauthorized occupant of the schedule property?

(2) Whether the plaintiffs are entitled for possession of the schedule property?

(3) Whether the plaintiffs are entitled for damages of Rs.60000/- for the period from 1.9.2008 to 1.9.2010?

(4) Whether the plaintiffs further prove that they are entitled for damages at the rate of Rs.5000/- p.m. from the date of suit till possession is restored?

(5) Whether the defendant proves that she contributed Rs.8 lakhs to purchase the suit property as alleged in her counter claim?

(6) Whether the defendant further proves that she is entitled for recovery of the said sum of Rs.8 lakhs with interest?

(7) What order or decree?

Additional Issue (1) Whether the defendant proves that court fee paid on plaint is insufficient?

8. In support of their case plaintiff no.1 examined himself as PW1 and got marked 21 documents. On the other hand the defendant examined herself as DW1 and two witnesses by name Deepak Somaiah and Mayur Shah as DW2 and DW3. She got marked Ex.D1 to D17. I have heard the arguments of Sri.VS, advocate for plaintiffs and Sri.HR, advocate for defendant. They have also filed their written arguments and furnished the citations. I have carefully analyzed the pleadings and evidence made available by the parties.

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

Issue No.1 - In the affirmative Issue No.2 - In the affirmative Issue No.3 - In the affirmative Issue No.4 - Partly in the affirmative Issue No.5 - In the negative Issue No.6 - In the negative Addl. Issue No.1 - In the affirmative Issue No.7 - As per final order, for the following:

REASONS Issue Nos.1, 5 & 6:

10. The keen examination of these issues would show that the discussion and findings on one issue will automatically resolve the other one, so to avoid duplication of discussion I taken up all these issues at a time.

11. Though the whole dispute lies in a very narrow compass, both side have messed it without giving emphasis to the key issue or core issue involved in the case, perhaps it may be because of the unwanted and unwarranted pleadings by both as they are involved in series of litigations. It is unnecessary to say that the findings in a criminal case would hardly decide the rights of the parties in civil dispute. At the most such criminal proceedings, documents produced there and findings recorded in them have some probative value and nothing more than that. In deciding the rights and interest of a party to a suit in respect of an immovable property, court has to go by primarily on documents and if need be, it shall have to take the assistance of oral evidence for certain aspects. With these things in mind I have culled out the pleadings and evidence made available by the litigants in this case.

12. In contrast to the plaintiffs' claim that they purchased the suit schedule property for consideration of Rs10 lakhs on 8.11.2006 as per Ex.P1, which was registered on 13.11.2006, the defendant contends that she also contributed Rs.8 lakhs to purchase that property and the sale consideration is infact Rs.18 lakhs and an assurance was given to her by the plaintiff no.1 that he would take sale deed jointly in her name, thus she submits that she contributed that money to purchase that property. In significant to note that when plaintiffs alleged that they entered into an agreement of sale with their vendor Y.Govinda Raju before purchasing the suit property the defendant denied the execution of such agreement, instead she pleaded that she paid Rs.4 lakhs by surrendering her leasing of Nagarabhavi house and another Rs.4 lakhs by selling her ornaments. When such claim was made by her and admittedly when the sale deed/Ex.P1 is in the name of plaintiffs jointly, if any contrary thing is asserted in contrast to the contents of that document, it is for the defendant to establish the same.

13. First of all to show that the sale price of suit property was Rs.18 lakhs and not at Rs.10 lakhs as averred in the sale deed she has not produced any piece of evidence nor she was able to extract anything on this point from PW1. Therefore her version that sale consideration of the said property was at Rs.18 lakhs cannot be accepted. Further more when she herself pleaded in para-1 of her written statement that there was no agreement of sale to purchase that property before the Ex.P1 was entered into, the only option that was available to her to prove the said sale consideration was by examining the said vendor Y.Govinda Raju or the persons, who were present at the time of negotiation to purchase that property. It was inevitable for her as she categorically pleaded that plaintiff no.1 and herself had negotiated with the said vendor to purchase that property and by paying Rs.4 lakhs she took possession from the said vendor even before the sale deed was executed in favour of plaintiffs. Here I may straightaway refer to the examination chief of this defendant on page no.8 of para- 17 there at 20th line from the bottom she stated that she came into possession of the schedule A property by transferring Rs.4 lakhs to the said vendor. If at all she had paid that amount to that vendor on behalf of plaintiff no.1, she ought to have obtained receipt from the said vendor or atleast she should have examined him on her behalf. But no such steps are taken by her. As admitted by her in her cross-exam repeatedly she has no document to show that she paid either Rs.4 lakhs or Rs.8 lakhs or Rs.12 lakhs to the plaintiff no.1 or to anybody on his behalf. Her counter claim is entirely based on the oral evidence. When a party to a suit comes up with oral evidence sans documentary evidence, atleast such oral evidence has to be consistent in consonance with the accurate pleading. If the pleading itself is not consistent, then it is difficult to imagine that there will be a corresponding consistency in oral evidence. I would demonstrate this by referring to the cross-examination of PW1 and the documents of both parties.

14. It may be noted that even after the plaintiffs initially pleaded the existence of rental agreement between themselves and the defendant and later they gave up that case by making out a case for suit for possession rather than suit for eviction by setting up precise pleading on page no.8 at para-12 of their plaint and this defendant having denied the said rental agreement by taking a contention that her signature on that document was forged and because of that reason she filed private complaint against them and plaintiff no.1 faced the trial in C.C.No:3691/2009 by producing the charge sheet of that case at Ex.D6, in contrast to the said defence when she herself cross-examined the PW1 personally on page no.12 at para-21 by suggesting that she had taken the schedule A property viz; the first floor of the property purchased under Ex.P1 under lease along with her husband in September 2006, she substantially accepted the plaintiffs case. Her said suggestion took away her defence altogether. Since the matter of jural relationship is not before the court I do not assign too much importance to it. Then departing from her earlier suggestion in para-23 on page no.13 she denied the existence of rent agreement, but made an interesting suggestion that she has paid Rs.12 lakhs in total to the plaintiff no.1 and the said amount was paid by her in 3 to 4 installments. Nowhere in her written statement she made such claim that she had paid Rs.12 lakhs in 3 to 4 installments much less in the counter claim. Then in para-26 of his cross exam she suggested that plaintiff no.1 received Rs.4 lakhs from her and again in para-31 repeating her earlier suggestion she claimed that Rs.12 lakhs was received by him by playing fraud on her.

15. In total disregard to her own pleading and the counter claim made by her in para-3- of cross-examination of PW1 she suggested that suit property is the joint property of herself and the plaintiff

no.1. When there is no document to show that she paid Rs.4 lakhs directly to the plaintiffs' vendor again a suggestion was made by her on page no.18 at para-32 of the cross- examination of PW1 but it was flatly denied by the latter. For the first time on page no.21 of his cross-examination dt.12.10.2017 she suggested that she jointly entered in to an agreement of sale with the plaintiffs' vendor to purchase that property for Rs.18 lakhs. Her said suggestion derogates her contention, taken in para-1 of her written statement, to which I have already referred. At the cost of repetition I would say that denying the contention of plaintiffs that they entered in to sale agreement with their vendor, she categorically asserted that no such agreement was entered into with that vendor. That is why in the earlier paragraph I observed that it was inevitable for the defendant to examine the said vendor in order to prove her contention. She having no document to show that she was possessing Rs.4 lakhs or Rs.8 lakhs or Rs.12 lakhs at any point of time atleast the considerable sums in her bank account, it was too much for her to make such tall claims. On the very same page she conceded that she did not insist to have any document to prove payment of Rs.8 lakhs or the expenses incurred by her towards registration of the sale deed because of the relationship she had with plaintiff no.1. I think it is enough to reject her claim that she had paid Rs.8 lakhs or Rs.4 lakhs or even Rs.12 lakhs in installments to the plaintiff no.1 to enable him to purchase the schedule property.

16. One has to think twice before acting on her so called claims when she herself, in the beginning of the cross-examination of PW1, suggested that the plaintiff no.1 purchased three houses during the years 1995, 1996 and 1997 and his father has got 30 acres of land and four houses in Rajasthan. It only shows that the affluence of the plaintiffs' family. In the sale deed produced at Ex.P1 indisputably there is no recital regarding the payment of any money by this defendant except that she signed that document along with M.S.Shetty as a witness. Consequently Ex.P2 and P3 viz; katha certificate and katha extract show the name of plaintiffs to the schedule property and as evidenced by Ex.P4 to P8 they have paid property taxes to the Corporation.

17. The Ex.P9 is the copy of the petition filed in Crl.Petition No:920/08, the Ex.P10 is the certified copy of the deposition of this defendant recorded in that case, the Ex.P11 is the certified copy of the order sheet in P.C.No:14846/2008, which was later renumbered as CC.3691/02, the Ex.P12 and P16 are the only examination chief of this defendant recorded in CC.3691/02, which are inadmissible in evidence as they are incomplete documents as they are without the cross- examination portion, Ex.P13 is the order passed in Criminal Misc.No:126/2011 which was filed u/s 12 of D.V. Act, the Ex.P14 is the disputed rental agreement, the Ex.P15 is the bank passbook showing the issuance of Rs.5,000/- cheque by defendant on 6.9.2007, the Ex.P17 is the FIR in Chamarajpet P.S.Cr.No:358/09 for the offence u/s 457 and 380 of IPC, the Ex.P18 is the notice issued by the plaintiff no.1 calling upon this defendant to vacate the schedule A property, the Ex.P19 is the postal window receipt and Ex.P20 is the statement of this defendant recorded by the Karnataka State Women Commission, wherein she again stated differently that she has filed Misc.Petition:920/08 to recover Rs.4 lakhs from plaintiff no.1. The Ex.P21 is the voters list showing the name of defendant at sl.no.1144 with her photograph with her residential address as House No:11 of Malagalu village, where she is residing with her son Raghavendra and daughter-in-law Renuka in the year 2013 as the said list was published on 28.1.2013. Nevertheless she denied her photograph at sl.no.1144 she admitted the photographs of her son, who is no more, at sl.no.1142 and her daughter-in-law at 1140.

It is material to note that Ex.D20 and D21 were marked during her cross-examination (DW1). With these documents one cannot even remotely say that the defendant is the joint owner of the schedule property as suggested by her.

18. Before I proceed to the cross-examination of DW1 and the documents produced by her I would like to once again refer to the cross-examination of PW1 recorded on page no.25, where she suggested that because she paid Rs.4 lakhs to purchase the suit property she is in permissive possession of the schedule A property. On that page at the bottom portion it was her suggestion that she paid that Rs.4 lakhs in ten installments of Rs.25,000/- to Rs.50,000/-. This is once again an inconsistent version as compared to the earlier ones where she suggested that she paid Rs.8 lakhs in 3 to 4 installments. So viewed from any angle it is difficult to imagine that she could have possessed that much of money so as to pay it to the plaintiff no.1.

19. Now let us turn to the cross-examination of this defendant who examined herself as DW1. By referring to her chief in the earlier paragraphs I have already stated that according to her version she had paid Rs.4 lakhs directly to the plaintiffs' vendor and she having claimed that and she having relationship with plaintiff no.1 as alleged by her, on page no.15 she tried to explain that she was earning through real estate business and was also getting money from her "husband". Then on page no.16 it was elicited from her that she filed that criminal miscellaneous case under the provisions of DV Act after filing this suit and the said petition as well as appeal filed by her against order passed in that petition were came to be dismissed on their merits. Then again on page no.19 and 20 of her cross-exam inconsonance with suggestion made to the PW1 in para-21 of his cross-exam, she replied that when she was in hurry to go to Mysore her signature on the rent agreement was obtained by the plaintiff no.1. This seals her fate that she is a joint owner or that she is in permissive possession because of her living in relationship with plaintiff no.1. In respect of payment of Rs.5,000/- to the plaintiff no.1 for the first time she stated that she gave that amount towards repayment of hospital charges, which she never whispered at any time. As I said earlier she conceded that she has no document to prove the payment of amounts to the plaintiff no.1 despite answering that she is filing IT returns and did not produce them. At the fag end she admitted that she has no document to show that plaintiff no.1 is her husband or that she has lent money to him at any time.

20. In total ignorance of the nature of the dispute involved in the case she examined DW2, who came to depose that he lent Rs.50,000/- to plaintiff no.1 by retaining the original lease agreement as the said plaintiff was in need of that money to help this defendant. The said witness stated that plaintiff no.1 was introduced to him by DW3. The DW3 also reiterated whatever the DW2 stated. I wonder whether evidence of said witnesses would help the defendant in proving any of the issue framed herein. Instead the evidence of said witnesses contradict her defence that she herself helped the plaintiff no.1 financially. Then what remains is the documents produced by her. The Ex.D1 and D2 are the copies of the complaint filed by the plaintiff no.1 alleging manipulation of period of lease in the rental agreement, the Ex.D3 is the letter issued by Information Officer of Chamarajpet P.S. expressing their inability to furnish copies of the complaints filed by plaintiffs 1 and 2 as they have destroyed them. The Ex.D4 is the FIR in Chamarajpet Cr.No:165/2009, the Ex.D5 is the copy of the complaint filed in that crime, the Ex.D6 is the charge sheet to which I have already made reference, the Ex.D7 is the Criminal Appeal Memo filed against the findings in CC.3691/09, the Ex.D8 is the

certified copy of the remand warrant, the Ex.D9 is the certified copy of the order sheet in criminal appeal, the Ex.D10 is the domestic gas customer card, the Ex.D11 is the copy of the complaint filed in PCR No:12555/09 filed by plaintiff no.2 against this defendant and one Ravikumar, the Ex.D12 is the notice issued by DW-2 against the plaintiff no.1 and the defendant, the Ex.D13 is the reply given by defendant to the Ex.D12, the Ex.D14 is the copy of the complaint wherein again the defendant alleged that she had paid Rs.12 lakhs to the plaintiff no.1, the Ex.D15 is the copy of the complaint in PCR No:8284/15, the Ex.D16 is the complaint filed by plaintiff no.2 and Ex.D17 is the statement of defendant recorded by the concerned police, wherein once again she alleged that she has paid Rs.12 lakhs to the plaintiff no.1.

21. Intentionally I have referred to each document produced by the defendant as well as plaintiffs just to show whether any one of the document so produced would come to the help of defendant in proving her defence. If this conclusion is arrived and hold that the defendant has no credible evidence to prove the payment of amount of Rs.8 lakhs as alleged in the counter claim, the sale deed at Ex.P1 being in the names of plaintiffs jointly with corporation records in their names, it is for the defendant to explain in what capacity she is in possession of the schedule A property. When the plaintiffs have given up their case by stating that they do not want to rely on the rental agreement produced at Ex.P14, the defendant having failed to establish her right or interest in the suit property, there can be no other inference except that she is an unauthorized occupant of the schedule A property. Even if a person enters in to the property of another with the implied or express consent of the other, if he remains there once that consent is withdrawn either impliedly or expressly it amounts to trespass or un-authorised occupation. Hence for the foregoing discussion I answer issue no.1 in the affirmative, whereas issue no.5 and 6 in the negative.

Issue No.2 to 4:

22. For the sake of convenience I have taken these three issues simultaneously.

23. With the findings on issue no.1 having gone in favour of plaintiffs it is needless to say that the defendant having no manner of right, title or interest to continue in the said property, she has to vacate the schedule A property. A person, who is in permissive possession of an immovable property can be called as a trespasser once such permission is revoked or recalled. I am making this observation as the defendant has also taken the defence that she is a permissive possessee. In order to show that plaintiffs have revoked that permission and she is no- longer in authorized possession I may refer to the notice issued by these plaintiffs, marked at Ex.P18. Through the said notice plaintiffs called upon this defendant to vacate the suit property as they require it for their bonafide use and occupation by giving three months time. The said notice is dt.28.6.2008 and it was dispatched through RPAD and regarding which plaintiffs have produced postal receipt at Ex.P19, but there is no postal acknowledgement to show that it was duly served or that its returned postal envelope to raise the presumption regarding it's service. In order to cover up the same by cross-examining the defendant effectively they have elicited that she received that notice. Admission to this effect can be seen on page no.24 at about 15th line from the top. There the defendant voluntarily stated that she has received the notice referred to at Ex.P18.

24. It was contended by Sri.HR, advocate that the description of the name of the defendant in that notice differs from the description made in the plaint cause title. It is true that in the said notice the defendant is described with her husband's name M.S.Shetty, but while filing this suit plaintiffs described her father's name though she is married, but without mentioning her husband's name. According to me that is not a serious issue because the defendant herself has admitted the rent agreement produced at Ex.P14. In that notice her name is described with her alleged husband's name M.S.Shetty and in accordance with that agreement the plaintiffs have caused notice to her. Even otherwise the very filing of this suit would show that the plaintiffs have no intention to continue her in possession of schedule A property.

25. The issues framed on 17.9.2011 by my predecessor in office, which came to be deleted vide order dt.3.10.2017 would show that the said earlier issues were framed as if it is a suit for eviction based on the jural relationship of a land lord and tenant. Even there was no issue with regard to the counter claim of defendant. At the same time plaintiffs as well as the defendant did not seek for correction of those issues and they went for trial, adduced their evidence and also submitted their arguments, but when this matter was reserved for judgement, court realized the actual nature of the suit and framed the issues under consideration vide order dt.3.10.2017, consequently the plaintiffs, who had filed their written arguments based on the issues dt.17.9.2011, referred to hosts of decisions viz, reported at AIR 1981 SC 1550 in the case of Smt.Shanti Devi Vs Amal Kumar Banerjee, (1997) 11 SCC 358 in the case of M.Vijayalaxmi Vs G.Voverdhan Reddy, AIR 1987 SC 2078 in the case of Budh Ram Vs Ralla Ram (dead by L.Rs), AIR 1992 SC 1097 in the case of Kulkarni Patterns Pvt. Ltd and others Vs Vasant Baburao Ashtekar and others, AIR 1989 SC 2187 in the case of Majati Subbarao Vs P.V.K.Krishna Rao (deceased) by L.Rs, AIR 1998 SC 1309 in the case of Palani Ammal Vs Viswanatha Chettiar (dead) and others, (2000)3 SCC 282 in the case of Chordia Automobiles Vs S.Moosa and others, HRRP No:95/2015, RFA No:1904/2012 and RFA No:114/2012, as if it is a suit for eviction. I have gone through the said decisions and all these decisions are in respect of landlord and tenant relationship and about services of termination notice and defects if any in such notice. According to me none of these decision would come to the help of plaintiffs as this is not a suit for eviction as presumed and assumed by them.

26. Along with her written arguments the defendant has also produced some decisions and I would refer to them one after the other. In the decision reported at 2012(4) KLJ 402 = ILR 2010 KAR 2204 in the case of Ananthaswami Vs Smt.Radha Srinath and another referring to the provisions of T.P. Act and the Karnataka Rent Act, 1999 Hon'ble Court held that nomenclature of the document is not the criteria to decide the nature of that document, instead one has to go by the contents of such document. It was also held that where an immoveable property is governed by the provisions of The Karnataka Rent Act the jurisdiction of the civil court gets excluded. According to me no such things exist in this case. In the decision reported at (2009) 15 SCC 693 in the case of Biswanath Agarwalla Vs Sabitri Bera and others Hon'ble Supreme Court explained that in a simple suit for eviction if the plaintiff fails to prove the jural relationship of landlord and tenant, to pass decree in such suit atleast an issue has been framed to find out whether the defendant is a trespasser or not and unless such an issue is framed and given finding, there can be no order for possession. In the case in hand with the reframing of the issues on 3.10.2017, according to me the ratio laid down in that case is complied by this court and issues framed herein are enough to vouch the same. In another decision reported at

(1981) 2 SCC 535 in the case of Harcharan Singh Smt.Shivrani and others Hon'ble Court had an occasion to examine Sec.27 of General Clauses Act and Sec.114 of Evidence Act in respect of service of notice issued by the landlord. In my opinion the ratio laid down in that case has no application to the case in hand.

27. Like the plaintiffs in her written arguments the defendant also urged many things which have nothing to do with the nature of the dispute and issues involved. I am unable to find any substantial pleading and evidence which would tilt the pendulum in favour of this defendant so as to record finding on the issues in hand as desired by her. Wherefore I hold that there is no substance in the arguments canvassed by the defendant.

28. The very pleadings of the plaintiffs would show that the defendant came in possession of the schedule A property in September 2006, whereas they purchased the property in November 2006, therefore even if the defendant was put in possession of the schedule A property either by the plaintiffs on the strength of understanding entered with their vendor or by that vendor himself, once these plaintiffs purchased the schedule property, the schedule "A" property being part of it and when it is demonstrated that the defendant has no right to continue in possession of that property she has no other option except to vacate the same. This is a suit filed u/s 5 of The Specific Relief Act and there is no allegation of forcible dispossession as contained in Sec.6 of that Act. This finding is also essential when I take up the additional issue on court fee. Hence at this stage it is suffice to say that definitely the plaintiffs are entitled for possession of the schedule A property.

29. Now let us turn to the issues on damages. In the rental agreement rate of rent was shown at Rs.2,500/- p.m, so calculating the damages at that very rate from 1.9.2008 to till the end of August 2010 (i.e. up to 1.9.2010) the plaintiffs have prayed for damages of Rs.60,000/-. It seems that they have given concession of three months as they issued Ex.P18 notice on 28.6.2008.

So even one has to go by their calculation. From September 2008 to August 2010 as the suit was filed on 6.9.2010 the possession of the defendant being unauthorized one from September 2008, she is liable to pay damages at the rate of Rs.2,500/-, which is just and reasonable and not and not on excessive side. In that case the plaintiffs are very much entitled of Rs.60,000/- as prayed by them.

30. The plaintiffs have also prayed for damages from the date of suit till possession is restored to them at the rate of Rs.5,000/-. According to me the peculiar facts prevailing in this case and the fact that the defendant is a woman, who allegedly suffered in her life, needs to be viewed differently, unlike in normal cases. In my considered view the awarding of Rs.3,000/- p.m. from September 2010 to October 2017 i.e., the month preceding the date of this judgment and awarding of Rs.4,000/- p.m. from the month of this judgment with an enhancement clause of 10% of the base rent at the end of every two years till possession is restored, would meet the real cause of justice. In that case from September 2010 to October 2017 for 86 months at the rate of Rs.3,000/- p.m. the defendant would be liable to pay Rs.2,58,000/-, which is in addition to Rs.60,000/-, which has accrued prior to the date of suit. With this I answer issue no.2 and 3 in the affirmative and issue no.4 partly in the affirmative.

Additional Issue no.1:

31. In para-13 of their plaint in ignorance of what they pleaded in para-12 of the plaint, while calculating the court fee the plaintiffs resorted to Sec.41 of the KCF & SV Act as if it is a suit for eviction based on jural relationship and paid court fee of Rs.5,925/-. While discussing on the issues no.2 to 4 I have already spelt out that it is a suit for possession u/s 5 of The Specific Relief Act based on title, so the plaintiffs were expected to pay court fee as per Sec.29 of KCF & SV Act. The defendant has taken defence to this effect in para-7 of her written statement on page no.9 disputing the valuation of the reliefs, therefore this additional issue was framed.

32. Regarding this issue referring to the order passed by our Hon'ble High Court in CRP No:1542/2004 the plaintiffs contended that as no evidence is adduced by the defendant treating that issue as a preliminary issue nor there is any cross-examination of PW1 on this aspect, court has to accept the valuation of the relief as made by the plaintiffs. I have gone through the decision relied by the learned advocate. According to me the facts and circumstances of that case and this case are distinctive. Here there is incorrect evaluation of the reliefs under wrong provision. The nature of the suit was not taken cognizance while computing the court fee.

Hence I hold that the decision cited by the VS advocate will not come to his help.

33. Nevertheless there is no cross-examination of PW1 to ascertain the market value of the schedule property as on the date of suit, much less the market value of the schedule A property, the possession of which is sought in this case, looking to the consideration involved in Ex.P1 i.e., Rs.10 lakhs in November 2006 and taking the judicial notice of sharp increase in the market value of the properties situating in Bangalore subsequent to the year 2005 with advent of software industry, in September 2010 as suit was filed in that month, I can safely take the market value of schedule property at Rs.15 lakhs. The schedule A property being first floor of the schedule property, its market value can be taken at Rs.7.5 lakhs. In that case as per Sec.29 of the KCF & SV Act, the plaintiffs have to pay court fee on the market value of the said first floor and it would be Rs.48,275/- as per Schedule-I of the Act, which provides of Ad valorem fee.

34. Then in respect of sum adjudicated as damages ie, for Rs.3,18,000/-(60,000/- + 2,58,000/-) plaintiffs have to pay court fee u/s 42(1) of the said Act. If court fee is again calculated as per Schedule -I, then plaintiffs have to pay court fee of Rs.21,545/- i.e., in all they to pay Rs. 69,820/- (Rs.48,275/= + Rs.21,545/-). In that total amount of court fee of Rs.69,820/- if the court fee paid already i.e., Rs.5,925/- is deducted, still the plaintiffs are liable to pay deficit court fee of Rs.63,895/- and that can be recovered by the office before it prepares the decree. During the arguments Sri.VS, advocate fairly conceded that even if court comes to the conclusion that court fee paid by the plaintiffs is insufficient, they are prepared to pay it. Hence I answer this additional issue no.1 in the affirmative.

Issue No.7:

35. In the light of the discussion and findings arrived on the above issues I proceed to make the following:

ORDER Suit is partly decreed. The counter claim filed by the defendant is dismissed.

The defendant is directed to quit, vacate and hand over the vacant possession of the schedule property within three months from the date of this judgement.

The defendant is directed to pay
damages of Rs.60,000/- accrued from

1.9.2008 to till the end of August 2010. She is further directed to pay damages of Rs.2,58,000/- for the period September 2010 to October 2017 (till previous month of this judgement), and from November 2017 onwards she shall continue to pay damages at the rate of Rs.4,000/- p.m. with escalation clause of 10% of the base rent at the end of every two years, till possession is restored.

Considering the peculiar facts of the case parties are directed to bear their own costs.

The plaintiffs are directed to pay deficit court fee of Rs.63,895/- and office to prepare the decree on furnishing the said deficit court fee.

(Dictated to the Judgement Writer, transcript computerized, then corrected and pronounced by me in open court this the 29th day of November 2017) (Ron Vasudev), III Addl. City Civil & Sessions Judge, Bengaluru.

List of witnesses examined for the plaintiffs side:

PW1 Rajendra Kumar Sharma List of documents exhibited for the plaintiffs side:

Ex.P1	Sale deed dt.8.11.06
Ex.P2	Khatha certificate
Ex.P3	Khatha extract
Ex.P4 to 8	Tax paid receipts
Ex.P9	Certified copy of the Crl.Mis.920/08
Ex.P10	Deposition in Crl.Mis.920/08
Ex.P11	C/copy of the order sheet in CC:3691/09
Ex.P12	Evidence in CC:3691/02
Ex.P13	Order in Crl.Mis.126/11
Ex.P14	Rental agreement dt.2.7.07
Ex.P15	Pass book
Ex.P16	Deposition in CC:3691/02
Ex.P17	FIR
Ex.P18	Notice
Ex.P19	Postal receipt

Ex.P20 Complaint
Ex.P21 Election (Electrol Roll)
Ex.P21(a) to P21(b) - Photographs

List of witness examined for the defendant side:

DW1 Smt.Manjula
DW2 Deepak Somaiah
DW3 Mayur Shah

List of documents exhibited for the defendant side:

Ex.D1 Certified copy of the police complaint Ex.D2 Copy of complaint Ex.D3 Information from RTI Ex.D4 FIR Ex.D5 Complaint Ex.D6 Charge sheet Ex.D7 Certified copy of the judgement in Crl.A. Ex.D8 Remandyadi Ex.D9 Certified copy of the order sheet Ex.D10 Domestic gas customer cover Ex.D11 Private complaint Ex.D12 Legal notice Ex.D13 Reply notice Ex.D14 Copy of complaint Ex.D15 Copy of private complaint No.8284/15 Ex.D16 Copy of IA filed in O.S.5119/93 Ex.D17 Statement recorded by IO (Ron Vasudev), III Addl. City Civil & Sessions Judge, Bengaluru.