

Smt. Saleemunissa vs Smt Thippu Bai on 6 January, 2021

Author: S R.Krishna Kumar

Bench: S.R.Krishna Kumar

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IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 6TH DAY OF JANUARY 2021

BEFORE

THE HON'BLE MR.JUSTICE S.R.KRISHNA KUMAR

HRRP No. 27 OF 2019(EVI)

BETWEEN:

SMT. SALEEMUNISSA
W/O MOHAMMED HABEEB SHARIF,
AGED ABOUT 55 YEARS,
RESIDING AT NO.36,
NEAR INTO HIGH SCHOOL
5TH CROSS, 3RD MAIN, 6TH BLOCK,
PADARAYANAPURA
BENGALURU - 560 026.

...PETITIONER

(BY SRI. SUNIL SESHAGIRI RAO, ADVOCATE)

AND:

SMT THIPPU BAI
W/O LATE NARASAPPA,
AGED ABOUT 76 YEARS,
RESIDING AT NO.53/3
RAJANNA COMPLEX,
5TH CROSS, NEAR ANJANEYA TEMPLE
MALLATHHALLI, JNANA BHARATHI POST
BENGALURU - 560 026.

...RESPONDENT

(BY SRI.K.S. RAMESH, ADVOCATE)

THIS HRRP IS FILED UNDER SECTION 46(1) OF THE
KARNATAKA RENT ACT, 1999 AGAINST THE ORDER DATED:
25.03.2019 PASSED IN HRC.NO. 38/2018 ON THE FILE OF THE
CHIEF JUDGE COURT OF SMALL CAUSES BENGALURU,

ALLOWING THE PETITION FILED UNDER SECTION 27(2) (q) AND (r) OF THE KARNATAKA RENT ACT, 1999 AND ETC.

THIS HRRP IS BEING HEARD AND RESERVED ON
22.12.2020, COMING ON FOR PRONOUNCEMENT OF ORDERS
THIS DAY, THE COURT MADE THE FOLLOWING:-

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ORDER

This revision petition by the tenant is filed under Section 46 (1) of the Karnataka Rent Act, 1999 (for short 'the Act') against the impugned order passed by the Chief Judge, Court of Small Causes, Bangalore (for short 'the trial court') in H.R.C.No.38/2018 whereby, the trial court allowed the eviction petition filed by the respondent - landlord under Section 27 (2) (q) & (r) of the Act, thereby directing the petitioner to vacate and hand over the vacant possession of the schedule residential premises to the respondent within a period of three months from the date of the order.

2. I have heard the learned counsel for petitioner and learned counsel for respondent and perused the material on record.

3. In addition to reiterating the various contentions urged in the petition and referring to the pleadings and evidence of the parties, learned counsel for the petitioner submits that on the respondent's own showing, petitioner was a tenant of the schedule premises on a monthly rent of Rs.6,500/- at the time of filing the eviction petition. In this context, it is pointed out that Section 2(3)(e) of the Act specifically provides that the Act shall not apply to premises to which the monthly rent exceeds Rs.3,500/- and consequently, the eviction petition filed by the respondent under Section 27(2)(q) & (r) of the Act was not maintainable and was liable to be dismissed on the ground of lack of jurisdiction on the part of the trial court to adjudicate upon the dispute between the parties. It is also submitted that there does not exist jural relationship of landlord and tenant between the petitioner and the respondent since the husband of the petitioner who was the original landlord had executed an Agreement to sell dated 10.02.2011 in favour of the petitioner agreeing to sell the schedule premises in her favour for a total sale consideration of Rs.20 lakhs and received an advance amount of Rs.13 lakhs from the petitioner. Under these circumstances, since the petitioner was an Agreement holder in possession in part performance of the contract under the aforesaid Agreement to sell dated 10.02.2011, pursuant to which, the petitioner was not a tenant, the eviction petition filed by the respondent was not maintainable. It is further contended that the trial court committed grave and serious error of law, fact and jurisdiction in coming to the wrong conclusion that the respondent had made out the grounds for eviction as required under Section 27(2)(q) & (r) of the Act by improper and erroneous appreciation of the material on record. It is therefore submitted that the impugned order passed by the trial court deserves to be set aside.

4. Per contra, learned counsel for the respondent- landlord submits that the trial court having correctly and properly considered and appreciated the entire material on record has arrived at the

just and proper conclusion that the petitioner was a tenant under the respondent in respect of the schedule premises and has passed the impugned order directing eviction of the petitioner from the schedule premises which does not warrant interference by this Court.

5. Upon re-appreciation and re-evaluation of the entire material on record, I am of the considered opinion that the trial court has considered and appreciated the pleadings and evidence of the parties and has recorded proper and correct findings of fact which do not warrant interference for the following reasons:-

(i) Though the respondent-landlord had contended that the petitioner was a tenant under her on a monthly rent of Rs.6,500/-, the respondent had not placed any material to establish the said rate of rent pleaded by her;

On the other hand, the petitioner (RW-1) had admitted in her cross-examination that she was inducted as a tenant under the respondent's husband vide Rental Agreement dated 07.02.2006 (Ex.P13) on a monthly rent of Rs.2,700/- which is well within the prescribed monthly rent of Rs.3,500/- under Section 2(3)(e) of the Act; Under these circumstances, in the absence of any material adduced by both sides with regard to the rate of rent coupled with the undisputed fact that the rate of rent was Rs.2,700/- as per the Rental Agreement admitted by the petitioner, the trial court has come to the correct conclusion that the rate of rent was Rs.2,700/- only which was lesser than the upper limit of Rs.3,500/- prescribed under the Act and consequently, Section 27(2)(q) & (r) of the Act was applicable to the schedule premises.

(ii) The trial court has also taken into account the specific contention put forth by the petitioner that she was not a tenant under the respondent in respect of the schedule premises; Having denied the jural relationship of the landlord and tenant between the petitioner and the respondent including the rate of rent of Rs.6,500/- pleaded by the respondent coupled with the admission by the petitioner that the rate of rent under the Rental Agreement at Ex.P13 was Rs.2,700/- per month, the trial court has come to the correct conclusion that the petitioner was not entitled to approbate and reprobate and is estopped from contending that the provisions of the Act were not applicable to the schedule premises and consequently, directing eviction of the petitioner.

(iii) The trial court has also taken note of the fact that except the self serving and interested testimony of the petitioner (RW-1), she had not adduced any independent or corroborative evidence to prove the execution, genuineness and validity of the alleged Agreement to sell at Ex.R3 dated 10.02.2011; The said finding of fact recorded by the trial court cannot be said to be illegal or perverse so as to warrant interference by this Court.

(iv) The trial court has also come to the correct conclusion that having regard to the provisions contained in Section 53-A of the Transfer of Property Act r/w Section 17 of the Registration Act, the alleged Agreement to sell at Ex.R3 dated 10.02.2011 was a compulsorily registrable document for the purpose of claiming possession of the schedule premises in part performance of the contract; In the instant case, it is not in dispute that Ex.R3 was an unregistered document and consequently, no reliance can be placed upon the said document to come to the conclusion that the petitioner was

only an Agreement to sell holder in possession in part performance of the contract and not a tenant under the respondent in respect of the schedule premises; even this finding recorded by the trial court does not warrant interference by this Court.

(v) The trial court has also correctly held that the recitals in the alleged Agreement at Ex.R3 indicate that the petitioner had not been put in possession in part performance of the contract so as to result in termination of her tenancy in respect of the schedule premises which was admittedly created vide Ex.P13 - Rental Agreement; In this context, the trial court has not only taken into account the recitals and contents of Ex.R3 but also the decision of the Apex Court in the case of H.K.Sharma vs. Ramlal - (2019) 4 SCC 153, wherein, it was held as under:-

"23. In other words, the question that arises for consideration is when the lessor enters into an agreement to sell the tenanted property to his lessee during the subsistence of the lease, whether execution of such agreement would ipso facto result in determination of the lease and sever the relationship of lessor and the lessee in relation to the leased property.

24. In our considered opinion, the aforementioned question has to be decided keeping in view the provisions of Section 111 of the TP Act and the intention of the parties to the lease -- whether the parties intended to surrender the lease on execution of such agreement in relation to the tenanted premises or they intended to keep the lease subsisting notwithstanding the execution of such agreement.

25. Chapter V of the TP Act deals with the leases of immovable property. This chapter consists of Section 105 to Section 117.

26. A lease of an immovable property is a contract between the lessor and the lessee. Their rights are governed by Sections 105 to 117 of the TP Act read with the respective State rent laws enacted by the State. Section 111 of the TP Act deals with the determination of lease. Clauses (a) to (h) set out the grounds on which a lease of an immovable property can be determined. Clauses (e) and (f) with which we are concerned here provide that a lease can be determined by an express surrender; in case, the lessee yields up his interest under the lease to the lessor by mutual agreement between them whereas clause (f) provides that the lease can be determined by implied surrender.

27. This Court in *Shah Mathuradas Maganlal & Co. v. Nagappa Shankarappa Malage* [*Shah Mathuradas Maganlal & Co. v. Nagappa Shankarappa Malage*, (1976) 3 SCC 660] considered the scope of clauses (e) and (f) of Section 111 of the TP Act and laid down the following principle in para 19 as under: (SCC p. 665) "19. A surrender under clauses (e) and (f) of Section 111 of the Transfer of Property Act, is an yielding up of the term of the lessee's interest to him who has the immediate reversion or the lessor's interest. It takes effect like a contract by mutual consent on the lessor's acceptance of the act of the lessee. The lessee cannot, therefore, surrender unless the

term is vested in him; and the surrender must be to a person in whom the immediate reversion expectant on the term is vested. Implied surrender by operation of law occurs by the creation of a new relationship, or by relinquishment of possession. If the lessee accepts a new lease that in itself is a surrender. Surrender can also be implied from the consent of the parties or from such facts as the relinquishment of possession by the lessee and taking over possession by the lessor. Relinquishment of possession operates as an implied surrender. There must be a taking of possession, not necessarily a physical taking, but something amounting to a virtual taking of possession. Whether this has occurred is a question of fact."

28. It is in the light of the aforementioned legal principle, the question involved in this case has to be examined.

29. Perusal of agreement to sell dated 13-5-1993 (Annexure P-1) shows that though the agreement contains 9 conditions but none of the conditions provides, much less in specific terms, as to what will be the fate of the tenancy. In other words, none of the conditions set out in the agreement dated 13-5-1993 can be construed for holding that the parties intended to surrender the tenancy rights.

30. A fortiori, the parties did not intend to surrender the tenancy rights despite entering into an agreement of sale of the tenanted property. In other words, if the parties really intended to surrender their tenancy rights as contemplated in clauses (e) or (f) of Section 111 of the TP Act while entering into an agreement to sell the suit house, it would have made necessary provision to that effect by providing a specific clause in the agreement. It was, however, not done. On the other hand, we find that the conditions set out in the agreement do not make out a case of express surrender under clause (e) or implied surrender under clause (f) of Section 111 of the TP Act.

31. It is for this reason, the law laid down by this Court in *R. Kanthimathi* [*R. Kanthimathi v. Beatrice Xavier*, (2000) 9 SCC 339] has no application to the facts of this case and is, therefore, distinguishable on facts. Indeed, it will be clear from mere perusal of para 4 of the said decision quoted hereinbelow:

(SCC p. 341) "4. As aforesaid, the question for consideration is, whether the status of tenant as such changes on the execution of an agreement of sale with the landlord.

It is relevant at this junction first to examine the terms of the agreement of sale. The relevant portions of the agreement of sale record the following:

'I the aforesaid Mrs Beatrice Xavier hereby agree out of my own free will, to sell, convey and transfer the property to you Mrs R. Kanthimathi wife of Mr S. Ramaswami, 435 Trichy Road, Coimbatore for a mutually agreed sale consideration of Rs 25,000. I shall be proceeding to Coimbatore and shall execute the sale deed and present the same for admission and registration before the Registering Authority, accepting and acknowledge payment of the balance of consideration of Rs 5000 (Rupees five thousand only) at the time of registration and shall complete the

transaction of sale and conveyance as the property demised has already been surrendered to your possession."

(emphasis in original) The words highlighted in italics of the agreement were construed by their Lordships for holding that these italicised words in the agreement clearly indicate that the parties had really intended to surrender their tenancy rights on execution of the agreement of sale and bring to an end their jural relationship of the landlord and tenant.

32. As observed supra, such is not the case here because we do not find any such clause or a clause akin thereto in the agreement dated 13-5-1993 and nor we find that the existing conditions in the agreement discern the intention of the parties to surrender the tenancy agreement either expressly or impliedly.

33. In the light of the foregoing discussion, we are of the considered opinion that the tenancy in question between the parties did not result in its determination as contemplated under Section 111 of the TP Act due to execution of the agreement dated 13-5-1993 between the parties for sale of the suit house and the same remained unaffected notwithstanding execution of the agreement dated 13-5-1993.

34. A fortiori, the respondent (lessor) was rightly held entitled to file an application against the appellant (lessee) under Section 21(1)(a) of the U.P. Act and seek the appellant's eviction from the suit house after determining the tenancy in question.

35. Before parting, we make it clear that we examined the terms of the agreement dated 13-5- 1993 only for deciding the question as to whether the execution of agreement, in any manner, resulted in determination of the existing tenancy rights between the parties in relation to the suit house in the context of the TP Act and the U.P. Act and not beyond it.

36. Coming to the next question as to whether the respondent has made out a case of his bona fide need for his residence and the members of his family as contemplated under the U.P. Act, suffice it to say, it being a question of fact, the finding recorded by the High Court on this question does not call for any interference in this appeal. It is binding on this Court. Even otherwise, we find no good ground to interfere in the finding for the reason that the respondent being a landlord and a retired man has every right to live in his house with his family. Therefore, there is no perversity in the finding of the High Court on this issue.

37. In the light of the foregoing discussion, we concur with the reasoning and the conclusion arrived at by the High Court in the impugned order [Ram Lal v. H.K. Sharma, 2017 SCC OnLine Utt 1928] . It does not call for any interference.

38. The appeals thus fail and are accordingly dismissed.

39. The appellant is, however, granted three months' time to vacate the suit house subject to the appellant furnishing usual undertaking in this Court within two weeks from the date of this order and paying entire arrears of rent up to date including three months' rent to be paid in advance to the respondent to enable him to remain in possession for a period of three months from the date of this order. The arrears of rent, as directed, be paid by the appellant to the respondent within one month from the date of this order".

(vi) While appreciating the contention of the respondent with regard to Section 27(2)(q) of the Act, the trial court has correctly placed reliance upon Ex.P11 - letter of undertaking given by the petitioner wherein she has categorically undertaken to vacate the schedule premises on or before 10.04.2018; In this context, the trial court has taken into account not only the admission of the petitioner (RW-1) in her cross-examination that she has signed Ex.P11 but also the lack of evidence adduced by her to substantiate her contention that her signature on Ex.P11 was taken by coercion and duress; Accordingly, the trial court has correctly placed reliance upon on Ex.P11 in order to come to the conclusion that the said document entails eviction of the petitioner under Section 27(2)(q) of the Act.

(vii) A perusal of the impugned order passed by the trial court as well as the material on record also indicates that the trial court has considered and appreciated the pleadings and evidence which establish that the respondent-landlord or her family members do not own or possess any other alternative accommodation for the purpose of their residence and the schedule premises was required by them for their own use and occupation; Even this finding recorded by the trial court does not warrant interference by this Court.

6. The aforesaid facts and circumstances clearly indicate that the trial court was fully justified in allowing the petition for eviction filed by the respondent thereby directing the petitioner to quit and deliver vacant possession of the schedule premises to the respondent. I do not find any illegality or infirmity in the impugned order warranting interference by this Court in the exercise of its revisional jurisdiction.

7. In the result, I pass the following:-

(i) Revision petition is hereby dismissed.

(ii) Petitioner - tenant is granted a period of six months from today to vacate and hand over the vacant possession of the petition schedule premises to the respondent - landlord.

(iii) Petitioner - tenant shall pay the monthly rents regularly to the respondent - landlord in respect of the petition schedule premises. They shall also pay the arrears of rent if any, due to the respondent - landlord.

(iv) Petitioner shall not sub-let or part with possession or induct any third party into the petition schedule premises till they vacate and hand over the vacant possession of

the same to the respondent-landlord.

(v) Petitioner shall voluntarily hand over the vacant possession of the petition schedule premises to the respondent-landlord without driving them to file Execution petition.

Sd/-

JUDGE Srl.