

Bangalore District Court

Sri. K.Shekarappa vs Smt. Begum on 16 July, 2015

IN THE COURT OF THE CHIEF JUDGE,  
COURT OF SMALL CAUSES AT BANGALORE  
(SCCH-1)

DATED THIS THE 16th DAY OF JULY 2015

PRESENT : SRI H.P.SANDESH, B.A.L, LL.B.,  
CHIEF JUDGE.

H.R.C.No.186/2014

PETITIONER            Sri. K.Shekarappa,  
                             S/o. late V.Kariyappa,  
                             Aged 64 years,  
                             R/at No.416,  
                             1st Cross, ISEC Main Road,  
                             Nagarabhavi, Bangalore - 560 072

(By Sri.M.Ganesh, Advocate)

-Vs-

RESPONDENT           Smt. Begum,  
                             W/o. late Munna Sab,  
                             Aged 62 years, R/at No.14, 68, 69  
                             formed in Sy. No.55, Gottigere village,  
                             Hanumanthanagar,  
                             Kammanahalli Main Road,  
                             Bangalore - 560 076

2nd Address:

Smt. Begum,  
W/o. late Munna Sab,  
Aged 62 years, Fish Vendor,  
Opp. Nobanagar Bus stop,  
Kammanahalli Main Road,  
Bangalore - 560 076

(By Sri. H.V.Mahadevappa, Advocate)

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ORDERS

The petitioner has filed this petition U/s. 27 of the Karnataka Rent Act, 1999 seeking an order of eviction against the respondent and to direct the respondent to quit, vacate and deliver the vacant possession of the schedule premises and to grant such other reliefs.

2. The brief facts of the case are:

It is the case of the petitioner that, he is the absolute owner of premises bearing No.14,68,69 constructed on site formed in Sy.No.55 of Gottigere village, Hanumanthanagar, Kammanahalli Main Road, Bangalore- 560 076 each house measuring 1 square which is morefully described in the petition schedule.

3. It is further contended that, on 25.12.2012 the Respondent approached the Petitioner to let the petition schedule premises on a monthly rent of Rs.500/- without any security deposit.

4. It is contended that, the Respondent after taking the premises on rent became a defaulter in payment of periodical rent and as on 03.11.2014 she is in arrears of rent 3 SCCH-1 HRC: 186/2014 of Rs.10,500/-. Further contended that, the premises is in a highly dilapidated condition and it requires urgent repair. There is also a complaint by neighbours about the cleanliness of the premises and surrounding area. The Petitioner is willing to demolish the same and construct a residential premise for himself and for his family.

5. Further contended that, the petitioner has issued quit notice dated 03.11.2014 to the respondent to vacate the premises and to deliver the same. Though the Respondent received legal notice and gave evasive reply dated 14.11.2014 declining to comply the terms of legal notice. Hence, respondent is liable to be evicted from the schedule property and prayed this Court to pass an order of eviction.

6. In response to the notice, the respondent appeared through his counsel and filed objection statement denying the averments of the petition. It is contended that, the Petition itself is not maintainable and denied the jural relationship of landlord and the tenant and the Petitioner has filed this Petition with a malafide intention. Hence prayed this court to dismiss the Petition.

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7. The petitioner in order to prove his case has examined himself as PW.1 and he got marked the documents Ex.P.1 to 11(b). On the other hand, the respondent has examined himself as RW.1 and he got marked the documents at Ex.R.1 to Ex.R.6.

8. After the closure of the evidence, I heard the arguments of both the counsels.

9. After having heard the arguments, the following points arise for my consideration:-

- 1) Whether the petitioner proves that, there is a jural relationship of landlord and tenant between the petitioner and the respondent ?

2) Whether the petitioner has made out grounds to invoke Sec.27of Karnataka Rent Act 1999?

3) What order?

10. My answer to the above points are as under:-

- |               |   |   |
|---------------|---|---|
| 1) Point No.1 | : | In the Negative                           |
| 2) Point No.2 | : | In the Negative                           |
| 3) Point No.3 | : | As per final order<br>for the following:- |

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#### REASONS

11. Issue No.1 & 2:- These two issues are

interconnected to each other hence taken up together for discussion in order to avoid repetitions.

12. It is the case of the petitioner that, the respondent is a tenant under the Petitioner on a monthly rent of Rs.500/- without any security deposit and the Respondent after taking the premises on rent became a defaulter in payment of rent. As on the 03.11.2014 she is in arrears of rent of Rs.10,500/-. The Petitioner also got issued a legal notice to the Respondent on 03.11.2014 and the Respondent gave evasive reply on 14.11.2014.

13. On the other hand it is the contention of the Respondent that, there is no jural relationship between the Petitioner and the Respondent and the Petitioner is not the landlord and the Respondent is not a tenant. She claims that, her husband was a watchman and he was taking care of the property. Her husband passed away 5 years ago and some other people are in occupation of the petition schedule premises.

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14. The petitioner in order to prove the fact that the respondent is a tenant under him and there is a jural relationship between the Petitioner and the Respondent, he has examined himself as PW.1 and got marked the documents Sale deed, Encumbrance certificate, Legal notice and reply as Ex.P1 to Ex.P8.

15. The PW.1 was subjected to cross examination and in the cross examination it is elicited that, the Respondent has approached him in the year 2012 to provide the petition schedule premises for rent. It is suggested that, the husband of the respondent also accompanied him and the same was denied. It is suggested that, in the year 2003 he told respondent and her husband to take care of the said

property and the same was denied. He claims that, after he purchased the property he built the petition schedule premises. It is suggested that, at the time of purchase itself there was a shed and the same was denied. It is suggested that, the petition schedule premises was earlier Government land and the same was denied. He says that, he has built 2 sheds and also taken electric connection and put up compound wall and still the very same sheds are in existence. It is suggested that, 7 SCCH-1 HRC: 186/2014 now there are 10 to 15 houses and the same was denied. It is suggested that, Afsath Khan, Aslam Khan, Dasthu, Bakash, Thyagaraju, Gangamma, Muniraju, Suresh and others have put up the houses in his property and they are residing there and the said suggestion was denied. It is suggested that, he has given instructions to the husband of the respondent in 2002 to take care of the said property and he passed away and thereafter the respondent is staying elsewhere and not residing in my property and the same was denied. He admits that, he has not obtained any plan to put up the sheds. Also admits that, now the property comes within the BBMP. It is suggested that, the respondent is not a tenant under him and the Petitioner is also not the owner and the same was denied. He says he has not produced the documents to show that the respondent is his tenant. It is suggested that, respondent is not his tenant and only with an intention to evict the persons who are in occupation of the said premises he has filed this petition against this respondent and the same was denied.

16. The Petitioner has also produced the rental agreement which is marked as Ex.P11 and photos which are affixed on the document also marked as Ex.P11(a) and (b).

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The PW.1 was again subjected to cross examination and in the cross examination it is suggested that, the stamp paper which has been purchased has to be used within 6 months period and he says he did not know about the same. He admits that, the stamp paper may be purchased on 06/06/2012 and the same was utilized on 25/12/2012. He admits that, he knows the difference between the affidavit and the agreement. Also admits that, the stamp paper is purchased for affidavit purpose. It is suggested that, Ex.P.11 is created and the same was denied. It is suggested that, the Respondent is staying along with her daughter in the mortgaged house bearing no. 404, II cross, Kammanahalli and the same was denied. It is suggested that, the respondent is not in occupation of the petition schedule premises and in ordered to vacate the persons who are in occupation in the said site a false case has been filed against the respondent and the same was denied.

17. On the other hand the Respondent has been examined as RW.1. In her evidence she has reiterated that, she is not a tenant under the Petitioner and also the 9 SCCH-1 HRC: 186/2014 Petitioner is not a landlord. She claims that, her husband was working as a watchman 15 years ago and he passed away 5 years ago and some other persons are in occupation of the petition schedule premises. To prove her contention she has got marked the documents Ex.R.1 to Ex.R6. She was subjected to cross examination. In the cross examination she says that, the persons appear in photo Ex.R.2 are somebody else and she is not knowing them. It is suggested that, on 25/12/2012 she entered into an agreement of rent with the Petitioner and the same was denied. It is suggested that, she agreed to pay an amount of Rs.500/- per month in respect of all the 3 houses and the same was

denied. It is suggested that, she has sub-letted all the 3 houses and the same was denied. It is suggested that, by sub-letting the said premises she is collecting the rent of Rs.10,000/- per month from the three houses and the same was denied. She admits that, her husband Munna was working as Watchman since the owner has promised that when he constructs the apartment, he will give a portion to him but he did not construct any apartment and not provided any such accommodation. Her husband worked as watchman for about 8 or 12 years without any 10 SCCH-1 HRC: 186/2014 remuneration. The owner has agreed to pay Rs.3,000/- per month as remuneration. She admits that, in her affidavit I have not stated all these things. It is suggested that, the owner was paying an amount of Rs.500/- per month as remuneration regularly without any default and the same was denied. It is suggested that, after the death of her husband she has requested to continue in the same shed since they were not having any house and the same was denied. It is suggested that, after the death of her husband she entered an agreement by taking all the 3 houses for rent and the same was denied. It is suggested that, she did not pay the rent as agreed in terms of the Rental agreement and the same was denied.

18. Now let me appreciate both oral and documentary evidence available before the court. The Petitioner counsel also relied upon the judgment reported in AIR 1955 Rajasthan 167. In this judgment the Hon'ble Rajasthan High Court held that, "An unregistered rent-note executed by the tenant for a period of one year only is not compulsorily registrable under S.17(1)(d), 11 SCCH-1 HRC: 186/2014 Registration Act. It does not create a lease under S.107 of the Transfer of Property Act and, therefore, it would not be admissible as a lease deed, but if there is an oral agreement accompanied by delivery of possession, then there is no reason why such a document should not be admitted in evidence to corroborate the fact of such agreement and the terms thereof." The counsel while considering the admissibility of the document of Ex.P11 has relied upon the judgment reported in AIR 1988 SC 1470 (Burmah Shell Oil Distributing now known as Bharat Petroleum Corporation Ltd. Vs. Khaja Midhat Noor and others). In this judgment the Apex Court held that :

"In the absence of registered instrument, the lessee shall be deemed to be "lease from month to month"

The Petitioner counsel also relied on the Delhi High Court judgment reported in CDJ 2003 DHC 292 (Rani Pushpa Kumari Devi Vs. The embassy of Syrian Arab Republic) has held that, "The tenancy exceeding a period of one year was sought to be created in favour of the defendant by way of lease agreements by virtue of section 107 of the Transfer of Property Act, 1882 and 12 SCCH-1 HRC: 186/2014 section 17 read with section 49 of the Registration Act, 1908, the lease agreements were compulsorily to be got registered. However, as the said lease agreements were not got registered, the tenancy could not be taken to have been created for a period of five years and rather it would be a tenancy from month to month."

The counsel also relied upon another judgment reported in CDJ 2004 PHC 106 (Vijay Kumar Vs. Mahesh Kumar). In this judgment Delhi High Court held that:

"The document may or may not be considered as a proof of lease between a landlord and a tenant on account of its non-registration. But at this stage the document has to be admitted because it is an

early stage to throw away a document which may rather prove a collateral purpose.

Further held that a document would be admissible in evidence under section 49 of the Registration Act for a collateral purpose."

19. For having taken note of the arguments of the Petitioner counsel and the Respondent counsel in his written argument he vehemently contended that, the Petitioner has not proved that the Respondent is a tenant under the Petitioner. When there is no jural relationship between the 13 SCCH-1 HRC: 186/2014 Petitioner and the Respondent, the question of entertaining the Petition does not arise at all.

20. In keeping the contentions urged by both the Petitioner counsel and the Respondent counsel it has to be noted that, the Petitioner has claimed that the Respondent is a tenant under him. The Rental agreement is also marked as Ex.P.11. No doubt this agreement is created for the period of 3 years and the document is not admissible as the same was not registered. Further, in view of the principles laid down in the judgment referred supra by the Delhi High Court it is clear that, document can be considered for collateral purpose. It is important to note that, the Respondent has signed this document and photos of the Respondent are also affixed on the agreement. It is further important to note that, on perusal of the document rental agreement, the stamp paper is purchased for the purpose of affidavit and the same is elicited from the mouth of PW.1 in the cross examination. It has to be noted that, the stamp paper was purchased on 06.06.2012 and document came into existence on 25.12.2012. The rental agreement is also not in the form of a rent agreement and it appears that, this document came into 14 SCCH-1 HRC: 186/2014 existence under the suspicious circumstances. Further it is important to note that, it is not a case of the Petitioner that, the Respondent was paying the rent and it is her case that, the husband of the Respondent was a watchman and he was not a tenant and the salary was also not paid. In the cross examination of PW.1 it is suggested that, her husband was working as a watchman in respect of the petition schedule premises and the PW.1 denied the said suggestion. It is further important to note that a suggestion was made that, the Respondent is not in possession of the petition schedule premises and some other persons are in possession of the petition schedule premises and the same was denied. It is also suggested that, the PW.1 has given the instruction to her husband in 2002 to take care of the said property and he passed away and thereafter the Respondent is staying elsewhere and not residing in the petition schedule premises and the said suggestion was denied. It is important to note the very fact that, the Respondent's husband was a watchman is denied in the evidence of PW.1. It is also important to note that, in the cross examination of RW.1 it is suggested that, her husband was working as a watchman and 15 SCCH-1 HRC: 186/2014 he was working as Watchman since the owner has promised that, when he constructs the apartment he will give portion to him, but he did not construct any apartment and not provided any such accommodation. Hence it is clear that, a promise was made to the husband of the RW.1 that, the Petitioner will make an accommodation to him if he constructs the apartment. It is also important to note that, in the cross examination it is suggested that the owner was paying an amount of Rs.500/- per month remuneration regularly without any default and the said suggestion was denied. Hence it is clear that, the husband of the Respondent was working as Watchman and also there was a promise by the owner to accommodate him in a portion of apartment he intend to put up. Also there is no any

documentary proof for having Respondent has paid the rent and also it is important to note that, it is the contention of the Petitioner that, after the Respondent had entered into an agreement in terms of Ex.P11 she has not paid the rent. I have already pointed out that, the very document Ex.P11 it appears that, it came into existence in a suspicious circumstances.

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21. Regarding point No.2 is concerned, it is the contention of the Petitioner that, the premises is in a dilapidated condition which requires urgent repair. There is a complaint by neighbours about the cleanliness of the premises and surrounding area. The Petitioner is willing to demolish the same and construct residential premises for himself and for his family. Notice has been issued to the Respondent. The Petitioner also produced the legal notice as per Ex.P7 and the Respondent has given evasive reply in terms of Ex.P8. On perusal of Ex.P7 it discloses that, the Petitioner has sought the premises and also sought for arrears of rent and the Respondent has given reply in terms of Ex.P8. In the reply itself the Respondent has contended that, there was oral understanding and in terms of the said oral understanding the Petitioner had not acted upon and her husband was working as Watchman and the Petitioner has agreed to pay Rs.3,000/- as salary to him. There was a civil dispute between the Petitioner and the owner. It is contended that, her husband was working as Watchman from 2004 and the remuneration has not been paid and some of them also 17 SCCH-1 HRC: 186/2014 are ready to give evidence in this regard. Hence she demanded an amount of Rs.25 lakhs.

22. Also the Respondent has produced Ex.R1 to R6 photos and CD which discloses that, some other persons are in the occupation of petition schedule premises. Further it is important to note that, in the cross examination of RW.1 the Petitioner counsel himself has suggested that, the Respondent has sub-letted all the 3 houses and by sub-letting the said premises she is collecting Rs.10,000/- p.m. from the 3 houses. Also there is no such pleading in the Petition regarding sub-letting of the premises by the Respondent. Hence it is clear that, the Respondent is not residing in the petition schedule premises as contended in the Petition and the very suggestion discloses that, some other persons are in possession in 3 houses. The Petitioner has not even made the parties to the proceedings who are in possession of the premises as suggested in the cross examination, if really they are the sub-tenants ought to have been made as Respondents. Hence I do not find any merit in the Petition to pass an order of eviction against the Respondent when there is a clear admission and suggestion 18 SCCH-1 HRC: 186/2014 that some other persons are in possession. Hence I answer point No.1 and 2 in the Negative.

23. Issue No.3: In view of the discussions made above, I proceed to pass the following:-

ORDER The petition filed by the petitioner under Section 27 of Karnataka Rent Act, 1999 is hereby dismissed. (Dictated to the Stenographer, transcribed by her, corrected & then pronounced by me in Open Court on this the 16th day of July 2015) (H.P.SANDESH) Chief Judge, Bangalore SCHEDULE - "A"

House premises bearing No.14, constructed on Site bearing No.14, formed in Sy.No.55, of Gottigere village, Utharahalli Hobli, Bangalore North Taluk measuring 1 Square, bounded on:

East by : site bearing No.13,  
West by : site bearing No.15,  
North by : site bearing No.35,  
South by : Road

In between East to West 30 feet, North to South 40 feet. In total 19 SCCH-1 HRC: 186/2014 SCHEDULE - "B"

House premises bearing No.68, constructed on Site bearing No.68, formed in Sy.No.55, of Gottigere village, Utharahalli Hobli, Bangalore North Taluk measuring 1 Square, bounded on:

East by : site bearing No.67,  
West by : site bearing No.36,  
North by : Road  
South by : site bearing No.69,

In between East to West 30 feet, North to South 40 feet, In total SCHEDULE - "C"

House premises bearing No.69, constructed on Site bearing No.69, formed in Sy.No.55, of Gottigere village, Utharahalli Hobli, Bangalore North Taluk measuring 1 Square, bounded on:

East by : site bearing No.70,  
West by : site bearing No.13,  
North by : site bearing No.68,  
South by : Road

In between East to West 30 feet, North to South 40 feet, In total (H.P.SANDESH) Chief Judge, Bangalore 20 SCCH-1 HRC: 186/2014 ANNEXURES LIST OF WITNESSES EXAMINED FOR THE PETITIONER: PW-1 : Shekarappa K.

LIST OF WITNESSES EXAMINED FOR THE RESPONDENT : RW-1 : Smt. Begum LIST OF DOCUMENTS EXHIBITED FOR THE PETITIONER:

Ex.P-1 : Certified copy of sale deed  
Ex.P-2 to 6 : Encumbrance Certificates  
Ex.P-7 : Legal notice  
Ex.P-8 : Reply  
Ex.P-9 : 5 photos  
Ex.P-10 : Bill  
Ex.P-11 : Rental Agreement



Ex.P-11(a) & (b) : The photos which are affixed on the document are belongs to the respondent and respondent daughter LIST OF DOCUMENTS EXHIBITED FOR THE RESPONDENT:

Ex.R-1 to 5 :           5 photographs  
Ex.R-6 :                CD

(H.P.SANDESH)  
Chief Judge, Bangalore