CASE NO.:
Appeal (civil) 3321 of 2003

PETITIONER:
H. SESHADRI

RESPONDENT:
K.R. NATARAJAN AND ANR.

DATE OF JUDGMENT: 10/04/2003

BENCH:
R.C. LAHOTI & S. B. SINHA

JUDGMENT:
JUDGMENT

2003 (3) SCR 505

The following Order of the Court was delivered: Leave granted.

This appeal is directed against a judgment and order dated 28.9.2001 of the High Court of Karnataka in HRRP No. 783/99 whereby and whereunder a revision petition filed by the respondent no.l herein purported to be under Section 50(1) of the Karnataka Rent Control Act read with Section 18 of the Kamataka Small Causes Court Act questioning an order dated 10.6.1999 passed in miscellaneous petition No. 257/96 by the Small Causes Judge, Bangalore allowing the petition filed by the appellant herein under Order XXI Rules 99 and 100 of the Code of Civil Procedure was set aside.

The fact of the matter is as under:

The appellant is said to have entered into a lease agreement with the father of the first respondent in respect of the premises described in the Schedule of the original application which comprises of one shop in a portion of the residential building bearing No. 297, 11th Cross, Wilson Garden, Bangalore. The appellant is said to have been running a tailoring shop in the said premises under the name and style 'Rajalakshmi Tailoring Hall'. According to the appellant, the residential portion of the said building was in occupation of the second respondent. An eviction petition marked as HRC No. 2463/90 was filed by the first respondent against the second respondent in respect of the residential, portion of the premises pursuant whereto and in furtherance whereof a decree for eviction was passed on the consent of the respondent No. 2.

While purporting to evict the respondent No.2 in execution of the said decree; allegedly the appellant was also evicted.

The appellant thereafter filed an application purported to be under Order XXI Rule 99 of the Code of Civil Procedure inter alia claiming independent right to the said tailoring shop wherein he not only alleged execution of a lease agreement in his favour by the father of the first respondent but also alleged that he had all along been paying rent to the landlord.

In the proceedings arising out of the miscellaneous petition filed by the appellant marked as 257/96, both parties adduced oral as also documentary evidence. According to the appellant, he had been running a tailoring shop under the name and style of 'Rajalakshmi Tailoring Hall' for more than 25 years. With a view to substantiate his claim of tenancy he proved 16 documents which were marked as Exhibits P1 to P16 being the deed of lease, a diary showing payment of rent agreement, telephone bills, notice from Labour Department, Income Tax letters etc.

The learned Small Causes Judge, Bangalore, by his judgment dated 10.6.1999, inter alia, noticed an admission made by the first respondent in his cross-

examination to the effect that there existed a rolling shutter in the disputed premises which he had removed, closed by a wall and converted the shop into a bed room. The learned Small Causes Judge further took into consideration the fact that the first respondent after closure of the evidence adduced by the appellant consented to accommodate him in the ground floor, provided he constructs a shop at his own cost with asbestos sheet to which he agreed. The first respondent, however, later on resiled from his said stand. The Trial Judge held:

"The contention of respondent 1, that the petitioner was not a tenant in that shop is not at all believable. The present petitioner has produced the various documents and also telephone bills to show that he was running a Tailoring shop in building No. 297. The petitioner has clearly shown that he was illegally dispossessed by the respondent 1. The son of petitioner has also stated in his evidence as PW.2 that in his presence, the articles in the shop were thrown out. He has also stated that himself and his father have now become unemployed. Looking to the entire evidence of petitioner and that of respondent 1 and also looking to the various documents produced by the petitioner tenant, it is clear that the petitioner was a tenant in the shop premises. It is also clear that the petitioner was illegally dispossessed by the respondent 1 while executing the eviction order in HRC. 2463/90. The notices issued by the labour department and the copy of lease agreement and also telephone bills are the documents which clearly show that the petitioner was running a tailoring shop and he had got the business in the said shop in building No. 297, which is converted by the respondent 1 into his bed room. The said shop is clearly shown in the schedule of the petition. The petitioner has proved that he was illegally dispossessed by the respondent 1 and, therefore, I answer point 1 in the affirmative."

The application filed by the appellant was, therefore, allowed and the first respondent was directed to restore possession in favour of the appellant with costs.

Aggrieved the first respondent filed a revision petition before the High Court. The learned Judge noticed that the delivery proceedings in the execution case indisputably establishes that at the time of delivery, the appellant was in occupation of the premises in question and there were tailoring machines belonging to him. The learned Judge, however, doubted the correctness or otherwise of the lease agreement marked as Exhibit P.3 dated 5.7.1977. It was although noticed that the premises in occupation of the second respondent was admeasuring 25 x 36 feet and thus the entire area of the premises was not the subject matter in HRC case, but the plea of the appellant was negatived by the learned Judge stating that on close perusal of the boundaries and the dimensions it is evident that the disputed premises situated in the south eastern portion of the same building.

The High Court opined:

"After going through the documentary and oral evidence, it becomes highly doubtful to believe the version of the first respondent that he is occupying the premises as a tenant. May be the material suggests that he has been in occupation of the premises and carrying on a tailoring shop. But by the said material, it cannot be inferred or concluded that his occupation is by virtue of a tenancy. The plea of tenancy is based upon the documentary evidence reflected in Exs. P.3. P.4 and P.15 and the oral evidence. As discussed above, the said documentary material is discrepant and does not inspire the confidence of the Court to believe that they are the genuine documents to support the theory of tenancy. Mere unexplained occupation of the premises does not give any right to the first respondent to resist the proceedings or to seek redelivery. Even though the factum of actual possession is established in the absence of any legal basis, it would only mean an occupation as a trespasser or as a sub lessee. In other words, only on the basis of actual possession, the first respondent is not entitled to redelivery."

Having heard the learned counsel for the parties and having perused the materials on record we are of the opinion that the impugned judgment cannot be sustained.

The judgment under appeal demonstrates that the High Court did not come to a definite finding to the effect that the appellant was a rank trespasser or claimed his title in or over the disputed premises under the respondent No.2. Although the High Court did not disbelieve the actual possession of the appellant in respect of the suit premises but without any basis whatsoever and without setting aside the findings of the Trial Judge it came to the conclusion that such possession was unlawful.

For the purpose of considering an application under Order XXI Rules 99 and 100 of the Code of Civil Procedure what was required to be considered was as to whether the applicant herein claimed a right independent of the judgment-debtor or not. A person claiming through or under the judgment-debtor may be dispossessed in execution of a decree passed against the judgment-debtor but not when he is in possession of the premises in question in his own independent right or otherwise.

It does not appear from the records that any plan was produced or there existed any other material to show that the tailoring shop was a part of the premises tenanted in favour of the second respondent. It also does not appear that there existed any material to show that the appellant was inducted by the second respondent as a sub-tenant or was put in possession by him.

The first respondent, from the judgment of the Trial Judge as also the High Court, does not appear to have raised a specific plea as to how the appellant came in possession of the tenanted premises. The High Court further failed and/or neglected to consider the other materials on record and in particular the admission of the first respondent in the proceedings before the Trial Judge as also the effect of his offer to the appellant to be accommodated in a part of the said building.

Furthermore, a question arose for consideration as to whether the disputed premises was within the tenanted premises of the respondent No.2 or not. A clear finding on the said question was imperative. In any event, the High Court should have taken note of its limited jurisdiction in terms of Section 50(1) of the Karnataka Rent Central Act and Section 18 of the Karnataka Small Causes Court Act. We may observe that a finding of fact based on oral evidence is not ordinarily set aside even by an appellate court save and except on strong and cognet reasons.

Mr. Sampath Anand Shetty, the learned counsel appearing on behalf of the first respondent, however, would submit that in terms of Section 30 of the Kamataka Rent Control Act, 1961 as an independent title was not proved by the appellant in respect of the premises in question, he was bound to be evicted in terms thereof. Such a plea does not appear to have been taken either before the Trial Judge or before the High Court. It is not for this Court to examine the said question for the first time. In view of our findings aforementioned, we are of the opinion that the impugned judgment is wholly unsatisfactory and deserves to be set aside.

This appeal is, therefore, allowed. The impugned judgment and order is set aside and the matter is remitted to the High Court for consideration of the matter afresh.

We, however, hasten to add that the learned Judge hearing the revision petition may consider the matter on its own merits without in any way being influenced by the discussions made herein. However, keeping in view of the fact that the appellant herein was dispossessed on or about 20th April, 1996, we would request the High Court to consider the desirability of disposing of the revision petition as expeditiously as possible. In the

facts and circumstances of the case, however, there shall be no order as to costs.