

CASE NO.:
Appeal (civil) 3502 of 2004

PETITIONER:
E. Parashuraman (D) by LRs.

RESPONDENT:
V. Doraiswamy (D) by LR.

DATE OF JUDGMENT: 18/11/2005

BENCH:
B.P. SINGH & ARUN KUMAR

JUDGMENT:
J U D G M E N T
WITH

CIVIL APPEAL NO. 3503 OF 2004

G. Ramachandran

\005 Appellant

Versus

V. Doraiswamy (D) by LR.

\005 Respondent

B.P. SINGH, J.

These two appeals by special leave are directed against the common judgment and order of the High Court of Karnataka at Bangalore dated July 15, 2003 in H.R.R.P. Nos. 209 and 210 of 2000. By its aforesaid judgment and order, the High Court dismissed the revision petitions preferred by the appellants/tenants and upheld the order of the 15th Addl. Small Causes Judge, Bangalore dated January 27, 2000 in H.R.C. Nos.10700-10701 of 1991 thereby affirming the order of eviction on the ground of bona fide need of the respondent/landlord.

It is necessary to recapitulate the facts of the case. According to the appellants, the property in question, of which the rented premises form part, was owned by the Bangalore Mahanagar Palike, (hereinafter referred to as the 'Corporation') which had leased out the building to one Mr. Dhanpal for a period of ten years. In O.S. No. 436 of 1964 on the file of the Munsif's Court, Civil Station, Bangalore, a decree had been passed in favour of Shri Dhanpal directing the vendors to execute the re-conveyance deed in favour of Shri Dhanpal and to deliver all the documents in their possession. It also appears from the deed of sale executed on 9th June, 1967 by the Munsif, Civil Station Bangalore, on behalf of the aforesaid vendors Smt. Lakshamma and others, that Shri Dhanpal had assigned the decree in favour of Shri Doraiswamy. The sale deed which was executed by the Court on behalf of the judgment debtor and in favour of Doraiswamy narrates the following :-

"Now this indenture of sale witnesseth that in pursuance of the Decree in OS No. 436 of 1965 and Ex. No. 425 of 1966 on the file of the Munsif, Civil Station, Bangalore, the Vendors 1 and 2 by the Munsiff, Civil Station,

Bangalore, doth hereby grant and sell and transfer, convey and assign unto the use of the said purchaser, free from encumbrance of the schedule property to have and to hold the same with absolute liberty to own, occupy, use, transfer, deal with and to dispose of the said schedule property in any manner whatsoever the said purchaser desires."

On a reading of the sale deed executed by the Court, it appears that the vendors therein claimed absolute ownership of the land and structures and building thereon, and the same was conveyed to the assignee, namely \026 Doraiswamy, the predecessor-in-interest of the respondent.

The said Mr. V. Doraiswamy filed a suit for the eviction of the appellant in Civil Appeal No.3503 of 2004 under Section 21(1) (a) and (h) of the Karnataka Rent Control Act which was allowed only under Section 21 (1) (a) and the tenant was given one month time to pay the arrears of rent. The order was made on February 22, 1983.

Pursuant to Doraiswamy purchasing the property in question in execution proceeding, the Corporation initially entered the name of Mr. V. Doraiswamy along with Mr. Dhanapal in its record, but later realizing its mistake deleted his name by order dated June 16, 1986. This was challenged by Doraiswamy who filed a suit being O.S. No.10815 of 1986 for a declaration and for cancellation of the order deleting his name. The suit filed on October 10, 1986 was ultimately dismissed on January 31, 1989 holding that the Civil Court had no jurisdiction in view of the fact that the plaintiff was not the owner of the property which was really a public premises. Against the dismissal of his suit Doraiswamy preferred Regular First Appeal No.305 of 1989 before the High Court of Karnataka at Bangalore. The said Regular First Appeal was dismissed for non-prosecution on February 27, 2001 and, thereafter, a petition for restoration was also dismissed for non-prosecution on January 10, 2002.

While the aforesaid Regular First Appeal was pending in the High Court, Doraiswamy claiming to be the landlord, filed applications for eviction of the appellants herein under various provisions of the Karnataka Rent Control Act including Section 21 (1) (h) thereof. The said applications were numbered as H.R.C. Nos.10700-100701 of 1991. During the pendency of the said suit Doraiswamy died. In terms of the Will executed by him, his daughter, the respondent herein, was brought on record as his legal representative.

It is important at this stage to refer to the proceedings initiated by the appellants during the pendency of the eviction proceeding. It appears that the tenants preferred H.R.R.P Nos.1295-1296 of 1995 before the High Court contending that the eviction petitions were not maintainable as there was no jural relationship of landlord and tenant between the parties. The said revision petition was disposed of by the High Court directing the trial court to consider the question as a preliminary issue. The trial court, thereafter, considered the question as a preliminary issue and held that jural relationship of landlord and tenant was established between the parties.

Aggrieved by the said order H.R.R.P. Nos.390-391 of 1998 were filed before the High Court and the High Court by its order dated September 8, 1998 affirmed the finding of the trial court with regard to the existence of jural relationship between the parties. In those revision petitions the High Court also noticed that once the relationship of landlord and tenant was admitted, it continued to exist until it was put to an end in a manner known to law. The mere claim of the Corporation claiming to be the owner, could not affect the

rights and obligations of the parties as landlord and tenants. Thus, the High Court affirmed in revision that landlord-tenant relationship existed and, therefore, the application for eviction was maintainable under the Karnataka Rent Control Act.

It appears that during the pendency of the proceeding before the trial court an application under Section 29(4) of the Act was filed by the landlord stating that he was willing to personally receive the rent from the tenant. The trial court directed that the rent be given to the landlord directly. This order of November 30, 1998 was challenged by the tenants in H.R.R.P. Nos.14-15 of 1999 which were also dismissed by order dated March 3, 1999.

The trial court ultimately allowed the applications for eviction on the ground enumerated in Section 21 (1) (h) of the Karnataka Rent Control Act, 1961, by its order dated January 27, 2000. The appellants herein preferred H.R.R.P. Nos.209-210 of 2000 impugning the eviction order passed by the trial court.

Even at the stage of admission the appellants sought to urge before the High Court that the eviction petition was not maintainable in view of absence of landlord-tenant relationship. The High Court noticing the earlier orders passed by the High Court in H.R.R.P.Nos.390-391 of 1998 dated September 8, 1998 and the order dated March 3, 1999 in H.R.R.P. Nos.14-15 of 1999 held that these orders conclusively decided that jural relationship of landlord and tenant existed between the parties with respect to the petition premises, and it stood conclusively established that the tenants are the tenants under the respondent/landlord and consequently a petition for eviction under the Act was maintainable. It was not open to the appellants to challenge the decisions of the trial court aforesaid which were affirmed by the High Court in revision, and which operated as res-judicata against the tenants. They could not be permitted in law to re-agitate the same issue on one or the other pretext. Having so recorded its finding, the High Court directed the matter to be placed for admission on the other questions involved in the two revision petitions. Ultimately, the matter came to be heard by the High Court, and by its impugned common judgment and order the revision petitions were dismissed.

One another aspect of the matter may be noticed at this stage. The Bangalore Mahanagara Palike claiming to be the owner of the premises in question had filed a suit being O.S. No. 15139 of 2000 against the respondent (defendant No.1 in the suit) and the appellants herein, who were defendants 2 and 3 in the suit. In the said suit the Corporation prayed for a declaration to the effect that the sale deed executed on 9th June, 1967 on behalf of Smt. Lakshamma and others in favour of predecessor-in-interest of defendant No.1 was null and void and unenforceable and that the same may be cancelled with direction to the defendants to handover the vacant possession of the suit property to the Corporation. A further declaration was sought that the schedule property belonged absolutely to the Corporation. Other reliefs such as permanent injunction etc. were also prayed for.

The suit was tried by the XXVIIIth Additional City Civil Judge, Bangalore. However, the Corporation filed a memo admitting that it ought to have sought the relief under Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974. In view of the admission of the Corporation aforesaid, the Court held that the suit was not maintainable and accordingly the application filed by the respondent herein under Order 7 Rule 11 read with Section 94 of the Code of Civil Procedure was allowed and the plaint was rejected. A copy of the order of the Court dated March 1, 2004 was handed over to us when the appeal was being heard.

It thus appears that the sale deed executed by the Court on behalf of the judgment-debtor in favour of the predecessor-in-interest of the respondent has not so far been set aside or cancelled. The sale deed purports to confer on the predecessor-in-interest of the respondent absolute title to the property in question.

Even before us it was strenuously urged that there is no relationship of landlord and tenant between the parties and, therefore, an application for eviction under the Karnataka Rent Control Act was not maintainable. We have earlier noticed that this submission was urged by the appellants at earlier stages in the proceeding. When the issue was tried as a preliminary issue and the trial court found that the jural relationship did exist, a revision was preferred before the High Court which was dismissed. The material on record also discloses that the same plea was taken in opposition to the application filed by the landlord under Section 29(4) of the Act and the same was again rejected. A revision against the said order was also dismissed by the High Court. It is also admitted by the appellant in Civil Appeal No. 3503 of 2004 that earlier a suit for eviction had been filed by the landlord under Section 21(1)(a) and (h) of the Karnataka Rent Control Act which was partially decreed and the tenant was directed to pay the arrears of rent by order dated February 22, 1983. The High Court in its earlier order dated September 6, 2000 has also referred to these facts and held that these orders having attained finality it was not open to the appellants to reopen the issue and to reagitate the same question over again. Apart from the finding of the High Court, the undisputed position is that the appellants were inducted as tenants by Doraiswamy. Doraiswamy claimed to be the absolute owner of the property pursuant to the sale deed executed by the Court in his favour in execution proceeding. It is, therefore, apparent that the appellants were inducted as tenants by Doraiswamy, their landlord. The question as to whether Doraiswamy was the absolute owner of the property is not relevant in considering the question whether there existed the jural relationship of landlord and tenant between the parties. The appellants had been paying rent to Doraiswamy. These facts lead to the inescapable conclusion that relationship of landlord and tenant existed, and the several orders passed by the trial court and the High Court in this regard cannot be faulted. On facts, therefore, we find that the appellants cannot deny the fact that they were inducted as tenants by Doraiswamy, the father of the respondent and her predecessor-in-interest.

It was then urged before the High Court that the need of the respondent was fully met as she had come in possession of other portions of the building which were earlier occupied by two other tenants. In any event, it was argued, the right to sue did not enure to the benefit of the respondent since the requirement pleaded by Doraiswamy, her late father, was not for the benefit of the present respondent. The High Court has elaborately considered this submission and negatived it. We have been taken through the judgment of the High Court and we find no reason to take a different view. The question as to the existence of bona fide personal need is a pure question of fact and, we find no reason to interfere with the finding of the High Court on this issue.

It was submitted before us that in the facts and circumstances of this case the tenants were justified in challenging the claim of the respondent to be the landlord. It was argued that the tenancy, if any, was created at an earlier stage and thereafter certain developments took place which justified the appellants' challenge to the right of the landlord to seek their eviction. In this context it was submitted that after the court sale, though the name of Doraiswamy was added in the record maintained by the Corporation, his name was subsequently deleted. Doraiswamy, thereafter, filed a suit for declaration and also a decree for cancellation of the order deleting his name. The suit was

dismissed on the ground of want of jurisdiction and the appeal preferred against the said judgment and order was also dismissed. Therefore, it was submitted, that the order of the Civil Court dismissing the suit filed by Doraiswamy attained finality. On the basis of these facts it was contended that Doraiswamy ceased to be the owner of the property and consequently could not exercise the rights conferred upon a landlord by the statute. The submission must be rejected firstly, for the reason that the landlord under the Karnataka Rent Control Act need not be the owner of the premises. Secondly, the mere dismissal of the suit did not, as a consequence, confer title on the Corporation in respect of the property in question. In fact we have noticed that a subsequent suit filed by the Corporation for a declaration that the sale deed executed in favour of Doraiswamy was null and void was also dismissed. In these circumstances whatever may be the dispute between the Corporation and the respondent, the appellants certainly cannot take advantage thereof, once having admitted that they were inducted as tenants by Doraiswamy, the predecessor-in-interest of the respondent. It is also interesting to note that in the suit filed by the Corporation a prayer was made for a direction to the respondent as well as to the appellants herein to handover vacant possession of the premises to the Corporation. The appellants derive their right to continue in possession of the premises only through the respondent. The judgment relied upon by the appellants in *D. Satyanarayana vs. P. Jagdish* : (1987) 4 SCC 424 is clearly distinguishable on the facts of the case. In our view there was no extinguishment of title of the respondent, even though there may be some dispute about it with the Corporation. It is well settled that entries in the revenue record may, at times, raise a presumption, but do not conclusively confer title.

We have carefully examined the decisions of this Court in *D. Satyanarayana vs. P. Jagdish* (supra) and *A.V.G.P. Chettiar and Sons and others vs. T. Palanisamy Gounder* : (2002) 5 SCC 337 and we are of the view that the principles laid down therein are not applicable to the facts of this case. The exception to the rule of estoppel embodied under Section 116 of the Evidence Act arises if it is shown that since the date of the tenancy the title of the landlord came to an end, or that he was evicted by a paramount title holder, or that even though there was no actual eviction or dispossession from the property, under a threat of eviction, the tenant had attorned to the paramount title holder and a new jural relationship of landlord and tenant had come into existence between them. Such a situation has not arisen in the instant case. In this case there is no finding that the title of the landlord has come to an end. The Corporation has not established its title in any proceeding in accordance with law. In these circumstances the exception to the rule of estoppel embodied in Section 116 of the Evidence Act cannot be pleaded by the appellants.

It was then submitted before us that in view of the provisions of Section 2(7) of the Karnataka Rent Control Act, 1961 the proceeding under Section 21 thereof was not maintainable at the instance of the respondent. This argument again, assumes the existence of title in the Corporation and proceeds on the basis that the premises belong to the Corporation. Such a submission was not even advanced before the High Court. Learned counsel submitted that in an application under Order 6 Rule 17 of the Code of Civil Procedure, the appellant in Civil Appeal No.3503 of 2004 had raised an objection to the jurisdiction of the Court. We have perused the aforesaid application and we find that there is no mention of Section 2(7) of the Act nor is there any plea raised in the said application to the effect that the court had no jurisdiction since the premises belonged to the Corporation. The only objection raised therein was that there did not exist jural relationship of landlord and tenant between the parties. The objection however, was sought to be raised before us for the first time. In the proceeding giving rise to these

appeals the Corporation was not even a party and, therefore, the disputed question as to whether the title holder was the Corporation or the respondent could not have been gone into, and no finding could be recorded against the Corporation. We do not, therefore, wish to go into this question for the first time in these appeals particularly in the absence of the Corporation. Moreover, as we have noticed earlier, the suit filed by the Corporation for declaration of its title was dismissed. The sale deed executed in favour of the landlord by the court in the execution proceeding has not yet been declared by any court to be null and void. Counsel for the respondent was, therefore, justified in submitting that the question now sought to be urged, namely, whether title vests in the Corporation or not, would necessitate a finding on a jurisdictional fact, which must be pleaded and proved by the party raising the objection. The submission, therefore, based on lack of jurisdiction of the court in view of the provisions of Section 2(7) of the Act cannot, in the facts of this case, be entertained for the first time by this Court, and we accordingly reject the same.

We may, however, notice the submission urged on behalf of the respondent that the provision of Section 2(7) of the Act will not apply because the provision was enacted to except the provision of the Act from governing government premises and legal relationships created by governments and other authorities and bodies mentioned in the sub-section. In the instant case the relationship between the parties was not created by the government or corporation and hence the appellants cannot derive any benefit and claim exemption under Section 2(7) of the Act. In this connection reference was made to the decision of the Division Bench of the Karnataka High Court in *Bharat Coal Mines Ltd. and another vs. Kannappa and another* : 1988 (3) Kar. L.J. 327 (DB). Since we have not entertained this submission, it is not necessary for us to express any opinion in this regard.

Lastly it was faintly submitted that the respondent has come on record as a legal representative of Doraiswamy under a Will, but she had no right to continue with the proceeding after the death of her father on the ground of ademption. It was submitted that the Will executed by late Doraiswamy did not confer the right of ownership of the premises on the respondent as Doraiswamy himself was not the absolute owner of the premises. Since he was not the owner of the premises, he could not bequeath that right in favour of the respondent. This submission has been considered by the High Court and rejected. In our view the High Court rightly took the view that the question which arises in the instant proceeding is not whether Doraiswamy was the owner of the premises, but whether he was the "landlord" who could sustain an eviction proceeding under the Act. Since a "landlord" under the rent Act can maintain a suit for eviction even without being the owner of the premises, the submission based on Section 152 of the Indian Succession Act, 1959 must be rejected. In any event, there is no finding that the testator, had got title to the premises in question at the time of his death.

We, therefore, find no merit in these appeals, and they are accordingly dismissed. No costs.