

PETITIONER:
VENKATESH THIMMAIAH GURJALKAR

Vs.

RESPONDENT:
S.S. HAWALDAR

DATE OF JUDGMENT: 05/10/1997

BENCH:
A. S. ANAND, S. RAJENDRA BABU

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This Civil Appeal is directed against the judgment and order or the High Court of Karnataka dated 26.10.1983 in Civil Revision Petition No. 1091/81. The facts and circumstances in which the appeal arises need a brief notice at this stage.

The suit premises is a shop, which was let out by the father of the respondent - landlord, to one Thimmaiah, father of the appellant in or about 1940 for running a hair cutting saloon at a monthly rent of Rs. 40/-. There was a family partition and the suit premises fell to the share of the respondent - landlord, who thereafter became the owner and the landlord of the demised premises. According to the pleadings of the parties, in 1972, the original tenant Thimmaiah fell ill and stopped paying rent of the premises from January 1974 onwards. A notice was issued by the respondent - landlord to Thimmaiah terminating his tenancy and asking him to hand over the vacant possession of the suit premises. That notice was issued to him on 10.1.1974. Despite the notice having been received by Thimmaiah, he did not vacate the premises and hand over the possession to the landlord - respondent. Thimmaiah died on 12.7.1974. The appellant carried on the hair cutting business in the demised premises and sent rent of the premises to the respondent - landlord, who, however, refused to receive the same on the plea that the appellant was not his tenant and was in unlawful possession of the premises. A notice was issued by the landlord to the appellant on 29.7.1974 calling upon him to hand over the vacant possession of the demised shop. Since, the notice did not evoke any response, the landlord - respondent filed a petition under Section 21 read with Section 51(2) of the Karnataka Rent Control Act, 1961 for eviction of the appellant in the court of Principal Munsiff, Bijapur. The petition was resisted by the appellant. It was asserted that the appellant had been carrying on the hair cutting business along with his father and that the shop which had been taken on lease by his father was taken by him in his capacity as a Manager of the joint Hindu Family of which the appellant was also a member. On that basis, he claimed that he had inherited the tenancy

rights in the premises and that those rights did not come to an end on the death of Thimmaiah.

The Principal Munsiff, after recording the evidence came to the conclusion that the premises had not been taken by Thimmaiah as a Manager of the Hindu Joint Family and also that the appellant had not inherited the tenancy rights of Thimmaiah, who death. accordingly, on 18.11.1976, the petition for eviction was granted. The order of the Principal Munsiff was challenged by the appellant in revision before the learned District Judge, Bijapur. By a detailed order, the learned District Judge held that the appellant was not a tenant within the meaning of Section 3(r) of the Mysore Rent Control Act, 1961 (hereinafter referred to as the Act). The learned District Judge further held that the respondent - landlord had not established any of the grounds under Section 21 (1) of the Act and, therefore, the petition for eviction was not maintainable. The revision petition was, accordingly, allowed and the order of eviction passed by the learned Principal Munisff was set aside. The respondent - landlord preferred a revision petition in the High Court against the order of the District Judge. The High Court allowed the revision petition, set aside the order of the District Judge and restored that of the Principal Munsiff.

We have heard Ms. K. Saradi Devi, learned counsel for the appellant. Learned counsel submits that since all the three courts have concurrently found that the appellant was not a tenant within the meaning of Section 3(r) of the Act, the courts ought to have held that the petition for eviction under Section 21 of the Act was not competent to recover possession from the appellant and should have dismissed the eviction petition filed by the respondent - landlord.

From a perusal of the orders of all the three courts, we find that it has been concurrently found by them that the premises and not been taken on lease by Thimmaiah as a Manager of Hindu Joint Family. It has also been found that the appellant had not inherited the tenancy, since the premises in question were non-residential premises and, therefore, tenancy was not heritable. This finding of the courts below is fortified by a judgment of the division bench of the Karnataka High Court in K. Abdul Subhan Vs. A.K. Satyanarayana Setty reported in (1984 (2) Karnataka Law Journal, 72) wherein after an analysis of various provisions of the Act, it has been authoritatively laid down that there is no provision in the Act for transmission of tenancy in regard to non-residential premises under the Act. In that view of the matter, learned counsel for the appellant is right to contend that since the appellant was not a tenant and had not inherited the tenancy, a petition under Section 21 of the Act for his eviction was not maintainable. If the respondent wanted to recover possession of the premises from the appellant, he had to take recourse to filing a suit for possession and not by filing an eviction petition. The learned District Judge while hearing the revision was, therefore, perfectly right in coming to the conclusion that the respondent - landlord was not entitled to file the application for eviction, more particularly because the landlord had not mentioned any of the grounds contained in Section 21(1) of the Act in the petition seeking eviction either. The High Court, therefore, fell in error in upsetting the well considered judgment and order of the learned District Judge dated 4.3.1977. This appeal consequently succeeds and is allowed. The order of the High Court dated 26.10.1983 is set aside and that of the District Judge dated 4.3.1977 restored. Since, the respondent is not

present, there shall be no order as to costs.

JUDIS