

CASE NO.:
Appeal (civil) 7791 of 2001

PETITIONER:
SHASHI KAPILA

Vs.

RESPONDENT:
R.P. ASHWIN

DATE OF JUDGMENT: 08/11/2001

BENCH:
K.T. Thomas & S.N. Variava

JUDGMENT:

THOMAS, J.

Leave granted.

The tenant of a residential building, situate at Jayamahall Extension, Bangalore who has been occupying it for nearly quarter of a century is now at the peril of being evacuated therefrom by his landlord. To resist the action launched by the landlord for evicting the tenant he has adopted a defence that his continuation in the building from April 1986 onwards was under a separate jural linkage on account of an agreement of sale executed by the landlord. But the said line of resistance did not succeed thus far. The partial relief he secured from the High Court, as per the impugned order, was not enough to thwart the impending eviction hence the tenant has filed the appeal by special leave.

The respondent landlord applied for an order of eviction of the appellant on two grounds envisaged under Section 21(1) of the Karnataka Rent Control Act. One was on the allegation that the tenant defaulted paying rent of the building for a few months and the other was that the landlord himself requires the building bona fide for his own occupation. Though the Rent Control Court (the Court of Small Causes Judge, Bangalore) granted the order of eviction on both grounds the High Court, in revision, restricted the order to the ground of bona fide need of the landlord.

According to the appellant, the landlord had entered into an agreement on 17.4.1986 with a firm by name M/s Shiva and Co. of which the appellant is one of the partners as per which the landlord had agreed to sell the building for a sale consideration of Rupees twelve lacs, within three months of the said date, and a sum of Rupees one lac had already been received by the landlord as advance amount. On the strength of the said agreement appellant sought to non-suit the landlord.

The Rent Control Court did not accept the above contention. The court found that the landlord made out both the grounds and hence the order of eviction was passed. The High Court concurred with the Rent Control Court in respect of the ground of bona fide need of the landlord. The following is what the learned single judge of the High Court has stated about it:

The contention of the learned counsel for the petitioner that he is in permissive possession as an agreement holder and not as a tenant is difficult to accept. He has produced Ex.R.1, a copy of the sale agreement which shows that the respondent-landlord has entered into an agreement with a firm represented by Mr. Yati Kumar. There is no evidence on record to show that the present petitioner is a part of M/s. Shiva and Co. The lease agreement produced by the parties in those proceedings disclosed that the premises had been taken on lease by the petitioner himself and not by the company. I have perused the terms and conditions of the sale agreement. There is no term or agreement between the parties recognising the present petitioner as an agreement holder and not as a tenant and therefore it is difficult to accept his submission that the petitioner is no longer a tenant of the petition premises.

Sri Sudhir Chandra, learned Senior Counsel adopted a twin contention on the basis of the agreement dated 17.4.1986. First is that the appellant can lawfully resist the eviction of the landlord on the strength of Section 53A of the Transfer of Property Act. Second is that the said agreement is enough to nullify the bona fides of the claim of the landlord that he requires the building for his own occupation. According to the learned Senior Counsel the agreement reflects the intention of the landlord to part with his rights in the building and hence the ground urged for eviction is inconsistent with the desire limned in the agreement.

While dealing with the first contention, a reference has to be made to Section 53A of the Transfer of Property Act. It applies to a person who contracts to transfer immovable property in writing. If the proposed transferee in the agreement has taken possession of the property, or he continues in possession thereof being already in possession, in part performance of the contract and has done some act in furtherance of the contract, and transferee has performed or is willing to perform his part of the contract, the transferor shall be debarred from enforcing any right in respect of the property. This is the kernel of the principle incorporated in Section 53A of the Transfer of Property Act.

The agreement dated 17.4.1986 was between the respondent landlord on the one part and M/s Shiva and Co. on the other part. The hurdle which the appellant has to surmount initially was to show that he was a partner of the firm M/s Shiva and Co. We will assume, for the present, that he was a partner and hence for all practical purposes he could also represent the firm. Of course, the agreement is totally silent of the fact that appellant was partner of M/s Shiva and Co. Even assuming that he was a partner thereof it is legally impermissible for him to individually claim all the rights of the firm. Nor can he project himself as a transferee under the agreement.

A partnership firm is an association of persons. But in spite of that unity between themselves, every partner can have his own separate existence from the firm. Any right which a partner has over any property, other than the partnership property, would remain as his individual asset. The mere fact that the particular person has chosen to include himself as a partner of a firm will not result in incorporation of all his individual properties as the assets of the partnership. Section 14 of the Indian Partnership Act 1932 says: Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Here it is an admitted fact that appellant was a tenant of the building even earlier than the formation of the firm M/s Shiva and Co. In such a situation the tenancy right of the appellant in respect of the building is a separate right available to the appellant individually over which the partnership has no claim. Appellant never contended that he had offered the suit property as an asset of the partnership firm. Nor did the firm at any time claim that appellant threw the tenancy right over the building into the hotchpot of the partnership at any time. On the contrary, the agreement has taken care that the building is in the personal possession of the appellant. The following recital in the agreement would bear testimony for it:

The purchaser is aware that the tenant is in possession of the said premises and after the purchaser he must obtain the possession of the said premises in due course at his own cost and responsibilities. The seller does not hold himself responsible in any way to get him vacant possession. In fact, the purchaser has agreed to take up this responsibility.

Even that apart, when a suit was filed by M/s Shiva and Co. for specific performance of the agreement dated 17.4.1986 the firm made it abundantly clear in the plaint itself that appellants right in the building as a tenant is in his personal capacity and not as a partner of the firm. The relevant

portion of the plaint is extracted below:

The suit schedule property, at the time of agreement of sale, was in the occupation of Mr. Shashi Kapila in his personal capacity. Hence it is agreed that the defendant would not be responsible to place the plaintiff in vacant possession of the suit property and the plaintiff agreed for the same. The suit schedule property continues to be tenanted by Mr. Shahi Kapila in his personal capacity who is also one the partners of the plaintiffs firm.

(Mr. Shashi Kapila, mentioned in the above portion, is the appellant in this case).

Thus the appellant cannot lay any claim on the strength of Section 53A of the Transfer of Property Act, even assuming that the agreement is still binding on the parties thereto.

The second limb of the contention is that when the landlord himself had agreed to transfer his rights to others, such a stance is negatory to his claim that he genuinely needs the building for his own occupation. At the first blush the argument appeared forceful because the bona fides of the landlords need could possibly get eclipsed when the landlord himself wanted his rights in the building to be alienated to other persons. But when we delved into the matter we found that genuineness of the landlords need remains unimpaired despite his earlier inclination to sell the building. We shall now state the reasons.

We pointed out above that the agreement to sell was executed on 17.4.1986. It has been stipulated therein that the sale deed should be executed and registered within three months from the said date. It is the admitted case that the sale deed was not executed within that time. The landlord filed a petition for eviction only 6 years thereafter. In the petition for eviction he has stated that he was residing at Mysore and he shifted his residence to Bangalore and has been staying in a temporary accommodation as the building belonging to another person was given for his occupation. He further said that he is unable to continue in the said building for various reasons. It is not disputed that the landlord is now residing in the building belonging to somebody else.

M/s. Shiva & Co. had filed a suit in 1986 for specific performance of the agreement. The said suit was vehemently resisted by the landlord. At some point of time the said suit was withdrawn by the firm and later in 1989 the same firm filed a second suit for specific performance of the agreement dated 17.4.1986. Landlord opposed the second suit also on all grounds. He contended, inter alia, that the agreement itself could not be acted on as he was deceived by Mr. Yati Kumar who represented the firm and it was never disclosed to the landlord that the appellant was a partner of that firm. At any rate, it was clear beyond doubt that the landlord was totally

opposed to the performance of the terms of the agreement dated 17.4.1986. That stand of the landlord was proclaimed long before he launched the present litigation for eviction of the appellant on the ground of his need to occupy the building. The above developments would indicate that the need of the landlord for occupying the suit building arose only long after 17.4.1986. Therefore, he cannot be preempted from claiming the relief merely on the ground that six years prior to it he was willing to sell the building. Hence, we are unable to agree with the contention of the appellant that the landlord can be non-suited on the basis of the afore-mentioned agreement.

Learned senior counsel for the appellant relied on the decision of this Court in P. Veerappa vs. M.A. Mohammad Amanulla {1996(1) SCC 415} in support of his contention that the agreement would foreclose the landlords claim that he needs the building bona fide for his own use. The following passage in the judgment is enough to show that the said decision is of no use to the appellant:

So long as the agreement subsists, it is settled law that the lesser right of tenancy stood merged with larger rights accrued under the agreement. But unfortunately in the compromise itself it was recognised that the appellant was to pay arrears of rent till the date of compromise. In other words, the appellant recognised the reversion to his pre-existing rights as tenant up to the date of the compromise. In other words, subject to compliance of the terms of the contract, his tenancy rights continued. The terms have not been complied with and the agreement came to an end. Thereby, the appellants pre-existing rights as a tenant stood revived and the appellant and the respondent were bound by the relationship of landlord and tenant.

We do not find any merit in any of the contentions of the appellant and hence we dismiss this appeal. However, time for vacating the building would stand extended by six months from today on condition that appellant gives an unconditional undertaking in this Court in the form of an affidavit, within three weeks, that he would vacate the building and put the landlord in possession thereof on or before the expiry of six months from today. If the said undertaking is not furnished within the time mentioned above, appellant will forfeit the benefit for extension of time to vacate. Appeal is thus disposed of.

J
[K.T. Thomas]

[S.N. Variava]

November 8, 2001.

JUDIS