

IN THE COURT OF THE PRL.CIVIL JUDGE & J.M.F.C.,
AT: DHARWAD

Dated this the 26th day of March 2016

Present:
Sri. M.R.Wadeyar. BA., LL.B.(SPL)
Prl. Civil Judge & JMFC.,
Dharwad.

ORIGINAL SUIT No. 376/2015

Plaintiffs : Sri. Anand Kumar H.
Age: 46 years, Occ: Business & Agriculture,
R/o: F.No.404, Anand Residency, Balaji Layout,
Vidyaranyapur, Bangalore-97.

(By. Sri. R.G. Naidu, Advocate)

V/s.

Defendants : 1. [Smt. Sarojini W/o Jayakumar Patravali]
Since deceased by her LR's

Amended carried
out as per order
dated 27.8.2015

2. Smt. Kalpana W/o Ajit Patil,
Age: 50 years, Occ: Household,
R/o: Malamaddi, Near Rayaramath, Dharwad.

3. Sri. Sanjay S/o Jayakumar Patravali,
Age: 52 years, Occ: Business,
R/o: Malamaddi, Near Rayaramath, Dharwad.

4. Sri. Sandeep S/o Jaykumar Patravali,
Age: 45 years, Occ: Business,
R/o: Malamaddi, Near Rayaramath, Dharwad.

Defendant No.2 to 4 are LR's of defendant No.1.
They are already on record.

5. Sri. Shamsuddin S/o Rajahammad Rahut,
Age: 60 years, Occ: Business,
R/o: Hanumant Devar Gudi Oni, Madarmaddi,
Dharwad.
6. Sri. Bashirahmed S/o Raja Ahmed Rahut,
Age: 55 years, Occ: Business,
R/o: Hanumanth Devar Gudi Oni, Madarmaddi,
Dharwad.

(D.1 dead)

(D.2 to 4 by. Sri. S.G. Patil, Advocate)

(D.5 by Sri. G.S. Savadatti, Advocatae)

(D.6 placed exparte.)

ORDERS ON PRELIMINARY ISSUE

Plaintiff has filed this suit against defendants for the relief of possession.

2. Brief facts of the case are as under:

Suit open space comprised with temporary shed CTS No.218/A1/A1/A2/LB measuring 287 sq. yards and CTS No.218/A1/C2/LB measuring 77 sq. yards of line bazaar, near Sangam talkies, Dharwad, are the suit properties.

3. Originally very properties were belongs to original propositus Shivashankar Tenginkai of Dhrwad. During his family partition in the year 1992 very property is fallen to share of Abjit Tenginkari. Husband of defendant No.1 viz. father of defendant No.2 to 4 was tenant under Jayakumar Patravali. Very Abjit Tenginkai filed HRC petition No.23/1996 against Jayakumar Patravali, and which is ended in compromise. Accordingly, Jayakumar Patravali handed over the vacant possession over the suit property to the original owners.

4. Plaintiff purchased suit property from his vendor Abjit Tenginkari on 17.4.2015 through registered sale deed for Rs.92,00,000/- and put in possession. Defendant No.1 to 6 have no locus standi to challenge the sale deed, decree passed in HRC No.23/1996 is time barred. Jayakumar Patravali has violated the lease conditions dated 1.5.1975 by sub-letting the some portion of the area without consent of the owner, proceedings in HRC petition No.27/1987 are not binding against this plaintiff. Prior to purchase of the suit land plaintiff issued public notice on 22.5.2015 in Vijayavani daily news paper. Defendant No.5 and 6 are illegal occupants in the

suit property, their claim is not binding upon the plaintiff. They filed HRC No.27/1987 before this court against Jayakumar Patravali claiming false relief over the suit property, but this court has rejected the claim of the defendant No.5 and 6 on 25.9.1987, there is no relationship of landlord and tenant and very order is not binding upon this plaintiff. Defendant No.5 and 6 issued notice against this plaintiff on 4.6.2015, he has also replied to the said notice on 16.6.2015. LRs. of Jayakumar Patravali filed CTS/RTS/AP/8/2015-16 on 30.6.2015 before the Deputy Director of Land Records Dharwad, against the plaintiff and original owner Abjit Tenginkai, who is the vendor of the suit property all the contents are denied by this plaintiff.

5. Plaintiff issued notice through his counsel to defendant No.1 to 6 on 23.7.2015 to quit and hand over the vacant possession of the property in favour of the plaintiff, on the since date of issuance of notice. Defendant No.1 to 4 are liable to pay damages of Rs.20,000/- per month and also defendant No.5 and 6 are held responsible to pay damages of Rs.20,000/-.

6. Plaintiff does not want to keep the defendants any more as occupants in the suit property. The plaintiff deserves and interest to construct a new complex in the suit property. Hence, plaintiff constrained to file this suit for recover of the possession of the suit property. Cause of action arose to file this suit on 23.7.2015. Proper court fee of Rs.1,500/- is also paid. This court has jurisdiction to try this suit. Accordingly, prayed to decree the suit as prayed for.

7. On service of summons defendant No.1 is reported as dead, so that amendment is carried out on 27.8.2015 his LRs defendant No.2 to 4 are brought on record, but they have not filed their written statement instead of granting sufficient time. Defendant No.6 has not appeared before this court on service of summons hence placed exparte. On the other hand defendant No.5 appeared through GSS Advocate and filed written statement as follows:

Description of suit property is not proper and correct. Compressing with temporary shed boundaries mentioned by the plaintiff is not true and correct. It is true that, original owner of the suit property was Shivashankar Tenginkai, but very property is not

fallen to share of Abjit Tenginkai, there is no partition in the year 1992, husband of defendant No.1 viz. father of defendant No.2 to 4 Jayakumar Patravali was not tenant of the said property. Abjit Tenginkai did not file HRC Petition No.23/1996 against deceased Jayakumar Patravali and not ended in compromise. Possession is also not handed over, plaintiffs have not purchased the suit property for Rs.92,00,000/- on 7.4.2015 from Abjit Tenginkai, which is not within the knowledge of defendants. Defendants No.1 to 6 are ready to challenge the sale deed. Jayakumar Patravali was not in possession of the said property and not paying the monthly rent of Rs.1,500/- towards vendors' family. Plaintiff is not owner of the said property under the light of sale deed, compromise in between LRs. of deceased Jayakumar Patravali and Abjit Tenginkai is not binding upon him.

8. Filing of HRC Petition No.23/1996 by the Abjit Tenginkai is not within his knowledge. Original tenant Jayakumar Patravali has not violated the lease agreement dated 1.5.1975 by subletting the said property in favour of defendant No.5 and 6 without knowledge

of the owner, compromise in between defendant No.5 and 6 is not binding on plaintiff is false. Issuance of public notice in Vijayvani daily news paper dated 22.2.2015 is denied. It is denied that, defendant No.5 and 6 are not having any right over the suit property. It is true that, defendant No.5 and 6 filed HRC Petition No.27/1987 before this court against Jayakumar Patravalli and said petition is not dismissed. Defendant No.5 alone issued notice dated 4.6.2015 and replied by the plaintiff dated 16.6.2015 is also false. Contents of para No.10 are not within knowledge of the defendant No.5. Plaintiff issued notice dated 23.7.2015 against defendant No.1 to 6 with request to hand over the possession, a suitable reply is also given. Defendant No.5 and 6 are not responsible for pay the damages of Rs.20,000/-. Question of constructing of new building by the plaintiff over the suit property will not arise. Mangala Shivashankar Tenginakai is collecting the rent from defendant No.5. The vendor of the plaintiff never collected rent from defendant No.5. Hence, there is no relationship of landlord and tenant in between plaintiff or his vendor and defendant No.5. There is no cause of action to file this suit. Valuation made and court fee paid is not proper and correct. This court has no jurisdiction

to try this suit. Very suit is not maintainable. Plaintiff suit is hit by Order 7 Rule 3 of CPC.

9. True facts of the case are as under:

Shivshankar Tenginkai was original owner of the suit property along with some other adjoining properties. He leased out his suit property in favour of defendant No.5 on the basis of monthly rent of Rs.100/- in the year 1978 and expired on 8.1.1983 in road accident leaving behind his wife and 3 sons. After his death his wife Mangala has written a letter to this defendant No.5 for payment of monthly rent of Rs.100/- per month since February 1983, in favour of her mother-in-law by name Rachavva Tenginkai. Accordingly, defendant No.5 has been paying rent of Rs.100/- p.m. in favour of Rachavva Tenginkai in cash. She did not pass any receipt till her death. After death of Rachavva Tenginkai, Mangala has been collecting the rent, she has also not passed any receipt. Originally partnership deed is executed in between defendant No.6 and deceased Jayakumar Patravalli. Electricity supply to the New Bharath Engineering Works was standing in the name of Jayakumar Patravalli. There is a dispute

arose between defendant No.5 and 6 and deceased Jayakumar Patravalli in running the New Bharath Engineering Works. Deceased Jayakumar Patravalli filed an application to the KEB Office Dharwad for disconnection of electricity to the New Bharath Engineering Works. The KEB authorities have disconnected the electricity supply to the New Bharath Engineering Works. The business of defendant No.5 and 6 was stopped. The defendant No.5 and 6 have filed HRC Petition No.27/1987 before this court under Section 43 of the Rent Control Act, seeking the relief of restoration of electricity connection. Very petition is dismissed on 25.9.1987 on the ground that, there is no relationship between the parties as landlord and tenants. Thereafter partnership was dissolved on 21.9.1991.

10. Thereafter compromise took place in between defendant No.5 and deceased Jayakumar Patravalli on 5.9.1991. Deceased Jayakumar Partavalli agreed to transfer the electrical installation in the name of defendant No.5 by deleting his name on the same day. Said Jayakuamar Patravalli had taken back his share of machineries and dissolved the partnership. Defendant No.5 alone running the

business. The landlord of the suit property not paid the tax to the HDMC, Dharwad. The HDMC Authorities have issued notice and warrant to the defendant No.5 and threatened as such they will attach the movables of the company. Defendant No.5 has paid the tax to the HDMC, Dharwad. The vendor of the plaintiff alone is not the landlord of the defendant No.5. Hence, present plaintiff is also not the landlord of the suit property. There is no relationship of landlord and tenant between plaintiff and defendant No.5. On this count alone the suit of the plaintiff is liable for rejection. Accordingly, prayed to dismiss the suit.

11. On going through the rival pleadings case was posted for ADR, but parties have not arrived for compromise. So that, the following issues are framed:

ISSUES

- 1) Whether the plaintiff proves that, he is lawful owner of the suit property as on date of filing of this suit?
- 2) Whether the plaintiff proves that, defendants are denying to hand over the possession of suit property without any reasonable cause?

3) Whether the defendant proves that, court fee paid by the plaintiff is not sufficient?

4) Whether the plaintiff proves that, he is entitled for the relief of possession as prayed for?

5) What order?

Note: Issue No.3 shall be heard as preliminary issue.

12. Meantime evidence of plaintiff is recorded as P.W.1, marked Ex.P.1 to 15 and also case was posted for hearing on preliminary issue i.e. issue No.3.

13. On next day defendant No.5 filed I.A.No.2 under Order 14 Rule 5 R/w. 4 of CPC with prayer to frame the Additional Issues and furnished list of Additional Issues.

14. On the other hand counsel for plaintiff submitted no objection to allow the I.A.

15. Heard the argument, perused and satisfied, I.A. is allowed. Accordingly, additional issues are framed as follows:

Addl. Issues

1. Whether the plaintiff proves that, the description of suit property is proper and correct?
2. Whether the plaintiff proves that, as per partition between Abjit and his family members partitioned their property in the year 1992 and suit property is fell to the share of Abjit?
3. Whether the plaintiff proves that, the possession of the suit property of defendant No.5 and 6 is illegal and they have no right, title and interest over the suit property?
4. Whether the plaintiff proves that, there is a cause of action arose to file this suit?
5. Whether the defendant No.5 proves that, this court is not having pecuniary jurisdiction to hear and decide this suit?
6. Whether the suit of the plaintiff is maintainable without the relief of declaration?

Addl. Issue No.5 is treated as preliminary issue.

16. Heard the argument on Issue No.3 and Addl. Issue No.5 which are treated as preliminary issues, perused the pleadings and documents available on record, then my findings to the above preliminary issues are as follows.

Issue No.3 (Preliminary Issue No.1) : In the Affirmative.

Addl. Issue No.5 (Preliminary Issue No.2): In the Affirmative.

Issue No.5: As per final order for the following:

REASONS

17. **Issue No.3 (Preliminary Issue No.1):** As per case of the plaintiff he has purchased suit property for Rs.92,000/- through registered sale deed from its real owner Abjit S. Tenginkai on 17.4.2015, accordingly he is owner of the said property. But defendants are no way concerned to the property and they are not his tenants. They are only illegal possessors accordingly, prayed to issue direction for hand over the possession of the said property.

18. As per case of the defendants after the death of Jayakumar Patravalli, deceased Shivashankar Tenginkai, defendant No.2 to 4 were in possession of the said property. Thereafter defendant No.5 and 6 are sub tenants. They have been paying the electricity bills.

19. Admittedly it is clear that, as per case of the plaintiff he is owner of the said property through registered sale deed and he has

purchased the suit property for Rs.92,00,000/-, admittedly as per his case, defendants are in possession of the said property.

20. Further admittedly seeking for the relief of possession over the properties, for the purpose of court fee suit property is valued for Rs.1,500/- and paid court fee of Rs.1,500/- acting U/s. 41 of Karnataka Court Fee and Suit Valuation Act.

21. If plaintiff admits as the defendants are his tenants and he can value the property for Rs.1,500/- and he may pay the court fee as provided U/s. 41 of Karnataka Court Fees and Suit Valuation Act, 1956.

22. As per the pleading in para No.4 of the plaint original tenant Jayakumar Patravalli himself handed over the possession of the suit property in favour of his vendor i.e. Abjit Tenginkai and these defendant No.5 and 6 are illegal occupants as pleaded in para No.9 of the plaint and seeking for the relief of possession. Under such circumstances, he shall pay the court fee acting U/s. 29 of the Karnataka Court Fee and Suit Valuation Act 1956.

23. In support of his case learned counsel for the plaintiff relied upon citation reported in **ILR 1976 page 1293 in between Veerathappa Alias Papanna Vs. Nanjundasetty**, wherein it is held that, *if there is a dispute in between landlord and tenant in regard to recovery of immovable property, under such circumstances, for the purpose of court fee and jurisdiction valuation shall be made on the basis of annual rent*, the observation made by the Hon'ble High Court of Karnataka in the above cited case is proper and correct. But which is not applicable to the case in hand, because as per case of the plaintiff himself defendants are not his tenants, or his vendees, original tenant Jayakumar Patravalli has handed over the possession in favour of Abjit Tenginkai. Further defendant No.5 and 6 are only illegal possessors, when he has taken such contention under such circumstances, he is not entitle to rely upon this ruling. Further plaintiff relied another case in between **K. Ramachandra Rao S/o late K. Venkatanarayana Rao Vs. K.G. Ramamohana Gupta S/o K.N. Gopalaiah reported in 2006 AIR (Kar) 247**, wherein also Hon'ble High Court of Karnataka observed that, if the dispute is in between landlord and tenant in case of recovery of possession, for

the purpose of court fee and registration one year rent shall be considered. But that proposition of law is also not applicable to the case in hand. Because plaintiff has not come up before the court stating that, he is owner and defendants are his tenants, under such circumstances, the very plaintiff cannot take the shelter under the above cited citations, and he cannot pay court fee acting U/s. 41 of the Karnataka Court Fee and Suit Valuation Act 1956.

24. When plaintiff approached this court for the relief of possession claiming that, he is owner of the suit property under the light of registered sale deed dated 17.4.2015 for Rs.92,00,000/-, under such circumstances, he has to pay court fee on Rs.92,00,000/- acting U/s. 29 of the Karnataka Court Fee and Suit Valuation Act 1956, as per Schedule I of the Act ad valuerum court fee come to Rs.2,53,125/-, but very plaintiff has paid only court fee of Rs.335/-, under such circumstances, there is deficit court fee of Rs.2,52,790/-, so that, court is of the opinion that, defendants have successfully proved this issue in their favour, so that court come to the conclusion that, court fee paid by the plaintiff is not proper and correct. Hence, I have answered the above issue in the affirmative.

25. **Addl. Issue No.5 (Preliminary Issue No.2):**

Admittedly as per case of the plaintiff as on 17.4.2015 market value of the suit property is Rs.92,00,000/- and he has purchased the said property by paying Rs.92,00,000/-. Further as discussed and come to conclusion in the above Preliminary Issue No.1, there is no relationship between plaintiff and defendants as landlord and tenant, as per the pleadings made by the plaintiff in para No.9 of his plaint defendants are illegal occupants without having any right title or interest, under such circumstances, question of value the suit property for the purpose of jurisdiction on the basis of monthly rent of Rs.300/- p.m. will not arise. Pecuniary jurisdiction of this court is only for Rs.5,00,000/-, and market value of the suit property is Rs.92,00,000/- and which is already calculated and submitted before the public authority at the time of registration of sale deed and said fact is pleaded by the plaintiff, it goes to show that, once again it is not necessary to prove the said fact. When plaintiff himself pleaded the said aspect, under such circumstances, court come to the conclusion that, defendant No.5 has successfully proved this issue as

such this court has no pecuniary jurisdiction to try this suit, so that, I have answered this Issue in the affirmative.

26. **Issue No.5:** For the reasons discussed and findings given on the above Preliminary Issues, rest of the issues dated 4.12.2015 and 8.11.2015 are not survived before this court. So that, court proceeds to pass the following:

ORDER

In view of the findings given on the Preliminary Issues suit of the plaintiff is not maintainable before this court for want of jurisdiction.

So that, acting under Order 7 Rule 10 of CPC plaint is returned reserving liberty to submit before the jurisdictional court by paying required court fee as provided U/s. 29 of the Karnataka Court Fees and Suit Valuation Act.

Parties have to bear their own cost.

Draw decree accordingly.

(Dictated to the stenographer, transcribed and typed by her, corrected, signed and pronounced by me in the open Court on 26th day of March 2016).

(M.R.Wadeyar)
PRL.CIVIL JUDGE & JMFC.,
DHARWAD.

26.03.2016
For Orders

(Order pronounced in the open court vide separate order)

ORDER

In view of the findings given on the Preliminary Issues suit of the plaintiff is not maintainable before this court for want of jurisdiction.

So that, acting under Order 7 Rule 10 of CPC plaint is returned reserving liberty to submit before the jurisdictional court by paying required court fee as provided U/s. 29 of the Karnataka Court Fees and Suit Valuation Act.

Parties have to bear their own cost.

Draw decree accordingly.

Prl. Civil Judge & JMFC,
Dharwad