

KADW050062992023



Presented on : 25-10-2023
Registered on : 26-10-2023
Decided on : 14-10-2024
Duration : 0 years, 11 months, 20 days

**IN THE COURT OF THE III ADDITIONAL SENIOR CIVIL
JUDGE & C.J.M., DHARWAD**

: PRESENT:

Sri.ALLAPPA MAHADEVAPPA BADIGER,

B.A., LLB.,(Spl)

III Addl. Senior Civil Judge & AMACT.,
Dharwad

Form No. 11
(Civil)
Title Sheet for
Judgments in
Appeals.

Dated this the 14th day of October, 2024

REGULAR APPEAL No.57/2023

Appellant/s
(Plff)

Shri. Ninganagouda Shankargouda
Patil, Age: 75 years, Occ: Agri.,
R/o Bhusagalli, Dharwad.

(By Sri.Ramkrishna Hegade- Adv.)

// -Vs- //

Respondent/s
(Deft)

Basheerahmed Mohammad Isaq
Kazi, Age: 41 years, Occ: Auto
Driver, R/o Sheelavantar Oni, Near
Urdu Girls School, Gouli Galli,
Dharwad.

(By Sri.M.R.M., Adv.)

Date of Institution of the Appeal : 25.10.2023

Appeal against : The Judgment and Decree passed by I Addl. Civil Judge and JMFC, Dharwad, in OS No.229/2020 dated 30.08.2023.

Date of Judgment : 14.10.2024

Duration of the Appeal	:	Year/s	Month/s	Day/s
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: J U D G M E N T :

This is appeal filed by the appellant/plaintiff being aggrieved by the judgment and decree passed in OS No.229/2020 dated 30-8-2023 by the 1st Addl.Civil Judge and JMFC Dharwad.

2. For the sake of convenience the parties are referred to their ranks as referred in the trial court.

3. The plaintiff filed suit for the relief of recovery of possession, arrears of rent as well as injunction against the defendant in respect of suit property.

4. **Brief facts of the plaintiff's case before the trial court are as under:**

That, the suit property is residential house with backyard its bearing CTS No.51/S of Shukravar peth Dharwad measuring 112 sq.yards. The plaintiff is an owner of the suit property and it is allotted to him in the compromise decree of O.S. No.50/1992 dated 8-12-1994. Therefore, the plaintiff became an owner of the suit property. The plaintiff further contended that father of defendant i.e., Mohammed Isaq Kazi along with his children including defendant were residing in the suit schedule property on tenement basis prior to becoming ownership of plaintiff. The said Mohammed Isaq kazi died in the year 1984. The plaintiff further submits that the defendant has approached the plaintiff to continue in the suit property by agreeing to hand over the same whenever demanded by the plaintiff. Accordingly the request of the defendant was permitted by the plaintiff on monthly rent of Rs.1,000/-. The plaintiff youngest son completed graduation and he intended to start medical shop in the suit schedule property by demolishing the same and by constructing new building. Therefore, plaintiff requested the defendant to hand over the

property but he has postponed the same and filed suit OS No.87/2020 for the relief of injunction. Therefore, the building is in dilapidated condition. Hence the defendant is also chronic defaulter in making payment. Hence the plaintiff filed present suit.

5. Upon service of summons defendant appeared and filed written statement contending that the suit is false, frivolous and not tenable either in law or on facts. The defendant admitted that defendant is tenant in occupation of the residential house and plaintiff is landlord. The defendant further contended that this court has no jurisdiction to decide the eviction of tenant and it is exclusion from the provisions of Karnataka Rent Act 1991. The defendant has denied that suit property is in dilapidated condition. Further the plaintiff and his henchmen have damaged the northern wall of the suit property with ulterior motive to dispossess the defendant. The rent of the suit property is Rs.10/- and not Rs.1,000/-. The defendant is not agreed to pay rent of Rs.1,000/- p.m., and defendant also denied that he has approached the

plaintiff to continue in the suit property and agreed to hand over the possession whenever demanded by the plaintiff. He admitted that he filed suit OS No.87/2020 against the plaintiff for injunction and defendant denied that the youngest son of plaintiff is intended to start medical shop in the suit schedule property. The plaintiff has sought for possession of the suit property from the tenant and nature of the suit is ejectment of tenant and no notice of termination of the tenant U/s 106 of T.P., Act is issued by the plaintiff to the defendant. Therefore, the plaintiff is not entitled for the relief without termination of tenancy. There is no arrears of rent from July 2017. Hence the defendant contended that this court has no jurisdiction and hit by provisions of Karnataka Rent Act. Hence, prayed to dismiss the suit.

6. Upon pleadings of the parties, the trial court had framed the following issues;

ISSUES

1) Whether plaintiff proves that the defendant is in illegal possession of the suit property?

2) Whether this court has got jurisdiction to try this suit?

3) Whether the plaintiff is entitled to vacant possession of suit property?

4) Whether plaintiff is entitled to the relief/s as prayed for?

5) What order or decree?

7. In order to prove the case, the appellant/plaintiff got examined himself as PW.1 and produced the documents as Ex.P.1 to 12 and closed his evidence. On the other hand, the defendant got examined as DW.1 and produced the documents as Ex.D.1 to 11(g).

8. After closure of evidence and after the arguments from both sides, the trial court answer to finding to the issue No.1 in the affirmative & issue No.2 to 4 in the negative and ultimately dismissed the suit of plaintiff as suit is hit by provisions of Karnataka Rent Act.

9. Being aggrieved by the said judgment and decree passed in O.S. No.229/2020 the appellant/plaintiff filed present appeal on the following grounds;

- 1) *That the judgment and decree of trial court is arbitrary, capricious and perverse.*
- 2) *The trial court has utterly failed to appreciate the materials placed before it.*
- 3) *The trial court has utterly failed to appreciate the pleadings including admissions of the defendant and Ex.D.11(a) to (g).*
- 4) *The trial court has wrongly held that section 2(e) of Karnataka Rent Act is applicable. The present suit even from defendant is illegal possession of the suit schedule property. Hence question of termination of provisions of rent Act could not arise.*
- 5) *The finding of the trial court to the issue No.2 and 3 is quite contrary to the law as because the defendant himself searching the right of tenant from his father who died in the year 1984. The defendant has not established his independent right of tenancy either by way of agreement or act of the parties. Section 3 of Karnataka Rent Act could not applicable to the present defendant as it is not only against the answer to the issue No.1. When the Karnataka Rent Act is applicable to the persons who is tenant and who comes under purview of Section 2 of Karnataka Rent Act but not the illegal possessor of land in question. Hence the*

very answer by the trial court in respect of issues No.2 and 3 is hopeless and meaningless which requires to interfere.

- 6) *The trial court has failed to exercise judicial power. The suit is one for recovery of arrears of rent and the very admission of defendant as he is chronic defaulter. Therefore, in consideration of the suit of the plaintiff in respect of recovery of money and dismiss the suit of entire in the present fashion is error and apparent on the face of the records.*
- 7) *The trial court has utterly failed to digest the difference between tenant and illegal possession itself while delivering the judgment. Hence same is bad in law and liable to be dismissed. Hence, on these grounds appellant/plaintiff sought to allow the appeal and decree the suit.*

10. After institution of the appeal, appeal notice was issued to the respondent and respondent appeared through his counsel.

11. The trial court records have been secured.

12. Heard the arguments of both sides. Both counsels have relied the decisions. I have perused the materials placed on record.

13. After hearing the arguments from the appellant and respondent, the following points that would arise for my consideration:

1. Whether the impugned judgment and decree passed by the trial Court is perverse, capricious, illegal and contrary to the law and facts of the case?

2. Whether the finding of the trial court on issues No.2 to 4 are not correct and liable to be reversed?

3. Whether the impugned judgment and decree needs interference by this Court?

4. What order or decree?

14. My answers to the above points are as under:

Point No.1 : In the negative

Point No.2 : In the negative

Point No.3 : In the negative

Point No.4 : As per the final order,
for the following:

: REASONS :

15.**POINT No.1 to 3**: These points are inter connected with each other. Hence, in order to avoid repetition of facts, these points are taken up together for common discussion.

16. The appellant/plaintiff had filed suit against the defendant for the relief of possession of the suit schedule property on the ground that he is the owner of the suit schedule property and father of defendant including the defendant was residing in the suit property as tenement basis and after the death of father of defendant, the defendant approached the plaintiff and agreed to continue in the suit property by agreeing to hand over the same whenever demanded by the plaintiff. Therefore, the plaintiff is permitted the defendant on monthly rent of Rs.1,000/-. As the youngest son of the plaintiff intended to start medical shop in the suit schedule property by demolishing it with new construction thereby requested the defendant to hand over the suit premises but defendant failed to adhere their request. Hence suit was filed before the trial court.

17. On the other hand the defendant admitted that he is in possession of the suit schedule property and continued in the suit property after death of his father and he denied that he requested the plaintiff to continue in the suit property and agreed to hand over the suit property

whenever demanded by the plaintiff and denied the rate of rent of Rs.1,000/-. On the contrary, he contended that rent was Rs.10/- per month and defendant denied that he is due arrears of rent from July 2017.

18. The plaintiff himself examined as PW.1 and produced documents as Ex.P.1 to 12. In this case it is not disputed by the parties that the plaintiff is an owner of suit schedule property and father of defendant was tenant in the suit schedule property. According to plaintiff after demise of father of defendant on quest the defendant was continued in the suit schedule property on monthly rent of Rs.1,000/- and on the other hand defendant contended that he did not request the plaintiff to permit him to continue in the suit schedule property. On the other hand he has been continued in the suit schedule property after death of his father and rent was Rs.10/- p.m.

19. The defendant himself examined as DW.1 and produced documents as Ex.D.1 to 11(g).

20. The counsel for plaintiff argued that tenant has no right to dispute ownership of the plaintiff and as per Section 116 of Indian Evidence Act 1872, it is estoppel him to dispute the title of landlord. In this case defendant is not disputing title of the plaintiff. The counsel for the appellant submitted that defendant became defaulter in payment of rent from July 2017. Therefore, he became illegal possession in the suit schedule property. Therefore, the provisions of Karnataka Rent Act do not apply. Therefore, tenancy is inheritable and father of the defendant died in the year 1984 and therefore as per Section 5 of the Karnataka Rent Act apply and after five years only right to continue in the premises. The documents produced by defendant as per Ex.D.11(a) to (g) are standing in the name of father of plaintiff. Therefore, the Karnataka Rent Act does not apply and suit is maintainable.

21. On the other hand, the counsel for defendant/respondent argued that the defendant is tenant and according to defendant the rent was Rs.10/- however, he argued that according to plaintiff rent was Rs.1,000/-,

therefore it is less than Rs.2,500/- as per Karnataka Provisions of Rent Act, the suit is not maintainable before Civil court and plaintiff has to approach the proper forum under the Karnataka Rent Act for eviction of tenant. However though it is presumed that Karnataka Rent is not applicable. The rent is Rs.1,000/- as per pleading of the plaintiff and arrears of rent is Rs,36,000/-. Therefore, the suit is not maintainable, small cause court has got jurisdiction to entertain the ejectment of tenant not a suit before the civil court. Therefore, suit is not maintainable before Civil court. Further he argued that as per Section 5 of the Karnataka Rent Act the tenant is right to continue in the suit premises. Further argued that as per Section 108 of Transfer of property act the tenant has right to carry out the repair works. Hence suit is not maintainable and prayed to dismiss the appeal.

22. Before going to admissions and facts of the case whether suit is maintainable before Civil court, upon the pleadings of the parties and with relevant provisions of Karnataka Rent Act. In this case as per pleading of the

plaintiff, the defendant requested to continue in the suit schedule property and same was permitted by the plaintiff on monthly rent of Rs.1,000/- and same is pleaded in plaint at para No.4. Therefore, for this facts it is necessary to refer the provisions of Karnataka Rent Act.

23. Section 2 of Karnataka Rent Act provides applicability of the Act, the same is read as follows.

2. Application of the Act:- *(1) Chapters-I to III and Chapter-V to VIII of this Act shall apply to areas specified in the First Schedule.*

(2) Chapters I, and IV shall apply only to areas specified in the Second Schedule.

(3) Nothing contained in this Act shall apply,-

(a) to any premises belonging to,-

(I) the State Government or the Central Government or a local authority;

(ii) a Muzarai or religious or charitable institution;

(iii) a Wakf.

Explanation. - If any doubt arises whether any institution referred to in sub-clause (ii) and (iii) above is a muzarai or religious or charitable institution or a wakf, the decision of the Divisional Commissioner shall be final.

(b) to any building belonging to a Co-operative Society registered or deemed to be registered under the Karnataka

Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959) or the Multistate Co-operative Societies Act, 1984 (Central Act 51 of 1984);

(c) to any building belonging to a Market Committee established under the Karnataka Agricultural Produce Marketing Regulation Act, 1966 (Karnataka Act 29 of 1966);

(d) to any tenancy or other like relationship created by a grant from the State Government or the Central Government in respect of any premises taken on lease or requisitioned by the State Government or the Central Government;

(e) to any premises, deemed rent on the date of commencement of this Act or the standard rent of which exceeds,-

(i) three thousand five hundred rupees per month in any area referred to in part A of the first schedule; and

(ii) two thousand rupees per month in any other area.

Explanation. - "Deemed rent on the date of commencement of this Act" shall be the rent calculated in the manner provided in section 7, together with revision, if any, as provided in section 9 and decreased in the case of premises constructed after the commencement of this Act at the same rate as the rate of enhancement stipulated in the third Schedule to reflect the position on the date of commencement of this Act;

(f)

24. As per Section 2(e) of the Karnataka Rent Act, if the rent is exceeds more than Rs.3,500/- p.m., for the city

limits and Rs.2,000/- p.m., for any other area then Karnataka Rent Act is not applicable.

25. In the present suit according to plaintiff the rent is Rs.1,000/-p.m. Therefore, the pleading itself shows rent is less than the rent limits prescribed in Section 2(e) of Karnataka Rent Act. Further Section 3(e) and (n) of Karnataka Rent Act provides definition of landlord and tenant and the same are urged as follows.

Section 3(e) of Karnataka Rent Act:-

"landlord" means a person who for the time being is receiving or is entitled to receive, the rent of any premises, whether on his own account or on account of or on behalf of or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or to be entitled to receive the rent, if the premises were let to a tenant;

As per Section 3(n) Karnataka Rent Act:-

"tenant" means any person by whom or on whose account or behalf the rent of any premises, is or but for a special contract would be, payable, and includes,-(i)a sub-tenant;(ii)any person continuing in possession after the termination of his tenancy, but

does not include any person to whom a licence as defined in section 52 of the Indian Easements Act, 1882 (Central Act 5 of 1882) has been granted;

26. In this case the plaintiff himself stated in the pleading as the defendant was permitted to continue in the suit premises on monthly rent of Rs.1,000/-. Therefore, the admission in the pleading is best piece of admission and the admitted facts need not be proved U/s 58 of Indian Evidence Act 1872. The plaintiff cannot go beyond his pleading. Further in appeal grounds at 10 it is contended that the trial court utterly failed to digest the difference between tenant and illegally possessor but on careful reading of plaint the plaintiff nowhere stated the defendant is in an illegal possession of the suit schedule property except he is defaulter in payment of rent. Moreover during cross-examination of DW.1, the counsel for plaintiff did not suggest to PW.1 as defendant is illegally possession in the suit property. Hence this ground is urged in the first time in the appeal without pleading. Therefore, the trial court has rightly digested it and applied the right provisions of Law.

This is the suit, the facts has to be understood and the parties have to digest it and apply the Law relating to it.

27. Further, it is contended by the counsel for the appellant that trial court has not properly appreciated the documentary and oral evidence and come to conclusion that suit is not maintainable and hold that Karnataka Rent Act is applicable and answered issues No.2 to 4 in the negative. The counsel for the appellant argued that as per Section.5 of the Karnataka Rent Act the tenancy is only 5 years from the date of death of original tenant and further after death of original tenant his possession is illegal possession, therefore, for the suit for possession on the illegal possessor the Karnataka Rent Act could not be attracted. As stated above it is not pleading of the appellant/plaintiff as the defendant is illegal possession in the suit schedule property after the demise of original tenant but as pleaded by the plaintiff that the defendant is continued in the suit schedule property on monthly rent of Rs.1,000/- without rent is fixed on monthly basis, therefore it is impliedly agreed as the defendant is tenant under the plaintiff and there is jural

relationship of landlord and tenant. Moreover for the movement, may it presume as the suit is maintainable then the question of termination of tenancy or licence, will come into picture, then the plaintiff ought to have terminated the tenancy or lease as per Section 106 of T.P.Act. In this case the plaintiff has not at all issued any legal notice and terminate the tenancy as contemplated under T.P.Act. Therefore, in view of Section 2 and definition as land lord and tenant and applicable of the rent Act, the trial court has rightly held as the provisions of rent Act are applicable. Therefore at this juncture it is proper to refer the decision reported in Civil Appeal No.7020-7021 of 2005, between Shahwar Basheer and others Vs. Veena Mohan, wherein the Hon'ble Supreme court has held as under:

On the strength of Section 70(2)(b), learned counsel for the respondent submitted that now the definition of "tenant" prescribed in the new Act will apply. We do not agree. In our opinion, the provision of Section 70(2)(b) is procedural. The said Section has nothing to do with substantive rights which had accrued before the 1999 Act came into force.

As already stated above, the appellants had become tenants when the original tenant

died in 1994 and there is no clear provision in the 1999 Act which states that the tenancy rights which had accrued earlier will become extinguished on the coming into force of the 1999 Act.

28. Further the Hon'ble High court of Karnataka in H.R.R.P. No.169/2008, at para No.26 the Hon'ble High court of Karnataka has held thus.

26. Therefore, Section 5 makes it clear that, in the event of death of a tenant, the rights of tenancy shall devolve for a period of 5 years or only for a period of one year from the date of his death to his successors in the order mentioned therein. The said section applies to a tenant on the date the Act came into force and such a tenant dying after the Act came into force. Therefore, if a tenant of premises dies before the Act came into force, Section 5 of the Act has no application. Section 5 of the Act is attracted to a case where a tenant dies after the Act came into force. A tenant who has acquired a right under the old Act prior to the Act came into force continues to be a tenant under the new Act and Section 5 is attracted to a case only on his death after the commencement of the Act. Section 5 is not attracted to a case of the predecessors of the tenant who was the original tenant, who died prior to the coming into force of the new Act. If such an interpretation is placed it runs counter to the legislative intent and it is absurd. The new Act has not taken away the vested rights of tenants who are the tenants of the premises prior to

coming into force of the Act except in the manner specified in the new Act. The new Act does not specify that the rights of legal heirs of original tenant who acquired the status of tenancy under the old Act, are also restricted in terms of Section 5 of the Act.

29. Further the appellant has relied the decision reported in AIR (2009) 2 Kar 214 between B.K.Suresh Babu, B.K., Jayakumar Chetty and B.K.Ashok Kumar Chetty, the Hon'ble High court of Karnataka held as under.

Karnataka Rent Act, 1999-Sections 5, 27(2)(a), 21(1)(a)(h), 21(1)(a)(p) - Order of eviction-Legal representatives of the deceased tenant-Suit for eviction notwithstanding anything to the contrary if the tenant failed to pay rent regularly as provided in Section 9(ii) of the Punjab Security of Land Tenures Act, 1953-Right of tenancy-Section 5 of the Karnataka Rent Act, 1999 (hereinafter referred to as the 1999 act) as on 16-9-2003 to urge that the right of the tenants to continue in occupation, after the expiry of five years from the date of death of the tenant under whom they claimed, stood extinguished and for a direction to hand over possession-Right of a legal representative of a tenant to claim protection under Section 3(n) read with Section 21 of the 1961 Act is taken away prospectively with the coming into force of the 1999 Act, which recognizes only a limited right in such legal representatives. Section 5 is not applied

retrospectively as the requisite for an action in terms of Section 5 is an event that has occurred before the coming into force of the new Act. The right of a legal representative of a tenant who claims his right to occupation only as the successor of the tenant, but not under an independent right would have to be addressed in terms of Section 5 which contemplates that the tenancy would stand determined with the death of the tenant subject to Section 5. The limited protection afforded may have spent itself out before the coming into force of the Act. This would hardly make any difference in the applicability of the same. The rule against retrospective construction would, therefore, not be applicable to Section 5 only because, a part of the requisites for its action is drawn from a time antecedent to its passing. To construe it otherwise, would result in nullification of its operation.

30. On the other hand the respondent has relied the following decisions.

i) 2002 AIR CC 26 between Shanmukhasa Krishnasa Shidling and Gangadhar Shivangouda Honavadakar Iravva and others, the Hon'ble Karnataka High court has held thus;

Specific Relief Act, 1963 Sections 34 and 5 Karnataka Rent Act, 1999, Sections 2 (1)(g) and 27-Recovery of possession-Suit for jurisdiction-Building used for commercial purpose i.e., non residential premises having plinth area not exceeding 14 sq.meters being used for commercial purpose-Therefore small cause courts or civil courts have no jurisdiction-So, suit itself is not maintainable-Reasoning of trial court that, Act came to effect by notification 5.12.2001 and 31.12.2001 and suit was filed earlier on 21.12.2001 is not correct-Therefore, suit for ejectment is not tenable before Civil court in view of applicability of Act, 1999-Plaintiff is not barred from initiating appropriate proceeding under Act, 1999.

This decision is pertaining to non residential premises which plinth area does not exceeds 14 sq.meters. Therefore, this decision is not applicable to the present facts of the case.

ii) AIR 2003 Allahabad 315 between Smt.Saroj Dwivedi VS.Addl.District Judge/Special Judge and others, the Hon'ble Allahabad High court has held thus.

Transfer of property Act (4 of 1882), S.108(m)-Lease-Tenant is duty bound to maintain leased premises-He has right to

effect repairs in tenanted premises in terms of S.108(m)-Provisions of S.28 of U.P.Rent Act of 1972 which enables tenant to seek repairs from landlord does not take away right of tenant to effect repairs himself-Thus, landlord cannot claim injunction restraining tenant from reconstructing roof of tenanted premises.

Iii) ILR 1990 Kar 2639 between Govindamma Vs. Murugesh Mudaliar, the Hon'ble High court of Karnataka has held as under.

(A) KARNATAKA RENT CONTROL ACT, 1961 (Karnataka Act No.22 of 1961)-Parts IV & V – Non-Obstante clause; Signification-'Any court' in Section 21(1) indicates Civil court exercising civil jurisdiction under Karnataka Civil courts Act: excluded by Act to pass order for recovery of possession of premises to which parts IV & V of Act apply.

31. It is contended by the appellant in his appeal grounds that the defendant himself searching right of tenant from his father who died in the year 1984 and he has not established his independent right of tenancy either by way of any agreement or act of the parties from the date of commencement of Act, it may extend for a period of 5 years but not more than that, therefore, Section 3 of Karnataka

Rent Act would not be applicable. Further contended that more over when the Karnataka Rent Act is applicable to the person who is tenant and who acts under the purview of Section 3 of the Karnataka Rent Act but not illegal possessor of the land in question. Hence the very answer by the trial court in respect of issues No.2 and 3 is hopeless and meaningless and further argued that issues No.2 and 3 are required to be interfered. During argument he has submitted that as per Section 5 of the Karnataka Rent Act their tenancy is only 5 years.

32. It is pertinent to note that though defendant trying to establish his tenancy from his father as his father was tenant to the suit schedule property. But the plaintiff himself pleaded in plaint para No.4 that the defendant has approached the plaintiff to continue in the suit property by agreeing to hand over the same whenever the plaintiff demanded the possession of the same. **Accordingly by considering the request of the very defendant as permitted by the plaintiff on monthly rent of Rs.1,000/-**. This pleading itself narrates as the defendant is

tenant under the plaintiff. As the appeal ground there is no independent right of tenancy by way of any agreement or act of the parties. This act of the plaintiff to permit the defendant as stated above itself proves that the defendant is independent tenant of monthly rent of Rs.1,000/-, the permission given by the plaintiff itself is an act of the parties. The monthly rent was of Rs.100/-, then as prescribed rent as per Section 2(e) of K.R.Act, it is not exceeds the monthly rent of Rs.2500/- p.m. Therefore the provisions of Karnataka rent Act are applicable to the premises as rent was less than of Rs.2,500/- any other area and Rs.3,500/- to the area referred in para A of first schedule. The present premises comes under Section 2(e)(ii) which is rent fixed of Rs.2,500/- p.m. In this case rent is fixed Rs.1,000/- p.m. Therefore, the decision relied by the respondent in the case of Govindamma referred supra which is pertaining to Karnataka Rent Act 1961 but the same provision is covered under rent Act 2(e) of K.R.Act-1999. Further Section 27 and 50 of the Karnataka Rent Act exclude the jurisdiction of the civil court and the cognizance

has to be taken by the Karnataka Rent Act to the premises where covered under the provisions of Karnataka Rent Act 1999. Section 5 of the Karnataka Rent Act is not applicable because the independent tenancy has been confirmed by the plaintiff on monthly rent of Rs.1,000/-. Moreover the father of defendant died much prior to coming into force of Karnataka Rent Act 1991 i.e., in the year 1984. Therefore, Section 5 of the Karnataka rEnt Act is also not applicable . Therefore, argument advanced by the learned counsel for the appellant holds no water with respect to not applicability of the Karnataka Rent Act.

33. The counsel for appellant argued that the trial court has not taken into consideration of Ex.D.11(a) to 11(g). I have perused the all documents and said documents are payment receipts payable to the Shankaragouda Patil who is the father of plaintiff. Though it is not covered in the trial court judgment and the said documents are not standing in the name of defendant, But admission made in the pleadings it is best piece of evidence. Therefore, by taking purview of Section 58 of Indian

Evidence Act this court comes to the conclusion that the defendant is tenant on monthly rent of Rs.1,000/-. Mere failure to pay the rent even more than 3 years he became defaulter of payment in rent but no illegal possessor of the suit schedule premises because the plaintiff himself admitted defendant is tenant on monthly rent of Rs.1,000/-. Therefore, which excludes jurisdiction the civil court under the provisions of Karnataka Rent Act. Therefore, the plaintiff has to approach the proper forum to evict the defendant not before the civil court by filing civil suit. Hence the suit of the plaintiff was rightly dismissed by the trial court by digesting the pleading and evidence of the parties and rightly answered to the issues No.2 to 4 in the negative. Therefore, the suit is not maintainable. The trial court has rightly dismissed the suit by considering oral and documentary evidence and applicability of the provisions of Karnataka Rent Act to the suit premises. Hence the appeal is liable to be dismissed with costs. Hence I answer points No.1 to 3 in the negative.

34.**Point No.4:** In view of the aforesaid reasons, I proceed to pass the following:

: O R D E R :

Appeal filed by the appellant/ plaintiff under Order 41 Rule 1 of CPC is hereby dismissed with costs throughout the entire proceedings.

The judgment and decree passed in O.S.No.229/2020 dated 30.08.2023 by the learned I Addl.Civil Judge, Dharwad is hereby confirmed.

Draw decree accordingly.

Office is directed to transmit the copy of this judgment and decree to the trial court with its records if any.

(Dictated to the Stenographer, typed by him, corrected and signed by me and then order is pronounced by me in the open court on this 14th day of October, 2024)

(Allappa.M.Badiger)
III Addl. Sr. Civil Judge & C.J.M.,
Dharwad