

KAYG200004322019



**IN THE COURT OF THE ADDL. CIVIL JUDGE, AND J.M.F.C.,**  
**AT SHAHAPUR**

**PRESENT: Sri. Kadappa Hukkeri, B.A.LL.B.,**  
**Prl. Civil Judge & J.M.F.C., Shahapur**

**Dated this the 20<sup>th</sup> Day of November, 2021.**

**ORIGINAL SUIT NO. 50 OF 2019**

Tippanna S/oIranna Arikeri  
age:63 years, Occ: Hotel Busines,  
R/o. APMC Yard Shahapur, Tq.Shahapur.  
Dist. Yadgir.

**(By Smt.B.M. Rampure Adv.)**

**... Plaintiff**

**VERSUS**

The Secretary, APMC Yard Shahapur,  
Tq.Shahapur, Dist.Yadgiri.

**(Deft by Sri.L.S. Kulkarni Adv.)**

**... Defendant**

|                                            |   |                      |
|--------------------------------------------|---|----------------------|
| Nature of the suit                         | : | for injuncion        |
| Date of institution of the suit            | : | 28.2.2019            |
| Date of commencement of recording evidence | : | 09.01.2020           |
| Date of Judgment                           | : | 20-11-2021           |
|                                            |   | Year/s Month/s Day/s |
| Total duration                             | : | 02 08 23             |

### **JUDGMENT**

This is a suit for permanent injunction restraining the defendant or anybody claiming under him permanently from removing the plaintiff over the suit premise except in due course of law.

2. The case of the plaintiff is that he is in lawful possession and enjoyment of suit premise i.e., tin shed house since from 1-6-1997 to till today by paying Rs.125/- rent to its owner i.e., defendant. The defendant is nothing to do with the suit premise, but on 27.2.2019 came to the suit premise and asked to vacate him from the suit premise without following the due process of law. The act of the defendant is illegal. As such the plaintiff has filed the present suit.

3. In response to the suit summons, the defendant appeared through his counsel and contested the suit by filling the written statement. In the written statement, the defendant has denied the entire averments of the plaint by contending that the plaintiff is in illegal possession of suit premises. Therefore, his possession cannot be protected. The plaintiff has requested to the defendant vacate the suit premises, which is required for office purpose. The plaintiff has not heeded the request last one year. Further, this Court has no jurisdiction to try the suit. As such he prayed for dismissal of the suit.

4. On the basis of above said pleadings, the following Addl issue was framed;

1. Whether the suit of the plaintiff is maintainable in view of Sec.16 of Karnataka Public Premises (Eviction of Unauthorised occupants) Act.1974?

5. I have heard the arguments on both sides. Perused the records. My reasons to the above issue are as follows.

### **REASONS**

6. The plaintiff has filed the present for permanent injunction restraining the defendant from illegal eviction from the suit premise. In the plaint, the plaintiff has admitted the ownership of the defendant. The plaintiff has asserted that he has been in possession of the suit property since from 1-6-1997 and paying the rent to the defendant regularly. But the defendant is evicting him from the suit premise without following the due process of law.

7. On the other hand, the defendant contended that the suit property is public property falls within the definition of Sec.2(c) of Karnataka Public premises (Eviction of Unauthorised Occupants) Act.1974. As such the proceedings taken by competent authority under the said Act, cannot be challenged before the Civil Court, in view of bar contained in Sec.16 of the said Act. For the better appreciation of facts Sec.2(c) extracted hereunder;

**Section 2(c)** “*premises*” means any land or any building or hut or part of a building or hut and includes, -

(i) the garden, grounds and out-houses if any, appurtenant to such building or hut or part of a building or hut; and

(ii) any fittings affixed to such building or hut or part of a building or hut for the more beneficial enjoyment thereof;

**Section 2 (e)** “*public premises*” means any premises belonging to or allotted to State Government or taken

on lease or requisitioned by or on behalf of the State Government and includes any premises belonging to or taken on lease by or on behalf of,-

(i) a local authority;

(ii) any company as defined in section 3 of the Companies Act, 1955 (Central Act 1 of 1956) in which not less than fifty one percent of the paid-up share capital is held by the State Government; [or any company which is a subsidiary (within the meaning of the said Act) of the first mentioned company";

(iii) any corporation (not being a company as defined in section 3 of the Companies, Act, 1956) established by or under a Central Act or a State Act and owned or controlled by the State Government; and

(iii-a) the Institute for social and economic change, Bangalore.

(iv) a Notified Institution or Declared Institution under the Karnataka Hindu Religious Institutions and Charitable Endowments Act 1997.

(v) a wakf registered with the Karnataka State Board of Wakfs;

(vi) the State Government and the Government of Andhra Pradesh jointly, and under the management or administrative control of the Tungabhadra Board constituted by the Government of India under sub-section (4) of section 66 of the Andhra State Act, 1953 (Central Act 30 of 1953).

(vii) a University established or deemed to have been established by or under any law of the State Legislature.

[(viii) A Co-operative Society or a Federation of Co-operative Societies established under any law in force in the State in which the Government Property or share is involved.

Explanation. - For the purposes of this clause 'local authority' means,-

(a) a municipal corporation;

(b) a town or city municipal council;

(bb) ***a market committee established under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (Karnataka Act 27 of 1966);***

(c) an Improvement Board established under the Karnataka Improvement Boards Act, 1976 (Karnataka Act 11 of 1976);

(d) a Zilla Panchayat or Taluk Panchayat or a Grama Panchayat established under the Karnataka Panchayat Raj Act, 1993 (Karnataka Act 14 of 1993).

(e) the Bangalore Development Authority constituted under the Bangalore Development Authority Act, 1976 (Karnataka Act 12 of 1976);

(f) an Urban Development Authority constituted under the Karnataka Urban Development Authorities Act, 1987 (Karnataka Act 34 of 1987).

(g) the Karnataka Slum Clearance Board established under the Karnataka Slum Areas (Improvement and Clearance) Act, 1973.

8. By combined reading of Section 2(c) and (e) of the above said Act, the public premises means any land or any building or hut or any part of building belonging to the State Govt is called public premise. The APMC Shahpur established under Karnataka Agriculture Produce Regulation Act.1996. The Section 2 (e) includes the premises belonging to the market. Admittedly in the present case, the plaintiff seeking the protection against APMC Shahapur, he has not denied the title of the defendant. The suit property falls under the definition of Sec.2(c) and (e) of public premises (Eviction of Unauthorised Occupants) Act. Sec.16 of the said Act clearly bars the jurisdiction of the Civil Court to take the cognizance of the suit or proceedings in respect of eviction or other matters initiated under the said Act. Sec.16 of the above said Act is extracted here under:

“16. Bar of jurisdiction.- No court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or the recovery of the arrears of rent payable under sub-section (1) of section 7 or the damages payable under sub-section (2) of that section or the costs awarded to the State Government or the local authority or the corporate authority under sub-section (5) of section 10 or any portion of such rent, damages or costs.”

9. On perusal of the aforesaid provision, it is clear that no suit or proceedings can be challenged before the Civil Court in respect of proceedings initiated by competent authority such as eviction of unauthorised occupants of any public premises,

recovery of arrears of rent etc. Section 16 expressly bars the jurisdiction of Civil Court from taking cognizance in respect of matters relating to eviction of unauthorised occupants from public premises.

10. In the present case also the suit premises is public premise. Admittedly the plaintiff is in illegal possession of the suit premises, when the defendant asked to evict him from the possession of the suit property, the plaintiff has filed the present suit. Therefore, Sec.16 of the said Act clearly prohibits the jurisdiction of Civil Court. As such this Court has no jurisdiction to entertain and try the suit. Section 15 of the Public Premises (Eviction of Unauthorised Occupants) Act. 1971 is analogous to section 16 of Karnataka Act of 1974 which bars the jurisdiction of Civil Court to entertain any suit in respect of or in relation to eviction of unauthorised occupants from public premises.

11. It is to be noted that in order to apply Section 16, the persons must be in unauthorised occupation of the premise. Section 2 (g) of said Act defined the term unauthorised occupation. Which runs as follows.

(g) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises, without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

12. In the present case, the plaintiff has stated that he has been in possession of the suit premise from 01-06-1997. The

plaintiff has produced some photos and receipts to show that he is in possession of the suit premise. Ex.P1 and 2 receipts show that plaintiff has paid rent in the year 2009 but no recent receipts have been produced. In the plaint, the plaintiff has admitted that the defendant has initiated eviction proceedings against him as he has filed the present suit for protection of his possession. The plaintiff has not produced any documents to show that he is in permissive possession. From this discussion, it is clear that the plaintiff is in unauthorised occupation of suit premise. In such case he cannot take the shelter under general law.

13. The learned counsel for the defendant contended that the plaintiff cannot be dispossessed except in due course of law and relied on the following decisions:

1. ILR 1997 Karnataka 999- P. Fatesh Ahamed Saheb by Lrs. Vs. Sandur Usaman Saheb by Lrs. and Ors.

2. A.Subramanian Vs. R.Pannesarvam reported in (2021) 3 SCC 675.

3. Rudrappa Vs. Hubballi Dharwad Municipal Corporation Dharwad ( RSA No.309/2008 dated 24-06-2008 )

14. By referring the above decisions, the plaintiff contended that, a person in settled possession cannot be dispossessed by even by the owner. Otherwise than by proceeding in accordance with the procedure established by law. The concept of forcible dispossession is disfavoured by law and even the true owner has to resort to the due process of law for getting evicted a person from his property who is in settled possession though unlawful". But the learned counsel for the defendant has contended that the Karnataka Public premises (Eviction of Unauthorised Occupants) Act.1974 is special enactment. The Special enactment prevails over the General Law. As such the contention taken by the plaintiff



cannot be accepted. With due respect to the decision referred by the plaintiff's counsel, which are not applicable to facts and circumstances of the present case as the plaintiff is filed the suit on initiation of eviction proceedings by the defendant. The argument advanced by the learned counsel for the defendant is acceptable because the said Act is Special Law and it provides the procedure eviction of unauthorised occupants from public premises.

15. In the present case, the defendant has initiated proceedings against the plaintiff for eviction, such matter falls within the ambit of the said Act and that cannot be question before the Civil Court in view of bar contained in Sec.16 of the said Act. The only appropriate authority has jurisdiction to decide such claims. Therefore, for the above said reasons, I am of the opinion that, the suit of the plaintiff falls within the ambit of Sec.16 of Karnataka Public premisses (Eviction of unauthorized Occupants) Act.1974. Hence the suit of the plaintiff is not maintainable. Hence, I answered Addl. issue No.1 in the negative and I proceed to pass the following:

### **ORDER**

The suit of the plaintiff is hereby dismissed. No order as to costs.

(Dictated to the Stenographer, transcribed by him, corrected by me, and then pronounced by me in the open Court, on this the 20<sup>th</sup> day of November, 2021).

**(Sri. Kadappa Hukkeri)**

**I/c. Addl. Civil Judge & J.M.F.C.,  
Shahapur.**

### **ANNEXURE**

#### **1. List of witnesses examined on behalf of the plaintiff**

P.W.1 : Tippanna s/o Iranna Arikari

P.W.2 : Devindrappa S/o Nandappa Devpurdavar.

**2. List of documents marked on behalf of the plaintiffs.**

Ex.P1 &2 : Tax paid receipts.

Ex.P3 to 6 : Photographs.

Ex.P7 : One C.D.

**3. List of Witness examined on behalf of the defendants**

**-Nil-**

**4. List of documents marked on behalf of the defendant**

**- Nil-**

Addl. Civil Judge and J.M.F.C.  
Shahapur