



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

REGULAR SECOND APPEAL NO. 96 OF 2026 (EVI)

BETWEEN:

SRI M RAMESH SANKHLA
S/O SRI MODARAM,
AGED ABOUT 51 YEARS,
R/A D.NO.354 A,
RAMANNA STREET,
DEVARAJA MOHALLA,
MYSURU - 570 001.

...APPELLANT

(BY SRI T N VISWANATHA, ADVOCATE)

AND:

SRI N V SATHISH,
S/O LATE N.R. VISHWANATHA SHETTY,
AGED ABOUT 61 YEARS,
R/A D.NO.301,
NAVARATHNA ENCLAVE,
KRISHNARAJA BOULEVARD STREET,
KRISHNAMURTHYPURAM,
MYSURU - 570 004.

...RESPONDENT

(BY SMT. A. KUNDAVAI, ADVOCATE FOR
SRI H.L.NAGESH, ADV. FOR C/R IN CP NO.27146/2025)





THIS RSA IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 17.11.2025 PASSED IN RA.NO. 37/2025 ON THE FILE OF THE C/C VI ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, AT MYSURU, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 10.12.2024 PASSED IN OS NO.1243/2022 ON THE FILE OF XIII ADDITIONAL CIVIL JUDGE AND JMFC, MYSURU.

THIS APPEAL, COMING ON FOR HEARING ON I.A., THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and decree dated 17.11.2025 passed by VI Additional Senior Civil Judge and J.M.F.C., Mysuru, in R.A.no.37/2015 and judgment and decree dated 10.12.2024 passed by XIII Additional Civil Judge and J.M.F.C., Mysuru, in O.S.no.1243/2022, this second appeal is filed.

2. Sri T.N. Viswanatha, learned counsel for appellant submitted that appeal was by defendant in O.S.no.1243/2022 filed for decree, directing defendant to handover eastern half



portion of shop premises situated in Ground Floor of building constructed on Site no.3, Opposite to Devaraja Market, Clock Tower, popularly known as Duplin Complex, Shivarampet, Devaraja Mohalla, Mysuru, measuring East to West - 5½ feet and North to South 15 feet (hereinafter referred to as '**Suit Property**') to plaintiff, for damages at rate of Rs.40,000/- per month from date of suit till vacation and handing over suit premises etc.

3. In plaint, it was stated that *suit property* belonged to plaintiff's father and defendant was its tenant on monthly rent of Rs.15,000/- as per rent agreement dated 06.12.2009 for a period of 11 months but, extended from time to time. It was further stated that defendant was a chronic defaulter in payment of rent and after passing away of plaintiff's father on 16.08.2018, he continued as a statutory tenant. It was stated that his siblings had executed Power of Attorney in favour of plaintiff and as they require premises for own use, they had got issued notice for termination of tenancy on 07.04.2022, which was duly served on defendant and despite same, defendant failed to vacate *suit property* giving rise to cause of action for filing suit.



4. After entering appearance, defendant filed written statement denying plaint averments, disputing right, title and interest over *suit property* for filing suit, but stated that he had paid a sum of Rs.15,00,250/- towards rent from 06.12.2009 to September, 2019 and denied being in arrears. Even issuance of legal notice was denied. It was further stated that at time of tenancy, he had paid a sum of Rs.5,00,000/- as advance and Rs.3,00,000/- as goodwill which was required to be returned with interest. On said grounds sought for dismissal of suit.

5. Based on pleadings, trial Court framed following:

ISSUES

- 1) *Whether the plaintiff proves the relationship of tenant and landlord in respect of suit schedule property vide rent agreement dated 06.12.2009?*
- 2) *Whether the plaintiff proves that the defendant being the statutory tenant under him and his brothers continued the tenancy?*
- 3) *Whether the plaintiff proves that the defendant is the chronic defaulter of rent?*
- 4) *Whether the plaintiff proves that the premises is required by the plaintiff and his brothers for their occupation?*
- 5) *Whether the defendant proves that he paid refundable advance amount of Rs.5,00,000/- and Rs.3,00,000/- as goodwill without their being any*



interest to Sri N.R.Vishwanatha Shetty?

- 6) *Whether the defendant proves the payment of Rs.1,50,000/- to plaintiff and Rs.2,00,000/- to N.V.Jagidish?*
- 7) *Whether the tenancy has been terminated in accordance with law?*
- 8) *Whether the plaintiff is entitled for the vacant possession of suit property and damages at Rs.40,000/- per month as sought for?*
- 9) *What order or decree?*

6. In trial, plaintiff examined himself as PW.1 and got marked Exhibits-P1 to P10. Defendant did not step into witness-box, but got marked Exhibits-D1 to D10 in confrontation of PW.1.

7. Thereafter, trial Court answered issues no.1, 2, 4 and 7 in affirmative; issue no.3 in negative; issues no.5, 6 and 8 partly in affirmative and issue no.9 by decreeing suit in part, directing defendant to vacate *suit property* and handover possession within three months and holding defendant entitled for refund of security deposit after deduction of dues payable at time of handing over of *suit property*.



8. Aggrieved defendant filed R.A.no.37/2025 on various grounds. It was contented, judgment and decree passed by trial Court was contrary to facts and circumstances of case and material on record. It was contented that finding of trial Court about plaintiff having established relationship of tenant and landlord was without basis. It was contented that plaintiff had failed to establish bonafide requirement. Likewise, even finding of trial Court about valid termination of tenancy and plaintiff being entitled for relief was contrary to material on record. Based on contentions urged, first appellate Court framed following:

POINTS

- 1) *Whether the appellant proves that the Trial Court has committed error decreeing the suit and not considering the contention of the defendant?*
- 2) *Whether the impugned judgment and decree of the trial Court is perverse, erroneous, arbitrary, capricious and opposed to law, facts and circumstances of the case and calls for interference by this Court?*
- 3) *To what order or decree?*

9. After answering points no.1 and 2 in negative, it answered point no.3 by dismissing appeal. Aggrieved by concurrent findings, defendant had filed this appeal.



10. Learned counsel for appellant/defendant sought to contend that both Courts had concurrently erred in holding valid termination and that it was without proper and necessary pleadings. Said contention was also urged on ground of non-service of notice of termination. It was submitted, Exhibits-P1 to P5 as well as Exhibits-P7 to P10 were only notice appended with postal receipts and un-served returned covers. Thus finding about valid termination would be contrary to material on record.

11. It was further submitted, first appellate Court had erred in not re-appreciating entire material on record and arriving at independent conclusion which would be in violation of ratio laid down by Hon'ble Supreme Court in case of **Santosh Hazari v. Purushottam Tiwari**, reported in **2001 (3) SCC 179**. On said grounds learned counsel submitted following substantial questions of law would arise for consideration and sought for answering same in favour of appellant/defendant by allowing appeal.

1. *Whether First Appellate Court was justified in dismissing Appeal without assigning independent reasoning as held required by*



*Hon'ble Supreme Court in its decision reported in **2001 (3) SCC 179?**"*

2. *Whether both Courts were justified in decreeing the suit for possession in absence of valid termination of tenancy under Section 106 of Transfer of Property Act?*

12. On other hand, Smt.Kundavai A., learned counsel appearing for Sri H.L. Nagesh, advocate for respondent/plaintiff opposed appeal. At outset, it was submitted, both Courts had arrived at concurrent findings on appreciation of Exhibit-P1 - legal notice that there was deemed service of notice of termination of tenancy of defendant. Plaintiff had specifically pleaded about issuance of notice in plaint. Same was not disputed and infact failure of defendant to step into witness-box would substantiate same. In any case, since no such specific contention was urged in first appeal or in written statement, findings were justified and could not be interfered with in second appeal. Therefore, no substantial question of law would arise for consideration. On said grounds sought for dismissal of appeal.



13. Heard learned counsel, perused impugned judgment and decree and certified copies of pleadings, deposition as well as copy of Exhibit-P1 - notice of termination made available for perusal by learned counsel for parties.

14. From above, it is seen, this appeal is by defendant against concurrent findings in suit for possession. Perusal of plaint would reveal specific assertion by plaintiff about defendant being tenant in pursuance of agreement of lease dated 06.12.2009 executed between plaintiff's father and defendant, for 11 months but extended from time to time and on death of plaintiff's father, defendant continuing as statutory tenant. In plaint, plaintiff has stated about issuance of notice of termination of tenancy on two grounds, firstly about defendant being chronic defaulter in payment of rent and secondly, on ground of bonafide requirement for own occupation. In written statement, though said assertions are denied or disputed, there is specific assertion about payment of arrears of Rs.15,00,250/- towards rent from 06.12.2009 to September, 2019.

15. While passing impugned judgment, trial Court answered issues no.1 and 2 about relationship of landlord and



tenant in affirmative, which would be inconsonance with admission about payment of arrears by defendant. In suit for possession, only requirement would be to establish a valid termination, about which trial Court framed issue no.7. On reference to Exhibit-P1 - notice of termination and Exhibits-P2 to 10 - receipts/un-served covers etc., trial Court has come to conclusion that they would establish deemed service of notice on defendant. Perusal of plaint as well as Exhibit-P1 would indicate that plaintiff has specifically pleaded tenancy was monthly, beginning from 6th day of every calendar month and ending on 5th day of succeeding month with Rs.15,000/- as monthly rent subject to revision of every two years.

16. Indeed while passing impugned judgment, trial Court has arrived at a specific finding that plaintiff failed to establish defendant being chronic defaulter or being in arrears of rent. But same would not be germane to issue between parties herein, which is to establish valid termination. While passing impugned judgment, first appellate Court has taken note of specific contentions urged which do not include contention about non-service of notice of termination on defendant. First appellate Court has referred to entire material



on record and advertent to contentions urged, arrived at reasoned conclusion concurring with findings of trial Court. Thus, though, points for consideration framed appear general and not specific, requirements of law as stated in **Santosh Hazari's** case (*supra*) are met.

17. In view of above, and as finding about valid termination is concurrent, I do not see any substantial question of law arising for consideration or for admitting appeal. Appeal is ***dismissed***. Insofar as contentions urged about requirement of refund of security deposit of Rs.5,00,000/- to defendant after deduction of rent payable and also contention of respondent/plaintiff about defendant being in arrears to tune of Rs.16,17,398/- as claimed, same would not require examination by this Court.

Parties would be at liberty to urge same in Execution Petition.

At this stage, learned counsel for appellant/defendant seeks for reasonable extension of time for vacation. Considering facts and circumstances, I find it fit to grant extension by a period of one month from today with suggestion



NC: 2026:KHC:12250
RSA No. 96 of 2026

to Executing Court to consider defendant's plea to vacate with liberty to contest claim for arrears/refund of deposit in execution on plaintiff either depositing advance amount as per trial Court decree or filing undertaking to deposit same as per order/direction of Court.

Sd/-
(RAVI V HOSMANI)
JUDGE

GRD
List No.: 1 Sl No.: 11