



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF FEBRUARY, 2024

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BEFORE

THE HON'BLE MR JUSTICE M.I.ARUN

CIVIL REVISION PETITION NO. 461 OF 2019

BETWEEN:

1. B. MOHAMMED KUNHI,
S/O. LATE P. SAYYAD ALI,
AGED ABOUT 59 YEARS,
2. MRS. MAIMOONA
W/O. SRI. B. MOHAMMED KUNHI,
AGED ABOUT 45 YEARS,

BOTH R/AT DOOR NO. 20-2-141/38,
(NO.412 A), NALAPAD KUNIL TOWERS,
'A' BLOCK, 3RD FLOOR, NELLIKAI ROAD,
MANGALURU - 575 001 (DK).

...PETITIONERS

(BY SRI. M. SUDHAKAR PAI, ADVOCATE)

AND:

ABDUL SALEEM HASSAN,
S/O. AHMAD HASSAN,
AGED ABOUT 45 YEARS,
R/AT MUNNOOR HOUSE,
P.O. THUMBE - 574 143,
BANTWAL TALUK (DK).

...RESPONDENT

(BY SRI. SYED AKBAR PASHA, ADVOCATE)





THIS CRP IS FILED UNDER SEC.115 OF CPC, PRAYING TO SETTING ASIDE THE ORDER DATED 25.09.2019 IN O.S.NO.256/2016 ON THE FILE OF III ADDL.SENIOR CIVIL JUDGE AND JMFC, MANGALURU, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The respondent claiming to be the owner of the suit schedule property and alleging that the petitioners are the tenants, filed O.S.No.256/2016 on the file of the Senior Civil Judge at Mangaluru with the following prayer:

IV. That the Plaintiff values the subject matter and the relief claimed in this suit at Rs.7,50,000/- for the purpose of Court Fee and jurisdiction, and herewith pays the Court Fee of Rs.48,375/- under Section 21 and 41(2) of the Karnataka Court Fee and Suits Valuation Act through the Banker's Cheque/D.D. dated 18.11.2016 No.000943 drawn on the Bank of Baroda, B.C. Road Branch, Bantwal.

V. That the Plaintiff hereby claims-

(a) Quit and surrender the vacant possession of the plaint schedule Premises to the Plaintiff

Rs.7,15,000/-



[Yearly rent Rs.65,000 + premium

6,50,000= Rs. 7,15,000/-)

[This relief is valued @

Rs. 7,15,000/- and Court Fee paid u/S.41(2) of K.C.F. & S.V. Act)

(b) Mesne Profit @ Rs.500/- per day from 03.09.2016 to 01.11.2016,

*i.e. 2 months = Rs.30,000/-
15000x2=30,000/-*

[This relief is valued at Rs.30,000/- under Section 21 of K.C.F.. & S.V. Act)

© Cost of Legal notice Rs.5,000/-

[This relief is valued at Rs.5,000/- under Section 21 of K.C.F.. & S.V. Act]

(d) Future mesne profits @ Rs.500/- per day from the date of this suit till payment

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[This relief is not valued]

TOTAL VALUE: RS. 7,50,000/-

and valued the said suit at Rs.7,50,000/- and paid Court fee on the sum of Rs.7,50,000/-.



2. The petitioner raised an objection that the suit is not properly valued and the Civil Judge, Senior Division, has no jurisdiction to try the case and the plaint has to be presented before the Civil Judge, Junior Division. The trial Court on 12.04.2018, framed an additional issue as follows:

"Whether the defendants prove that the suit is improperly valued for the purpose of court fee and jurisdiction?"

3. The trial Court treated the aforementioned issue as a preliminary issue and held that the suit has been properly valued by way of its order dated 25.09.2019. Aggrieved by the same, the defendants therein have preferred this Civil Revision Petition.

4. The question that arises for consideration is what is the proper valuation of the suit given the nature of the prayers made by the respondent in the original suit.



5. The case of the respondent is that he is the owner of the suit schedule property and the same has been leased in favour of the petitioners herein and the tenancy has been terminated in accordance with law, but in spite of the same, the petitioners have not vacated the suit schedule property, because of which the respondent has filed O.S.No.256/2016. In the said suit, the respondent has contended that a sum of Rs.65,000/- is the annual rent to be paid by the petitioners to the respondent and that the petitioners had deposited a sum of Rs.6,50,000/- in favour of the respondent, which the respondent is liable to pay back to the petitioners upon they vacating the suit schedule property. Further, a sum of Rs.30,000/- is claimed to be payable by the petitioners to the respondent as mesne profits and further, a sum of Rs.5,000/- towards the cost of a legal notice and a future mesne profit of Rs.500/- per day from the date of filing of the suit. On the said ground, the suit has been valued at a sum of Rs.7,50,000/- and a Court fee is paid on the same.



6. The contention of the respondent is that the Court fee could not have been paid on a sum of Rs.6,50,000/-, which is the advance amount payable by the respondent to the petitioner at the time of vacating the property and he further submits that if that were to be the case, the suit should have been valued at Rs.1,00,000/- and the Civil Judge, Junior Division should try the case and not the Civil Judge, Senior Division where O.S.No.256/2016 has been filed.

7. Sections 21 and 41 of the Karnataka Court Fees and Suits Valuation Act, 1958, which are the relevant provisions reads as under:

***"21. Suits for money.-** In a suit for money (including a suit for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically), fee shall be computed on the amount claimed.*

***41. Suits between landlord and tenant.-** (1) In the following suits between landlord and tenant in civil courts, namely,-*



(a) for the delivery by a tenant of the counterpart of a lease or for acceptance of patta in exchange for a muchalika;

(b) for enhancement of rent;

(c) for the delivery by a landlord of a lease or for obtaining a patta in exchange for a muchalika;

(d) for recovering occupancy of immovable property from which a tenant has been illegally ejected by the landlord;

(e) for establishing or disproving a right of occupancy;

fee shall be levied on the amount of rent for the immovable property to which the suit relates, payable for the year next before the date of presenting the plaint.

(2) In a suit for recovery of immovable property from a tenant including a tenant holding over after the termination of a tenancy, fee shall be computed on the premium, if any, and on the rent payable for the year next before the date of presenting the plaint."



8. This Court in the case of ***K.Ramachandra Rao and Others Vs K.G.Ramamohana Gupta and Others*** reported in ***ILR 2006 KAR 2561*** in Paragraph Nos.9 to 11 as held as under:

"9. There is a fine distinction between the word premium and the security deposit/advance. A premium includes any like sum, whether payable to the intermediate or a superior landlord; and any sum paid on or in connection with the granting of a tenancy is presumed to have been paid by way of premium except in so far as other sufficient consideration for the payment is shown to have been given. Apparently "Premium" would mean the amount which is paid before the period of lease commenced and the liability for rent was incurred by the lessee. Such a sum paid in advance could only be a consideration for the grant of the lease and it clearly does not amount to premium which would necessarily mean that it is a money advanced in addition to the rent reserved. But however in the agreement if there is a stipulation for return of the advance or security deposit then it shall not partake character of a premium. A premium is in the nature of Capital and such a sum could only be a consideration for grant of lease and only in such



cases it would mean that it is premium as defined under Section 105 of the T.P. Act. It is not the form but substance of the transaction that matters. The nomenclature used may not be decisive or conclusive but would help having regard to the other circumstances to ascertain the intention of the parties. A perusal of the agreement clearly discloses that it is not in the nature a premium, but it is in the nature of a security deposit. It is useful to extract the terms of the agreement which would relate to the payment of the said deposit, which reads as under:

"The tenant shall, on execution of this agreement, deposited with the landlord ten months rent at the rate of Rs. 16,000/- (Sixteen thousand only) per month totally amounting to Rs. 1.50 lakhs (Rupees One lakh and fifty thousand only) which the amount shall continue to remain as deposit. The said deposit amount of Ten months rent shall not carry any interest."

10. A reading of this clause would clearly indicate that the said amount was paid as security deposit and not as a premium. Admittedly and it is not in



dispute that if the amount is returnable after the term of the lease, then the plaintiff is not liable to pay Court Fee on the same amount. It is only if the said amount is not returnable it can be treated as premium and the petitioner will have to pay Court Fee on it. There is nothing on record to show that the said amount which is paid as security deposit is not refundable. It is clear from the provisions of Sub-section (2) of Section 41 of the Act that the sub-section is not attracted for payment of Court Fee on security deposit which is refundable.

11. The Full Bench of this Court in the case of THE CHIEF CONTROLLING AUTHORITY vs. M/S TAXAS INSTRUMENTS INDIA LIMITED, has ruled that the amount received under the particular clause of the lease deed would be the money advanced in addition to the rent reserved does not attract duty under Article 30(a) of Schedule to the Act. Since word 'Premium' does not encompass the refundable security deposit, I am of the view that the impugned orders passed in these Writ Petitions are liable to be set aside. "

9. The reading of the aforementioned provisions of law and the case decided by this Court make it clear that in a suit filed by the landlord for evicting the tenant, he is



required to pay a Court fee on the rents payable and cannot take into consideration the security deposit, which are the advance amounts paid which he is required to refund to the tenant upon the tenant vacating the premises concerned.

10. It is immaterial whether he terms the same as a premium or an advance or as a security deposit in the original suit.

11. In the instant case, though the respondent herein has termed the sum of Rs.6,50,000/- as a premium in the original suit filed by him, it is admitted that he has to pay back the amount and the same is received by him as an advance for him having let out the property in favour of the petitioners.

12. Thus, the respondent ought not to have taken into consideration a sum of Rs.6,50,000/- to value the suit filed before the Civil Judge, Senior Division. He should have valued the same at Rs.1,00,000/-.



13. Admittedly, the pecuniary jurisdiction of the Senior Civil Judge is over and above a sum of Rs.5,00,000/- at present.

14. For the said reason, the impugned order passed by the trial Court is liable to be set aside. The additional issue framed by the trial Court is hereby answered in the affirmative. The trial Court is directed to return back the plaint to the plaintiff therein (respondent herein) to enable him to present the same before the appropriate Court. It is hereby ordered that the excessive Court fee paid by the respondent in O.S.No.256/2016 shall be refunded to him in the manner known to law.

15. Accordingly, the Civil Revision Petition is hereby ***disposed of.***

**Sd/-
JUDGE**

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List No.: 1 Sl No.: 36
CT: BHK