IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF MAY 2023

BEFORE

THE HON'BLE MR.JUSTICE ASHOK S. KINAGI

REGULAR SECOND APPEAL NO. 650 OF 2011 (RES)

BETWEEN:

G. JAGADISH KUMAR
S/O LATE K. GOVINDASETTY
AGED ABOUT 52 YEARS
R/O 6TH CROSS ROAD
SRIKANTAPURI EXTENSION
NANJANGUD TOWN – 571301
MYSORE DIST.

...APPELLANT

(BY SMT. P. C. SUNITHA, ADV.)

AND:

K. G. MURALI
S/O K. N. GOPAL
AGED ABOUT 44 YEARS
SRI DHARSHINI HOTEL
OPP. DALVOI SCHOOL, BAZAAR STREET
NANJANGUD TOWN – 571301
MYSORE DIST.

... RESPONDENT

(BY SRI. P. MAHESHA, ADV.)

THIS RSA IS FILED UNDER SECTION 100 OF THE CPC PRAYING TO SET ASIDE THE JUDGMENT AND DECREE PASSED BY THE LEARNED CIVIL JUDGE (SR.DN.), NANJANGUD IN R.A.NO.82/2007 DATED 09.09.2010 DISMISSING THE APPEAL AND THEREBY CONFIRMING THE JUDGMENT AND DECREE PASSED BY THE LEARNED ADDL. CIVIL JUDGE (JR.DN.), NANJANGUD IN O.S.NO.178/2002 DATED 10.03.2006, DISMISSING THE SUIT OF THE APPELLANT/PLAINTIFF AND DECREE THE SUIT BY ALLOWING THE APPEAL WITH COSTS.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 05.04.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This second appeal is preferred challenging the judgment and decree dated 10.03.2006 passed in O.S No.178/2002 on the file of Additional Civil Judge (Jr. Dvn.), Nanjangud and also the judgment and decree passed in R.A No.82/2007 dated 09.09.2010 on the file of Senior Civil Judge and JMFC, Nanjangud.

2. The parties are referred to as per their rankings before the trial Court. The appellant is the plaintiff and respondent is the defendant.

3. Brief facts leading rise to filing of this appeal are as under:

The plaintiff filed the suit for ejectment and for arrears of rent amounting to Rs.33,715/-. It is the case of the plaintiff that defendant's father Sri.K.N.Gopal entered into a lease agreement on 05.07.1992, with the plaintiff, who is the owner of the schedule premises, on the condition that the lease is a monthly lease and the rent at the beginning of the lease would be Rs.500/- per month and if the lease continued beyond one year, there would be an enhancement of rent at the rate of 10% over the prevailing rent, every two years. Thus the present rent is Rs.800/- per month. The said Sri.Gopal died in the month of June, 1995. The defendant being his son, continued in possession of the premises. Ever since then, the defendant has failed to pay the rent and he is in arrears of rent from June, 1995. Inspite

of repeated requests and demands, the defendant has not paid the rent. Hence, the suit is for arrears of rent and also for recovery of possession. The plaintiff got issued a legal notice to the defendant terminating the tenancy on 13.05.2002. Though the defendant received the notice, gave an untenable reply and failed to vacate the premises. Hence, cause of action arose for the plaintiff to file a suit for ejectment and also for recovery of arrears of rent.

The defendant filed written statement denying that defendant's father Sri.K.N.Gopal entered into lease agreement with the plaintiff and also denying that the plaintiff is the owner of the suit premises as on 05.07.1992. He denied that the said premises was let out to defendant's father Sri.K.N.Gopal by the plaintiff and also denied the monthly rent at Rs.800/- with effect from 05.06.2002. It is admitted that after the demise of Sri.Gopal, the defendant being his son,

continued in possession of the premises. But it is denied that the defendant has failed to pay the rent and is in arrears of rent from June, 1995. It is contended that the suit is barred by limitation. It is contended that the averment made in para-5 of the plaint to the effect that even after the termination notice, the defendant has not paid any rent, is not applicable to the defendant and as such plaintiff has no right to seek possession of the schedule shop. The plaintiff is not the owner of suit schedule property and defendant is not the tenant under the plaintiff, as such, there is no relationship between the plaintiff and the defendant as the landlord/lessor and the tenant/lessee. Hence, it is contended that defendant is running a hotel from his childhood and after the demise of his father, he alone continued in the premises and invested heavy amount and installed

several machinery for smooth running of the hotel. Hence, on these grounds, prays to dismiss the suit.

The trial Court on the basis of pleadings of the parties, framed the following issues:

1. Whether the plaintiff proves that the defendant's father was a tenant under him on a monthly rent of Rs.500/- with respect to the suit schedule property?

2. Whether the plaintiff proves that the defendant is a chronic defaulter in payment of rent right from 1995?

3. Whether the plaintiff proves that the tenancy is properly terminated as contemplated under law?

4. Whether the plaintiff proves that he is entitles for possession of the suit schedule property?

5. Whether the plaintiff is entitled for the reliefs as claimed in the suit?

6. Whether the defendant proves that the plaintiff is not the owner of the suit schedule property and he is not a tenant under him as claimed in para 7 of the written statement?

7. What order or decree?

The plaintiff in support of his case, examined himself as PW.1 and examined two witnesses as PW.2 and PW.3 and got marked documents at Exs.P1 to P7. The defendant examined himself as DW.1 and got marked documents at Exs.D1 to D62.

The trial Court after recording the oral and documentary evidence has held that the plaintiff has failed to prove that defendant's father was a tenant under him on monthly rent of Rs.500/- in respect of suit schedule property and also held that the plaintiff has failed to prove that the defendant is a chronic defaulter in payment of rent right from 1995 and held that the plaintiff has failed to prove the tenancy as contemplated under law and failed to prove that he is entitled for the relief of possession of suit schedule property. Further, it is held that the plaintiff is not entitled for the relief as claimed in the suit and further held that the defendant has proved that plaintiff is not

the owner of the suit schedule property and is not a tenant under him, as claimed under paragraph No.7 of the written statement and consequently dismissed the suit of the plaintiff.

Being aggrieved by the judgment and decree passed by the trial Court, the plaintiff preferred an appeal in R.A No.82/2007 on the file of Senior Civil Judge and JMFC, Nanjangud. The Appellate Court framed the following points for consideration:

(1) ವಿಚಾರಣಾ ನ್ಯಾಯಾಲಯವು OS.178/2022 ಅನ್ನು ವಜಾ ಮಾಡಲು ನೀಡಿರುವ ಕಾರಣಗಳು ನ್ಯಾಯ ಸಮ್ಮತವಾಗಿದೆಯೇ?

(2) ಒಂದು ವೇಳೆ ನ್ಯಾಯ ಸಮ್ಮತವಾಗದೇ ಇದ್ದಲ್ಲಿ ಸದರಿ ತೀರ್ಪಿನಲ್ಲಿ ಹಸ್ತಕ್ಷೇಪ ಮಾಡಬೇಕಾಗಿದೆಯೇ?

(3) ಈ ಮೇಲ್ಮನವಿಯ ಕೊನೆಯ ಆದೇಶ ಏನು?

After re-appreciating the oral and documentary evidence, the Appellate Court dismissed the appeal and confirmed the judgment and decree passed by the trial Court. Being aggrieved by the judgment and

decree passed by the Courts below, the plaintiff has preferred this second appeal.

This court has admitted the appeal on the following substantial question of law :

> *Whether the Courts below are legally correct in holding that in the absence of proof of attornment of tenancy, there is no relationship of landlord and tenant between plaintiff and defendant, when there can be attornment of tenancy by operation of law?*

4. Heard the learned counsel for the plaintiff and also the learned counsel for the defendant.

5. The learned counsel for the plaintiff submits that the plaintiff has purchased the suit schedule property under a registered sale deed dated 05.07.1992. He submits that the father of the defendant has entered into a lease agreement with the plaintiff and defendant's father passed away in the month of June, 1995. After the demise of his father,

the defendant alone continued in possession of the property as a tenant. The plaintiff got issued a legal notice terminating the tenancy. The defendant has replied to the said notice. She submits that as per Sections 8 and 109 of the Transfer of Property Act, by operation of law, all the interest which the transferor is then capable of passing in the property and in the legal incidents, shall transfer to the transferee including the rent thereof accruing after the transfer. She also submits that according to Section 109 of the Transfer of Property Act, the defendant has accepted the plaintiff as a lessor. She submits that the Courts below have failed to consider Sections 8 and 109 of the Transfer of Property Act. Hence, she submits that there exist a relationship as lessor/landlord and iessee/tenant between the plaintiff and the defendant. The Courts below have committed an error in recording a finding that there exist no relationship as

a lessor and lessee between the plaintiff and the defendant. Hence, on this ground, she prays to allow the petition.

6. Per contra, learned counsel for the defendant submits that plaintiff is not the owner of the suit schedule property and that there is no relationship of lessor and lessee between the plaintiff and defendant. He submits that that the suit filed by the plaintiff is not maintainable. The courts below were justified in recording a finding that there exist no relationship as a lessor and lessee between the plaintiff and defendant. He submits that the plaintiff has not pleaded in the plaint how the plaintiff has acquired the title over the suit schedule property. Hence on these grounds, prays to dismiss the appeal.

7. Perused the records and considered the submissions of learned counsel for the parties.

8. It is the case of the plaintiff that defendant's father entered into a lease agreement with the plaintiff on a condition that lease is a monthly lease and the rent of suit schedule property would be Rs.500/- p.m. and if the lease period is extended beyond one year, there would be enhancement of rent at 10% on the prevailing rent every two years. Present rent is Rs.800/- p.m. The defendant's father died in the month of June, 1995. After the demise of his father, the defendant being his son continued to be in possession of the suit property and running a hotel in the suit schedule property. The plaintiff requested the defendant to pay the rent, but the defendant did not pay the rent to the plaintiff. The plaintiff got issued a legal notice terminating the tenancy. The defendant replied to the said legal notice, wherein the defendant denied the title of the plaintiff and admitted the title of plaintiff's vendor and

refused to vacate the suit property. Defendant contended that there exist no relationship as a lessor and lessee between the plaintiff and defendant. It is denied that defendant's father executed a lease agreement in favour of the plaintiff. It is denied that plaintiff is the owner of the suit property. It is contended that the defendant is in possession of the suit property as tenant under the plaintiff.

9. The plaintiff in support of his case examined himself as PW-1. He has reiterated the plaint averments in the examination-in-chief got marked the original rent agreement as Ex.P1, executed by defendant's father namely Sri.K.N.Gopal in favour of the plaintiff. Ex.P2 is the certified copy of the final decree passed in O.S.No.189/1984 filed by G.Jagadeesh Kumar against C.L.Sriramshetty, since deceased through LRs. Ex.P3 is the legal notice dated 13.05.2002, got issued by the plaintiff terminating the

tenancy. Ex.P4 is the reply notice issued by the defendant. Ex.P5 is the copy of objections filed by the father of defendant in HRC No.18/1992 filed by Sujnanendra Char @ Raja S. Giriyachar Manthralaya. Ex.P7 is the certified copy of the registered sale deed executed by Sriram Shetty in favour of the plaintiff. In the course of cross-examination, it was suggested to PW-1 by learned counsel for the defendant that defendant's father was carrying a hotel business in the suit property and Sriram Shetty was the owner of the suit property and he had let out the suit property to the defendant's father and for the last 20 years the defendant's father was running hotel business till his death and after his demise, the defendant alone is in continuous possession. Rest of the averments made in the examination-in-chief is denied by the learned counsel for the defendant in the course of cross-examination.

10. Sri. N. Mahadeva was examined as PW-2. He is the attester to Ex.P1. He deposed that plaintiff is the owner of the suit property and father of defendant executed lease agreement in favour of the plaintiff and he has put his signature on Ex.P1. In the course of cross-examination, nothing has been elicited from this witness. PW-2 has supported the case of the plaintiff.

11. Sri. N. Krishna was examined as PW-3. He has reiterated the examination-in-chief of PW-2. But, nothing has been elicited from this witness.

12. Defendant was examined as DW-1. He has reiterated the contentions taken in the written statement in his examination-in-chief. In the course of cross-examination, he admits that his father has taken the suit property on lease from Sriram Shetty and Sriram Shetty was the owner of the suit property.

He also admits that Sriram Shetty is no more and the legal representatives are residing at Nanjangud. He admits that he has not made any attempt to pay the rent to the legal representatives of deceased Sriram Shetty on the ground that they did not demand the rent.

13. Admittedly, Sriram Shetty was the owner of the suit property and K.N.Gopal, i.e., father of defendant, was the tenant under Sriram Shetty in respect of the suit property. He sold the suit property in favour of the plaintiff under registered sale deed as per Ex.P7. The suit property was transferred in the name of the plaintiff. As per Section 8 of the Transfer of Property Act ('the TP Act' for short), there is a presumption that when a property is transferred, all things attached to the earth, such as, trees and shrubs are also transferred along with the land. The plaintiff becomes the owner by operation of law on the

strength of the registered sale deed. Such transfer will not affect the tenancy as tenant will continue till the eviction of tenant by the procedure of law. Defendant does not acquire any interest in the property and as such tenant cannot challenge the right, title of his landlord. The tenant remains as a tenant under the transferee/landlord. The plaintiff issued a legal notice terminating the tenancy, but the defendant replied to the said notice denying the title of the plaintiff over the suit property. Though the defendant had the knowledge about the registered sale deed executed by Sriram Shetty in favour of the plaintiff, but has denied him to be his landlord and has not paid the rent to him. The defendant is enjoying the suit property without paying the rent. The defendant is a chronic defaulter. The defendant has neither paid the rent to the plaintiff nor to the legal representatives of deceased Sriram Shetty. It is the

case of the defendant that legal representatives of deceased Sriram Shetty are neither claiming title over the suit property nor demanded the rent. The defendant cannot challenge the status of the plaintiff as owner of the suit property. As such, the defendant became a tenant under the plaintiff by operation of law under Section 109 of the TP Act. The attornment by lessee/defendant is not necessary for transfer of property leased out to his father under Section 109 of the TP Act. The Hon'ble Apex Court in the case of **GOPI @ GOVARDHANNATH, DEAD BY LRS. & ORS. VS. BALLABH VYAS** reported in **AIR 2022 SC 5248**, held that attornment by lessee is not necessary for transfer of property leased out to him under Section 109 of the TP Act. At paragraph-27, Hon'ble Apex Court has held as under:

> "27. In the light of the finding on the issue whether the respondents in R.C.No.262 of 2008 were malafidely denying the title of the

petitioner therein over the petition schedule property, Section 109 of the Transfer of Property Act would assume relevance in regard to the right of the petitioner in R.C.No.262 of 2008 to seek eviction of the respondents therein, from the petition schedule property. Admittedly, the predecessor-in-interest of the appellants viz., late Shri Balraj, was the tenant in respect of the petition schedule property under its original owner Smt. Phool Kumari. A bare perusal of Section 109 of the Transfer of Property Act would reveal that if a landlord transfers the property leased out or any part of it, the transferee, in the absence of any contract to the contrary, shall possess all the rights of the landlord. Hence, the impact of Ext.P3, in the absence of any contract to the contrary, is that the respondent herein has stepped into the shoes of Smt. Phool Kumari. In terms of Section 109 of the Transfer of Property Act it is clear that attornment by the lessee is not necessary for the transfer of the property leased out to him. Thus, the inevitable consequence of transfer of a leased-out property by the landlord in accordance with law to a third party, in the absence of a contract to

the contrary, is that the third party concerned would not only become its owner having title but also would step into the shoes of the vendor as the landlord in relation to the lease holder at the relevant point of time. In such circumstances, the findings of the courts below that there exists jural relationship of landlord and tenant between the respondent and the appellants can only be held as the correct and lawful conclusion in the light of the evidence on record based on the legal position."

14. Section 109 of the TP Act reads as under:

"**109. Rights of lessor's transferee.—** If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

> Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.
>
> The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased."

15. Section 109 of the TP Act contemplates that when right, title and interest in immovable property stand transferred by operation of law, the spirit behind Section 109 would apply and successor in interest would be entitled to the rights of the predecessor. The defendant is challenging the derivative of the title of the plaintiff and not the title of the original landlord, i.e., Sriram Shetty. The same holds no good as the subsequent owner will derive the title of the original

owner and will step into the shoes of the owner. In the instant case, the right and title of Sriram Shetty is not under challenge and hence, the challenge as regards the derivative title, is of no consequence in the given background. Section 109 of the TP Act would assume relevance ot the right of the plaintiff to seek eviction of the defendant from the suit schedule property. Even if the plaintiff failed to prove the execution of Ex.P1, Section 109 of the TP Act contemplate that in the absence of any contract to the contrary, that is plaintiff has stepped into the shoes of Sriram Shetty in relation to the lease holder at the relevant point of time. In terms of Section 109 of the TP Act, it is clear that attornment by the defendant's father or by defendant is not necessary for the transfer of property leased out to defendant's father.

16. The trial Court has dismissed the suit only on the ground that the plaintiff, except producing

Ex.P1, has not produced any document to establish the relationship as landlord and tenant. The trial Court has failed to consider that the defendant has admitted the ownership of plaintiff's vendor and also defendant's father was a tenant and failed to consider that attornment by defendant is not necessary for transfer of property leased out to the defendant's father under Section 109 of the TP Act. The Appellate Court has, without properly re-appreciating the evidence, has simply confirmed the judgment and decree passed by the trial Court. Both the courts below have committed an error in passing the impugned judgments and decrees. As observed above, when the landlord/original owner – Sriram Shetty under whom the defendant's father was a tenant, transferred the property in favour of the plaintiff, the plaintiff became the owner on the strength of the registered sale deed. As such, the

defendant became the tenant of the schedule property and no attornment is required to create such landlord and tenant relationship.

17. The defendant cannot deny the title of the plaintiff. Section 116 of the Indian Evidence Act, reads as under:

> "**116. Estoppel of tenant; and of licensee of person in possession.** -- No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given."

Section 116 of the Indian Evidence Act provides that when a tenant of immovable property admits he

is in possession of property as a tenant and during the continuance of the tenancy he denies the relationship of the landlord. Such tenant has no right to remain in possession of the suit property.

18. The Hon'ble Apex Court in the case of **PALANI AMMAL VS. VISHWANATH CHETTIAR** reported in **1998 (2) LW PAGE 7,** held applying Section 111(g) that the tenant must accept the owner of the building as a landlord by renouncing his character as a tenant of the landlord by setting up title in the third person or in himself otherwise, he ceases to be a tenant. The Hon'ble Apex Court has clearly held that the umbrella given to the tenant under the TP Act or under any other law can no longer come to his aid and by denying title, the tenant had walked out of the protective umbrella of the protection act. That is a case where in the suit filed for ejectment, the title was denied in the written statement as well as in the

additional written statement. Ultimately, holding that the denial having made in the course of pleadings, the question of further intimating the tenant about such a denial by a fresh notice and giving further notice does not arise and consequently the tenant goes out of protective umbrella and not entitled to the protection of Section 106. The said judgment is aptly applicable to the present case in hand.

19. The said aspect has been overlooked by the courts below and proceeded to pass the impugned judgments and decrees. The judgments and decrees passed by the courts below are arbitrary and erroneous. Hence, the impugned judgments are liable to be set aside. In view of the above discussion, the substantial question of law is answered in negative.

20. Accordingly, I proceed to pass the following:

ORDER

The appeal is allowed.

The impunged judgments and decrees are set aside. Consequently, the suit of the plaintiff is decreed.

The defendant is directed to vacate and handover the possession of suit property to the plaintiff within 3 months from today, failing which, the plaintiff is entitled to recover the possession of the suit schedule property by executing the decree.

The defendant is directed to pay the arrears of rent amount of Rs.33,715/- to the plaintiff within 3 months from today.

No order as to the cost.

SD/-
JUDGE

RD