

**IN THE COURT OF II ADDL. SESSIONS JUDGE,
AT SHIVAMOGGA**

Dated this the 26th day of June 2019

Present: **Sri Kudavakkaliger G.M., B.Com., LL.M.,
II Addl. Sessions Judge,
Shivamogga.**

///

R.R.01/2018

Rev. Petitioner: Smt. Manjamma
W/o Late Govindappa
54 years r/o Bapujinagar,
2nd Main, 2nd cross,
Shivamogga.

(By Sri T. Shivaram Hebbar, Advocate),

-Vs-

Respondent: Smt. Anuradha
w/o Late Thimmaiah
Aged 42 years R/o Bapujinagar,
2nd Main, 2nd cross,
Shivamogga.

(Absent)



ORDER

The Rev. petitioner has preferred this rent revision petition u/s 46[2] of Karnataka Rent Act against the order passed by the learned IV Addl. Civil Judge and J.M.F.C., Shivamogga in H.R.C.No.26/2014 dated 22.11.2017.

2. Following are the brief and relevant facts leading to the case of the Rev. petitioner:

That the petitioner is the daughter of late Thimmakka and the property mentioned in the schedule was granted to said Thimmakka by the City Municipal Council, Shivamogga on 30.10.1974 by executing sale deed in favour of Thimmakka bearing site No.313 and though the Slum Clearance Board has renumbered the same as site No.441 and granted Hakku Patra on 24.11.1976. The said Thimmakka had constructed a house and died on 10.03.2003. Thereafter khata was changed into the name of petitioner. The respondent's husband on oral lease was residing in the schedule house and after his death the present respondent is residing and both husband and wife withheld the rent. Moreover the house was required to the petitioner and as such filed a petition for eviction and the respondent took vague ground in her objection and denied the relationship of landlord and tenant and pleaded that she is the owner of the property.

3. Being aggrieved by the said order the revision petitioner has filed this revision challenging the legality, propriety and correctness of the said order are challenged by the revision petitioner in this revision on the following grounds:

i] The trial judge totally erred in dismissing the petition and referred to approach the civil court is unjust and contrary to law and ought to have considered that the defence taken by the respondent is totally a bundle of lies and ought to have passed the order of eviction.

ii] The trial court ought to have gone through the objection statement of the respondent in para-3 wherein she

stated that her father-in-law constructed a house in suit schedule property about 70 years back itself, but when the said site was granted to the mother of the petitioner on 30.10.74 by City Municipal Council, Shivamogga and in the year 1976 Hakkupathra was given and then the petitioner mother constructed a house and alleging the construction of house 70 years back was totally false and the trial court erred in not considering the same.

iii] The averments made by the respondent in his objection statement at para-4 is totally confusing and far from truth and further states that as the respondent's husband was minor, the temporary site certificate was given in the name of Thimmakka on 02.01.1973 also false.

iv] The trial court ought to have considered that except filing the objection, the respondent never cross-examined the petitioner much less she got examined herself or stood for to get cross him by the petition itself indicates that the pleading of the petitioner is unchallenged and under such circumstances the trial court resorting for Section 43 of Karnataka Rent Act is quite illegal and erroneous order.

v] The trial court ought to have considered that the respondent neither produced any documents or any witnesses to prove his case except saying something in objection and as such the trial court ought to have reject the objection and passed an order of eviction.

vi] The trial court ought to have considered that in most of the hearings and giving several opportunities to respondent to appear and plead, but she did not appear, which shows that respondent was realized that she has no case and the trial court did not consider the same.

vii] The trial court failed to consider Section 27[2][0] of Karnataka Rent Act. In the circumstances the order under revision is liable to be reversed and this revision petition deserves to be allowed.

4. Soon after the registration, notice of the revision petition came to be issued to other side. Pursuing to the

notice, the respondent remained absent Hence case posted for arguments.

5. Heard the arguments on both side and perused the materials placed on record.

6. On the basis of the materials placed on record following are the points that arisen for consideration are:

1. Whether the revision petitioner has made out a ground to allow the petition?

2. What order?

7. My answer to the above points are as under:

Point No.1: In the Affirmative.

Point No.2: As per final order for the following:

REASONS

8. Point No.1:-

It is the brief facts of the case that the petitioner is the daughter of late Thimmakka and the property mentioned in the schedule was granted to said Thimmakka by the City Municipal Council, Shivamogga on 30.10.1974 by executing sale deed in favour of Thimmakka bearing site No.313 and though the Slum Clearance Board has renumbered the same as site No.441 and granted Hakku Patra on 24.11.1976. The said Thimmakka had constructed a house and died on 10.03.2003. Thereafter khata was changed into the name of petitioner. The respondent's husband on oral lease was residing in the schedule house and after his death the present respondent is residing and both husband and wife

withheld the rent. Moreover the house was required to the petitioner and as such filed a petition for eviction and the respondent took vague ground in her objection and denied the relationship of landlord and tenant and pleaded that she is the owner of the property. Being aggrieved by the said order the revision petitioner has filed this revision challenging the legality, propriety and correctness of the said order are challenged by the revision petitioner in this revision.

9. The respondent has not appeared before this court and not filed any objection to the petition. On careful perusal of the L.C.R. of H.R.C.26/2014 wherein the respondent appeared and filed her objection admitting the fact of the petition mentioned at para-3 that petitioner is the daughter of Thimmakka and after the death of Thimmakka however respondent denied granting of site No.313 to Thimmakka and renumbering of the site as 441 by Slum Board. But she made various allegations that one Hanumanthappa the father in law of the respondent has constructed the house and said Hanumanthappa is in possession and enjoyment of the said house the husband of the respondent is the son of the Hanumanthappa. As the husband of the respondent was minor temporary site certificate was given in the name of Thimmakka. The respondent made various other allegations that deceased Thimmakka has made a Will dated 26.03.1998 wherein she has given life interest to the petitioner after her death the entire schedule property shall vest in favour of the respondent's husband and further contended the petitioner has snatched the said Will in order

to fix the respondents family into trouble with malafide intention to oust the respondent making false and frivolous grounds. But during the course of the trial the respondent has not at all cross-examined the PW.1 and not entered into witness-box to substantiate their contention. Whereas the petitioner has substantiated her allegation made in the petition by entering into witness-box and filed her affidavit eviction and got marked as many as 8 documents as per ExP.1 to P.8. On careful perusal of the entire eviction of the petitioner and material documents it is quite clear that ExP.8 is the sale deed executed by the City Municipal Council, Shivamogga in favour deceased Thimmakka wife of Chinnaswamy. This ExP.8 is the title deed which confers the ownership to the Thimmakka. ExP.5 is the house tax register extract which discloses the name of Thimmakka as the grantee and after her death the property was transferred to the petitioner. ExP.4 is the transfer order, ExP.6 and 7 are the encumbrance certificates. The ownership of the property devolved on the petitioner. Hence it discloses that the petitioner is the owner in possession of the suit schedule property.

10. In the instant case respondent though made various allegations in her objection to the petition has not substantiated by cross-examining the PW.1 or by entering into witness-box for deposing in support of her case. In the instant case though the respondent has appeared before this court and filed her written statement, not cross-examined PW.1 and she even not entered into the witness box to substantiate her case. Hence in view of the principles

evolved by their lordship of Divisional Bench of the Hon'ble Supreme Court in the case of **Vidhyadhar Vs. Manikrao and others**¹ it is held that:

“ [A] Evidence Act, 1872, Section 114 –
Party to suit not appearing in witness box-
Offer of cross-examination of party not given
– presumption arises that case of the party is
not correct.”

If the party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct. For better appreciation I am cull out the principles laid down in the said decision:

“Para-17 Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the privy council beginning from the decision in **Saradar Gurubaksha Singh Vs. Gurudayal Singh, AIR 1927 PC 230** ----- The Allahabad High Court in **Arjun Singh Vs. Veerendranath, AIR 1971 Allahabad 29** held that, if a party abstains from the witness box, it would give rise to an adverse inference against him. Similarly, a Division Bench of the Punjab and Haryana High Court in **Bhagwan Dass v. Bhishan Chand, AIR 1974 P & H 7**, drew a presumption under Section 114 of the Evidence Act, 1872 against a party who did not enter the witness-box.”

1 2000[2] Civil Law judgements 119 [SC]

11. On careful perusal of the principles evolved by their lordships of the divisional bench of the Hon'ble Supreme Court at para-No.17 of the above judgment it is quite clear that where a party to the suit does not enter the witness box and states her own case on oath and does not offer himself/herself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by the various High Courts and the Privy Council beginning from the decision in **Sardar Gurbaksh Singh v. Gurudayal Singh, AIR 1927** itself. Hence the court can draw adverse inference and presumption u/s 114 of the Evidence Act 1872 against a party who did not enter the witness box.

12. In the instant case the respondent has not cross-examined the PW.1 and even not entered into the witness box to substantiate her claim if any. Therefore in the instant case adverse inference can be drawn against the respondents accordingly it has been drawn. Therefore this court is of the opinion that it is a fit case to draw adverse inference against them and to draw presumption u/s 114 of the Indian Evidence Act. Hence accordingly it has been drawn.

13. No doubt in the instant case the petitioner has averred in the petition itself that it is the oral lease between the petitioner with that of husband of the respondent Thimmaiah on monthly rent of Rs.500/- to the petitioner. Hence there cannot be any lease deed or the rent receipt to produce before the court. Therefore the respondent becomes

statutory tenant as the property is existed City Minicipal limit as per the Schedule-I Part-B of the Karnataka Rent Act is applicable to the present facts and circumstances of the case. During the course of the argument learned counsel for the petitioner Sri K.S.H. has also argued that respondent is also not residing in the said house. The summons of this petition was served on the respondent to the different address i.e. Sai United Union, Sai Garments, in front of Gayathri Kalyana Mantapa, B.H. road, Shivamogga. Moreover the suit filed by the respondent in O.S.663/2011 before the 1st Addl. Civil Judge, Shivamogga was dismissed and Mis. Petition 17/2013 was also dismissed. The petitioner is entitled for the relief as claimed for in this petition.

14. Hence the trial court has erred in rejecting the petition by answering point No.1 in the negative. Therefore interference of this court is warranted. Hence this Court is of the opinion that by considering materials on record, for which, interference of this Court is required and order passed by the trial court is liable to be set aside. Hence I answered point No.1 in the Affirmative.

15. **Point No.2:-** In view of the discussion and findings on above point No.1, I proceed pass the following:

ORDER

The revision petition filed the petitioner is hereby allowed.

The order passed by the trial court in H.R.C.26/2014 dated 22.11.2017 is hereby set aside.

The respondent is hereby directed to vacate the premises and to pay the arrears of rent as prayed for.

Send copy of the order along with L.C.R. to the lower Court forthwith.

(Dictated to the stenographer, directly on computer, then corrected and pronounced by me in open court, this the 26th day of June 2019)

(Kudavakkaliger G.M.)
II Addl. Sessions Judge,
Shivamogga.

A] KARNATAKA RENT ACT, 1999 [“ the Act”, for brevity] – SECTION 43 – Entitlement of a tenant to ask for stay of proceedings – Inconsistent stand by the tenant on the issue landlord and tenant relationship – Tenant cannot abuse the process of the Court by invoking Section 43 of the Act—

HELD,

Section 43 of the Act entitles the tenant to ask that further proceedings be stayed, if he were to question the relationship of the landlord and tenant and were to deny the title of the landlord to the suit property. But precisely because a party is granted this right, the party cannot be permitted to abuse the law by changing its position on the issue as to who is the landlord. To permit the tenant to do so, is to encourage the people to abuse the process of the Court, and of the law in order to escape the judgment day. Thus, a strict view should be taken if a litigant hoodwinks the Court by

changing his stand from the stand taken by him/her in a previous suit.

FURTHER HELD,

The petitioner has changed his position from the previous suit vis-à-vis the issue as to who is the landlord? In the previous suit, the petitioner claimed that Mr. Mohammad Shafi is his landlord; in the subsequent suit, filed by Mr. Mohammad Shafi, the petitioner claims that Mr. Shafi is not his landlord. Obviously, the petitioner cannot be permitted to blow hot and cold simultaneously. He cannot change his position under the doctrine of Judicial Estoppel. Litigants, like the petitioner, cannot be allowed to pull the wool over the eyes of the Court.

B] DOCTRINE OF ESTOPPEL – Judicial Estoppel – Meaning of – Conditions to be satisfied to apply the doctrine of Judicial Estoppel – Judicial Estoppel binds a party to his previous judicial statements or declarations —

HELD,

Judicial estoppel is said to be parcel of doctrine of equitable estoppel. Judicial estoppel binds a party to his/her previous judicial declaration, such as allegations contained in a lawsuit, complaint, written statement, or testimony given under oath. The object of judicial estoppel is to preserve the integrity of the Courts, and to uphold the sanctity of the oath. Under judicial estoppel a party to a litigation cannot be permitted to take contradictory stand and to change its position from the previous litigation to the subsequent one. For, a litigant cannot be permitted to take a Court out for a ride by his shifting stand.

FURTHER HELD,

The doctrine of judicial estoppel can be applied if three conditions are satisfied: [i] the party's later position must be clearly inconsistent with its earlier position; [ii] whether the first Court had accepted the earlier position; [iii] whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

C] ESTOPPEL – Meaning of – HELD, Estoppel is a collective name given to a group of legal doctrines whereby a person is prevented from making assertions that are contradictory to their prior position on certain matters before the Court; thereby, the person is said to be “estopped”. Estoppel may operate by way of preventing someone from asserting a particular fact in Court, or in exercising a right, or in bringing a claim. – Estoppel is a bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true.

D] KARNATAKA RENT ACT, 1999 – SECTION 3[e] – Landlord – Definition of – HELD, 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.

FURTHER HELD,

According to the petitioner, he was under the belief that Mr. Shafi was acting on behalf of the true landlord. Hence, he paid rent amount to him. Thus, considering the definition of “landlord”, the petitioner cannot claim that Mr. Shafi is not his landlord. Since the rent has been paid to Mr. Shafi he is deemed to be the landlord under the Act. – Moreover, even if there were a dispute between Mr. Shafi and his family members with regard to the title of the property, even then it would not prevent Mr. Shafi from filing an eviction suit against the petitioner. For, under Section 3[e] of the Act, Mr. Shafi is deemed to be the landlord.

Order pronounced in the open
Court as under:

ORDER

*The revision petition filed the
petitioner is hereby allowed.*

*The order passed by the trial court
in H.R.C.26/2014 dated 22.11.2017 is
hereby set aside.*

*The respondent is hereby directed to
vacate the premises and to pay the
arrears of rent as prayed for.*

*Send copy of the order along with
L.C.R. to the lower Court forthwith.*

(Vide separate order)

II Addl. Sessions Judge,
Shivamogga.

