

IN THE COURT OF I ADDL.CIVIL JUDGE & J.M.F.C.,

KALABURAGI

Present

SMT.PANKAJA KONNUR

B.A.,LL.B.

**I Addl. Civil Judge & JMFC,
Kalaburagi**

H.R.C.No.01/2018

DATED THIS THE 15th DAY OF SEPTEMBER 2020

PETITIONER:

Smt. Rehana Begum W/o Moulasab,
Age: 42 years, Occ: Household,
R/o H.No.MIG 27, KHB Colony,
Nehru Gunj, Kalaburagi.

-V/s-

RESPONDENT:

Md. Salimuddin Qureshi S/o
Md. Yusuf Ali Qureshi,
Age: 50 years, Occ: Petty Business,
R/o Plot No.13 in Sy.No.121/1,
Block No.3, Mansafdar Layout,
Badepur Colony, Kalaburagi.

PARTIES TO THE APPLICATION

APPLICANT/RESPONDENT:

Md. Salimuddin Qureshi S/o
Md. Yusuf Ali Qureshi,
Age: 50 years, Occ: Petty Business,
R/o Plot No.13 in Sy.No.121/1,
Block No.3, Mansafdar Layout,
Badepur Colony, Kalaburagi.
(By Sri. N.B. Diwanji, Advocate)

V/s

OPPONENT/PETITIONER:

Smt. Rehana Begum W/o Moulasab,
Age: 42 years, Occ: Household,
R/o H.No.MIG 27, KHB Colony,
Nehru Gunj, Kalaburagi.

(By Sri. P.V. Deshpande, Advocate)

ORDER ON APPLICATION FILED U/S 43 OF HE
KARNATAKA RENT ACT

This application is filed under section 43 of the Karnataka Rent Act by the respondent to defer all further proceedings of this case till the title of the petition premises is decided.

2. It is contended in the affidavit that the petitioner is not at all owner of the premises, he has created fabricated documents. One Abdul Saleem S/o Abdul Gafoor is the owner and land lord of the petition premises and this petitioner is having no manner of rights over the petition premises. Further contended that as there is dispute regarding the title to the premises and prays to defer all further proceedings of this case till the title of the premises is decided.

3. On the other hand the petitioner's counsel filed objection it s submitted that in the khata maintained by the Corporation, the name of the petitioner Rehana Begum is entered. The petitioner has also paid property tax to the Corporation. These documents are enough proof of ownership of petitioner.
4. Further the petitioner has also produced rent agreement dated 22.12.2014 between petitioner and the respondent. Hence it is enough to hold the relationship of landlord and tenant.
5. Heard both sides. The learned counsel for respondent relied on case laws of Hon'ble Apex Courts, those are as follows;-

**1. ILR 2004 KAR 1546 (Shariff and Ors –
Vs.- A. Mohammed Noor and Anr.**

**2. AIR 1998 KAR 321 (Basalingappa
Channappa Mamale Pattan Shettar &
ors –Vs.- Dundappa Puttappa
Panchappanavar)**

**3. ILR 1998 KAR 1 (State of Himachal
Pradesh – Vs.- Keshav Ram & Ors)**

4. ***AIR 1997 SC 2719 (Balwanth Singh and Ors – Vs.- Daulat Singh (dead) by LRs and Ors)***
5. ***ILR 1998 KAR 1 (Supreme Court) (State of Himachal Pradesh -Vs- Keshav Ram and others)***
6. ***ILR 2002 KAR 4637 (P.K. Vasudevan Vs. The Deputy Commissioner of Kodagu District and others)***
7. ***ILR 2004 KAR 1546 (R. Shariff and Ors. - Vs.- A. Mohammed Noor and Ors.)***

6. The question arises for consideration is that **“Whether the respondent made out grounds to allow the application filed under section 43 of The Karnataka Rent Act”?**
7. The answer of this court to above point is in in the Negative for following;

REASONS

8. This petition is filed by the petitioner against the respondent under section 27 (1) (a) (r) of the Karnataka Rent Act with respect to suit property as mentioned in para No.2 of the petition.
9. Both counsel argued the matter in support of their case. The counsel for petitioner argued that the petitioner is the owner and land lord of the petition property as the respondent is in premises under tenancy for Rs.3,000/- per month and the respondent has executed the rent agreement for the same on 22.12.2014 as he was defaulter of rent amount about Rs.1,14,000/- as the petitioner wanted the said premises for their use. Hence, they are seeking eviction of the premises after issuing legal notice dated 26.02.2018.
10. On the other hand the learned counsel for respondent denied the contention of the petitioner, the respondent denied the ownership of the petitioner with respect to premises property as there is no relationship of tenants per the respondent one Abdul Saleem S/o Abdul Gafoor is owner of the property and

the respondent is tenant under him. Further the case Law relied by the respondent i.e., **R. Shariff and Ors. -Vs- A Mohammed Noor and Ors** reads as follows;

“When the title of the vendor of the present petitioner itself was questioned and having been denied by the Courts, the applications maintained by the respondents in the Trial Court for deferring the eviction proceedings until the title is decided cannot be said to be either frivolous or to drag on the proceedings”

11. As stated above the respondent came up with present application under section 43 of the said Act. As the title of the premises property is in dispute until decide of the title further proceedings have to be deferred. Hence, it is necessary to extract the provisions of the section 43 of the said Act. The said section reads as follows:-

“43. Dispute of relationship of landlord and tenant.- (1) where in any proceeding before the Court, a contention is raised denying the existence of relationship of landlord and tenant as between the parties it shall be lawful for the Court to accept the document of lease or where there is no

document of lease, a receipt of acknowledgement of payment of rent purported to be signed by the landlord as prima-facie evidence of relationship and proceed to hear the case.

(2) Where. -

(a) the lease pleaded is oral and either party denies relationship, and no receipt or acknowledgement of payment of rent as referred to in sub-section (1) above is produced, or

(b) in the opinion of the Court there is reason to suspect the genuine existence of the document of lease or the receipt or acknowledgement of payment of rent.

The Court shall at once stop all further proceedings before it and direct the parties to approach a competent Court of civil jurisdiction for declaration of their rights.

12. Now the question arises that under what circumstances the Court can stop proceedings. This Court would like to rely on the case Law of **C.S. Sheshagiri -Vs.- Smt. Jayalaxmi @ Jayalaxamma, HRRP No.31/2011**, the Hon'ble High Court of Karnataka held in this petition that ***“The provision provides the procedure to be followed by the Court when***

tenant, in a proceeding initiated under the provisions of the Act, denies the existence of relationship of a landlord and tenant. It provides that, it shall be lawful to the Court to accept the document of lease or a receipt of acknowledgment of payment of rent as a prima-facie evidence of relationship and proceed to hear the case on merits. If these basic documents are missing or if the Court has reason to suspect the genuineness or existence of such documents, then it has no option except to stop all further proceedings before it and direct the parties to approach the competent Court of jurisdiction”.

13. With due respect to Hon'ble High Court, the above stated citation will not applicable to the present case, because in this case the petitioner has relied on rent agreement and same is submitted by him. As per the said act, at present stage, it is prima-facie evidence to show the relationship of landlord and tenant. At this stage on relying on the said

document, the petitioner has made out his case. Whether the petitioner is owner or not it requires the trail at this stage the court cannot come to conclusion about title of the premises without holding trail. Hence, this Court answered the point No.1 in the Negative and proceeds to pass the following;

ORDER

The application filed by the respondent U/s 43 of the Rent Act to stop the further proceedings with respect to the petition premises is hereby rejected.

No order as to costs.

(Dictated to the Stenographer directly over the computer and typed by him, corrected, signed and then pronounced by me in the Open Court on this the 15th day of September 2020)

(SMT. PANKAJA KONNUR),
I Addl. Civil Judge & JMFC.,
Kalaburagi.