Karnataka Civil Judge (Mains) 2020

Law Paper II · compulsory paper

Framing of Issues and writing Judgment in Civil Case · Date: 29.11.2020 · Max. Marks: 100 · Time: 10.00 AM to 1.00 PM

1. Frame proper issues on the basis of following pleadings. 15 Marks

O.S. No.302/2019

Plaintiff: Gangadharaiah
Vs
Defendant: Anil Kumar

PLAINT

The defendant is the owner of the suit schedule property, which measures 2 acre 35 guntas of land in Survey No.20/1 of Thanisandra Village. Vide sale agreement dated 27.03.2017, the defendant agreed to sell the suit property to the plaintiff for Rs.7,00,000/- and on the same day received Rs.2,50,000/- from the plaintiff as a sale advance. As a part performance of the contract, defendant handed over the possession of the suit property to the plaintiff. As per the terms of the sale agreement, defendant has to remove the encumbrance appearing in the RTC of the suit property and execute the registered sale deed within one year from the date of sale agreement. The defendant failed to perform his part of the contract by removing the encumbrance appearing in the RTC of the suit property. On 28.11.2018, plaintiff issued a legal notice to the defendant calling upon him to perform his part of the contract and to execute a registered sale deed in his favour. In spite of the service of legal notice, defendant failed to perform his part of the contract and failed to execute the• sale deed in favour of the plaintiff. The plaintiff has been ready and willing to perform his part of the contract.

On all these grounds, plaintiff claimed a decree of specific performance by directing the defendant to execute the registered sale deed in his favour in pursuance to the sale agreement dated 27.03.2017 and in the alternatively, directing the defendant to repay the sale advance amount of Rs.2,50,000/- to him with interest at the rate of 12% p.a.

WRITTEN STATEMENT

The defendant, in his written statement, admitted that he is the owner of the suit property and denied all other plaint averments regarding sale transaction between him and the plaintiff, he executing sale agreement in favour of the plaintiff, receiving Rs.2,50,000/- from the plaintiff as a sale advance and handing over the possession of the suit property to the plaintiff as part performance of the contract. According to the defendant, to perform the marriage of his daughter, he barrowed the hand loan of Rs.2,50,000/- from the plaintiff and as a security for the said loan transaction, plaintiff has obtained his signature on the blank stamp paper and created a sale agreement. There was no need for the defendant to sell the suit property. When the defendant received the legal notice, he approached the plaintiff and offered him to repay the loan amount, which was refused by the plaintiff The suit is barred by Limitation. If the suit is decreed for specific performance, the defendant would be put to irreparable loss and hardship, as suit property consist of his residential house and agricultural land, which is the only source of livelihood to him. On these grounds, defendant prayed for dismissal of the suit with costs.

2. Frame proper issues on the basis of following pleadings. 15 Marks

O.S. No.298/2012

Plaintiff: Smt.Sundaramma
Vs
Defendants: Sri Ramesha and 4 others.

PLAINT

The suit A schedule property measures 4 acres 30 guntas and suit B schedule property measures 3 acre 35 guntas of land in Sy.No.28 and 30 Gonikoppa village of Virajpete Taluk. The plaintiff is the married daughter of Sri Basappa, who died during the year 2007. The defendant No.1 and 2 are the elder brothers of the plaintiff and sons of Sri Basappa. The defendant No.3 and 4 are the married daughters of Sri Basappa and elder sisters of plaintiff and defendant No.1 and 2. The defendant No.5 is the purchaser of suit 'B' schedule property from the defendant No.1 vide registered sale deed dated 23.03.2011. The suit properties are the ancestral and joint family properties of the plaintiff and defendant No.1 to 4. The plaintiff has got 1/5th share over the suit property. After her marriage, plaintiff is residing in her husband's house at Hunsur. The defendant No.1 and 2 are looking after and managing the suit property and appropriating its income, without giving any share to the plaintiff. Recently plaintiff came to know that defendant No.1 has sold the suit 'B' schedule property to the defendant No.5, without the consent of others and behind their back. Said sale is not for any family necessities and it is not binding on the plaintiff. The plaintiff requested the defendant No.1 and 2 to divide the suit nrninprtiee between them and allot her 1/5th share , The defendant No.1 and 2 have refused to allot the plaintiffs share, which made the plaintiff to file the present suit.

On all these grounds, plaintiff claimed a decree for partition and separate possession of her 1/5th share over the suit property and also for mesne profit.

WRITTEN STATEMENT

The defendant No.1, in his written statement, admitted the relationship between them and denied all other plaint averments. According to the defendant No.1, suit properties were the absolute properties of their father Sri Basappa, as it was granted to him by the Land Tribunal, Virajpete. During his lifetime, Sri Basappa has executed a registered will in favour of the defendant No.1 bequeathing the suit B schedule property. On the basis of the said will, after the death of Sri Basappa, defendant No.1 became the absolute owner of the suit 'B' schedule property and to construct the house, he has sold the B schedule property to the defendant No.5, vide registered sale deed dated 23.03.2011. After the death of his father, defendant No.1 has performed the marriages of plaintiff and defendant No.3 and 4 and incurred huge expenses for the same. Even if the plaintiff and defendant No.3 and 4 have got any share in the suit property, same has been given to them at the time of their marriage. The suit is not properly valued and requisite court fee has not been paid on the plaint. This court has no jurisdiction to try this suit. On all these grounds, defendant No.1 prayed for dismissal of the suit with costs.

The defendant No. 2 filed the memo to adopt the written statement of defendant No. 1. The defendant No.3 and 4 have filed written statement and admitted the claim of the plaintiff and prayed for allotment of their 1/5th share over the suit property.

The defendant No.5, in his written statement, contended that he is the bonafide purchaser of the suit B schedule property. Even if the plaintiff and defendant No.2 to 4 have got any share in the suit property,

same can be allotted in the suit A schedule property. The suit, without seeking the relief of declaration, is not maintainable. On all these grounds, defendant No.5 prayed for dismissal of the suit with costs.

3. Write a considered Judgment on the basis of following pleadings, oral and documentary evidence by giving valid and cogent reasons 70 Marks

IN THE COURT OF CIVIL JUDGE, DHARWAD

O.S. No.128/2011

Narasimhaiah, aged about 62 years, S/o Hanumantha, R/o Sapthapura, Dharwad. ... Plaintiff

Vs

Prasanna Kumar, aged about 34 years, S/o Somashekara, R/o Dhavalagiri, Dharwad. ... Defendant

DATE OF FILING THE SUIT: 01-03-2011

PLAINT

The suit property described in the plaint schedule is a shop premises bearing No.13/1, Ground Floor, Hanumantha Complex, Sapthapura, Dharwad, measuring 20x8 feet. The defendant is a tenant under the plaintiff in respect of the suit premises on monthly rent of Rs.4,000/- and he is running a jewellery shop in the suit premises. The tenancy month commences from the 1st day of the English calendar month and ends on the last day. The suit premises is required by the plaintiff to start a mobile shop by his son, who is unemployed. The defendant is very irregular in paying the monthly rent. The defendant is liable to pay arrears of rent to the tune of Rs.1,16,000/- as on the date of filing this suit. Therefore, plaintiff requested the defendant to pay the arrears of rent and vacate the suit premises. When the defendant failed to comply with the request of the plaintiff, plaintiff issued a legal notice on 01.11.2010 and terminated the tenancy of the defendant and called upon him to vacate the suit premises within 15 days from the date of service of legal notice and to pay the arrears of rent. In spite of service of legal notice, defendant, neither gave any reply nor complied the demand made in the legal notice, which made the plaintiff to file the present suit.

On all these grounds, plaintiff claimed a decree for ejectment against the defendant, by directing him to vacate and hand over the vacant possession of the suit premises to the plaintiff and to pay arrears of rent to the tune of Rs.1,16,000/-.

WRITTEN STATEMENT

The defendant, in his written statement, admitted that the plaintiff is the owner of the suit premises and he occupies the suit premises as a tenant under the plaintiff on monthly rent of Rs.4,000/- and running a Jewellery shop. The defendant denied other plaint averments, regarding plaintiffs requirement of the suit premises, allegation of arrears of rent and also the measurement of the suit premises and valid termination of tenancy. According to the defendant, actual measurement of the suit premises is less than 14 sq. meters. Therefore, provisions of the Karnataka Rent Act, 1999 is applicable to the suit premises and he is a protected tenant under the said Act. Hence, suit filed by the plaintiff under general law by terminating the tenancy is not maintainable. The defendant disputed the validity of termination of tenancy by contending that sufficient time has not been given before terminating the tenancy and there is no proper service of notice on him. The defendant also contended that he has been paying the rent regularly and plaintiff is not in the habit of issuing the rent receipts. The defendant further contended that he is running a Jewellery shop in the suit premises and it is only source of income for livelihood of his family and if he is evicted from the suit premises, he and his

family members will be put to irreparable loss and hardship. The defendant further contended that plaintiff demanded higher rent from him and when he refused to pay the same, plaintiff filed this suit. On all these grounds, defendant prayed for dismissal of the suit with costs.

ISSUES

Whether the provisions of the Karnataka Rent Act, 1999 is applicable to the suit premises?

Whether the plaintiff proves the legally valid termination of tenancy rights of the defendant?

Whether the plaintiff proves that as on the date of filing the suit Rs.1,16,000/- is due from the defendant towards the arrears of rent?

Whether the defendant to proves that he has been paying the rent of the suit premises regularly and not due to pay any rent to the plaintiff?

Whether the plaintiff is entitle for a decree for ejectment of the defendant from the suit premises?

Whether the plaintiff is entitle for decree for arrears of rent claimed by him?

What order or decree?

ORAL AND DOCUMENTARY EVIDENCE OF THE PLAINTIFF

The plaintiff, who was examined before the court as PW1, has reiterated the plaint averments in his examination-in-chief and deposed about his ownership over the suit premises and defendant occupying the same as a tenant under him on monthly rent of Rs.4,000/- and running a Jewellery shop in the suit premises. PW1 further deposed that defendant is very irregular in paying the rent and he is due to pay a sum of Rs.1,16,000/- as on the date of filing this suit. PW1 further deposed that he requires suit premises to run mobile shop by his son, who is unemployed. PW1 further deposed that he requested the defendant to vacate the suit premises and pay the arrears of rent and defendant failed to comply his request. PW1 further deposed that on 01.11.2010 he has issued a legal notice to the defendant and terminated his tenancy and requested him to pay the arrears of rent. PW1 further deposed that in spite of service of legal notice, defendant failed to vacate the suit premises and pay the arrears of rent, which made him to file the present suit.

During the course of his cross examination by the counsel for defendant, PW1 admitted that apart from the suit premises, there are other shops in the same complex owned by him and two of those shops were still vacant. PW1 denied that the actual measurement of the suit premises in occupation of the defendant is less than 14 sq. meters. PW1 denied the suggestion that in Ex.P1 the measurement was deliberately shown on the higher side. PW1 denied that he has demanded the higher rent from the defendant and when he refused to pay the same, he filed this suit. When it was suggested to PW1 that his son can start his mobile shop in other vacant shop premises in the same complex, PW1 said that those premises are not suitable for running the mobile shop. PW1 denied that even though defendant has been paying the rent, he has not issued the rent receipt to him.

The plaintiff has marked following documents on his behalf:

Ex.P1: Katha Extract.

This katha extract shows that the suit premises stands in the name of the plaintiff and the measurement of the suit premises is shown as 20x8 feet.

Ex.P2: Legal Notice

This legal notice was issued by the plaintiff through his counsel on 01.11.2010, whereby he called upon the defendant to pay the arrears of rent to the tune of Rs. 1,00,000/- and terminated the tenancy of the defendant and requested him to vacate the suit premises within 15 days from the date of service of legal notice.

Ex.P3: Postal Receipt

This Postal Receipt shows that Ex.P2 legal notice was sent to the defendant by way of registered post on 01.11.2010.

Ex.P4: Postal Acknowledgement

This postal acknowledgement shows that the legal notice issued to the defendant by registered post was received by the wife of the defendant.

ORAL AND DOCUMENTARY EVIDENCE OF THE DEFENDANT

The defendant, who was examined before the court as DW1, has admitted that the plaintiff is the owner of the suit premises and he occupy the same as a tenant under the plaintiff on monthly rent of Rs.4,000/- and running a jewellery shop. DW1 denied the measurement of the suit premises shown by the plaintiff and validity of termination of tenancy and also the arrears of rent. DW1 further deposed that the actual measurement of the suit premises is less that 14 sq. meters and the Karnataka Rent Act, 1999 is applicable to the suit premises. DW1 further deposed that his tenancy rights were not legally terminated. DW1 further deposed that he is running a Jewellery shop in the suit premises, which is only source of livelihood to him and if he is vacated from the suit premises, he will be put to irreparable loss and hardship.

DW1, during the course of his cross examination by the counsel for the plaintiff, admitted that he occupy the suit premises as a tenant under the plaintiff on monthly rent of Rs.4,000/-. DW1 admitted that whenever he has paid the rent to the plaintiff, he has issued rent receipts to him. DW.1 admitted that apart from Ex.D.1 he has no other rent receipt with him to show the payment of rent by him. DW1 admitted that he has no documents with him to show that the measurement of the suit premises is less that 14 sq. meter. DW1 admitted that he and his wife were residing together and legal notice sent by the plaintiff was received by his wife and handed over to him. DW.1 admitted that he has not given any reply for the legal notice issued by the plaintiff.

The defendant has marked following document on his behalf:

Ex.D1: Rent Receipt

This document shows that the defendant has paid the rent of Rs.16,000/- on 10.10.2008, being the rent for the months of June, July, August and September 2008.

ARGUMENTS FOR THE PLAINTIFF

The learned counsel appearing for the plaintiff argued that plaintiff's ownership over the suit premises, defendant occupying the same as a tenant and monthly rent as Rs.4,000/- per month were all admitted by the defendant. It was further argued by the learned counsel for the plaintiff that though the defendant contended that the measurement of the suit premises is less than 14 sq. meters and the Karnataka Rent Act, 1999 is applicable to the suit premises, he failed to prove the same. Whereas, Ex.P1 property extract produced by the plaintiff shows that suit premises measures 160 sq. feet and the present suit filed by terminating the tenancy is maintainable. It was further argued by the learned counsel for the plaintiff that there is valid termination of tenancy rights of the defendant, as the legal

notice issued to the defendant was served on his wife, as the defendant was not present and 15 days time was given to the defendant to vacate the premises. It was further argued by the learned counsel for the plaintiff that even as per the document produced by the defendant, he paid the rent till September 2008 and there is no evidence to show payment of rent subsequent to September 2008. On all these grounds, learned counsel for the plaintiff prayed to decree the suit with costs.

ARGUMENTS FOR THE DEFENDANT

The learned counsel for the defendant argued that though in the property extract measurement of the property is shown as 20x8 feet, actual measurement of the plinth area in occupation of the defendant is less than 14 sq. meter. Therefore, the Karnataka Rent Act, 1999 is applicable to the suit premises. It was further argued by the learned counsel for the defendant that the legal notice issued by the plaintiff has not been served personally upon the defendant and sufficient time has not been given while terminating the tenancy and directing the defendant to vacate the premises. Therefore, it was further argued that there is no valid termination of tenancy of the defendant. It was further argued for the defendant that plaintiff/PW1 admitted about he having other premises, in which his son can start his mobile shop. Therefore, suit premises is not required by the plaintiff. On all these grounds, learned counsel for the defendant prayed for dismissal of the suit with costs.