

P. VEERAPPA

v.

M.A. MOHAMMED AMANULLA

DECEMBER 4, 1995

[K. RAMASWAMY AND K.S. PARIPOORNAN, JJ.]

*Rent and Eviction :*

*Karnataka Rent Control Act, 1961 :*

*S.21—Tenant in arrears of rent—Entering into an agreement with landlord to purchase premises—Failure to pay consideration within stipulated period—Eviction proceedings by landlord—Tenant's objection to eviction proceedings under the Act and claim of rights under agreement—Held, not maintainable.*

The appellant, a tenant of the premises in dispute, entered into an agreement with the respondent-landlord to purchase the premises. Later he filed a suit for specific performances which was compromised. In the compromise, the appellant admitted being in arrears of rent and agreed to pay the re-fixed consideration, but he failed to pay the amount within the stipulated time.

Subsequently the landlord filed an application under s.21 of the Karnataka Rent Control Act, 1961 for eviction of the appellant. The appellant disputed the title of the landlord and raised a preliminary objection that he was in possession as an agreement holder and not as a tenant as his tenancy rights got merged in his right as an agreement holder and he was entitled to benefit under s.53-A of the Transfer of property Act. He contended that the matter was to be decided by the Civil Court and the Rent Controller had no jurisdiction. The claim of the appellant was rejected by the Rent Controller as also by the High Court. Hence this appeal.

Dismissing the appeal, this Court

HELD : The lesser right of tenancy stood merged with the larger rights accrued under the agreement, as long as the agreement subsisted. But since the terms of the agreement were not complied with, the agree-

A ment came to an end and the appellant's pre-existing rights as a tenant stood revived and the parties were bound by the relationship of landlord and tenant. The Rent Controller was entitled to proceed with the matter in accordance with law. [153-D-E]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11900 of 1995.

From the Judgment and Order dated 23.9.1991 of the Karnataka High Court in C.R.P. No. 3019 of 1987.

C Ms. Kiran Suri for the Appellant.

O.C. Mathur and Mrs. Meera Mathur for J.B.D. & Co. for the Respondent.

The following Order of the Court was delivered :

D Leave granted.

E We have heard the counsel on both sides. This appeal is filed against the order dated September 23, 1991 made by the Karnataka High Court in C.R.P. No. 3019/87. The facts are clearly not in dispute. They are stated as under:

F The appellant was a tenant prior to 1959. In 1959, the appellant had entered into an agreement with the respondent to purchase the premises for some consideration. Since the appellant claimed that the respondent was not willing to perform his part of the contract, he laid the suit for specific performance. In the suit, the parties ultimately had compromised the dispute and agreed to enhance the consideration to a sum of Rs. 38,000 payable within the specific time. Unfortunately, the appellant had not paid the amount within the agreed time which put an end to the rights asserted by the appellant under the contract.

G When an application for eviction under Section 21 of the Karnataka Rent Control Act was filed, the appellant raised preliminary objection that his tenancy rights had got merged in his right as an agreement-holder and he was in possession of the suit-premises as an agreement-holder and not as a tenant and thereby he disputed the title of the respondent. The H appellant sought for a decision by the Civil Court in that behalf. The

Controller negated it and the High Court by the impugned order affirmed the same. Thus this appeal by special leave. A

It is contended by Mrs. Kiran Suri, learned counsel for the appellant that the tenancy rights which the appellant had prior to 1959 stood merged with the rights as an agreement-holder. The appellant was always ready and willing to perform his part of the contract and was entitled to the benefit of Section 53-A of the Transfer of Property Act, 1882. The tenancy rights thereby stood merged with the right as an agreement-holder and that, therefore, the application for eviction did not lie. The Rent Control Court under those circumstances had no jurisdiction to go into that question. We find no force in that contention. B C

So long as the agreement subsists, it is settled law that the lesser right of tenancy stood merged with larger rights accrued under the agreement. But unfortunately in the compromise itself it was recognised that the appellant was to pay arrears of rent till the date of compromise. In other words, the appellants recognised the reversion to his pre-existing rights as tenant upto the date of the compromise. In other words, subject to compliance of the terms of the contract, his tenancy rights continued. The terms have not been complied with and the agreement came to amend. Thereby, the appellant's pre-existing rights as a tenant stood revived and the appellant and the respondent were bound by the relationship of landlord and tenant. Therefore, the Rent Controller was entitled to proceed with the matter in accordance with law. We do not say any further since the matter is pending before the Rent Controller. It would be open to the appellant to raise all the defences open to him in the Rent Control proceedings. D E

The appeal is accordingly dismissed. No costs. F

R.P.

Appeal dismissed.