

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 14TH DAY OF JUNE, 2011

BEFORE

THE HON'BLE MR.JUSTICE MOHAN SHANTANAGOUDAR

WRIT PETITION NO.20022/2011 (GM-CPC)

BETWEEN :

1. M/s.Luiran
A partnership Firm carrying on
Business at -
No.13 & 14, 80 Feet Road
4th Block, Koramangala
Bangalore
R/by its Partners
Petitioners 2 to 4
2. Syed Shujath Ehsanulla
Aged 35 years
3. Sheikh Zakir
Aged 36 years
4. Zulfikaruddin
Aged 48 years

Petitioners 2 to 4 are all
Partners of
M/s.Luiran
A partnership Firm carrying on
Business at -
No.13 & 14, 80 Feet Road

4th Block, Koramangala
Bangalore

.. PETITIONERS

(By Sri R.L.Patil, Adv., for M/s.Patil & Patil, Advs.,)

AND :

B.T.Vijay
S/o.late Thimmarayappa
Aged 82 years
R/at.No.2-A, anand Apartment
RMV Extension
Sadashiva Nagar
Bangalore-80

.. RESPONDENT

(By M/s.Lex Plexus, Adv., for C/R)

This writ petition is filed under Articles 226 and 227 of the Constitution of India, praying to quash the order dated 26.5.2011 passed on I.A.No.9 in O.S.5615/2008 passed by the 14th Additional City Civil Judge, Bangalore marked as Annexure-H to the writ petition, etc.

This writ petition coming on for preliminary hearing, this day the Court made the following:-

ORDER

Though the matter is listed for preliminary hearing, by consent of both the parties, it is taken up for final hearing and disposed of by this order.

2. By the impugned order, the Court below has rejected I.A.No.9 filed by the petitioners herein who are defendants in O.S.No.5615/2008, pending on the file of the City Civil Judge, Bangalore. By filing the said application, the defendants-petitioners herein had prayed for issuance of a direction to the plaintiff to pay proper Court fee on the plaint.

3. The records reveal that the respondent is the landlord of the property in question. Petitioners herein are the tenants. The respondent has executed a lease deed dated 12.3.2003 in favour of the petitioners herein in respect of the premises consisting of 4700 sq.ft. The said property was leased on

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monthly rent of ₹1,05,000/-. Subsequently, another lease deed is executed on 26.6.2033 for additional area of 3200 sq.ft. on monthly rent of ₹55,000/- for the first year and ₹60,500/- for the second year and ₹66,500/- for the 3rd, 4th and 5th year. Third lease was executed on 26.6.2003 in respect of further additional area of 2200 sq.ft. on a monthly rent of ₹45,000/- for the first year and ₹49,500/- for the second year and ₹54,450/- for the 3rd, 4th and 5th year. Pursuant to the said three separate lease deeds, the petitioners herein are in possession of the three premises mentioned in the lease deeds. Of course, three properties, which have been leased, are in the same building. The respondent herein has filed a suit in O.S.No.5615/2008, before the City Civil Court, Bangalore for ejectment. The valuation sheet annexed to the plaint reads thus:-

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Valuation Slip

Sl.No. of the property in Plaintiff Schedule	The clause of Sec.7(2) of the Karnataka Court Fees and suits Valuation Act, 1958 under which the property comes	The amount of Revenue or other basis for Valuation	Method adopted to arrive at the valuation	Valuation arrived at
1	2	3	4	5
1	Suit is valued u/s. 41(2) of Karnataka court Fee & Suits Valuation Act 1958	12,60,000/-	1 Year rent (monthly Rs.1.05,000)	75,125/-

4. From the above, it is clear that the plaintiff-respondent herein had valued the suit based on the monthly rent of ₹1,05,000/- as per Section 41(2) of the Court Fees and Suits Valuation Act. The defendants-petitioners herein took objection for the same by filing I.A.No.9. The same came to be rejected.

5. Sri R.L.Patil, learned counsel appearing for the petitioners contends that the respondent ought to have valued the suit on the basis of the monthly rent

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of ₹2,05,000/- and not at ₹1,05,000/-. He further submits that the plaintiff ought to have also paid Court fee based on the premium allegedly received by the landlord at the time of letting out the premises. According to him, the plaintiff has failed to pay the appropriate Court fee, obviously by ignoring two lease deeds (both dated 26.6.2003), by which two different/ additional areas were leased in favour of the petitioners.

6. Learned advocate appearing for the respondent opposes the writ petition by contending that the actual monthly rent paid by the lessee is only ₹1,05,000/- and based on the same, the suit is filed valuing the suit for ₹1,05,000/-; that the lease deeds dated 26.6.2003 are insufficiently stamped/ unregistered and are to be ignored for all purposes. He relies upon the judgment of this Court in the case

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of **Smt.G.Kusuma Devi vs. Smt.Gowramma & others, reported in 2006(6) Kar.L.J.120**, in support of the said contention.

7. The defendants in the written statement have averred thus:-

"06. There is no proper and quit notice, because there is several Leave Agreements entered in between the plaintiff and defendants in the different dates such as 12.3.2003, 26.6.2003 and 26.6.2003, for different portion of the property, for different amount of monthly rents, notice issued based on one of the Lease Agreement dated 12.3.2003, covered a ground floor area of 4,700 sq.ft. and seeking 10,200 sq.ft. during the enforcement of other two lease agreements is not proper under law, Further, it is submitted that, as per all the Lease Agreements recital No.4(ix)

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six months lease termination notice is must. Hence, it is liable to be dismissed in limine."

From the above, it is clear that the defendants have taken up a specific contention that three separate lease deeds were executed on different dates for different rents and for different areas. The plaintiff is examined as PW.1 before the Trial Court. In his evidence, he has clearly admitted that three agreements are existing between the parties and those three agreements are on different dates and for different areas. Thus, it is not in dispute that three lease deeds are entered into between the parties. It is also not in dispute that the tenancy is a monthly tenancy. It is also not in dispute that all the three lease deeds are unregistered and insufficiently stamped. The suit is filed for ejectment of the lessee,

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which presupposes that the plaintiff has recognized the defendants as lessors.

8. In the case of ***Smt.G.Kusuma Devi vs. Smt.Gowramma & others, reported in 2006(6) Kar.L.J.120 (cited supra)***, this Court has concluded that the plain language of Section 107 of the Transfer of Property Act makes it clear that the lease of immovable property for any term exceeding one year can be made only by registered instrument; in the absence of registered instrument, the lease must be a monthly lease and not yearly lease or a lease beyond one year. In the matter on hand, as the lease is for a period beyond one year and as the same is created by unregistered instrument, it shall have to be construed only as monthly lease and not yearly lease or a lease beyond one year. In view of the above, the contention of the petitioner that the lease deeds will

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have to be ignored for all purposes of the suit, cannot be sustained.

Be that as it may, as this Court is considering the sufficiency of the Court fees, it is wholly unnecessary to go enter into other aspects of the matter.

As aforementioned, the plaintiff admits in his evidence that there are three lease agreements on different dates for different areas. The different rent amounts are prescribed under three lease deeds. The total amount of lease amount comes to ₹2,05,000/- per month. Looking to the prayer found in the plaint, it is clear that the plaintiff is claiming possession of the entire area, contained in three lease deeds. Therefore, the plaintiff ought to have paid the Court fee based on the monthly rent of ₹2,05,000/- and not

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based on the rent mentioned only in one lease deed. Hence, the Court fee paid by the plaintiff on the basis of the monthly rent of ₹1,05,000/- is incorrect. It will have to be valued based on the monthly rent of ₹2,05,000/-.

Contention of the defendants that the plaintiff will have to pay Court fees on the premium, cannot be accepted. The lease deeds do not reveal anywhere the premium paid by the lessee to the lessor. However, the lessee has paid advance amount, which cannot be termed as premium. Therefore, the plaintiff need not pay the Court fee on the alleged premium amount. Accordingly, the following order is made:-

The impugned order is modified. Plaintiff is directed to value the suit based on the monthly rent of ₹2,05,000/- and shall accordingly pay the Court fee as



per 41(2) of the Court Fees and Suits Valuation Act,
1958.

Writ petition is **disposed of** accordingly.

Sd/-
JUDGE

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