

[2022 LiveLaw \(SC\) 561](#)

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
C.T. RAVIKUMAR; SUDHANSHU DHULIA, JJ.

June 24, 2022

PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO.10700 OF 2022
SRI K.M. MANJUNATH versus SRI ERAPPA. G DEAD THROUGH LRS.

Transfer of Property Act, 1882; Section 111 - Mere acceptance of the rent by the landlord after the expiry of the period of lease would not amount to waiver of the termination of lease. *Referring to Shanti Prasad Devi & Anr. Vs. Shankar Mahto & Ors. AIR 2005 SC 2905. (Para 11)*

Karnataka Small Cause Courts Act, 1964; Section 18 - High Court is empowered to interfere with findings of fact only if the findings are perverse or based on no evidence or suffering from error of law or there has been non-appreciation or non-consideration of a material on record by the court(s) below - That another view is possible based on the evidence on record can be no ground for the High Court to interfere with an order of court(s) below in exercise of its revisional jurisdiction - When the judgment and decree of the Civil Court is not 'according to law,' the High Court is certainly within its rights to set aside the decree in exercise of its revisional jurisdiction. *(Para 6, 11)*

Transfer of Property Act, 1882; Section 106, 111(a) - On determination of the lease by efflux of time no further termination of the tenancy by issuing a statutory notice to bring termination of a lease already terminated is necessary. *Referred to M.C. Mohammed Vs. Smt. Gowramma AIR 2007 KAR 46 and Pooran Chand Vs. Motilal & Ors. AIR 1964 SC 46. (Para 11)*

Transfer of Property Act, 1882 - In a suit for ejectment filed by the landlord the material questions would be whether there was jural relationship of landlord – tenant between the parties and whether tenancy was validly terminated. *(Para 8)*

(Arising out of impugned final judgment and order dated 19-04-2022 in CRP No. 500/2013 passed by the High Court of Karnataka at Bengaluru)

For Petitioner(s): Dr. M.P. Raju, Adv. Mr. Ravi Sagar, Adv. Mr. James P. Thomas, AOR

ORDER

1. This Special Leave Petition has been filed assailing the Judgment and final order dated 19-4-2022 in Civil Revision Petition No.500/2013 passed by the High Court of Karnataka at Bengaluru.

2. The Revision Petition was filed challenging the dismissal of the suit for ejectment passed by the XVth Additional Judge and Court of Small Causes, Bengaluru. The schedule property was the Shop bearing No.12 in the ground floor bearing Khata No.6/1 situated at Erappa Layout, Banaswadi Main Road, Bengaluru, measuring 13 feet X 24 feet.

3. The petitioner herein, viz., defendant therein, took up a contention that there was no valid termination of tenancy as per Section 106 of the Transfer of Property Act, 1882

(for short 'TP Act'). The Trial Court upheld the said contention after analysing the evidence on record and dismissed the suit on the sole ground that there was no valid termination of tenancy and hence, suit for ejectment was not maintainable.

4. Essentially, the contention of the respondents herein, viz., the legal representatives of the deceased plaintiff before the High Court in the Revision Petition, was that in view of Exts. D1 to D7 lease agreements, which are though unregistered documents, the period of lease ought to have been held as 11 months. As per Section 111(a) of the Act, such a lease would determine by the efflux of time and under such circumstances notice of termination under Section 106 of the Act was not required. After taking into consideration the rival contentions with reference to the provisions under the Act and the decisions specifically referred to in the impugned judgment, the High Court came to a positive finding that it is a case where tenancy got terminated by efflux of time by operation of Section 111(a) of the Act and in such circumstances, in view of the law laid down in the decision in **Shanti Prasad Devi & Anr. Vs. Shankar Mahto & Ors.** reported in **AIR 2005 SC 2905 = (2005) 5 SCC 543**, mere acceptance of the landlord after the expiry of the period of lease would not amount to waiver of the termination of lease. Obviously, the High Court took into account lease deeds Exts.D1 to D7 produced in evidence by the petitioner himself (the defendant in the suit) and found that they were unregistered and would reveal that every calendar year the parties went on executing lease agreements. Ultimately, accepting the contentions of the respondents herein based on the evidence on record the High Court set aside the judgment and decree passed by the Trial Court and partly decreed the suit. Thereafter, the High Court directed the petitioner herein to pay arrears of rent at the rate of Rs.1400/- per month from 01-01-2017 till possession of the property is handed over and also to handover the possession of the property to the petitioners therein, viz., respondents herein, within 60 days from the date of receipt of copy of the order. It is the said order passed in revision that is under challenge before us.

5. Heard the Learned Counsel for the petitioner.

6. As noted above, the impugned order was passed by the High Court in exercise of its power of revision under Section 18 of the Karnataka Small Cause Courts Act. As relates the scope of revisional power there can be no two views that the High Court is empowered to interfere with findings of fact only if the findings are perverse or based on no evidence or suffering from error of law or there has been non-appreciation or non-consideration of a material on record by the court(s) below. It needs no reiteration that another view is possible based on the evidence on record can be no ground for the High Court to interfere with an order of court(s) below in exercise of its revisional jurisdiction.

7. In the case on hand, the suit for ejectment filed by the landlord was dismissed by the Trial Court on the ground that there was no valid termination of the tenancy under Section 106 of the TP Act. During the pendency of the revisional petition filed against the judgment and decree of the Trial Court, the original revisionist petitioner – landlord died. Thereupon, the respondents herein who are his legal representatives prosecuted the matter and it culminated in the impugned order dated 19.4.2022. The tenant herein was the respondent – defendant.

8. The High Court rightly observed that in a suit for ejectment filed by the landlord the material questions would be whether there was jural relationship of landlord – tenant between the parties and whether tenancy was validly terminated. Obviously, the High Court found that initially the petitioner herein had denied the jural relationship, but then he himself had set up Ex. D1 to D7 lease agreements. As a matter of fact, there is now concurrent findings on the question of jural relationship against the petitioner herein. That apart, that question need not be taken forward in view of the further contention take up by the petitioner herein in this petition, at paragraph 5.4, to the effect that he was originally inducted as a tenant as per lease agreement dated 15.2.1989 (Ex. D1) and after the expiry of the period of the last lease agreement he has been continuing as a tenant in sufferance and had paid rent till the date of filing of the suit.

9. In the decision in **Smt. Shanti Devi Vs. Amal Kumar Banerjee (AIR 1981 SC 1550)** this court held that before deciding the validity of notice under Section 106 of the TP Act the court should first decide whether Section 106 is applicable or not. Further it was held that where a lease was for a fixed term the court could not take the pleadings of the parties for determining the nature of the lease and that the parties could not by their pleadings alter intrinsic character of lease.

In the case on hand, the obligation to decide on the aforesaid question unfailingly, was discharged by the trial court. This has resulted in perverse appreciation of evidence which led to a conclusion against the weight of evidence further leading to error of law. In such circumstances, we have no hesitation to hold that the High Court was right and justified in re-appreciating the evidence in exercise of its revisional power.

10. To consider the question whether the issue as to the requirement or otherwise of issuance of a notice in terms of Section 106 of the TP Act was available for consideration by the High Court indisputable facts obtained from the evidence on record are worthy of reference. As noticed hereinbefore initially the petitioner herein and taken up the contention that no jural relationship of landlord-tenant exists between himself and the plaintiff viz. the predecessor of the respondents herein. The fact is that, he himself belied the said contention by setting up Ext.D1 to D7 lease agreements. Ext.D1 to D7 agreements are of the years 1989, 1990, 1991, 1992, 1994 and 1995.

11. A scanning of the impugned order passed by the High Court would reveal that the High Court had appreciated the contentions as also the evidence on record to decide on the question of applicability or otherwise of Section 106 of the TP Act. Various decisions of this Court were also referred to, during that exercise. The trial court itself took note of the factual contention of the petitioner herein viz., the tenant that on expiry of period of lease under Ext.D1 dated 15.02.1989 as per Ext.D2 lease agreement dated 26.08.1990 the lease was extended for a period of 11 months upto 25.07.1991. Vide Ext.D3 lease agreement dated 31.10.1990 it was extended with effect from 01.11.1990 to 30.09.1991 and as per Ext. D4 lease agreement dated 31.12.1991 it was extended with effect from 01.01.1992 upto 30.11.1992. Taking note of Ext. D1 to D7 and the execution of lease agreement every year and that the parties have agreed to go by the provisions of the TP Act the High Court found that the lease could be taken as lease for a period of eleven months. In view of the evidence thus obtained and taking into account the decision in Shanti Prasad Devi's case (supra) the High Court held that mere acceptance of the rent

by the landlord after the expiry of the period of lease would not amount to waiver of the termination of lease. Relying on a Division Bench decision of the High Court in **M.C. Mohammed Vs. Smt. Gowramma (AIR 2007 KAR 46)** rendered relying on the decision in **Pooran Chand Vs. Motilal & Ors. (AIR 1964 SC 461)**, held that on expiry of the term fixed under the deed the tenant would not be entitled to statutory notice under Section 106 of the TP Act. It was found that on determination of the lease by efflux of time no further termination of the tenancy by issuing a statutory notice to bring termination of a lease already terminated is necessary. Taking into account the evidence on record the said conclusions the consequential reversal of the judgment and decree of the Civil Court cannot be held as perverse or illegal warranting interference. As the judgment and decree of the Civil Court was not 'according to law,' the High Court was certainly within its rights to set aside the decree in exercise of its revisional jurisdiction. The stated consequential directions by the High Court are nothing but a necessary sequel of such conclusions and findings.

12. In view of the above conclusion this Special Leave Petition must fail as it is devoid of merits.

13. At this juncture learned counsel for the petitioner requested for grant of sometime for the petitioner to vacate the premises in question. We grant the petitioners a reasonable period of six (6) months from today to handover its vacant and peaceful possession to the respondents provided the petitioner shall file an undertaking on affidavit in that regard to this Court, within three weeks from today. He shall also undertake thereunder to pay arrears of rent, at the rate of Rs.1400/- per month and further to pay an amount of Rs.1400/- on the 7th day of every month during the extended period. Needless to say that in case of non-filing of such an undertaking within the above stipulated time the benefit granted by this order would cease to exist and the decree would become executable forthwith without further reference to the Court.

14. This Special Leave Petition is dismissed as above.