



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

REGULAR FIRST APPEAL NO. 524 OF 2019 (RES)

BETWEEN:

DR SUNITHA AGARWAL,
W/O PANKAJ SONDHI,
AGED ABOUT 59 YEARS,
R/AT NO.15, EAGLE STREET,
LANGFORD TOWN,
BANGALORE-560 025.

...APPELLANT

(BY SRI ARUN GOINDRAJ, ADVOCATE FOR
SRI GOVINDARAJ L, ADVOCATE)

AND:

M/S RAJASHREE ENTERPRISES,
A DULY REGISTERED PARTNERSHIP FIRM
HAVING ITS OFFICE AT NO.23,
HARE KRISHNA ROAD, HIGH GROUNDS,
BANGALORE - 560 001
REP BY ITS MANAGING PARTNER
MRS. RAJASHREE YOGANANDA.

...RESPONDENT

(BY SRI K N KRISHNA RAO, FOR C/R (CP NO.415/19))

THIS RFA IS FILED UNDER ORDER XLI RULE 1 R/W
SEC.96 OF CPC., AGAINST THE JUDGMENT AND DECREE
DATED 06.02.2019 PASSED IN OS.NO.2024/2014 ON THE FILE
OF THE XXXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE,
BENGALURU, DECREETING THE SUIT FOR VACANT POSSESSION
AND DAMAGES.

Digitally signed
by BELUR
RANGADHAMA
NANDINI

Location: HIGH
COURT OF
KARNATAKA



THIS APPEAL, COMING ON FOR ADMISSION THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL JUDGMENT

This appeal is listed for Admission today. Considering the nature of the controversy involved in this matter and since the respondent-caveator is also served and is before the Court, the Court has considered the appeal on merits.

2. The respondent/plaintiff filed a suit in O.S.No.2024/2014 seeking delivery of vacant possession of the suit property on the premise that the suit property is licensed to the defendant and the license has come to an end. The plaintiff also sought damages at the rate of Rs.1,00,000/- per month from the date of the suit till the date of realisation with interest at the rate of 24% per annum.

3. The suit is filed on the premise that, on 04.07.2012, plaintiff and defendant entered into a license agreement and the defendant occupied the premises as a Licensee. The plaintiff claims that the tenure of the license is 11 months starting from 01.01.2012 to 30.11.2012. The monthly license



fee agreed is Rs.60,000/- per month according to the plaintiff. The plaintiff further claims that with effect from 01.01.2013, the defendant is paying enhanced license fee of Rs.63,000/- per month.

4. The suit is filed on 12.03.2014 on the premise that the defendant has failed to vacate the premises even after expiry of 15 days notice to vacate the premises. As already noticed, defendant also claimed Rs.1,00,000/- per month towards damages.

5. The defendant has resisted the suit. Defendant raised a contention that he is in possession of the property as a tenant and his tenancy is traceable to the lease agreement of the year 1993 which was for 10 years, and later was renewed for another 10 years from 2003 to 2012. Admittedly, both the lease deeds are unregistered. However, defendant is in possession of the property since 1993, this fact is not in dispute.

6. Defendant also raised a contention that since he is a tenant, notwithstanding the lease agreement dated 04.07.2012, the defendant cannot be evicted unless there is a



suit for eviction under the provisions of the Transfer of Property Act, 1882 (for short 'Act of 1882').

7. The Trial Court framed following four issues:

1. *Whether the plaintiff proves the jural relationship of landlord and tenant between itself and the defendant?*
2. *Whether the plaintiff proves that it has terminated the tenancy rights of the defendant legally and validly?*
3. *Whether the plaintiff is entitled for the reliefs as prayed for?*
4. *What Order or decree?*

8. Later, the issues have been recast vide order dated 01.04.2015. Paragraph No.4 of the judgment under challenge would disclose that the issues which have been recast have been wrongly numbered as 1 and 2 instead of 3 and 4. However, the order dated 01.04.2015 would indicate that issues No.1 and 2 have been recast as referred to above raising issue relating to licence.

- (3) *Whether plaintiff proves that the defendant is a licensee?*



- (4) *Whether the defendant proves that the relationship between the plaintiff and defendant is that of lessor and lessee?*

9. The Trial Court recorded the evidence and came to the conclusion that the plaintiff is a Licensor and the defendant is a Licensee.

10. The judgment would also indicate at page No.5 paragraph No.6 that original issue No.1 relating to the jural relationship of landlord and tenant and issue No.2 relating to legality of termination of tenancy are answered in the affirmative holding that the plaintiff is the landlord and the defendant is the tenant. However, the reading of the entire judgment would indicate that the Trial Court has held that the relationship is that of licensor and licensee.

11. The Court has held that the defendant is a Licensee and has come to the conclusion that the plaintiff is entitled to the relief of delivery of vacant possession. And on the damages sought by the plaintiff, the Court has come to the conclusion that the license fee fixed was Rs.60,000/- per month in the year 2012 and Court has decided the suit in the year 2019 and without much discussion on the quantum of damages payable,



the Court directed Rs.1,00,000/- per month to be paid from the date of the decree till the date of possession.

12. Aggrieved by the aforementioned judgment and decree, the defendant is before this Court.

13. Learned counsel appearing for the defendant raised the following contentions:

- (a) The plaintiff has suppressed the fact that the defendant was tenant from 1993 to 2012 and the two lease deeds between the plaintiff and defendant in between 1993 and 2003 have not been disclosed in the plaint.
- (b) Despite the agreement being styled as a license agreement on 04.07.2012, the fact that the possession is said to be with the defendant would indicate that the defendant is a tenant and not a Licensee. In the examination-in-chief, the plaintiff has stated that the defendant is in occupation of premises as a tenant and same is overlooked by the Trial Court.
- (c) In the cross-examination, PW.1 has admitted that the defendant has been in occupation of the property since



1993 as a tenant and has been paying rent. This is also overlooked by the Trial Court.

14. Since the defendant was a tenant since 1993, the Court could not have held that the defendant is a Licensee by virtue of the agreement dated 04.07.2012.

15. In support of his contention, learned counsel for the appellant has also relied on the following judgments:

(i) *Associated Hotels of India Ltd vs. R.N.Kapoor*¹

(ii) *General Secretary, Vivekananda Kendra vs. Pradeep Kumar Agarwalla and Others*²

(iii) *B.M.Lall and Another vs. M/s Dunlop Rubber Co. (India) Ltd. and Another*³

16. Learned counsel for the plaintiff/respondent raised the following conditions:

(a) There was no need for the plaintiff to disclose the status of the defendant who was a tenant from 1993 to 2012 as the status changed pursuant to the license agreement dated 04.07.2012.

¹ 1959 SCC OnLine SC 62

² 2026 SCC OnLine SC 316

³ AIR 1968 SC 175



- (b) A stray sentences in the cross-examination or the examination-in-chief do not establish the defendant's claim that he is a tenant in respect of the suit premises.
- (c) The agreement is not in dispute. The agreement clearly speaks that the defendant is the Licensee and the plaintiff is the Licensor. The tenure has come to an end and the Trial Court is justified in granting a decree for vacant possession of the premises and also damages at the rate of Rs.1,00,000/- per month considering the fact that 5 years have elapsed by the time the suit is decreed.

17. The Court has considered the contentions raised at the Bar and perused the records.

18. The following points arise for consideration:

- (a) *Whether the appellant is able to establish that he is a tenant in respect of the suit premises, as such, the suit is not maintainable?*
- (b) *If so, whether appellant establishes any prejudice being caused for not initiating a suit for eviction under the provisions of the Transfer of Property Act?*



19. From the records it is noticed that there is no dispute over the fact that the defendant was a tenant in respect of the suit premises from 1993 to 2012. It is noticed from Exhibit P1-the leave and license agreement dated 04.07.2012 that the plaintiff claims that he has licensed the premises to the defendant. The said document would reveal that the defendant agreed to occupy the premises as a Licensee on a condition that the defendant would pay Rs.60,000/- per month as license fee.

20. The nomenclature of the agreement at Exhibit P.1 and remaining contents, would clearly demonstrate the fact that the plaintiff and defendant entered into a contract where the plaintiff agreed to license the premises for the use of the defendant.

21. The question is, '*whether the one Clause in the agreement dated 04.07.2012 which records the possession of the defendant over the property would change the character of the said agreement as lease agreement*' as contended by the learned counsel for the plaintiff.



22. The Court is of the view that one sentence in the agreement dated 04.07.2012 wherein it is stated that the defendant is in possession of the premises does not change the nature of the contract i.e., licence, between the plaintiff and defendant.

23. On a holistic reading of the agreement for license dated 04.07.2012, it is explicit that the parties agreed to enter into a licence agreement. It is also required to be noticed that in the year 1993, the plaintiff entered into a lease agreement with the defendant. That lease was for 10 years. Admittedly, the lease is not registered and thereafter, again there was one more lease for 10 years. Again said lease agreement was not registered. The term has come to an end. Later, the parties entered into one more agreement on 04.07.2012 styling the same as licence agreement. Thus, it is evident that the plaintiff and defendant have consciously entered into an agreement for license, and not an agreement for lease, as it was done on previous two occasions. Merely because the plaintiff is said to be in possession of the property it cannot be held that the agreement between the plaintiff and the defendant is a lease.



24. This being the position, there is no difficulty in holding that the parties entered into an agreement of license and not lease as contended by the learned counsel for the plaintiff.

25. It is noticed that, in the plaint, in paragraph No.6, the plaintiff has asserted that the defendant is in possession of the premises. In the plaint, the plaintiff has stated that lease was terminated on 28.02.2014. In the examination-in-chief also the same paragraph No.6 is repeated. However, what is required to be noticed is the plaintiff has issued a notice which is marked Exhibit P2. It is noticed, the plaintiff has asserted that he is terminating the license. Thus, the averment in paragraph No.6 of the plaint and corresponding paragraph in the examination-in-chief should be read as a statement relating to termination of license not the lease as the plaintiff has issued a notice stating that the defendant is a licensee.

26. This being the position, the Court is of the view that the statement in the plaint and examination-in-chief that he has terminated tenancy does not come to the aid of the defendant to contend that the defendant is a tenant and the



plaintiff is the landlord. The conclusion on reappreciation of entire evidence and pleading on record would be that the defendant is a Licensee and the plaintiff is the Licensor.

27. Learned counsel for the appellant has relied on the judgment in ***Associated Hotels of India Ltd*** (*supra*). The Apex Court has spelt out the distinction between the lease and the license in the said judgment. There cannot be any quarrel as to the proposition of law in this behalf. The distinction between lease and license is well-defined.

28. Referring to the said judgment, it is urged that since the plaintiff has asserted that the defendant is in possession of the property and the license agreement also reveals the possession of the defendant over the property, it is to be construed as a lease and not a license.

29. The Court is of the view that the said contention is not acceptable. Merely because the defendant is found to be in possession or said to be in possession pursuant to a license agreement, it cannot be said that the status of the defendant gets changed from Licensee to that of a tenant, when the terms of the agreement as well as other evidence on record, more



particularly the two previous agreements are lease agreements whereas the last agreement is the licence agreement entered into after expiry of the tenure fixed under the lease agreement.

30. Learned counsel the appellant has also placed reliance on the judgment of the Apex Court in ***General Secretary, Vivekananda Kendra*** (*supra*), wherein the Court has held that in case, the relationship is that of the landlord and tenant, then the suit for mandatory injunction on the premise that the occupant is a Licensee is not tenable.

31. In paragraph No.20.1 of the said judgment, the Apex Court has extracted the agreement between the parties in the said case. From the averments in the said agreement, the Court has come to the conclusion that it is not a case of license, but it is a case of lease and accordingly the Court held the suit for mandatory injunction is not maintainable. However, in the present case, the Court is of the view that the evidence is placed to hold that the relationship between the plaintiff and defendant is that of Licensor and Licensee. Hence, the said judgment also does not come to the aid of the defendant.



32. The judgment in ***B.M.Lall*** (*supra*), would also reiterate the well-established principle that the nomenclature of the document, is not the criterion.

33. This Court has already discussed the evidence on record to hold that the relationship between the parties is that of the Licensor and Licensee and not landlord and tenant and Court has come to the conclusion that the plaintiff was a licensee based on evidence and not just the nomenclature of the agreement.

34. In addition to that, this Court is also of the view, assuming that the relationship between the parties is that of the landlord and tenant, since the plaintiff has filed a suit for eviction or vacant possession, no prejudice is caused to the defendant. The defendant, having raised a contention that he is a tenant, was not precluded from leading any evidence which otherwise would have come to the aid of the defendant to grant a relief in favour of the defendant. The defendant has led evidence in support of his claim that he is a tenant. However, the evidence is not sufficient to hold that he is a tenant. The defendant cannot contend that had the suit been filed under



the provisions of the Act of 1882, he would have led a better evidence or he would have taken some other defence. Since the tenure has come to an end either as a licensee or as a tenant the defendant is not put to any prejudice.

35. It is also noticed that even if it is held that the defendant is a tenant, the defendant is not entitled to any additional protection under any law and the defendant would be again bound by the provisions of the Act of 1882 as admittedly, the tenure has come to an end. There is no question of issuance of any notice to the defendant and assuming that such notice is required, the plaintiff has already issued a notice to the defendant and that fact is not in dispute.

36. That being the position, the Court is of the view that the decree for vacant possession granted in favour of the plaintiff does not call for interference.

37. As far as the damages is concerned, it is noticed that the defendant was required to pay Rs.60,000/- per month from 2012 for a period of 11 months. Thereafter, it appears that the defendant has paid Rs.63,000/- per month towards license fee and thereafter there is no enhancement. The suit is



filed in the year 2014. The Trial Court has passed a decree in 2019.

38. The Trial Court has assumed that the appropriate damages that could be awarded is Rs.1,00,000/- per month. It is also noticed that no damages is awarded from the date of the suit till the date of the decree. The decree only directs payment of damages from the date of the judgment till the delivery of possession. However, there is no cross-objection by the plaintiff. To that extent the defendant is benefited.

39. Under these circumstances, this Court does not find any error in the decree passed by the Trial Court awarding damages of Rs.1,00,000/- per month. Accordingly, this Court is of the view that there is no reason to interfere with the judgment and decree passed by the Trial Court.

40. Since it is submitted that the defendant is running a Clinic in the portion of the premises and remaining portion of the premises is occupied by the defendant for residential use, the Court is of the view some reasonable time is to be granted to the plaintiff to vacate the premises.



41. It is noticed that the defendant is in possession since the year 1993. Hence, it would be appropriate to grant time till 31.12.2026 to vacate the premises subject to the condition that the appellant/ defendant files an affidavit before the Trial Court before 07.06.2026 undertaking to vacate the premises by 31.12.2026, without seeking any further extension of time.

42. It is also made clear that the defendant shall continue to pay Rs.1,00,000/- per month towards damages till 31.12.2026.

43. Hence, the following:

ORDER

- (i) Appeal is ***dismissed***.
- (ii) Defendant/appellant is permitted to occupy the suit premises till 31.12.2026 subject to the condition that the defendant/appellant shall file an affidavit on or before 07.06.2026 before the Trial Court undertaking to vacate the premises before 31.12.2026 without seeking any further extension of time.



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(iii) The defendant shall also pay to the plaintiff
Rs.1,00,000/- per month towards damages till
31.12.2026.

No order as to cost.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

GVP
List No.: 1 Sl No.: 37