



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO.502 OF 2019 (POS)

BETWEEN:

K. MOHAN RAO
AGED ABOUT 63 YEARS
S/O. LATE RAMACHANDRA
R/AT MARIL HOUSE
KEMMINJE VILLAGE-574 202
PUTTUR TALUK, D. K.

...APPELLANT

(BY SRI CHANDRANATH ARIGA K., ADVOCATE)

AND:

CHARLI KUELA
AGED ABOUT 43 YEARS
S/O. SHIMAVUM KUELA
R/AT KADUMANE HOUSE
KEMMINJE VILLAGE
PUTTUR TALUK, D. K.

...RESPONDENT

(BY SRI ANANDARAMA K., ADVOCATE)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 11.10.2018 PASSED IN R.A.NO.10/2015 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND A.C.J.M., AT PUTTUR, D.K., DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 21.02.2015 PASSED IN O.S.NO.339/2015 (OLD O.S.NO.26/2008) ON THE FILE OF THE ADDITIONAL CIVIL JUDGE AND J.M.F.C., PUTTUR.

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Location:
HIGH
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KARNATAKA



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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Though the matter is listed for orders on application seeking condonation of delay, since this Court condoned the delay by a separate order, by consent of the parties, the matter is taken up for admission.

2. Heard the arguments of both sides.

3. This Court noted that, plaintiff is the appellant challenging the dismissal of the suit in O.S.No.339/2015 which was confirmed by the First Appellate Court in R.A.No.10/2015 wherein the suit for possession came to be dismissed on the ground that there was no violation of condition of lease.

4. Admittedly, the respondent - Charli Kuvela is the tenant under the plaintiff, who claims to be the



owner of the suit property. Defendant is the moolagenidar.

5. Suit was brought in seeking possession of the property on the ground that there were huge arrears in payment of rent and as such, tenancy needs to be terminated. Suit was resisted and in the cross-examination of P.W.1 (appellant) it has been elicited that after repeated request, before filing the suit, defendant has paid the rent in lumpsum about four to five times. Likewise, P.W.1 pleaded ignorance about the deposit of rent made into the Court.

6. Learned Trial Judge after taking note of the relevant aspects of the matter, dismissed the suit of the plaintiff holding that plaintiff failed to prove that there are arrears of rent which gave the right for the plaintiff to seek for possession of the suit property from the defendant.

7. Matter was taken up before the First Appellate Court by the unsuccessful plaintiff in RA No.10/2015.



8. Learned Judge in the First Appellate Court on reappreciation of the material evidence on record, dismissed the appeal of the plaintiff.

9. Being further aggrieved by the same, plaintiff is before this Court, in this appeal on following grounds and substantial questions of law:

GROUND

- *The judgment and decree by both the courts are erroneous and liable to be set aside.*
- *The moolageni lease by the father of the plaintiff is admitted by the defendant. Ex.P3 is the Lease Deed and the condition is that the rent to be paid regularly. Upon the failure to pay the rent, the plaintiff has the right of forfeiture. The plaintiff has exercised the option on the failure of the tenant to pay the rent. The finding of the trial court that the plaintiff has admitted that the defendant has paid the arrears of rent is not correct.*
- *The trial court proceeded to pass the judgment that the arrears of rent is not proved and*



therefore the issuance of quit notice does not arise. This finding is contrary to law and is liable to be set aside. 1047

- *The burden of proving that the rent has been paid is on the defendant. The defendant has not placed any material to the effect that the rent has been properly paid. In the absence of the material that the rent is not paid, the trial court and the first appellate court ought to have decreed the suit.*
- *The judgment and decree of both the courts is otherwise also erroneous and liable to be set aside.*
- *The certified copies of the judgment and decree in O.S.No.339/2013 and that of R.A.No.10/2015 are filed herewith.*

SUBSTANTIAL QUESTION OF LAW:

- a. *Whether the finding that the rent is fully paid by the defendant is proper finding in the absence of proof of payment by the defendant?*



- b. Whether the finding that the question of issuance quit notice does not arise in the absence of proof of arrears of rent is proper?*
- c. Whether the approach of the first appellate court in deciding the appeal u/s 96 of CPC without appreciating the documents is proper?*

10. Learned counsel for the appellant would contend that when there is a factual finding with regard to the payment of rent, only question would be that needs to be considered is with regard to whether there was a proper appreciation of the material evidence by this Court having regard to the scope of Section 100 of CPC.

11. He would further contend that both the Courts failed to note that payment of rent is a duty cast on the tenant and tenant is duty bound to pay the rent year by year as and when it accrues and not to pay in lumpsum and therefore, rejection of the suit by both the Courts is incorrect.



12. Per contra, learned counsel for the respondent supports the impugned judgments.

13. He would further emphasize that rents were not accepted in protest nor there was any termination of tenancy based on non-payment of rent and therefore, the contentions urged on behalf of the appellant cannot be countenanced in law and thus sought for dismissal of the appeal.

14. Having heard the arguments of both sides, this Court perused the material on record meticulously.

15. On such perusal of the material on record, reasons assigned by both the Courts in dismissing the suit is just and proper. Admittedly, there is no protest made by the landlord in accepting the arrears of rent.

16. In other words, conduct of the plaintiff in accepting the rent without any protest, would result in what is called Doctrine of Acquiescence and Waiver. Therefore, cause if any that accrued to the plaintiff to evict



the defendant on the basis of the non-payment of arrears of rent in time has been lost by accepting rent without protest.

17. Therefore, dismissal of the suit does not require further consideration before this Court.

18. As such, substantial questions of law raised in the appeal do not merit for further consideration.

19. Hence, following:

ORDER

- i. Admission is ***declined***.
- ii. Appeal is ***dismissed***.
- iii. However, dismissal of the appeal shall not come in the way of plaintiff exercising his rights in accordance with law to redress his grievance.

**Sd/-
(V SRISHANANDA)
JUDGE**