



CNR: KAHC010915902010

NC: 2026:KHC:36157
RSA No. 2971 of 2010

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 15TH DAY OF JULY, 2026
BEFORE
THE HON'BLE MR. JUSTICE G BASAVARAJA
REGULAR SECOND APPEAL NO. 2971 OF 2010 (MON)

BETWEEN:

THE CORPORATION OF CITY OF MANGALORE
LALBAGH, MANGALORE-03
A CORPORATION CONSTITUTED UNDER
THE KMC ACT, 1976, HAVING OFFICE AT LALBAGH,
MANGALORE -03, REP. BY ITS COMMISSIONER.

...APPELLANT

(BY SRI. UMESHA A., ADV. FOR SRI. A. K. VASANTH, ADV.)

AND:

SHRI RASHID A BOLAR
S/O LATE PAKEER MOHAMMED ACHAR,
AGED ABOUT 61 YEARS,
RESIDING AT 003, LOBO PRABHU COURT APT.,
LIGHT HOUSE HILL ROAD, MANGALORE-575001.

...RESPONDENT

(SERVICE OF NOTICE TO RESPONDENT HELD
SUFFICIENT V/O DATED: 18/06/2015.)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 20.9.2010 PASSED IN
R.A.NO.20/2009 ON THE FILE OF THE I ADDL. DISTRICT
JUDGE, D.K, MANGALORE, ALLOWING THE APPEAL AND
SETTING ASIDE THE JUDGMENT AND DECREE DATED
13.2.2008 PASSED IN O.S.NO.271/2002 ON THE FILE OF THE
PRL. CIVIL JUDGE (SR.DN) & JMFC., MANGALORE.

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



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CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

1. The plaintiff before the trial Court has preferred this appeal against the judgment and decree passed by the I Additional District Judge, D.K., Mangalore in RA No.20/2009 dated 20.09.2010.

2. For the sake of convenience the parties herein are referred as per their rank before the trial Court.

3. Plaintiff-Corporation of the City of Mangalore, has filed a suit in OS No.271/2002 against the respondent/defendant-Rashid A. Bolar for recovery of amount of Rs.1,19,000/- with interest at the rate of 12.5% per annum. It is alleged in the plaint that, the defendant was the licensee of Stall No.80 of Kankanady Market, Mangalore, run and maintained by the plaintiff and the defendant did not pay the licence fee and hence, he was dispossessed from the said Stall in the month of July, 2000 and at that time the defendant was in arrears of license fee in sum of Rs.95,000/- to which the defendant has issued 4



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cheques and when the said cheques were presented for encashment, all the cheques were dishonoured with the endorsement "insufficient funds". Therefore, the plaintiff caused the legal notice to the defendant and the defendant evaded to receive the same nor paid the arrears of licence amount. Hence, plaintiff has filed the suit.

4. The defendant appeared before the trial Court and filed his written-statement contending that he was not a licensee of Stall No.80 of Kankanady Market, Mangalore, run and maintained by the plaintiff. It was contented that, the defendant at any point of time was not the licensee or obtained the Stall No.80 at Kankanady Market from the plaintiff either on monthly payment or otherwise. Therefore, the payment of the license fee does not arise at all. Further, it is contented that the defendant had approached the plaintiff-Corporation for the allotment of Stall No.80 and accordingly the Stall No.80 was allotted to the plaintiff. But possession was not given to him by the plaintiff-Corporation. The defendant in anticipation of obtaining possession of the



premises had paid some deposit amount and also issued the cheques with regard to certain payment of license fee, but the plaintiff-Corporation has not given the Stall No.80 to the possession of the defendant and this fact is appraised to the plaintiff-Corporation. However, officials of the plaintiff have not bothered about this. Therefore contented that, the defendant was not in possession of the premises at any point of time. Hence, there is no question of arrears of license amount. Accordingly, he sought for dismissal of the suit.

5. On the basis of pleadings, the trial Court has framed the following issues.

1. *Whether the plaintiff proves that the defendant was a licensee of Stall No.80 of Kankanady Market, Mangalore, run and maintained by the Plaintiff?*
2. *Whether the plaintiff proves that the defendant is in arrears of licence fee in a sum of Rs.95,000/- since July, 2000?*
3. *Whether the plaintiff is entitled for the interest as claimed?*
4. *Whether the plaintiff is entitled for the judgment and decree as prayed for?*
5. *To what order or decree?*



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6. To prove the case of the plaintiff, the Revenue Inspector is examined as PW1 and 14 documents were marked as Exs.P1 to P14. On closure of plaintiff's side evidence, defendant adduced his evidence as DW1. No document was marked on behalf of defendant.

7. Having heard the arguments on both sides, the trial Court has decreed the suit for Rs.95,250/- with interest at the rate of 6% from the date of filing the suit till its realisation.

8. Being aggrieved by this judgment and decree passed by the trial Court, the defendant Rashid A. Bolar preferred the appeal before the I Additional District Judge, D.K., Mangalore, in RA No.20/2009 and the same came to be allowed and the judgment and decree dated 13.02.2008 passed in OS No. 271/2002, by the Prl. Civil Judge (Senior Division) and CJM, Mangalore, was set aside.

9. Being aggrieved by this judgment and decree passed by the I Appellate Court, the plaintiff has preferred the second appeal before this Court. On hearing the parties,



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this Court has framed the substantial question of law, which reads as under:

"Whether First Appellate Court was correct in reversing the judgment and decree passed in OS No.271/2002 decreeing the suit for recovery of Rs.95,000/- with 6% interest per annum, on the ground that appellant had not invoked the provisions of Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, though suit in question was for recovery of arrears of rent only?"

10. I have heard the arguments of learned counsel for the appellant. Despite service of notice, respondent remained absent and unrepresented.

11. Having heard the arguments of learned counsel for the appellant and perusal of materials, I answer to the above substantial question of law as in the Affirmative.

12. I have carefully examined the material placed before me. It is the case of the plaintiff that, the defendant was the licensee of Stall No.80 of Kankanady Market, Mangalore, run and maintained by the plaintiff-Corporation and the defendant did not pay the license fee and hence, he



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was dispossessed from the said stall in the month of July 2000. At that time the defendant was in arrears of license fee amounting to Rs.95,000/- for which the defendant has issued four cheques and when the said cheques were presented for encashment, all the cheques were dishonoured with the endorsement "insufficient funds". Even after issuance of legal notice, the defendant has not paid the arrears of license amount. Hence, the plaintiff has filed suit for recovery of money.

13. The defendant has filed his written-statement contending that he was not a licensee of Stall No.80 at Kankanady Market, Mangalore, run and maintained by the plaintiff. He has contended that at any point of time, he was not the licensee or obtained the Stall No.80 at Kankanady Market from the plaintiff either on monthly payment or otherwise.

14. To prove the case of the plaintiff, the plaintiff has produced Ex.P1 is the letter addressed by the defendant to the Commissioner, City Corporation of Mangalore. Ex.P2 is



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the cheque, Ex.P3 is the bank endorsement, Ex.P4 is the notice, Ex.P5 is the unserved notice, Ex.P6 to P8 are the cheques, Ex.P9 to P12 are the bank endorsements. Ex.P13 is the copy of the notice and Ex.P14 is the acknowledgment. The First Appellate Court has observed that the plaintiff has not at all produced any evidence to show that the Stall No.80 was allotted to the defendant. However, the defendant admitted in the written-statement that shop premises was allotted, but it is the contention of the defendant that possession was not given, therefore he could not run the business. During the course of cross-examination of PW1- Revenue Inspector admitted about giving the Shop No.80 to the defendant, but there is no agreement executed between the plaintiff and the defendant. Further, it is admitted fact that, if any shop premises is given to any person on rental basis, then there should have been an execution of agreement between the Corporation and the licensee. In the instant case there is no agreement executed between the plaintiff-Corporation and defendant.



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15. PW1-Revenue Inspector has admitted that there is no record to show that the defendant was dispossessed from said shop premises. The trial Court has also observed as to the non-compliance of mandatory provisions of Sections 176, 182, 436-A of Karnataka Municipal Corporation Act, 1976 and also Section 5 of Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974.

16. A perusal of materials on record makes it is clear that the plaintiff has pleaded that the defendant was dispossessed. But in this regard, there is no explanation provided by the plaintiff-Corporation regarding the date on which defendant was dispossessed or had vacated from the said premises. The plaintiff has also not stated anything about the date of actual delivery of physical possession of the premises to the defendant.

17. The First Appellate Court has properly appreciated the evidence on record in accordance with law and facts. I do not find any legal or factual error in the impugned judgment and decree passed by the Appellate Court. Hence, I answer



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substantial question of law framed by this Court, in the affirmative.

18. For the aforesaid reasons and discussions, I proceed to pass the following:

ORDER

Appeal is ***dismissed***.

Parties are directed to bear their own costs.

**Sd/-
(G BASAVARAJA)
JUDGE**

KBM
List No.: 1 Sl No.: 16