

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30<sup>TH</sup> DAY OF SEPTMEBER, 2011

BEFORE

THE HON'BLE MR. JUSTICE JAWAD RAHIM

HRRP No. 69 OF 2011

BETWEEN:

D.H.SHIVAPRAKASH,  
S/O LATE D.S.HOSA ALLIYAPPA,  
AGED ABOUT 54 YEARS,  
R/A NO.:15/3,  
R.V.SHETTY LAYOUT,  
RAILWAY PLATFORM ROAD,  
SESHADRIPURAM,  
BANGALORE - 560 020

... PETITIONER

(EY SRI S.M.BABU, ADV.,)

AND :

1. C.PRAMILA,  
AGED ABOUT 54 YEARS,  
W/O Dr. B.M.C.REDDY,  
D/O LATE C.D.RAJAGOPALA REDDY,  
R/A NO.141, 7<sup>TH</sup> 'A' MAIN ROAD,  
4<sup>TH</sup> BLOCK, 3<sup>RD</sup> STAGE,  
BASAVESHWARANAGAR,  
BANGALORE - 5600 079

2. K.N.GETHAPRABHA,  
AGED ABOUT 50 YEARS,  
W/O K.NAGENDRA KUMAR REDDY,  
D/O LATE C.D.RAJAGOPALA REDDY,  
R/A NO.326, 2<sup>ND</sup> 'F' CROSS ROAD,  
3<sup>RD</sup> BLOCK, 3<sup>RD</sup> STAGE,  
BASAVESJWEARAMAGAR.  
BANGALORE - 560 079



3. E.LAKSHMIPRABHA,  
AGED ABOUT 48 YEARS,  
W/O E.LOKESH REDDY,  
D/O LATE C.D.RAJAGOPALA REDDY,  
R/A NO:1975, KESHAVANAGAR,  
OPP. HENNUR MAIN ROAD,  
ST.THOMAS TOWN POST,  
BANGALORE - 560 084

..RESPONDENTS

(BY SRI B.RAJENDRA PRASAD, ADV., FOR R1-R3)

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HRRP FILED U/S 115 OF CPC AGAINST THE ORDER DATED 19-02-2011 PASSED IN HRC.NO.569/2007 ON THE FILE OF THE CHIEF JUDGE, COURT OF SMALL CAUSES, BANGALORE, ALLOWING THE PETITION FILED UNDER SEC.27(2) (r) OF KARNATAKA RENT ACT.

THIS PETITION IS COMING ON FOR FINAL HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Tenant's petition against the order of eviction dated 19-02-2011 in HRC No.569/2007 on the file of the Chief Judge, Court of Small Causes, Bangalore.

2. Heard.

3. The respondents sought eviction of the petitioner contending that they require premises in his occupation for their own use and occupation. In support of



their plea they averred that one C.D.Rajagopala Reddy was the owner of the property in question. He had let out the same to the respondent – tenant on rent of Rs.2,400/-. He paid rents to him till 18.08.2004. C.D.Rajagopala Reddy died survived by respondents, their mother as also their brothers. Their mother and brothers relinquished their right, title and interest in the property in their favour by deed dated 03-02-2005. Since then they are the owners.

4. The Tenant – respondent resisted the proceedings denying relationship of Landlord and Tenant between them and him. He also denied execution of release deed dated 03-02-2005 executed by the mother and brothers in favour of respondents. He further contended that he had occupied the premises not as a Tenant, but as a mortgagee after paying Rs.1,50,000/- to C.D.Rajagopala Reddy and period of mortgage was for 15 years from 12.06.1999. Thus he contended that eviction action was not permissible. He produced the deed of mortgage at Ex.R1 to substantiate his contention.

5. The learned trial Judge took up preliminary issue regarding jural relationship and considering recital in Ex.R1



held that respondent herein was inducted as a Tenant, but did not accept he occupied premises as a mortgagee under deed of mortgage at Ex.R1. He did not take into consideration Ex.R1 on the ground that it is not a registered document as registration was compulsory. Discounting his contentions regarding lack of jural relationship, held respondents to be his Landlords. Considering the other circumstances spoken to by them he accepted their plea that they require the premises for their own use and occupation. Consequently, petition came to be allowed. Assailing it the Tenant is in revision.

6. From the nature of dispute between the parties and the evidence on record it is seen that the petitioner had failed to establish he occupied the premises in a transaction of mortgage with C.D.Rajagopala Reddy.

7. The learned trial Judge has considered the evidence in the right perspective to hold respondents are the Landlords and petitioner is a Tenant under them. Such a finding needs no interference.



8. However, I am persuaded to accept the contention of the learned counsel for petitioner that reasonable time be granted to him to vacate the premises.

9. In the result the petition is dismissed confirming the order passed in HRC No.569/2007, but enlarging the period of time by one year from today to the Tenant to quit, vacate and handover the vacant possession of the schedule premises subject to payment of regular rents as and when fell due. The Tenant is directed to file an affidavit in the Registry of this Court undertaking to vacate the premises without compelling the Landlord to take coercive steps to evict him. If there is any default in payment of rent for consecutive period of two months the petitioner – Tenant is liable to vacate the premises forthwith and respondent – Landlord are entitled to execute the decree and the period of time granted herein shall not be available to him. The amount in deposit be paid over to the respondents.

Sd/-  
JUDGE

VK