

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28<sup>TH</sup> DAY OF MAY, 2015

BEFORE

THE HON' BLE MR. JUSTICE B VEERAPPA

R.S.A. NO 636 OF 2015

BETWEEN

SRI JAYARAM,  
AGED ABOUT 49 YEARS  
S/O D.R. NAGARAJ  
MONICA LUBRICANTS,  
AZAD ROAD,  
HASSAN.

... APPELLANT

(BY SRI : E KIRAN KUMAR, ADV., FOR SRI E  
NAGABHUSHANA, ADV.,)

AND

1. SMT PADMA  
W/O LATE KESHAVA MURTHI  
AGED ABOUT 70 YEARS
  
2. SRI RAMDAS  
S/O LATE KESHAVA MURTHI  
AGED ABOUT 53 YEARS  
R/AT NO.1507, M.N.K. BUILDING  
NORTHERN EXTENSION  
HASSAN

... RESPONDENTS

(BY SRI NARASIMHA MURTHY G.V., -ADV)

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THIS RSA IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 31.1.2015 PASSED IN R.A.NO.101/2012 ON THE FILE OF THE PRL SENIOR CIVIL JUDGE, HASSAN, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 24.8.2012 PASSED IN O.S.NO.493/2010 ON THE FILE OF THE III ADDL. CIVIL JUDGE & JMFC., HASSAN.

THIS APPEAL COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

### **JUDGMENT**

This is a tenant's regular second appeal filed against the judgment and decree dated 31.1.2015 in R.A.No.101/2012 passed by the Prl. Senior Civil Judge, Hassan, confirming the judgment and decree dated 24.8.2012 in O.S.No.493/2010 on the file of the III Addl. Civil Judge, Hassan.

2. The respondents/plaintiffs have filed original suit in O.S.No.493/2010 against the appellant for eviction contending that they are the owners of the suit schedule property bearing municipal khata No.579 , AR 579, RCC roofing consists of three shops out of which one shop measuring East-west 12 feet, south-North 13 feet more fully described in the schedule to the plaint was leased to the defendant, who was the tenant under the plaintiffs agreeing to pay rent at the rate of

Rs.550/- p.m., but the defendant has failed to pay rents since 1.3.2004 to 29.2.2008 amounting to Rs.25,850/-. The appellant/defendant has paid advance of Rs.40,000/-. The plaintiffs have deducted and adjusted the arrears of rent of Rs.25,850/- from the advance amount of Rs.40,000/-. The plaintiffs further contended that the plaintiffs have called upon the defendant to pay the rent and vacate the same and hand over the vacant possession of the suit property and in spite of the same, the defendant has not vacated, therefore, the plaintiffs have issued legal notice on 7.3.2008, but the defendant has intentionally avoided to receive the said notice and the said notice was returned as 'not claimed'. Therefore, he has filed the suit.

3. In response to the summons issued, the appellant/defendant has filed written statement and denied the ownership of the plaintiffs and admitted that he has paid an advance amount of Rs.40,000/-. He further contended that the plaintiffs have issued a legal notice on 5.1.2005 calling upon the defendant to evict the suit schedule property. The defendant has replied the said notice on 17.6.2005 stating that as there is no landlord and tenant relationship between the plaintiffs and the defendant. The defendant/appellant further contended that the defendant was put to confusion as he was paying rent to Smt. Padma, later due to

settlement, the defendant was paying rent to another brother of Smt. Padma and to his agent by name one Kumar till November 2008 etc., Therefore, he has sought for dismissal of the suit.

4. On consideration of the pleadings, the trial court framed the following issues:

- 1) Whether the plaintiffs have proved that they are entitled for vacant possession of suit schedule property by eviction the defendant?
- 2) Whether the plaintiffs have further proved that they are entitled to recover arrears of rent from the defendant from 01.03.2004?
- 3) Whether the plaintiffs have proved that they are entitled for damages and rent with 12% interest thereon after termination of tenancy from 1.4.2008 till realization?
- (4) Whether the plaintiffs are entitled for the relief as sought for?
- (5) What order?

5. In order to establish the plaintiffs' case, the plaintiff No.2 is examined as PW1 and got marked four documents as Ex.P.1 to P.4. The defendant, though filed an affidavit in the form of examination-in-chief, but not tendered any further evidence. On considering the entire material on record, the trial court by its

judgment and decree dated 24.8.2012 has decreed the suit and directed the appellant/defendant to vacate and hand over vacant possession of the suit schedule property to the plaintiffs within three months from the date of the judgment and also directed to pay arrears of rent of Rs.15,550/- within three months from the date of judgment.

6. Aggrieved by the said judgment and decree of the trial court, the appellant/defendant preferred R.A.No.101/2012 before the Prl. Senior Civil Judge, Hassan. The learned Civil Judge, after hearing both the parties, by its impugned judgment and decree dated 31.1.2015 has dismissed the appeal and confirmed the judgment and decree passed by the trial court. Against the said concurrent finding of fact, the present regular second appeal is filed.

7. I have heard the learned counsel for the parties to lis.

8. The learned counsel Sri. E Kiran Kumar along with Sri. E Nagabhushan appearing for the appellant has fairly stated that one year time may be granted to the appellant/defendant to vacate and hand over the vacant possession of the suit schedule property to the plaintiffs/respondent and also stated that he will instruct the

appellant/defendant to pay the entire arrears of rent as on today.

The said submission is opposed by Sri. Narasimha Murthy for granting one year's time.

9. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties. The material produced by the plaintiffs discloses that the plaintiff No.1 has proved that they are entitled for vacant possession of the suit schedule property by evicting the defendant/appellant and also proved that they are entitled to recover entire arrears of rent from 1.3.2004 and the said finding of the trial court has been confirmed by the lower appellate court holding that the plaintiffs have established their title to the suit schedule property and they are entitled for a decree as prayed for, The said finding of fact cannot be interfered by this court exercising its power under the provisions of Section 100 of Code of Civil Procedure. Considering the entire materials on record, I am of the considered opinion that six months time shall be granted to the appellant to meet the ends of justice, since he is running a lubricant shop in the suit schedule property.

10. In view of the above, the judgment and decree of the courts below is confirmed granting six months time to the appellant to vacate and hand over vacant possession of the suit schedule property to the respondent/plaintiffs without fail.

11. The appellant is also directed to file an undertaking by way of an affidavit within two weeks from today that he will vacate the suit schedule property within six months and hand over the vacant possession of the suit schedule property to the plaintiffs on or before 30.11.2015 voluntarily without forcing the plaintiffs any further and he will pay the arrears of rent up to date and he will not indulge any third party into the suit schedule property.

12. Further the respondent/plaintiffs are at liberty to deduct the arrears of rent from the advance amount paid by the appellant/defendant and the balance amount shall be refunded to the appellant/defendant. The appellant is directed to pay up to date all the electrical bills till he vacates and hand over possession to the plaintiffs/respondent.

Accordingly, Regular Second Appeal is disposed of.

**Sd/-  
JUDGE**

Psg\*