

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF APRIL, 2015

BEFORE

THE HON'BLE MR. JUSTICE A.S. BOPANNA

R.S.A.NO.423/2015 [RES]

BETWEEN:

T.CHITRAMMA W/O.LATE HOSURAPPA,
AGED:68 YEARS,
KALPANA BAR & RESTAURANT,
KANNIKA ROAD, SANTHEMAIDAN,
CHITRADURGA.

REP. BY HER POWER OF ATTORNEY HOLDER:
& SON:H.JEEVAN S/O.B.HOSURAPPA,
AGED:52 YEARS,
R/O.4TH CROSS, JCR EXTENSION,
CHITRADURGA-577 201.

... APPELLANT

(BY SRI MAHESH R.UPPIN)

AND:

S.RAMAIAH SETTY,
S/O.N.SUBRAMANYA SETTY,
AGED:73 YEARS,
MERCHANT,
R/O.V.P.EXTENSION, 3RD CROSS,
CHITRADURGA-577 201.

... RESPONDENT

(BY SRI NAGARAJAPPA, ADV.)

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE
JUDGEMENT & DECREE DTD 3.2.2015 PASSED IN
R.A.NO.42/2014 ON THE FILE OF PRL. SENIOR CIVIL JUDGE,

CJM & MACT-III, CHITRADURGA, DISMISSING THE APPEAL AND CONFIRMING THE JUDGEMENT AND DECREE DTD 11.3.2014 PASSED IN OS.NO.303/2010 ON THE FILE OF I ADDL. CIVIL JUDGE, CHITRADURGA.

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

JUDGMENT

The appellant is before this Court assailing the concurrent judgments of the Courts below.

2. The respondent herein was before the trial Court in O.S.No.303/2010 seeking that the appellant herein who was the defendant there be directed to vacate and hand over vacant possession of the premises. The defendant had appeared and contested the suit. The trial Court had framed as many as four issues for its consideration.

3. The plaintiff had examined himself as PW-1 and relied upon the documents at Ex-P1 to P11. The

defendant examined himself as DW-1 and the document at Ex-D1 was marked. The trial Court on analyzing the evidence has accepted the case of the plaintiff. With regard to the evidence as tendered to indicate that the tenancy has been terminated taking note of the evidence tendered through PW-1, the document at Ex-P2 namely, the legal notice and the postal acknowledgments at Ex-P3 and Ex-P4 has been into consideration. In the circumstance where the trial Court has referred to the evidence available on record and thereafter has answered the issue to come to a conclusion with regard to the tenancy and the valid termination of the same and a finding of fact has been recorded and when such finding as recorded by the trial Court has been considered by the Lower Appellate Court and has been concurred based on the re-appreciation of the evidence that has been made, no substantial question of law would arise for

consideration in a second appeal filed under Section 100 of Civil Procedure Code. In that view, I see no reason to interfere with the concurrent judgments rendered by the Courts below.

4. The learned counsel for the appellant at this stage would submit that since, this Court has not accepted the case as putforth by the appellant, at least sufficient time be granted to vacate since, the appellant is running a liquor shop in the premises. The learned counsel for the respondent would submit that the suit itself has taken about five years for disposal and when the trial Court and the Lower Appellate Court had granted time to vacate, the appellant should have made alternate arrangement.

5. However, taking note of the contention putforth by the learned counsel for the appellant that he

has secured a site and is making arrangement for construction, in my opinion, it would be in the interest of justice if the appellant is granted time of six months from this day to vacate and hand over vacant possession of the premises to the respondent. The time as granted is subject to the condition that the appellant shall file an undertaking before this Court within four weeks stating therein that the appellant would vacate from the suit schedule premises voluntarily at the end of six months. The rent which is being paid shall also be paid promptly during the said period.

In terms of the above, the appeal stands disposed of. In view of disposal of the appeal, IA.No.1/15 for stay is also disposed of.

**Sd/-
JUDGE**

ST/bms