

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7<sup>TH</sup> DAY OF OCTOBER 2021

BEFORE

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL

**WRIT PETITION NO.17829/2018 (GM CPC)**

**BETWEEN:**

1. LATE INDRAVATHI SRINIVASAN  
W/O LATE S. SRINIVASAN  
AGED ABOUT 77 YEARS  
RESIDING AT NO.1820, AKSHAYA  
13<sup>TH</sup> MAIN ROAD, ANNANAGAR WEST  
CHENNAI - 600 040  
(SENIOR CITIZEN BENEFIT NOT CLAIMED)  
REPRESENTED BY LEGAL HEIRS
- 1a. MS. SRIPRIYA SRINIVASAN  
AGED 42 YEARS  
WIFE OF MR.TILAK CHANDRASEKARAN  
DAUGHTER OF LATE S. SRINIVASAN  
RESIDING AT 3702 MAPLE BROOK  
ROAD, BELLINGHAM  
MASSACHUSETTS, 02019, USA  
  
(IMPLEADED VIDE ORDER DATED  
SEPTEMBER 15, 2018)
- 1b. MS. ANUSHA REISS NEE SRINIVASAN  
AGED ABOUT 41 YEARS  
WIFE OF MR. ALEXANDER REISS  
DAUGHTER OF LATE S. SRINIVASAN  
RESIDING AT 277 PRESIDENT STREET  
APT. 2, BROOKLYN, NEW YORK  
11231, USA  
  
(IMPLEADED VIDE ORDER DATED  
SEPTEMBER 15, 2018)

1c. MS. SHOBHANA CONSIDINE NEE  
SRINIVASAN  
AGED ABOUT 39 YEARS  
WIFE OF KEVIN CONSIDINE  
DAUGHTER OF LATE S. SRINIVASAN  
RESIDING AT 502, CLINTON STREET  
BROOKLYN, NEW YORK, 11231, USA

(IMPLEADED VIDE ORDER DATED  
SEPTEMBER 15, 2018)

2. MR. PRASHANTH SRINIVASAN  
S/O LATE S. SRINIVASAN  
AGED ABOUT 37 YEARS  
CURRENTLY RESIDING AT 33  
GREENWICH AVENUE APARTMENT 9F  
NEW YORK, NY 10014

(TRANPOSED FROM RESPONDENT  
NO.3 VIDE ORDER DATED  
SEPTEMBER 15, 2018)

... PETITIONERS

[BY SRI. SHRAVANTH ARYA TANDRA &  
SRI N.S.SRIRAJGOWDA, ADV. FOR  
SRI. SANJANTHI SAJAN POOVAYYA, ADV. FOR  
PROPOSED P1(a) TO P1(c);  
SRI. SHRAVANTH ARYA TANDRA, ADV. FOR  
SRI. SHISHIRA AMARNATH, ADV. FOR P2]

**AND:**

1. DR. SUNITHA VENUGOPAL  
W/O DR. MAHENDRA REDDY  
AGED ABOUT 37 YEARS

2. DR. MAHENDRA REDDY  
S/O HP RAMA REDDY  
AGED ABOUT 40 YEARS

BOTH ARE RESIDING AT NO.391  
'SONESTA'  
2<sup>ND</sup> CROSS, 13<sup>TH</sup> MAIN ROAD  
III BLOCK, KORAMANGALA LAYOUT  
BENGALURU – 560 034

3. MR. PRASHANTH SRINIVASAN  
S/O LATE S. SRINIVASAN  
AGED ABOUT 37 YEARS  
CURRENTLY RESIDING AT 33  
GREENWICH AVENUE APARTMENT 9F  
NEW YORK, NY 10014

(TRANPOSED AS PETITIONER NO.2 VIDE  
ORDER DATED SEPTEMBER 15, 2018)

... RESPONDENTS

(BY SRI. V.B. SHIVAKUMAR, ADV. FOR R1 AND 2;  
VIDE ORDER DATED 15.09.2018, R3 IS  
TRANPOSED AS P2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227  
OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE  
THE ORDER DATED 12.04.2018 PASSED ON I.A.NO.5 IN  
ORIGINAL SUIT NO.5863/2016 PENDING ON THE FILE OF  
THE XLIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE,  
BENGALURU (CCH-44) ANNEXURE-A AND ETC.

THIS WRIT PETITION COMING ON FOR **FURTHER  
HEARING** THIS DAY, THE COURT MADE THE FOLLOWING:

### **ORDER**

Aggrieved by the rejection of their application  
under Order XII Rule 6 CPC, the plaintiffs have  
preferred this petition.

2. Pending this petition, the sole plaintiff/  
petitioner died. On her death her son Prashanth who  
was initially arrayed as respondent No.3 in the case was  
transposed as petitioner No.2. Her other legal

representatives were brought on record as petitioner Nos.1(a) to 1(c).

3. The petitioner Indravathi's husband was the owner of residential bungalow consisting of six bedrooms constructed on site No.391 in block No.III in Koramangala, Bengaluru. Petitioner Nos.1 and 2 entered into lease agreement with respondent No.1 in respect of the suit schedule property on a monthly rent of Rs.1,30,000/-. The petitioners claimed that the said rent agreement was for a period of 11 months, which was extendable for another 11 months and thereafter, at the option of the petitioners.

4. Petitioner No.1 got issued notice to respondent Nos.1 and 2 as per Annexure-D dated 05.07.2016, terminating the tenancy and calling upon them to handover the possession of the property. They also claimed that respondent Nos.1 and 2 are making a false claim of perpetual lease and threatening the petitioner and the care taker of the house by implicating them in false criminal cases. She also called upon

respondent Nos.1 and 2 to vacate and handover of the possession of the property on or before 31.07.2016.

5. To the said notice, respondent Nos.1 and 2 got issued reply as per Annexure-E dated 18.07.2016. They claimed that the lease agreement dated 10.09.2014 was only a formal document and there was no term in the said agreement for termination of the tenancy. In other words they claimed that the lease was perpetual one. In the reply notice, they did not dispute the rate of rent. They also contended that they had taken the house on rent with an understanding that they shall remain in occupation of the premises till they complete the construction of their house, which is undertaken in a nearby site and that was oral agreement between them and the petitioner.

6. After receiving such reply, petitioner No.1 filed O.S.No.5863/2016 against defendant Nos.1 and 2. Her son was impleaded as defendant No.3 on the ground that he was residing abroad and not able to join her in filing the suit. In the suit, they sought the relief

of ejectment of defendant Nos.1 and 2, vacant possession of the suit property and mesne profits at the rate of Rs.2,50,000/- per month from 1st August, 2016 till the date of delivery of possession with interest at 18% per annum. She claimed that after service of termination notice, respondent Nos.1 and 2 have not paid the rent.

7. Respondent Nos.1 and 2 in their written statement admitted their possession of the premises as tenants. But claimed that the suit was not maintainable without impleading the other co-owners i.e., defendant No.3 as plaintiff and other children of Srinivasan the original owner. They also again set up the same ground of oral agreement of perpetual lease and petitioners causing nuisance to them by inducting one Marimuttu as the caretaker in the suit premises. Respondent Nos.1 and 2 admitted the service of notice and their reply to the same.

8. On the basis of such pleadings, the Trial Court has framed the following issues:

- “1. Whether the plaintiffs prove that the tenancy is duly terminated?
2. Whether the plaintiffs entitled for mesne profits at the rate of Rs.2,50,000/- p.m?
3. Whether the plaintiff is entitled for the relief sought?
4. What order or decree?”

9. Before the Trial Court, petitioner No.1 filed I.A.No.5 as per Annexure-F under Order XII Rule 6 of CPC claiming decree for possession of the schedule property on the basis of the admissions of defendant Nos.1 and 2. She claimed that in the written statement and the reply notice, defendant Nos.1 and 2 have admitted the relationship of the landlord and tenant and termination of the tenancy, therefore, the matter calls for decree with respect to relief of ejectment.

10. Respondent Nos.1 and 2 opposed the application again on the same ground namely in the agreement there was no clause to terminate the tenancy and notice was contrary to Section 106 of the

Transfer of Property Act. They claimed that the terms of agreement and termination of tenancy are matter of trial, therefore, no decree under Order XII Rule 6 could be passed.

11. Trial Court by the impugned order rejected the application on the ground that the questions raised require Trial.

12. Sri. Shrivanth Arya Tandra, learned counsel for the petitioners seeks to assail the impugned order of the Trial Court on the following grounds:

i) There were clear admissions in the pleadings as well as in the reply notice regarding the jural relationship and termination of the tenancy. Therefore, the Trial Court should have exercised discretion to pass decree;

In support of his contention, he relies on the following judgments:

- i) *Payal Vision Ltd. vs. Radhika Choudhary*<sup>1</sup>**
- ii) *Charanjit Lal Mehra vs. Kamal Saroj Mahajan*<sup>2</sup>**

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<sup>1</sup> (2012) 11 SCC 405



- iii) Karam Kapahi vs. Lal Chand Public Charitable Trust<sup>3</sup>**
- iv) Uttam Singh Duggal and Co. Ltd. vs. Union Bank of India<sup>4</sup>**
- v) Vimal Chand Ghevarchand Jain vs. Ramakant Eknath Jadoo<sup>5</sup>**
- vi) Saroj Anand vs. Prahlad Rai Anand<sup>6</sup>**

13. Sri.V.B. Shivakumar, learned counsel for respondent Nos.1 and 2 opposes the petition on the following grounds:

i) If at all the application was allowed that was terminating the proceedings, in such case, a Revision Petition under Section 115 of Civil Procedure Code lies and not the Writ Petition;

ii) Allowing application requires passing of a decree. In a Writ Petition, this Court cannot pass a decree. Therefore, the writ petition is not maintainable;

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<sup>2</sup> (2005) 11 SCC 279

<sup>3</sup> 2010 (4) SCC 753

<sup>4</sup> 2000 (7) SCC 120

<sup>5</sup> 2009 (5) SCC 713

<sup>6</sup> 2009 (15) SCC 505

iii) The copy of the lease agreement produced by the learned counsel for the petitioners is compulsorily registerable one. Therefore, the same is liable to be impounded and required duty and penalty has to be recovered. Unless and until that is done, no order can be passed in this petition.

iv) There are no clear-cut admissions in the pleading. Therefore, the matter requires adjudication and the Trial Court was justified in rejecting the application on that ground.

14. The petitioners are seeking the decree on the basis of the admission. Order XII Rule 6 Sub Rules (1), (2) and (3) of CPC with Karnataka High Court Amendment which deals with such relief reads as follows:

**"6. Judgment on admissions.-**(1) Where admissions of fact have been made ***either in the pleading or otherwise***, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."

**By Karnataka High Court Amendment**

**Sub-rules (2) and (3) added by Notification  
No.ROC No.2526/1959, dated 9-2-1967  
(w.e.f. 30-03-1967)**

" (2) The **Court may** also of its own motion **make such order or give such judgment as it may consider just, having regard to the admissions made by the parties.**

(3) Whenever an order or judgment is pronounced under the provisions of the rule, a decree **may** be drawn up in accordance with such order or judgment bearing the same date as the date on which the order or judgment was pronounced"

The reading of the above provisions makes it clear that the admissions contemplated under Order XII Rule 6 may be either in pleading or otherwise, it may be oral or in writing. Such application can be filed at any stage of the suit.

15. Karnataka High Court Amendment to Order XII Rule 6 Sub-rule (3) of CPC indicates that drawing of the decree is discretionary as the word 'may' is employed and not 'shall'.

16. In the light of the above provisions, this Court has to examine the rival contentions of the parties.

**Reg. maintainability of the writ petition.**

17. It was contended that if at all the application was allowed, the proceedings before the Trial Court were getting terminated, in such cases, a Revision Petition under Section 115 of the Civil Procedure Code lies and not the writ petition.

18. In support of his contention, learned counsel for the respondents relied upon the following judgments:

- i) *Surya Dev Rai vs. Ram Chander Rai and others*<sup>7</sup>**
- ii) *GR Amarnath vs. M.N.Narasimha Murthy Naik and another*<sup>8</sup>**
- iii) *Nawab Shaqafath Ali Khan and others vs. Nawab Imdad Jah Bahadur and others*<sup>9</sup>**

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<sup>7</sup> (2003) 6 SCC 675

<sup>8</sup> ILR 2016 KAR 20

<sup>9</sup> (2009) 5 SCC 162

19. It is material to note that the suit was not only for delivery of possession of the property, but also for mesne profit. Therefore, even if application for delivery of possession of the property was allowed, still the suit was to be continued to consider the other relief sought in the suit. Therefore, there is no merit in the contention that if the application was allowed, the proceedings before the Trial Court were getting terminated and the writ petition does not lie and only a revision lies.

20. Having regard to the aforesaid position, the judgments relied upon by the learned counsel for respondent Nos.1 and 2 to press into service Section 115 of CPC are not applicable.

**Regarding impounding of the lease agreement.**

21. During the course of the argument learned counsel for the respondent contended that the lease agreement itself was not produced by the petitioner before the Trial Court. But, no such contention was raised before the trial Court. Learned counsel for the

petitioners submits that the original lease deed in the possession of the respondents, however, for the perusal of the Court he produced the Xerox copy of the lease deed.

22. On production of copy of the lease agreement, respondents' counsel raised another contention that the said document is unregistered and improperly stamped, therefore, that needs to be impounded.

23. Learned counsel for the petitioners meeting such contention submits that the petitioners do not rely on the said document and they rely only on the admissions of the respondents. He further submits that the document produced is only a copy and what is required to be impounded as per Sections 33 and 34 of the Karnataka Stamp Act is the instrument which means the original document. In support of his contentions, he relied on the following judgments:

**i) *Hariom Agrawal vs. Prakash Chand Malviya*<sup>10</sup>**

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<sup>10</sup> (2007) 8 SCC 514

**ii) *Shri.Pradeep Shyamrao Kakirwar vs. Dr. Smt. Seema Arun Mankar*<sup>11</sup>**

24. Petitioners' counsel further contends that during the evidence before the trial Court an e-mail sent by defendant No.2 to petitioner No.1 was marked at Ex.P28 and in that e-mail, they have admitted the possession of the document. He further submits that even assuming that the document is liable for impounding, as per Section 30(b) of Karnataka Stamp Act, it was defendant No.1 who was liable to pay the duty and penalty.

25. First of all for the purpose of application under Order XII Rule 6 of CPC plaintiff did not rely on lease deed nor the petitioners rely on the same. Neither in the reply notice nor in the written statement defendant Nos.1 and 2 disputed the existence of the lease agreement. Even the rate of rent was not disputed. Their only contention was that as per the oral agreement, the lease was perpetual one. They did not

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<sup>11</sup> W.P. No.8245/2019, Bombay High Court, Nagpur Bench, DD 27.04.2020

even dispute the possession of the document. In fact, it was for them to produce the lease deed before the Trial Court or before this Court, which they did not do.

26. Section 34 does not speak of stopping of the proceedings. It only speaks of admitting the document in evidence or acting upon the same. Therefore, even assuming that the document is liable to be impounded, this Court does not find any merit in the contention that this Court cannot proceed with the matter unless the document is impounded and duty and penalty is collected. This Court can proceed with the matter based on admissions in the pleadings or otherwise regarding the landlord tenant relationship and termination of tenancy.

27. Even assuming that the copy of the document is also covered under Section 33 and 34 of the Stamp Act from whom the duty and penalty has to be collected is the question. Section 30 of the Stamp Act deals with who are liable to pay the duties. For the



purpose of this case, Section 30(b) is relevant, which reads as follows:

"30. **Duties by whom payable.**-In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne.-

30(a) .....

30(b) in the case of a conveyance (including a re-conveyance of mortgaged property) by the grantee; in the case of a lease or agreement to lease – **by the lessee or intended lessee**"

28. The reading of the above provision shows that in case of lease or agreement of lease, the duty is payable by the lessee or intended lessee. According to the respondents, the document is liable to be impounded. In view of Section 30(b), the liability to pay the duty and penalty is on respondent No.1. This Court does not find any merit in the contention of the learned counsel for respondent Nos.1 and 2 that duty and penalty has to be collected from the person who produces that.

29. This Court in **Suman vs. Vinayaka and others**<sup>12</sup> has held that in the event of the document having been impounded under Section 33 of the Act and

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<sup>12</sup> 2013 SCC Online Kar 10138

during the course of trial such an instrument is not sought to be tendered in evidence, then the course open to the Court would be to refer such document to the Deputy Commissioner for being adjudicated for collection of chargeable duty and penalty thereof by invoking Sub-Section (2) of Section 37.

30. Under the circumstances, acting under Section 37(2) of the Stamp Act, the Registrar (Judicial) can be asked to send the copy of the lease agreement dated 10.09.2014 produced by the petitioners to the concerned Authorities for determining the duty and penalty and collect the same from respondent No.1.

31. Since the contention that unless the document is impounded the Court cannot proceed with the matter is rejected, this Court can proceed to consider the other points in the case.

**Regarding drawing the decree and maintainability of the writ petition in that context.**

32. Learned counsel for respondent Nos.1 and 2 contended that if the application is allowed this Court has to draw a decree and that cannot be done in the

writ petition. Therefore, he contends that the order of the Trial Court cannot be reversed. As already pointed out, Order XII Rule 6 Sub-rule(3) as amended by the Karnataka High Court Amendment, ROC No.2526/1959 with effect from 30.03.1967, the drawing of the decree is discretionary as the word 'may' is used.

33. Apart from that, Order XII Rule 6(3) has to be read along with Section 37 of the Civil Procedure Code, which deals with the definition of the Court which passed a decree. Section 37 reads as follows:

**"37. Definition of Court which passed a decree.**— The expression "***Court which passed a decree***", or words to that effect, shall, ***in relation to the execution of decrees***, unless there is anything repugnant in the subject or context, be ***deemed to include.***—

- (a) ***where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and***
- (b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit. "

34. The reading of the above provision makes it clear that the Court which passed a decree in relation to the execution of the decrees deemed to include the Court of first instance.

35. Indisputably, this Court under Article 227 of the Constitution of India exercises power of superintendence on all the sub-ordinate Courts. Therefore, to meet the ends of justice, taking into consideration over all material on record, this Court can mould the relief appropriately reading Order XII Rule 6(3) and Section 37 CPC together and directing the Trial Court to draw the decree.

**Regarding the admissions.**

36. Regarding the admissions, the petitioners relied on the notice and reply to the notice and pleadings of the parties. In the notice, petitioner No.1 claimed that the house was let out to respondent No.1 as per the agreement dated 10.09.2014 on monthly basis. In the reply, the respondent admitted the lease

and the rate of rent. It was only contended that the document dated 10.09.2014 was only a formal document and in the said agreement, there was no clause for tenants to vacate. In para 5 of the reply, it was contended that the understanding between the parties is that the respondent shall not vacate the house till they complete the construction of their own premises in a nearby site.

37. In the written statement as well as in the reply notice defendant Nos.1 and 2 admitted the existence of the agreement dated 10.09.2014 thereby the relationship of the landlord and tenant was admitted. Even the rate of rent was admitted.

38. So far as the termination of the tenancy in para 3 of the reply to the notice it was contended that defendants cannot vacate the premises on or before 31.07.2016 and premises was taken not to vacate but for a fixed period. At one breath it was said that the understanding between the parties was that the defendant shall continue in the premises till they

construct the house in the nearby site of her father. In another breath the defence was that lease was a perpetual lease for which there was no document.

39. In the absence of the registered documents, as per Section 106(1) of the Transfer of Property Act lease is deemed to be month to month. In such case, Section 106 of the Transfer of Property Act requires issuance of 15 days notice for termination of lease. This was admittedly done in this case. Therefore there was sufficient admission to pass a decree under Order XII Rule 6 of CPC.

40. The trial Court without noticing all the aforesaid aspects simply said that the contention raised requires full dressed adjudication. The Hon'ble Supreme Court in para 12 of the judgment in ***Uttam Singh's case*** referred to supra while holding that the Court should not unduly narrow down the meaning of the rule held as follows:

"12. As to the object of Order 12 Rule 6, we need not say anything more than what the ***legislature itself has said when the said***

**provision came to be amended.** In the Objects and Reasons set out while amending the said Rule, it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. **The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled**". We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed."

(Emphasis supplied)

41. When she filed the suit petitioner No.1 was 75 years old. Pending these proceedings she died without seeing the fruits of the litigation. Petitioner No.2 and other heirs of petitioner No.1 are residing abroad. Petitioners are harassed and subjected to hardship due to protracted litigation that too when there are admissions with regard to the jural relationship and termination of tenancy.

42. For the aforesaid reasons, this is a fit case to exercise the discretion to grant decree under Order XII Rule 6 of CPC. The trial Court has failed to exercise

its discretion vested in it judiciously. Suffice it to state that the Judgments relied on by the learned counsel for respondent cannot be justifiably applied to the facts of present case.

43. For the aforesaid reasons, the petition is allowed with costs throughout.

The impugned order Annexure-A dated 12.04.2018 is hereby quashed. I.A. No.5 filed by the plaintiffs/petitioners under Order XII Rule 6 of CPC is allowed.

The respondent Nos.1 and 2 are hereby directed to handover the vacant possession of the suit schedule property to the petitioners within 60 days from the date of receipt of the copy of this order.

The Trial Court shall draw the decree accordingly.

The Trial Court shall proceed with the suit with regard to the relief regarding mesne profits.

The Registry shall send the copy of lease agreement dated 10.09.2014 produced by the petitioners to the Deputy Commissioner to decide the



duty and penalty payable on the same and for recovery of the same from respondent No.1.

**Sd/-  
JUDGE**

KG/AKC

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