

Devaki Vs. P.Sarojini

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Court : Kerala

Decided On : Feb-20-2014

Judge : Honourable Mr.Justice K.T.Sankaran

Appellant : Devaki

Respondent : P.Sarojini

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.T.SANKARAN & THE HONOURABLE MR.JUSTICE P.UBAID THURSDAY, THE 20TH DAY OF FEBRUARY 2014 1ST PHALGUNA, 1935 R.C Rev.No. 32 of 2014 ----- AGAINST THE

JUDGMENT

IN RCA52012 ON THE FILE OF RENT CONTROL APPELLATE AUTHORITY, KASARAGOD DATED 12-11-2013 AGAINST THE

ORDER

IN RCP132011 of THE RENT CONTROLLER (PRL.MUNSIFF'S COURT), KASARAGOD DATED 24-01-2012 REVISION PETITIONERS/APPELLANTS/RESPONDENTS: -----

1. DEVAKI, 82 YEARS, W/O. LATE BATYA.

2. KUMARAN, 62 YEARS, S/O. LATE BATYA 3 KUNHIRAMAN 57 YEARS, S/O. LATE BATYA, 1 TO 3 ARE RESIDING AT K M C NO. III/671 K.P.R RAO ROAD,

KASARAGOD.

4. SUMITHRA, 55 YEARS, D/O. LATE BATYA, RESIDING AT MOGRAL OF MOGRAL VILLAGE AND POST, MOGRAL PUTHUR, KASARAGOD TALUK.

5. JAYASHRI, 47 YEARS, W/O. LATE SUKUMARAN⁶ KAVYASHRI, 20 YEARS, D/O. LATE SUKUMARAN⁷ DIVYASHRI, 18 YEARS, D/O. LATE SUKUMARAN
R.C Rev.No. 32 of 2014 :

2. : (5 TO⁷ARE RESIDING C/O. ANANDA TAILOR MUDAIKODI HOUSE, BANYANPADAVU VILLAGE AND POST BANTWAL TALUK, D K DISTRICT, KARNATAKA. BY ADV. SRI.R.SREEHARI

RESPONDENTS/RESPONDENTS/PETITIONERS: ----- 1. P.SAROJINI, 72 YEARS, W/O. LATE P.K. KUNHIRAMAN.

2. P.K. RACHANA, 36 YEARS, D/O. LATE P.K. KUNHIRAMAN³ P.K. RAJESH, 34 YEARS, S/O. LATE P.K. KUNHIRAMAN, (RESPONDENTS ARE RDSIDING AT SRI KRISHNA, RAMNIKETH COMPOUND, NEAR VYAPARA BHAVAN, HOSDURG VILLAGE, KANHANGAD POST, KASARAGOD DISTRICT - 671 315. THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 2002-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
ab K.T.SANKARAN & P.UBAID, JJ.

----- R.C.R No.32 of 2014
----- Dated this the 20th day of February, 2014

ORDER

K.T.Sankaran,J.

Concurrent findings of the Rent Control Court and the appellate authority under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act are under challenge by the tenant of a residential house.

2. The respondents mother and two children, filed the Rent Control Petition under Section 11(2)(b) and 11 (3) of the Act. We are not concerned with the ground under Section 11(2)(b) now. The landlords contended that the petition schedule

building, a small residential house situated in the heart of Kasargod town is required for the residential purpose. The 1st petitioner before the Rent Control Court is the mother, who retired as Engineer from PWD. The husband of the 2nd petitioner before the Rent Control Court is a doctor by profession working at Kasargod. The 3rd petitioner in the Rent Control Petition is working in Bangalore. All of them were residing in one house. It has come out in evidence that in their residential compound another building is being R.C.R No. 32 of 2014 2 constructed for the residential purpose of the 3rd petitioner in the Rent Control Petition. The 2nd petitioner wants to reside in the petition schedule building. She has no house for her own. She wants to have a separate residence with her family.

3. The tenants raised all sorts of contentions. They even denied the title of the landlords which was rightly rejected by the Rent Control Court. The tenants contended that the need put forward by the landlords is not genuine. They have also raised a contention that the petition schedule building is not fit and enough for the residence for the 2nd petitioner in the Rent Control Petition, since her status is higher than that of the tenants. The status of the landlord would not permit them to occupy and reside in a house like the petition schedule building.

4. Before the Rent Control Court, the 2nd petitioner in the Rent Control Petition was examined as PW1. She stated in her evidence the bonafide need put forward by her. In cross examination she admitted the truth that another house is being constructed in their residential compound by the mother for the benefit of the 3rd petitioner in the Rent Control Petition, who is the brother of PW1.

5. The Rent Control Court considered the oral R.C.R No. 32 of 2014 3 and documentary evidence in detail and held that the bonafide need put forward by the landlords is genuine. That finding was confirmed by the appellate authority.

6. The courts below noticed that the status of the landlords is not a criteria for deciding the bonafide need put forward by them relying on the decision of the Hon'ble Supreme Court in Elias V. Cherian [2009(3) KLT226SC)].

7. The tenants contended that the petition schedule building is situated in the heart of Kasargod town and it is in a commercial area. They also contended that there is no separate latrine or bathroom for the building and there is no well in the compound. The building is a small house with tiled roof. It was contended that for the occupation of the 2nd petitioner in the Rent Control Petition, the petition schedule building is not sufficient. The courts below relied on the decision in Aameena V. Muhamood (2005(4) KLT (SN) 76 Case No.104), wherein it was held that simply because the building cannot be used without any repairs or renovation as a residential building is not a ground to deny an order of eviction under Section 11(3) of the Act. The tenant cannot dictate in what manner the landlord should make use of the building. It is for the landlord and his dependent to decide as R.C.R No. 32 of 2014 4 to how the building could be put to their beneficial use for residence.

8. The findings arrived at by the authorities below are the findings of fact based on evidence in the case. No grounds are made out for interference in the findings of fact recorded by the authorities below. There is no illegality, irregularity or impropriety in the order and judgment of the authorities below, warranting any interference under Section 20 of the Act. For the aforesaid reasons, the Rent Control Revision is dismissed.

9. The learned counsel for the petitioners submitted that the tenants may be granted a reasonable time to vacate the petition schedule building. It is submitted that the 1st petitioner is aged more than 80 years and it would take sometime to find out a residence for the petitioners/tenants. Taking into the account the facts and circumstances of the case, we are of the view that time can be granted till 31.5.2014 for the tenants to vacate the petition schedule building. Accordingly, while dismissing the Rent Control Revision, we grant time till 31.5.2014 to the tenants to vacate the petition schedule building, on condition that they shall file R.C.R No. 32 of 2014 5 an affidavit unconditionally undertaking to vacate the petition schedule building on or before 31.5.2014 The petitioners/tenants shall file the said undertaking before the Rent Control Court within one month from today and they shall also deposit the arrears of rent within that time. If the petitioners/tenants fail to comply with any of the conditions, the time granted to

them to vacate the petition schedule building will automatically stand cancelled.
K.T.SANKARAN JUDGE P.UBAID JUDGE ab

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