

Vinod B. vs Ashok

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Court : Kerala

Decided On : Jan-19-2023

Judge : Honourable Mr. Justice P.B.Suresh Kumar, Honourable Mrs. Justice C.S. Sudha

Appeal No. : RCRev./132/2020

Appellant : Vinod B.

Respondent : ASHOK

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR & THE HONOURABLE MRS. JUSTICE C.S. SUDHA THURSDAY, THE 19TH DAY OF JANUARY 2023 / 29TH POU SHA, 1944 RCREV. NO. 132 OF 2020 (THE JUDGMENT DATED 10/1/2020 IN RCA 15/2019 PASSED BY THE IIND ADDL.RENT CONTROL APPELLATE AUTHORITY, KOLLAM, (IIND ADDITIONAL DISTRICT JUDGE) IN THE JUDGMENT DATED 30/01/2019 IN R.C.(O.P)NO.15/2015 PASSED BY THE PRINCIPAL RENT CONTROL COURT, KOLLAM REVISION PETITIONER/APPELLANT/COUNTER PETITIONER: 1 VINOD B. AGED 57 YEARS S/O.LATE N.BHASKARAN PILLAI, RESIDING AT

HOUSE NO.6, MG NAGAR MAMOOTTIL KADAVU, KAVANADU P.O.,
KOLLAM FROM HOUSE NO.4, ALATTUKAVU, VALLIKKEEZHU,
KOLLAM - 691 003. BY ADVS. T.V.GEORGE SRI.JIMMY GEORGE
(THADATHIL) RESPONDENTS/RESPONDENTS/PETITIONERS:

1 ASHOK S/O.LATE LAKSHMANAN PILLAI, AGED 54 YEARS,
RESIDING AT DWARAKA VILAPPURAM NAGAR -91, ULİYAKOVIL,
KOLLAM - 691019, FROM PUTHEN VEEDU, VADAYATTUKOTTA,
KOLLAM DISTRICT, PIN - 691 001. 2 SAJEEV L. S/O.LATE
LEKSHMANAN PILLAI, AGED 50 YEARS, RESIDING AT DWARAKA
VILAPPURAM NAGAR- 91, ULİYAKOVIL, KOLLAM -691019, FROM
PUTHEN VEEDU, VADAYATTUKOTTA, KOLLAM - 691 001. BY ADVS.
K.SASIKUMAR(CAVEATOR) SRI.K.SASIKUMAR SRI.S.ARAVIND THIS
RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON

19.01.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: P.B.SURESH KUMAR & C.S.SUDHA, JJ.

Dated this the 19th day of January, 2023

ORDER

C.S.Sudha, J.

This R.C.R. under Section 20 of the Kerala Buildings (Lease and Rent

Control) Act, 1965 (the Act) has been filed against the judgment dated 10/01/2020 in R.C.A.No.15/2019 on the file of the Rent Control Appellate Authority (RCAA), Kollam, which appeal is against the order dated 30/01/2019 in R.C.P.No.15/2015 on the file of the Rent Control Court (RCC), Kollam. The revision petitioner is the appellant in the appeal and the respondent in the R.C.P. The respondents herein are the respondents in the appeal and the petitioners-landlords in the R.C.P. The parties and the documents will be referred to as described in the R.C.P.

2. R.C.P.No.15/2015 was filed by the petitioners-landlords seeking

eviction under Section 11(2)(b), 11(4)(ii), 11(4)(iii), 11(4)(v) and 11(5) of the Act. In the R.C.P. it is alleged that Sarojini Amma, the paternal aunt of the petitioners was the absolute owner of the shop room bearing no.QMC-370, situated in the heart of Kollam town. She leased out the shop room to the respondent, her brother's son in June 1986 for conducting a stationery business. The shop room, namely, the petition

schedule room was initially bearing no.QMC-237, which has been changed to QMC -370. The monthly rent agreed was 125/-. The respondent has paid rent to Sarojini Amma till January 1994. Thereafter, he committed default in the payment of rent. In the lease deed there are specific stipulations to the effect that the respondent shall not bring about any changes to the tenanted premises and also that he shall not sublet the same or induct any strangers into the shop. However, contrary to the terms of the lease agreement, the respondent has made material alterations to the shop room. He has divided the shop room into three independent shop rooms and two of them were leased out to strangers, namely, Anilkumar and Jayakrishnan, in violation of the

terms of the rent deed. Therefore, Sarojini Amma issued Ext.A9 notice dated

room to its original position and also to clear the rent arrears. A copy of the notice was issued to the sub tenants also. Sarojini Amma, in the meantime, had also filed petitions before the Corporation of Kollam intimating the Corporation about her objection in renewing the license in the name of the respondent as well as the sub-tenants. She also filed Ext.A12 caveat before the Subordinate Court, Kollam. Notice

on the caveat was issued and the same was received by the respondent. The respondent on receipt of Ext.A9 notice, approached Sarojini Amma and agreed to terminate the sublease as well as to restore the shop rooms to its original position by removing the partition walls that he had constructed. The arrears till the said date was also cleared by him. The rent by mutual consent was also enhanced to 500/- per

month. 2.1. The respondent continued paying rent to Sarojini Amma till her

death on 17/11/2008. During the life time of Sarojini Amma, she had executed Ext.A14 registered Will by which she bequeathed the shop room, the adjacent shop rooms and the properties that were owned by her name in favour of the petitioners. On the death of Sarojini Amma, the Will came into existence and thus the petitioners became the absolute owners of the petition schedule room and the property in which it is situated. Mutation has been effected in the name of the petitioners and they have paid land tax as well as building tax of the property. After the demise of Sarojini Amma, the petitioners informed the respondent of the fact that they had obtained title over the property on the basis of the Will and demanded him to pay the rent of the shop room. The respondent paid rent till April 2013. Thereafter, he has committed

default in the payment of rent. Though the petitioners demanded the rent, the respondent has not paid the rent so far. The respondent has ceased to occupy the tenanted premises for several years and he has abandoned the same. He is not carrying out the necessary repairs or the maintenance of the shop room as a result of which it is in a dilapidated condition at it may fall down any moment. During the year 2013, the petitioners had effected substantial improvements and maintenance to the rooms situated adjacent to the petition schedule room owned by the petitioners. They had then approached the respondent also and requested permission for doing necessary repairs and maintenance in the petition schedule room occupied by the

respondent. Though the respondent initially agreed for the same, subsequently he refused to permit the petitioners to carry out the maintenance. Now the condition of the tenanted premises is that if immediate and urgent repairs and maintenance is not done it would collapse at any moment. Reconstruction of the building in the area would then become impossible, putting the petitioners to great loss and hardship. The petitioners bonafide want to renovate the building so as to protect the same from any loss. The respondent is having his own buildings in his possession, which are reasonably sufficient for his requirement, if he intends to continue the business which he was earlier carrying on in the petition schedule shop room. Though a lawyer notice dated 23/04/2015 was sent demanding vacant possession, the respondent has not acceded to the request of the petitioners and

hence the R.C.P.

3. The respondent filed objection denying the allegations in the

R.C.P. In the objection it is contended that the allegation that the petition schedule shop room bearing no.QMC-237 (new no.QM- 370) belonged exclusively to Sarojini Amma is incorrect and false. The respondent denied the title of the petitioner and claimed ownership over the petition schedule room on the basis of Ext.B2 sale deed dated 07/10/1988. At the same time, he also admitted that he was a tenant of late Sarojini Amma from whom he had taken the petition schedule room on rent. He denied the allegation of the petitioner that he had ceased to occupy the tenanted premises and that by his willful abandonment of the tenanted premises, the value and utility of the building has been materially and permanently reduced. We will refer to

the contentions of the respondent in detail shortly.

4. PW1 was examined and Ext.A1 to A27 were marked on the side

of the petitioners. RW1 and 2 were examined and Exts.B1 to B6 were marked on the side of the respondent. The report and plan of the advocate commissioner have been marked as Exts.C1 and C2 respectively. The RCC, on an appreciation of the oral and documentary evidence and also after hearing both sides, found the claim of denial of title of the petitioners to be not bonafide and hence ordered eviction under Sections 11(2)(b), 11(4)(ii), 11(4)(5) and 11(5) of the Act. In R.C.A.No.15/2019 filed by the tenant, the RCAA has confirmed the findings of the RCC and dismissed the appeal. Aggrieved, the respondent has come up in revision.

5. Heard Sri.T.V.George, the learned counsel for the revision petitioner and Sri.K.Sasikumar, the learned counsel for the respondents.

6. The only point that arises for consideration is, whether the findings of the RCAA suffer from any illegality, irregularity or impropriety.

7. Section 20 of the Act allows the aggrieved party to challenge the

legality, regularity or propriety of the order or proceeding of an Appellate Authority. The power of revision is limited to making a scrutiny of the records to satisfy itself as to the three tests laid down in Section 20. The revisional court cannot convert itself into an evidence collecting or fact finding Court. The scope of interference by the revisional court is restricted to cases where the RCC or RCAA have relied on irrelevant consideration, ignored valuable items of evidence, or applied wrong principles of law. Where there is no illegality, impropriety or irregularity in the orders of the RCC and the RCAA, there is no justification for invocation of the revisional jurisdiction under Section 20 of the Act. This Court can certainly interfere under Section 20 of the Act if it is shown that the views taken by the RCC or the RCAA is perverse or when the statutory scheme has not been kept in mind. Therefore, we will look into the question whether there is any illegality, irregularity or impropriety in the findings of the RCC or the RCAA.

8. It was argued by the learned counsel appearing for the

respondent that both the Authorities went wrong in ordering eviction as they failed to take note of the fact that the respondent as per Ext.B2 sale deed is the owner of the petition schedule room. The second proviso to Section 11(1) of the Act clearly says that when the tenant denies the title of the landlord, the RCC has to decide whether the denial is bonafide or not. In spite of the specific denial of the title of the petitioners, both the Authorities have not properly considered or decided whether the denial is bonafide or not. The Authorities also failed to take note of the fact that the petitioners had never disputed or challenged the validity of Ext.B2 sale deed, which would clearly establish the claim of the respondent that he is the absolute owner of the petition schedule room. The RCAA without proper application of mind has confirmed the wrong order of eviction passed by the RCC and therefore, the findings require to be interfered with, contends the respondent.

9. Admittedly, the old number of the petition schedule room is

QMC-237, and the new number QMC-370. As per Ext.A1 rent deed, the room bearing no.QMC-237 was let out to the respondent in June 1986 by late Sarojini Amma. This fact is admitted by the respondent in his counter. However, his case is

that as per Ext.B2 sale deed dated 07/10/1988, he has purchased the shop room bearing no.QMC XVII/370 and the property situated therein from Lalitha Amma, the sister of Sarojini Amma. At the same time, he admits the tenancy arrangement with Sarojini Amma and contends that he paid rent to her till her death on 17/11/2008. Admittedly, the petitioners are the sons of Lekshmanan Pillai, the brother of Sarojini Amma. It is also admitted that the respondent is the son of another brother of Sarojini Amma and Lekshmanan Pillai. The respondent in his counter contends that his father, for about 45 years, was conducting a stationery business in the petition schedule room. His father passed away on 06/08/1985. Taking advantage of the fact that the respondent was out of station, the petitioners misled Sarojini Amma, their paternal aunt, into executing a rent deed in the name of their mother, Sarala. The respondent came to know of this only when he returned home in the year 1986 and had approached the Municipal authorities for renewing his license. It was found that the license in the name of his father had been transferred. In the mediation talks which took place in the family pursuant to the aforesaid incident, it was agreed as per Ext.B1 agreement that one half of the shop room would be given to the petitioners and the remaining one half to the respondent. Thus in the one half portion that was allotted to him as per Ext.B1 agreement, the respondent was conducting a stationery

business. According to him he had paid rent for the shop room till the death of Sarojini Amma, which was on 17/11/2008.

10. Admittedly, when the property in the family of the predecessor-

in-interest of the petitioners and respondent, who are admittedly brothers, took place in the year 1971, the sisters, namely, Sarojini Amma and her sister Lalitha Amma were given 35 cents of property. The southern 17 cents was allotted to Sarojini Amma and the northern 17 to Lalitha Amma. Going by the contentions of the respondent, the petition schedule room was situated in the middle of the property allotted to the sisters. He further contends that in the year 1988 as per Ext.B2 sale deed the shop room in the portion of the 17 cents allotted to Lalitha Amma was purchased by him. The said shop room was divided into two rooms and the same let out. He further admits that after partitioning the shop room

obtained as per Ext.B2, he has been conducting business in the shop room belonging to Sarojini Amma situated in the remaining 200 links of property. He has only leased out the shop room owned by him purchased from Lalitha Amma. When he received Ext.A9 notice purporting to have been sent by Sarojini Amma, he had approached Sarojini Amma and then he was informed by her that she had never authorized anybody to send such a letter and that it must have been sent by the 1 st petitioner. He denies the allegation of the petitioner that after the receipt of the said notice, he had assured Sarojini Amma that he would evict his tenants and had agreed to enhance to rent 500/- per month. According to him, there was no necessity or occasion for him to agree to remove the

walls constructed partitioning the rooms, as the said rooms are under his ownership and possession. In the counter he contended that he is unaware of Ext.A14 Will relied on by the petitioners and according to him it is up to the petitioners to prove the same. There is a further contention in the counter that once he comes to know of the actual owner of the petition schedule room, he is ready to pay rent to the said person.

(10 -)0 . & / 3 .) He further contends that the intention of the petitioners is to evict from the shop rooms owned by him in which he is conducting the business.

11. Though the respondent contends that he purchased the petition

schedule room as per Ext.B2 sale deed, he has no explanation as to why he continued to pay rent to Sarojini Amma even after the purchase till her death in 2008. The contentions in Paragraph 5 of his counter will give an answer to this. It reads :-

5. / 3 . 1988 . / . E3/ 200 / / / / . . N /

12. The respondent seems to be taking advantage of the fact that

Ext.B2 also refers the shop room number as XVII/370. How this happened is clear from a reading of para 5 in his own counter. Even going by his case, before

partition of the properties of the family, the petition schedule building was situated in the middle of 35 cents allotted to Sarojini Amma and Lalitha Amma. So when the property was partitioned and 17 cents each allotted to each sister, portions of building also seem to have been allotted to each of their shares. That explains how the same number is referred to in Exts.A1 and B2. This substantiates the case of the petitioners that the respondent is the tenant of the building portion owned by Sarojini Amma and that apparently is the reason why he has executed Ext.A1 lease deed in favour of Sarojini Amma. That is also the reason as to why he admits the fact that he continued to pay rent to Sarojini Amma till her death in the year 2008 and that he is ready to pay the rent once he comes to know who the actual owner is. After admitting in the pleading, that he is a tenant of the petition schedule room, at the time of evidence the respondent tried to bring in a new case, which is clearly not admissible because no amount of evidence can be let in regarding a pleading that has never been put forward. Further, the documents on record produced by the petitioners would also show that the denial is without any bonafides. Exts.A2 to A8 for the period between 16/05/2001 to 11/12/2001, show that the Sarojini Amma and the respondent were not in good terms. Sarojini Amma had sought the permission of the

Authorities concerned for repairing the roof of the building belonging to her, which is seen objected to by the respondent. Exts.A2 to A8 are the documents showing the proceedings of the authorities concerned relating to the aforesaid dispute between the parties. Ext.A9 notice dated 09/10/2001, is obviously after the dispute evidenced by Exts.A2 to A8 had arisen. Therefore, the contention of the respondent that on receipt of Ext.A9 notice he had approached Sarojini Amma and that she had told him that she had never sent such a notice etc., appears to be highly improbable.

13. Further, the petitioners rely on Ext.A14 Will alleged to have been

executed by late Sarojini Amma by which she bequeathed the petition schedule rooms and the adjacent rooms to the petitioners. Ext.A14 Will is seen marked and admitted in evidence without being objected to by the respondent. It is true that there is no denial of the Will in the counter filed by the respondent. When there is

no specific denial of the Will, it can only be taken to have been admitted by the respondent. However, no distinction has been drawn by the statutory provision between an admitted Will and a disputed Will. One of the attesting witnesses if he is alive should be called for the purpose of proving the execution of a Will whenever it is used as evidence and for whatever purpose. (Saradha v. Radhamani, 2017 (2) KHC 527). Be that as it may, even if Ext.A14 Will is ignored, the pleadings and evidence on record would show that the denial of title by the respondent is without any bonafides. The RCC as well as the RCAA have on a detailed consideration of the the oral and documentary evidence have arrived at the finding that the denial is

not bonafide. There is no infirmity, illegality or irregularity in the said order.

14. We also went through the order of the RCC as well as the

impugned judgment regarding the findings on the grounds sought for eviction. The respondent has been unable to show in what manner the said findings suffer from any infirmity calling for an interference by this Court. In the result, the Rent Control Revision is found to be without any merits and hence the same is dismissed confirming the impugned judgment in R.C.A.No.15/2019. The tenant shall vacate the tenanted premises within a period of one month from the date of this order.

Sd/- P.B.SURESH KUMAR JUDGE Sd/- C.S.SUDHA JUDGE Jms/18.01
APPENDIX OF RCREV. 132/2020 PETITIONER'S ANNEXURES ANNEXURE A1
CERTIFIED COPY OF PARTITION DEED NO.1092/1972 OF SRO KOLLAM.

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