

Mariyappan Vs. Pathumuthu

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Court : Kerala

Decided On : Dec-17-2014

Judge : Honourable Mr.Justice K.T.Sankaran

Appellant : Mariyappan

Respondent : Pathumuthu

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.T.SANKARAN & THE HONOURABLE MR. JUSTICE P.D.RAJAN WEDNESDAY, THE17H DAYOF DECEMBER201426TH AGRAHAYANA, 1936 RCRRev..No. 319 of 2014 (B) AGAINST THE

JUDGMENT

IN RCA NO.8/2012 OF THE RENT CONTROL APPELLATE AUTHORITY (ADDITIONAL DISTRICT JUDGE-I), PALAKKAD DATED3006-2014 AGAINST THE

ORDER

IN RCP NO.3/2010 OF THE RENT CONTROL COURT (MUNSIFF COURT), ALATHUR DATED1912-2011 REVISION PETITIONER/IST APPELLANT/IST RESPONDENT: MARIYAPPAN, AGED55YEARS S/O.LATE PONNU, KERALA SALOON, VADAKKENCHERRY (P.O) ALATHUR TALUK, PALAKKAD DISTRICT - 6 BY ADV. SRI.K.RAVI (PARIYARATH) RESPONDENTS/RESPONDENT &

APPELLANTS2TO7 PETITIONER & RESPONDENTS2TO7 1. PATHUMUTHU, AGED53YEARS W/O.M.A.ISMAIL, SAJITHA MANZIL, MOOLANKAD POTTAL VADAKKENCHERRY VILLAGE, ALATHUR TALUK PALAKKAD DISTRICT - 678 001.

2. AYYAPPAN, AGED49YEARS S/O.LATE PONNU, KERALA SALOON VADAKKENCHERRY P.O., ALATHUR TALUK PALAKKAD DISTRICT678001.

3. SUNDHARI, W/O.ARUMUGHAN, CHALAYAR ROAD, THATHAMANGALAM CHITTUR TALUK, PALAKKAD DISTRICT - 678 001.

4. PONNUKUTTY, W/O.LATE PONNU, KERALA SALOON, VADAKKENCHERRY (P.O) ALATHUR TALUK, PALAKKAD DISTRICT678001.

5. SYAMALA, AGED45YEARS, W/O.LATE SHANMUGHAN, PULIPPARAMB VEEDU, VADAKKENCHERRY, PALAKKAD - 678 001.

6. GANESH, AGED24YEARS, S/O.LATE SHANMUGHAN, PULIPARAMB VEEDU, VADAKKENCHERRY, PALAKKAD - 678 001.

7. HAREESH, AGED22YEARS, S/O.LATE SHANMUGHAN, PULIPPARAMB VEEDU, VADAKKENCHERRY, PALAKKAD - 678 001. R1 BY ADV. SRI.BINOY VASUDEVAN (CAVEATOR) THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON1712-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K.T.SANKARAN & P.D.RAJAN, JJ.

----- R.C.R. NO.319 OF2014(B)
----- Dated this the 17th day of December,
2014

ORDER

K.T.Sankaran, J.

The petitioner, who is the first respondent/tenant in R.C.P.No.3 of 2010 on the file of the Rent Control Court, Alathur, challenges the concurrent findings of the Rent Control Court and the Appellate Authority under Section 11(3) of the Kerala

Buildings (Lease and Rent Control) Act (hereinafter referred to as 'the Act').

2. The Rent Control Petition was filed under Sections 11(2)(b) and 11(3) of the Act. The Rent Control Court by the order dated 19.12.2011 allowed the Rent Control Petition under Section 11(3) and dismissed the Rent Control Petition under Section 11(2)(b) of the Act. The tenants challenged the order of the Rent Control Court in R.C.A.No.8 of 2012 on the file of the Rent Control Appellate Authority, Palakkad. The Appellate Authority dismissed the appeal as per the judgment dated 30.6.2014. R.C.R. NO.319 OF2014(B) ::

2. ::

3. The petition schedule building was let out on rent to the father of the tenants on a monthly rent of 200/-. In March, 2008, the rent was enhanced and it was fixed at 750/- per month. The predecessor-in-interest of the present tenants was conducting a barber shop in the petition schedule building. After the death of the tenant, his legal representatives are conducting the business.

4. According to the landlady, the petition schedule building is bona fide required for her to start a stationery business. The landlady does not own or possess any other building in the locality. The landlady contended that the tenants are not depending for their livelihood mainly on the income derived from the business conducted in the petition schedule building and that there are other buildings available in the locality to accommodate their business.

5. The tenants disputed the bona fide need put forward by the landlady. It was contended that the landlady owns an extent of ten acres of paddy land and three acres of coconut garden. It was also contended that the landlady's children are all well settled and the bona fide need put forward is only a ruse for eviction. The tenants R.C.R. NO.319 OF2014(B) ::

3. :: also claimed the protection of the second proviso to Section 11(3) of the Act.

6. Oral and documentary evidence were adduced before the Rent Control Court. On an analysis of the evidence on record, the Rent Control Court found that the bona fide need put forward by the landlady is genuine. The evidence of the

landlady was believed by the Rent Control Court. In the cross examination of the landlady it has come out that the landlady wanted increase in rent, but that was refused by the tenants. The Rent Control Court relied on the decision in Sukesini Amma v. Nagarajalu (2004(2) KLT427 wherein it was held that periodical request for enhancement of rent is not a ground to hold that the landlord does not have bona fide requirement. The contention put forward by the tenants that the landlady does not have any previous experience in business was also held to be not relevant in the light of the decision in Kurian K. Kuriakose v. Usha Cherian and others (2008(1) KHC731DB)), wherein it was held that previous experience to conduct business is not a necessary pre-condition for maintaining a Rent Control Petition under Section 11(3) of the Act. R.C.R. NO.319 OF2014(B) ::

4. ::

7. The Rent Control Court negated the claim put forward by the tenants under the second proviso to Section 11(3) of the Act. It was held that the tenants failed to discharge the burden of proof cast on them to prove both the ingredients of the second proviso to Section 11(3) of the Act. It is not proved that the income derived from the business conducted in the petition schedule building is the main source of income for the livelihood of the tenants. The report submitted by the Advocate Commissioner was relied on by the Rent Control Court. The Commissioner reported that several rooms are available in Vadakkanchery town. There is a building situated even on the opposite side of the petition schedule building, which is suitable for shifting the business in the petition schedule building.

8. The Appellate Authority confirmed the findings of fact rendered by the Rent Control Court on a re-appraisal of the evidence in the case. The findings rendered by the authorities below are findings of fact. The revisional court exercising jurisdiction under Section 20 of the Act would not be justified in interfering with the findings of fact rendered by the authorities below unless there is any R.C.R. NO.319 OF2014(B) ::

5. :: illegality, irregularity or impropriety in the proceedings. No such ingredient is established in the present case. The Revision lacks merits and it is, accordingly, dismissed. Lastly, the learned counsel appearing for the petitioner/tenant

submitted that a reasonable time may be granted to the tenants to vacate the tenanted premises. Taking into account the facts and circumstances of the case, we are inclined to grant time till 31.7.2015 to the tenants to vacate the premises. Accordingly, time upto 31.7.2015 is granted to the tenants to vacate the petition schedule building on condition that they shall file an affidavit before the Rent Control Court on or before 31.1.2015, unconditionally undertaking to vacate the petition schedule building on or before 31.7.2015 and also on condition that the tenants shall deposit the entire arrears of rent, if any, before the Rent Control Court on or before 31.1.2015 and also on condition that the monthly rent shall be paid on or before 10th of the succeeding months . If the tenants fail to comply with any of the conditions mentioned above, the landlady would be entitled to proceed with the execution. If the tenants R.C.R. NO.319 OF2014(B) ::

6. :: comply with the conditions, the execution proceedings shall not be commenced/continued till 31.7.2015. (K.T.SANKARAN) Judge (P.D.RAJAN)
Judge ahz/

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