

Krishnamma Vs. Ambika K.Moorthy

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Court : Kerala

Decided On : Mar-30-2015

Judge : Honourable Mr.Justice Antony Dominic

Appellant : Krishnamma

Respondent : Ambika K.Moorthy

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS MONDAY,THE30H DAY OF MARCH20159TH CHAITHRA, 1937 OP (RC).No. 49 of 2015 (O) ----- (EP NO.140/2015 IN RCP NO.56/2006 ON THE FILE OF PRINCIPAL MUNSIFF'S COURT, THIRUVANANTHAPURAM) PETITIONER(S)/

JUDGMENT

DEBTOR/RESPONDENT: -----

P.KRISHNAMMA AGED62YEARS, D/O PARU, 17/992, PARAYILKANDAM, ANCHUMURI, POOJAPPURA PO, THIRUVANANTHAPURAM. BY ADVS.SRI.JOSEPH SEBASTIAN (KOLLAM) SRI.LIJU. M.P
RESPONDENT(S)/DECREE HOLDER/ADDL.PETITIONERS:

----- 1. AMBIKA
K.MOORTHY, W/O.LATE KRISHNAMOORTHY, SIVASAILAM, 17/1643(1),
KATTUROAD, POOJAPPURA, THIRUVANANTHAPURAM69500.

2. K.NARAYANAN NAIR, S/O LATE KRISHNAMOORTHY, SIVASAILAM, 17/1643(1), KATTUROAD, POOJAPPURA, THIRUVANANTHAPURAM69500.

3. MANJU R.NARAYANAN, D/O LATE KRISHNAMOORTHY, SIVASAILAM, 17/1643(1), KATTUROAD, POOJAPPURA, THIRUVANANTHAPURAM69500. THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON 3003-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(RC) NO.49/15 APPENDIX PETITIONER'S EXHIBITS EXT.P1: TRUE COPY OF THE

ORDER

DATED 25.1.2000 IN SM1099 ON THE FILE OF LAND TRIBUNAL, THIRUVANANTHAPURAM. EXT.P2: TRUE COPY OF THE PURCHASE CERTIFICATE DATED 27.4.2000. EXT.P3: TRUE COPY OF THE

ORDER

DATED 29.8.2006 PASSED IN CRP NO.2328/2001 ON THE FILE OF THIS HON'BLE COURT. EXT.P4: TRUE COPY OF THE

ORDER

DATED 14.1.2010 PASSED IN RCR NO.263/2009 ON THE FILE OF THIS HON'BLE COURT. EXT.P5: TRUE COPY OF THE REPORT DATED 4.6.2008 OF REVENUE INSPECTOR. EXT.P6: TRUE COPY OF THE

ORDER

DATED 18.2.2015 PASSED IN SM222007 OF LAND TRIBUNAL, THIRUVANANTHAPURAM. EXT.P7: TRUE COPY OF THE

ORDER

DATED 11.3.2015 PASSED IN IA NO.27/2015 IN AA NO.15/2015 OF APPELLATE AUTHORITY, (LR) ALAPPUZHA. EXT.P8: TRUE COPY OF THE PETITION IN EP NO.140/2015 IN RCP NO.56/2006 ON THE FILE OF PRINCIPAL MUNSIF COURT, THIRUVANANTHAPURAM. //True Copy// PA to Judge Rp ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

JUDGMENT

Antony Dominic, J.

The respondents/landlords filed RCP No.56/06 against the petitioner under Sections 11(3) and 11(4)(iv) of the Kerala Buildings (Lease and Rent Control) Act. The Rent Control Court dismissed the petition, however, the same was reversed in appeal. The tenant filed RCR No.263/09 before this Court.

2. The tenant had already initiated proceedings against the landlord under the Kerala Land Reforms Act. During the pendency of the RCR also, such proceedings under the Land Reforms Act were pending. RCR was finally disposed of by Ext.P4 order dated 14/1/2010 along with connected cases. In this order, the judgment of the appellate authority in the Rent Control Appeal was confirmed. However, taking note of the pendency of the proceedings under the Land Reforms Act, this Court clarified that the eviction order which is confirmed will be subject to the result of the proceedings which are stated to be pending before the Land Tribunal. OP(RC) No.49/15 :

2. :

3. It is the case of the petitioner that subsequently, the proceedings under the Land Reforms Act were decided against her and that she challenged the order passed against her before the appellate authority under the Land Reforms Act by filing AA No.15/15. In that appeal, she also filed IA No.27/15. In that IA, appellate authority passed Ext.P7 order granting stay of further proceedings subsequent to the order impugned before him in the suo motu proceedings.

4. Meanwhile, the landlord filed EP No.140/15 in RCP No.56/06 on the file of the Munsiff Court, Thiruvananthapuram, a copy of which is Ext.P8. According to the petitioner, she entered appearance and contested the maintainability of the execution petition. The petitioner contended that since this Court has already

clarified that eviction order will be subject to the result of the proceedings under the Land Reforms Act and as A.A. No.15/15 is pending with an order of stay, the execution petition filed by the landlord was not maintainable. It is stated that this contention has been rejected by the execution court and delivery has been OP(RC) No.49/15 :

3. : ordered. This is the background in which the tenant has filed this OP.

5. We heard the learned counsel for the petitioner and considered the submissions made.

6. Admittedly, the order of eviction passed in RCP No.56/06, which was confirmed by this Court by dismissing RCR No.263/09, has attained finality. In so far as the pendency of the proceedings under the Kerala Land Reforms Act is concerned, while passing Ext.P4 order, a Division had clarified the position thus. "We clarify that the eviction order which is confirmed in RCP5606 (corresponding to RCR26309) will be subject to the result of the proceedings which are stated to be pending before the Land Tribunal." 7. Reading of the above therefore shows that the Division Bench has only ordered that the eviction order will be subject to the result of the proceedings under the Land Reforms Act and the Division Bench did not direct that until the finalisation of the OP(RC) No.49/15 :

4. : proceedings under the Land Reforms Act, the eviction proceedings pursuant to the order passed in the Rent Control Petition should be kept in abeyance or will remain stayed. When a Division Bench of this Court has ordered that eviction order will be subject to the result of the proceedings under the Kerala Land Reforms Act, that order does not operate as a stay of the implementation of the order, but only means that ultimately if the proceedings before the Land Tribunal are decided in favour of the tenant, the tenant will be entitled to seek restitution. If that be the purport of the clarification ordered by this Court in Ext.P4 order disposing of the RCR, the execution court cannot be faulted for entertaining the execution petition during the pendency of A.A.No.15/15 filed by the petitioner against the order passed by the Land Tribunal rejecting the suo motu proceedings initiated at the instance of the petitioner. We are therefore not in a position to agree with the counsel.

8. The second payer in this OP is to direct the Principal Munsiff's Court, Thiruvananthapuram to issue a copy of the order OP(RC) No.49/15 :

5. : dated 25/3/15 passed in EP No.140/15 in RCP5606. Since the order has been passed at the instance of the petitioner and since she is aggrieved by that order, she is entitled to obtain a copy of the said order to work out her remedies in accordance with law. Therefore, we direct that, on the production of a copy of this judgment, the Munsiff Court will issue a copy of the order, provided the petitioner has applied for the same. OP(RC) is disposed of as above. Sd/- ANTONY DOMINIC JUDGE Sd/- ALEXANDER THOMAS JUDGE Rp //True Copy// PA to Judge

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