

Sivadasan Vs. Abdulla

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Court : Kerala

Decided On : Apr-07-2015

Judge : Honourable Mr.Justice Antony Dominic

Appellant : Sivadasan

Respondent : Abdulla

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS TUESDAY, THE 7TH DAY OF APRIL 2015 17TH CHAITHRA, 1937 RCR Rev..No. 74 of 2015 () ----- AGAINST THE

ORDER

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JUDGMENT

IN RCA152013 of RENT CONTROL APPELLATE AUTHORITY (ADDL.DISTRICT COURT - II), MANJERI DATED 2012-2014 AGAINST THE

ORDER

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JUDGMENT

IN RCP162011 of RENT CONTROLLER (MUNSIFF COURT), MANJERI
DATED 27-02-2013 REVISION PETITIONER(S)/APPELLANT/RESPONDENT
NO.2: -----

SIVADASAN AGED 55 YEARS, S/O BALAKRISHNA PILLAI, JRG SECURITY
LTD., OPP METRO SUPER MARKET, KALIKAVU ROAD, WANDLOOR PO,
WANDLOOR AMSOM, VANIYAMBALAM DESOM, MALAPPURAM DT. BY
ADVS.SRI.SURESH KUMAR KODOTH SRI.K.P.ANTONY BINU
RESPONDENT(S)/RESPONDENTS & PETITIONER & 1ST RESPONDENT:

1.
ABDULLA, S/O NOTTATH SIDHIQUE, PUNNANPPALLA AMSOM,
CHADAMKALAM DESOM, NILAMBUR TALUK, REPRESENTED BY POWER OF
ATTORNEY HOLDER, ABDUL NAZAR 679328.

2. RAM SAIT, GOLD WORK, OPPOSITE METRO SUPER MARKET, KALIKAVU
ROAD, WANDLOOR PO, WANDLOOR AMSOM, VANIYAMBALAM DESOM,
MALAPPURAM DT 67932. THIS RENT CONTROL REVISION HAVING COME UP
FOR ADMISSION ON 07-04-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING: ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

===== R.C.R. No. 74 of 2015
===== Dated this the 7th day of April, 2015

ORDER

Antony Dominic, J.

1st respondent herein filed RCP No.16/11 on the file of the Rent Control Court,
Manjeri seeking eviction of the tenants, among whom, the 2nd respondent herein
was the 1st respondent and the petitioner herein was the 2nd respondent. The
ground urged in the petition was under Section 11(3) of the Kerala Buildings
(Lease and Rent Control) Act, in as much as according to the landlord, he, who is
now employed abroad, wanted to come back to the native place and start a
business of construction materials in the building in question.

2. Before the Rent Control Court, the 1st respondent in the petition remained ex
parte and the 2nd respondent, the petitioner herein, contested the matter. He

disputed the bona fides of the landlord and also claimed the benefit of the second proviso to Section 11(3) of the Act. Before the Rent Control Court, the Power of Attorney holder of the landlord was examined as PW1 and the petitioner was examined as RW1. Considering the matter, the Rent Control Court passed order dated 27th of February, 2013 allowing RCR No.74/15 :

2. : eviction. This order was confirmed by the Rent Control Appellate Authority by dismissing RCA No.15/13 filed by the petitioner.

3. Before us, the contention raised by the learned counsel for the petitioner is that the bona fide need being a state of mind, can be proved only by examination of the landlord himself. According to him, since the Power of Attorney holder of the landlord alone deposed in court, such evidence could not have been accepted to find bona fide needs in favour of the landlord. On this basis, counsel contended that the orders passed by the lower authorities cannot be sustained. In support of this contention, counsel also placed reliance on the judgments of the Apex Court in *Janki Vashdeo v. Indusind Bank* (2005 (2) KLT265 and *Joseph Mathew v. Jose Thomas* (2005 KHC1834).

4. In so far as this case is concerned, admittedly, the landlord is presently stationed abroad. The need projected by him is that he wanted to return to his native place and start a business. The Rent Control Petition was presented by his brother, who is his Power of Attorney holder. The Power of Attorney holder, who was examined before the Rent Control Court as PW1, deposed in Court that he was completely managing the affairs of RCR No.74/15 :

3. : the principal and that it was he who purchased and let out the building to the tenant. The question is whether in such a situation, the Power of Attorney holder is proved to have been completely managing the affairs of the principal. Evidence of the Power of Attorney holder can be accepted on issues including one of bona fide need. In our view, this issue need not detain us any further, because, this has been answered by the Apex Court in its judgment in *Man Kaur v. Hartar Singh Sangha* [(2010) 10 SCC512, where it has been held thus;

"8. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge: (a) xxx (b) xxx (c) xxx (d) xxx (e) xxx (f) xxx (g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his "state of mind" or "conduct", normally the person concerned alone has to give evidence and not an attorney-holder. A landlord who RCR No.74/15 :

4. : seeks eviction of his tenant, on the ground of his "bona fide" need and a purchaser seeking specific performance who has to show his "readiness and willingness" fall under this category. There is however a recognised exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or "readiness and willingness". Examples of such attorney-holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad." 5. In the light of the above authoritative principles, which binds this Court, we cannot accept the contention raised by the learned counsel for the petitioner. We, therefore, do not find any reason to interfere with the order passed by the Rent Control Court as confirmed by the appellate authority.

6. RCR is dismissed. RCR No.74/15 :

5. : However, having regard to the fact that the petitioner is now running a commercial establishment in the tenanted premises and as he requires reasonable time to shift out from the premises in question, we allow the tenant six months' time from today to surrender vacant possession of the building to the landlord. This shall, however, be subject to the condition that the petitioner shall file an affidavit before the Execution Court unconditionally undertaking to surrender the building in question to the landlord on or before the expiry of the six months' time allowed by this Court and on his continuing to pay the rent without default. Having regard to the closing of the courts for summer vacation, we direct that the affidavit shall be filed before 26/5/15. Sd/- ANTONY DOMINIC JUDGE Sd/- ALEXANDER

THOMAS JUDGE Rp //True Copy// PA to Judge

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