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Court : Kerala

Decided On : Feb-24-1971

Reported in : AIR1972Ker15

Judge : K. Sadasivan, J.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1959 - Sections 11(3); Code of Civil Procedure (CPC) , 1908 - Sections 115

Appeal No. : Civil Revn. Petn. No. 876 of 1970

Appellant : Ramakrishnan

Respondent : Gopala Moothan

Advocate for Def. : T.S. Venkateswara Iyer, Adv.

Advocate for Pet/Ap. : T.R. Govinda Warriar, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

K. Sadasivan, J.

1. The tenant is the revision petitioner. The landlord applied for eviction under Section 11 (3) of the Kerala Buildings (Lease and Rent Control) Act (shortly stated

the Act) saying that the building is required for the landlord's own occupation. Arrears of rent was also put forward as a ground but as the arrears were subsequently deposited, that ground was not pressed. On the question of requirement of the building for own occupation, the Rent Controller held that the claim is not bona fide and the petition was accordingly dismissed. But in appeal, the learned appellate authority held otherwise and allowed the petition which has been confirmed in revision by the learned District Judge.

2. The claim of bona fide requirement for own occupation is challenged on the ground that the petitioner is residing in his family house which is owned by him though along with other members of the joint family; but the case of the petitioner (respondent herein) is that the joint family house is not convenient enough to accommodate all the members and that out of the 5 brothers who constitute the joint family, are married. One of them is residing outside for the obvious reason that the family house is too congested to provide accommodation to him. All the married brothers are getting children and the family is growing in size. It was in these circumstances that the present building happened to be purchased by the petitioner. Proviso (1) to Section 11 (3) says that:--

'the Rent Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons, in any particular case it will bejust and proper to do so.'

So if the petitioner-landlord has another building of his own in his possession, his prayer for eviction will not ordinarily be entertained. Even in such cases if special reasons are made out to the satisfaction of the Rent Control Court, there will be no objection in granting the landlord's prayer; The question, therefore, is whether in the present casethe landlord has been proved to own and possess another building in the city, town or village. It is true that thelandlord is a member of the joint family, which owns a house. He is only a junior member. Under the Hindu Law which governs the parties he has a right of residence in the family house. He has, no doubt, inalienable interest in the joint family or ancestral property; but from that circumstance could it be said that he owns the family house, in the sense in

which the expression is used in the proviso. For the bar to operatethe petitioner-landlord should own and possess a building, exclusively for him self. In my view, a mere right of residence or some interest in the family house will not, by itself, debar him from claiming possession of the rentedbuilding. 'Own' according to the Law Lexicon, means, 'to hold as property, to possess; often used as synonymous withpossess', 'owper' is 'one who has dominion of a thing, real or personal, corporeal or incorporeal, which he hasthe right to enjoy and to do with it as he pleases--either to spoil or destroy it as far as the law permits.' 'owner' includes '(a) every person who is entitled for the time being to receive any rentin respect of the land with regard to which the word is used, whether from the occupier or otherwise.' (The Law Lexicon by Ramanatha Iyer, p. 930-931). 'Landlord' under the Act includes:

'the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another .....'

Under the law of Coparcenary, the father or head or manager of the family is alone, legally entitled to receive the rent and to be in possession of the joint family property. Prem's Judicial Dictionary defines 'owner' as a person 'who has an absolute dominion over it and in regard to which he has a right to do as he pleases.' In the case of a joint family a junior member does not possess any such right. In this view, therefore, it is difficult to apply the proviso against granting eviction. The fact that the petitioner's family is growing in size wag not disputed by the counter-petitioner either in his counter or in his deposition before court. On the other hand, he admitted before court that the family consists of 5 brothers and that three of them are married and have children. He was not in a position to dispute the averments in the petition that the family house is wanting in accommodation. About the size or nature of the family-house the counter-petitioner has no idea and he confessed that he has never gone to the petitioner's family house.'

3. It has also come in the evidence that one of the brothers recently shifted to another house evidently for the reason that the family house is too small and inconvenient to accommodate him. In these circumstances, the petitioner's prayer has only to be allowed. When the members constituting a joint family feel that

accommodation is insufficient and for maintaining healthy relationship between members inter se, it is better that other accommodation is found, the matter has to be viewed from a practical and humane standpoint. It is not for the tenant to dictate to the landlord that the latter should some how or other adjust himself in his family house and put up with difficulties and inconveniences. The tenant has no definite case in respect of the other buildings alleged to be possessed by the petitioner. In his counter, no specific case was put forward in this behalf; but in the course of his evidence he blurted out that the petitioner's family is possessed of about 30 other houses. 'Petitioner's family has 10-30 houses. That fact I know.' A vaguer and more indefinite contention one cannot think of. Exs. B1 and B2. certified copies of the property tax demand register were produced by the tenant at the fag end of the trial, practically after the case was closed but pending judgment. The buildings covered by Exs. B1 and B2 are, according to the petitioner, non-residential. Moreover, it was also not established before court that those buildings belong exclusively to the petitioner. They are buildings belonging to the joint family, and for reasons already stated they cannot be put forward as a circumstance against granting reliefs to the petitioner. Even if the kartha of the family or a joint family as such possessed other buildings, the junior member for that reason cannot be precluded from claiming eviction in respect of a building purchased by him for his separate residence. In the course of the evidence the counter-petitioner attempted even to challenge the bona fides of the petitioner in various other ways also. For instance he stated that the petitioner demanded from him an increment of Rs. 5/- in the rent to which he was not agreeable and it was the disgruntlement resulting from that, that actuated him to file the petition. This is evidently a baseless charge, not out forward in the counter, raised at random in the course of the examination. The order of the lower court has, in the circumstance, to be upheld.

4. Insufficiency of notice to quit was also urged as an additional ground against the petitioner; but it is significant that such a contention was not taken before the Rent Controller or even before the appellate authority. Before the Revisional court it is alleged that this contention was put forward but was not considered. The order of the learned District judge does not show that the contention regarding notice under Section 106 of the Transfer of Property Act was ever pressed before him. In the

memorandum of revision, of course such a ground was also mentioned; but from the order of the learned Judge it must be presumed that the said ground was not pressed. Even on the merits, I do not see any case for the petitioner regarding notice under the Transfer of Property Act. The one point of attack made against the notice was that in the petition the date of commencement of tenancy is shown as the 5th of the month; but in the notice Ex. A2 the commencement of the tenancy is shown as 9th day of the month. This is only consistent with the respondent's case put forward before court. He stated in his cross-examination:--

'Rent is to be paid on the 9th of every English month.'

I see, therefore, no point in the criticism levelled against the notice.

5. Learned counsel for the respondent-landlord raised also the question of maintainability of the revision under Section 115 of the Civil P. C. The contention was that this court has no iuris-diction to entertain the petition as the finding of the trial court did not involve any question of jurisdiction. But I do not see any force in the contention. The Supreme Court observed in Prem Rai v. Housing Construction Ltd., (1968-2 SCWR 482) = (AIR 1968 SC 1355) that:--

'It is manifest that in holding that the appellant was entitled in the alternative to ask for the relief of specific performance the trial court had committed an error of law and so had acted with material irregularity or illegality in the exercise of its jurisdiction within the meaning of Section 115(c) of the Civil P. C. It was therefore competent to the High Court to interfere in revision with the order of the trial court on this point. To put it differently the decision of the trial court on this question was not a decision on a mere question of law but it was a decision on a question of law upon which the jurisdiction of the trial court to grant the particular relief depended. The question was therefore one which involved the jurisdiction of the trial court. The trial court could not by an erroneous finding upon that question confer upon itself a jurisdiction which it did not possess and its order was therefore liable to be set aside by the High Court in revision.'

On the same analogy the decision of the court below in the present case is one on a question of law upon which the jurisdiction of the trial court to grant particular

relief is dependent. There is, therefore, no point in the contention that the petition is not maintainable.

6. The result is that the revision petition is dismissed.

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