Paul Vs. Pradeep

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Court : Kerala

Decided On : Feb-23-2006

Reported in : 2006(2)KLT20

Judge : M. Ramachandran and; K.T. Sankaran, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 2, 11, 11(2), 11(3), 11(4), 12(1), 12(3), 12(4), 18 and 20; ;Code of Civil Procedure (CPC) - Order 12 - Rule 6

Appeal No. : R.C.R. No. 492 of 2005

Appellant : Paul

Respondent : Pradeep

Advocate for Def. : R. Sudhish and; M. Manju, Advs.

Advocate for Pet/Ap. : V. Giri, Adv.

Judgement :
ORDER

K.T. Sankaran, J.

1. The revision petitioner, the tenant, challenges the concurrent findings of the Rent Control Court and the Appellate Authority under Sections. 11(2) (b) and 11

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

2. The Rent Control Petition was filed by the respondent under Sections 11(2)(b), 11(3) and 11(4)(ii) of the Act. The Rent Control Court rejected the claim under Section 11 (4)(ii). The landlord has not challenged the order of the Rent Control Court in appeal and, therefore, the decision under Section 11(4)(ii) has become final. The case of the landlord is that he acquired the property in the year 1978 and the building was entrusted to the tenant on a monthly rent of Rs. 500/- on 1.1.1994. The tenant defaulted payment of rent for the period from 1.1.1995 and in spite of notice, he did not pay the arrears of rent. The landlord contended that he bona fide requires the petition schedule building for conducting photostat and real estate business. According to him, he has no job or income.

3. The tenant disputed the entrustment of the building on 1.1.1994. He contended that he was a tenant from 1976 onwards on a monthly rent of Rs. 25/-. The respondent, the landlord, purchased the building only subsequently and the tenant attorned to him and paid rent up to June 1998. The tenant disputed the case of the landlord that the rent is in arrears from 1.1.1995. The bona fide need was disputed by the tenant and he claimed the benefit of the second proviso to Section 11 (3) of the Act.

4. Before the Rent Control Court, the landlord was examined as PW1 and Exts.A1 and A1(a) were marked. The tenant was examined as RW1 and Exts.B1 to B36 were marked on his side. As stated earlier, the Rent Control Court found against the claim of the landlord under Section 11 (4)(ii). In so far as the ground under Section 11(2)(b) is concerned, the authorities below found that the landlord failed to prove the entrustment in 1994, fixing a monthly rent of Rs. 500/-. It was also found by the authorities below, on evidence, that the tenant failed to prove that he paid rent up to June 1998. The authorities below found that since the landlord failed to prove that the rate of rent was Rs.500/-, the tenant is liable to pay only Rs. 25/- as monthly rent and that he has kept rent in arrears from 1.1.1995 onwards.

5. The learned Counsel for the revision petitioner tenant contended that the authorities below erred in passing an order under Section 11(2)(b) as it was found that the landlord failed to prove the entrustment in 1994 and the rate of rent at Rs. 500/- per month. He contended that a landlord can get an order of eviction under Section 11(2)(b) only on the strength of his case and not on the basis of the contentions raised by the tenant. The learned Counsel relied on the decision of the Supreme Court in Sayed Muhammed Mashur Kunhi Koya Thangal v. Badagara Jumayath Palli Dharas Committee and Ors. (2004) 7 SCC 708, wherein it is held that the 'plaintiff could only succeed on the strength of its case and not on the weakness found in the case of the defendant, if any'. In that case, the Division Bench of the High Court reversed the judgment of the District Court and decreed the suit on title, relying on the statement in the written statement of the Wakf Board that the plaintiff was actually acting as the mutawalli. The plaintiff had no such case in the plaint. The Supreme Court held that the admission in the written statement of the Wakf Board would not bind the second defendant who contested the suit and the plaintiff could succeed on the strength of its case and not on the weakness of the defence.

6. It is a settled principle of law that in a suit based on title, the plaintiff can succeed only on proof of his title and mere destruction of the defendant's title carries the plaintiff nowhere (See Moran Mar Baselios Catholicos and Anr. v. Most Rev. Mar Poulose Athanasius and Ors. 1954 KLT 385 (SC) : AIR 1954 SC 526; Brahma Nand Puri v. Neki Puri Since deceased represented by Mathra Puri and Anr. : [1965]2SCR233 , Jagdish Narain v. Nawab Said Ahmed Khan AIR 1946 PC 59; Baba Kartar Singh Bedi v. Daval Das and Ors. AIR 1939 PC 201 and Kunhikannan v. Damodaran Nambeesan 1992 (2) KLJ 625 : 1992 (2) KLT SN 43 P.31.

7. The question of title to immovable property is different from a claim for money or a claim for arrears of rent. If the defendant in a suit for money admits a part of the suit claim, a decree to that extent can be passed against him. Order XII Rule 6 of the Code of Civil Procedure provides that where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the court may at any stage of the suit, either on the application of any party or of its own motion

and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions. The object of this Rule is to entitle the plaintiff to get, and to empower the court to pass a judgment granting the relief to the extent of the admission made by the defendant. Without recourse to Order XII Rule 6 also, the court can pass a decree at the final determination of the suit, in favour of the plaintiff, taking into account the admission made by the defendant. The position is the same in a Rent Control Petition claiming eviction on the ground of arrears of rent. If the landlord says that the monthly rent agreed upon is a certain sum, but the tenant contends that the rate of rent is different, the Rent Control Court has to decide the dispute on the rate of rent. So also when there is dispute regarding the period during which the arrears of rent fell due that dispute also shall be decided by the Rent Control Court. An order under Section 11(2)(b) of the Act shall be passed based on such finding. In such a process of deciding the dispute regarding rate of rent or the period of arrears, the Rent Control Court would be acting well within its jurisdiction if it accepts the case of the tenant. Section 2 of the Act provides that no tenant against whom an application for eviction has been made by a landlord under Section 11, shall be entitled to contest the application before the Rent Control Court or to prefer an appeal under Section 18 unless he pays to the landlord or deposits, all arrears of rent admitted by the tenant to be due in respect of the building up to the date of payment or deposit, and continues to pay or deposit any rent which may become subsequently due. Sub-section (3) of Section 12 provides for the consequence of failure to make such payment or deposit. The landlord is entitled to withdraw the amount of admitted arrears of rent deposited by the tenant, as provided in Sub-section (4). After such payment or deposit, what is to be done in case the Rent Control Court finds that the rate of rent or the period of arrears is really as contended by the tenant? Should the landlord re-pay the amount withdrawn by him under Section 12 (4) to the tenant? Or if the deposit made under Section 12(1) was not withdrawn by the landlord under Section 12(4), should the tenant be allowed to withdraw it? Had the tenant paid to the landlord the arrears of rent, should the landlord be directed to repay it to the tenant? What order is to be passed in such a contingency and how it is to be implemented, is not provided in the Act. To our mind, the Scheme of the Act is that

the landlord need not repay or re-deposit such amount and the tenant should not be allowed to withdraw such deposit. Such payment or deposit should be towards the rent found to be in arrears. This answer would also lead us to the conclusion that the Rent Control Court is entitled and has jurisdiction to pass an order under Section 12(b) of the Act, on the basis of the rate of rent or period of the arrears of rent as stated by the tenant, if the court finds that the landlord failed to prove his case regarding the rate of rent or the period during which the rent fell in arrears.

8. We are not in a position to accept the contention raised by the revision petitioner/tenant. It is the specific case of the tenant that the rate of rent is Rs. 25/- and that the entrustment was in 1976. According to him. the Rent Control Petition was filed when he refused to enhance the rent at the rate of Rs. 500/- per month. The liability to pay rent at the rate of Rs. 25/- is not disputed by the tenant. Therefore, the revision petitioner is not justified in contending that an order under Section 11(2)(b) cannot be passed on the finding that the rent is in arrears at the rate conceded by the tenant. Even according to the tenant he has paid rent only up to June, 1998. The Rent Control Petition was filed in 2002. Therefore, at the time when the Rent Control Petition was filed the tenant had the liability to pay the arrears of rent. Subsequent payment of rent is only a ground to get an order of eviction under Section 11(2)(b) set aside under Section 11(2)(c) of the Act. The authorities below found on evidence that the tenant failed to prove the discharge of rent pleaded by him and, therefore, the case put forwarded by him that rent was paid up to June, 1998 was disbelieved. There is no infirmity in the order and judgment passed by the authorities below and we do not find any ground to interfere under Section 20 of the Act.

9. The landlord was employed in a Gulf country for quite some time. At present, according to him, he has no job or income. It has come out in evidence that the father of the landlord was running a hotel and after his death, the respondent herein has a fractional right over that business along with the other legal representatives. The Appellate Authority, according to us, rightly held that the co-ownership right in the building where the hotel is being run would not disentitle the landlord from claiming eviction of the revision petitioner. The first proviso to Section 11(3) would apply only if the landlord has another building of his own in his

possession. The fractional interest of the respondent/landlord in the hotel business could not be a ground for denying the claim for eviction of the tenant from the petition schedule building. Even if the landlord is having other business that is not a ground to doubt the bona fide need put forward by him to start a business in the petition schedule building. The authorities below on evidence, found the claim of the landlord is bona fide. It was also found by the authorities below that the tenant failed to prove that he is entitled to the benefit of second proviso to Section 11(3) of the Act. The findings that the landlord bona fide needs the building and that the tenant failed to prove the ingredients of the second proviso to Section 11(3) of the Act are findings of fact arrived at on the evidence on record. There is no case that the authorities below failed to consider any material piece of evidence or that irrelevant or inadmissible evidence has been relied on. No grounds are made out under Section 20 of the Act for interference with the finding of the below under Section 11 (3) of the Act.

10. There is no merit in the Rent Control Revision and it is accordingly dismissed. However taking into account the facts and circumstances of the case the revision petitioner tenant is granted four months' time to vacate the petition schedule building, on condition that he shall file an affidavit before the Rent Control Court, within six weeks from today, undertaking that he shall vacate the petition schedule building within a period of four months from today and also shall pay the arrears of rent up to and inclusive of January 2006 within a period of two months from today. If default is committed in complying with any of these conditions the landlord shall be entitled to execute the order of eviction forthwith.

11. The counsel for the revision petitioner contended that during the pendency of the appeal before the Appellate Authority, disregarding the order of stay passed by the court the landlord forcibly took possession of a portion of the building. It is submitted that I A.No.1644 of 2005 was filed by the tenant before the Appellate Authority for taking action against the landlord for violating the stay order and that I A. No 1695 of 2005 was filed for directing the landlord to restore possession of the portion of the petition schedule building which was forcibly taken possession of by him. It is stated in the memorandum of revision that the court below dismissed those applications. The orders passed by the court below in those applications are

not produced. The proceeding for violation of an order passed by the court during the pendency of Appeal is a separate and independent proceeding and it is not dependant upon the judgment to be passed in the appeal. The disposal of this Rent Control Revision would not deprive the right if any of the tenant to challenge the orders in the aforesaid application in accordance with law, if he is entitled to do so under law.