

Moosa Vs. Lakshmanan

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Court : Kerala

Decided On : Mar-30-2004

Reported in : 2004(2)KLT438

Judge : K.S. Radhakrishnan and; Pius C. Kuriakose, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11(4)

Appeal No. : C.R.P. Nos. 413 and 1500 of 1998

Appellant : Moosa

Respondent : Lakshmanan

Advocate for Def. : N.L. Krishnamoorthy and; K. Lakshminarayanan, Advs.

Advocate for Pet/Ap. : R. Parthasarathy, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

K.S. Radhakrishnan, J.

1. Can the jurisprudential concept of co-ownership that in every infinitesimal portion of subject matter each of the co-owners has a right of possession is sufficient to hold that one of the co-owners has in his possession a building within the meaning

of Section 11(4)(iii) of Act 2 of 1965?

2. Landlord claimed eviction under Section 11(4)(iii) contending that tenant Moosa is a co-owner along with one Pokker Haji of a nearby shop room as a co-owner and consequently landlord is entitled to the benefit of Section 11(4)(iii) of the Act. Tenant Moosa is in possession of the shop room belonging to the landlord situated in Kakkattil bazaar wherein he is conducting a grocery shop. Landlord produced Ext. A3 assignment deed dated 10.8.1989 by which tenant Moosa along with Pokker Haji and one Avulla purchased another building. While Ext. A3 was executed Moosa and Pokker Haji were doing business in the northern room in that building while Avulla was doing business in the southern room. Preceding Ext. A3 landlord in respect of that building had obtained a decree for eviction of Moosa and Pokker Haji in O.S.No 63 of 1983 and A.S. No 223 of 1984 which led to the execution of Ext. A3. Ext. A3 states that total consideration of Rs. 15,000/- was paid by Pokker Haji and Moosa contributed 7,500/- and the remaining amount of Rs. 7,500/- was contributed by Avulla. Ext. A3 states that Moosa and Pokker Haji together has half right and Avulla has other half right over the rooms covered by Ext. A3. Contention was raised that since Moosa is a co-owner along with Pokker Haji in respect of northern room, landlord is entitled to claim eviction of Moosa on the ground that he is a co-owner.

3. The question that arises for consideration is merely because Moosa is a co-owner can it be said that he is in possession of the building within the meaning of Section 11(4)(iii) of the Act? Each co-owner is in theory has interest in every infinitesimal portion of the subject matter and each has the right to be in possession of other part and parcel of the property, jointly with others. Each joint owner has the right to possession of all the property held in common equal of the right of each of his companions in interest and superior to that of all persons. All co-owners have equal right and coordinate interest in the property, but their shares may be either fixed or indeterminate. So for the test of co-ownership is co-ordinate interest. However, there is no joint possession in respect of the entire property there is no co-ownership. Every co-owner is therefore entitled to enjoy common property jointly with other co-owners. Both Moosa and Pokker Haji are entitled to possess and enjoy the property jointly, both of them are having equal right to

protection and ownership. Unless it is shown that one of the co-owners is put in possession exclusively by any arrangement between the co-owners, it cannot be said that one of the co-owners is in exclusive possession within the meaning of Section 11(4)(iii) of the Act.

4. We may now examine whether Moosa is in exclusive possession of the property covered by Ext. A3. Ext. A3 would indicate that Pokker Haji along with Moosa was doing business in the northern room even before and after the execution of Ext. A3. Later by Ext. A4 kychit dated 25.7.1995 Moosa and Pokker Haji entrusted the northern room to one Abdul Samad on rent. Ext. A4 would indicate that northern room leased to Samad belonged to Pokker Haji and Moosa. Ext. A4 would indicate that half of the consideration of the entire structure came from Moosa and Pokker Haji and the remaining half came from Avulla. The northern room was leased to Samad by Ext. A4 by Moosa and Pokker Haji. We have already indicated since Moosa and Pokker Haji are co-owners it cannot be said that either of them are in exclusive possession. All the same, tenant could defend a claim under Section 11(4)(iii) only if it is shown that Pokker Haji had objected to or was not in favour of leasing of the building to Moosa who himself is a co-owner. Moosa could have made some arrangement, express or implied, with Pokker Haji so that Moosa could have been in exclusive possession. No explanation was offered by Moosa as to why he could not have continued in exclusive possession. On the contrary, in order to get over the possible plea by the landlord under Section 11(4)(iii), Moosa and Pokker Haji leased out the premises to Samad, which in our view, cannot be justified in the facts and circumstances of the case.

5. Under such circumstances, though a co-owner simpliciter is not in exclusive possession of the premises and would not fall within the scope of Section 11(4)(iii) of the Act, so far as this case is concerned on facts, we are of the view, Moosa could have retained possession exclusively. In view of such circumstances, we are inclined to hold that the landlord is entitled to succeed in his plea under Section 11(4)(iii).

6. Landlord has succeeded in showing that tenant is in possession of one of the rooms within the meaning of Section 11(4)(iii). It is for the tenant to show that the

premises rented out is not reasonably sufficient for his requirement. Facts would indicate that tenanted premises is having .50 cents and the area of the shop room belongs to Moosa in co-ownership is having .42 cents. Premises also is situated near the tenanted premises. Tenant has not taken any steps to show that the room in which he is a co-owner is not sufficient or unsuitable for his requirement. In such circumstances the finding under Section 11(4)(iii) is only to be confirmed. C.R.P. No 413 of 1998 would therefore stand dismissed.

7. C.R.P. No 1500 of 1998 is filed by the landlord. Eviction was sought for under Sections 11(2)(b) and 11(3). Rent Control Court and the Appellate Authority concurrently found against the landlord. In such circumstances, we find no reason to disturb the concurrent finding rendered by the Rent Control Court and the Appellate Authority. In the result, both the revision petitions lack merits and are dismissed.

8. However, considering the facts and circumstances of the case, we are inclined to grant time to the tenant upto 30.6.2004 for vacating the premises on condition that the tenant should file an undertaking in the form of an affidavit that he would vacate the premises within the aforesaid period and would pay arrears of rent, if any, and future rent.