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Sundaram Vs. Rajeev

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Court : Kerala

Decided On : Feb-27-2004

Reported in : 2004(2)KLT613

Judge : A. Lekshmikutty, J.

Acts : Limitation Act, 1963 - Sections 5

Appeal No. : A.S. No. 520 of 1993

Appellant : Sundaram

Respondent : Rajeev

Advocate for Def. : B. Krishna Mani and; V. Premchand, Advs.

Advocate for Pet/Ap. : S.P. Aravindakshan Pillay, Adv.

Judgement :

A. Lekshmikutty, J.

1. Aggrieved by the judgment and decree in O.S. No. 82 of 1990 on the file of Sub. Court, Cherthala, this appeal is filed by the first defendant. The first respondent as plaintiff filed the above suit for recovery of arrears of rent. The case of the plaintiff is that shop room bearing Door No. 397 in Ward No. 23 of Cherthala Municipality belonging to the plaintiff was rented out to the late Padmanabhan Achari on

7.10.1980 for a monthly rent of Rs. 350/-. The 7th respondent is the widow and appellant and respondents 2 to 6 are the children of the late Padmanabhan Achari. The defendants were in possession of the shop room as the legal representatives of the late Padmanabhan Achari. On 5.11.1980 late Padmanabhan Achari filed a petition before the Rent Control Court as R.C.A. No. 24/1980 for fixation of fair rent. The Rent Control Court fixed the fair rent at the rate of Rs. 218.50 per month. Against the said order, both the plaintiff and late Padmanabhan Achari preferred appeals before the Appellate Authority. The Appellate Authority enhanced the fair rent to Rs. 346.50 per month and dismissed the appeal filed by late Padmanabhan Achari. It was provided in the order that the fair rent fixed will come into force from the date of application, i.e. on 5.11.1980. As the plaintiff required the shop room for his own bonafide occupation, he filed a petition as R.C.P. 12/1984 before the Rent Control Court for eviction and the same was allowed on 20.1.1987. At the time of filing the suit, the appeal preferred against the order of eviction was pending before the District Court. Alappuzha as R.C.A. No. 48 of 1989. Subsequently, the eviction has taken place. The plaintiff filed the present suit for realisation of a sum of Rs. 54,798.50 together with interest at 12% on the principal sum of Rs. 35,994/- and cost of the suit.

2. The first-defendant filed written statement contending that the suit is not maintainable and the plaint claim is barred by limitation. The valuation shown in the plaint is not correct and the interest claimed is excessive.

3. On the basis of the pleadings, the court below framed 4 issue. No oral evidence was adduced by the parties. On the side of the plaintiff, the common judgment in R.C.A. Nos.7/1985, 8/1985, 9/1985 and 10/1985 was marked as Ext.Al. The Court below after appreciation of the evidence passed a decree allowing the plaintiff to realise a sum of Rs. 54,798.50 from the defendants together with interest on the principal amount of Rs. 36,036/- at 6% from the date of suit till the date of recovery. The above said judgment and decree are challenged in this appeal.

4. The question for consideration is whether the suit claim is barred by limitation. The plaintiff filed the suit for recovery of arrears of rent together with interest from 7.11.1981 onwards. The said suit was filed on 6.8.1990. The contention of the

defendant is that the suit is barred by limitation. One Padmanabhan Achari, the father of the appellant took the shop building belonging to the first respondent on 7.10.1980 on a monthly rent of Rs. 350/-. The father of the appellant late Padmanabhan Achari filed R.C.A. No. 24 of 1980 before the Rent Control Court for fixation of fair rent and the Rent Control Court fixed the fair rent at the rate of Rs. 218.50 per month. Against the said order, both the parties preferred appeal before the Appellate Authority and the Appellate Authority dismissed the appeal filed by the tenant and allowed the appeal filed by the landlord fixing fair rent at the rate of Rs. 346.50 per month. The said appeal was disposed of on 31.1.1989. The contractual rent was paid by the tenant only up to 7.11.1981. As per Article 52 of the Indian Limitation Act, for recovery of arrears of rent, the period of limitation is 3 years from the date when the arrears become due. As per the respondents herein; the rent was in arrears from 7.11.1981 onwards. But the suit was filed only on 6.8.1990. At any rate, the plaintiff is not entitled to recover the arrears beyond 3 years. The remaining rent is barred by limitation. The trial court found that since there was proceedings pending between the parties with regard to the arrears of rent in respect of the building taken on rent by late Padmanabhan Achari, plaintiff need file the suit only after the final disposal of the fair rent application. The Appellate Court thus fixed fair rent at the rate of Rs. 346.50 only on 31.1.1989. The suit is filed on 6.8.1990, well within time. The court below accepted the contention raised by the appellant and decreed the suit. With regard to the rental arrangement between the parties, there is no dispute. Learned counsel for the respondent submitted that since they were bonafide prosecuting fair rent application before the Rent Control Court and the Appellate Authority, the cause of action will arise only after the final disposal of the petition. To substantiate the same, he has relied on the decisions reported in Basappa v. Shrishailappa Somnath Iyer (AIR 969 Mysore 200) and J.M. Andrews v. Radio Engineering Co. (AIR 1963 Mysore 113). The said decisions are not applicable to the present case. In AIR 1963 Mysore 113 (Supra) the dispute therein was with regard to the recovery of fair rent. In the said decision, it was held that since the application was pending before the court, the enhanced rent can be recovered from the date of final disposal of the fair rent application. The other decision also is with regard to the standard rent recoverable from the tenant. Here, in this case, the contractual

rent between the parties was Rs. 350/-. The landlord is entitled to recover the rent when it has become due. Even if any application for fixation of fair rent was pending, that will not preclude the landlord from recovering the contractual rent. If at all any excess amount is received by the landlord, and if the fair rent fixed is less than the contractual rent, it can be adjusted in future rent. So, there is no reason to wait till the final disposal of the fair rent application.

5. The rent claimed in the plaint is from 7.11.1980 onwards. With regard to the date of default, there is no dispute raised by the appellant in the written statement. So, even if the rent is in arrears from 7.11.1980 onwards, the plaintiff/first respondent is entitled to recover arrears of rent of 3 years prior to the filing of the suit. Rent beyond 3 years is barred by limitation. The court below failed to consider that the pendency of the petition for fixation of fair rent will not preclude the landlord to recover the contractual rent. Therefore, the first respondent is not entitled to recover the entire amount claimed in the plaint. Hence, the decree and judgment passed by the court below is modified and the plaintiff is entitled to recover arrears of rent at the rate of Rs. 346.50 for 3 years prior to the institution of the suit. Thus, the plaintiff is entitled to recover an amount of Rs. 12,371/- with 6% interest from the date of suit till recovery with proportionate costs. The judgment and decree is modified as stated above.

The appeal is disposed of accordingly.

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