

SaifuddIn Vs. Prakasan

SaifuddIn Vs. Prakasan

SooperKanoon Citation : sooperkanoon.com/721323

Court : Kerala

Decided On : Apr-02-2004

Reported in : 2004(2)KLT551

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

Acts : Kerala Building (Lease and Rent Control) Act, 1965 - Sections - 11(2) and 11(4)

Appeal No. : C.R.P. No. 62 of 1997

Appellant : Saifuddin

Respondent : Prakasan

Advocate for Def. : K.P. Dandapani, Adv.

Advocate for Pet/Ap. : M.K.S. Menon, Adv.

Judgement :

ORDER

K.S. Radhakrishnan, J.

1. Is failure to issue statutory notice under the proviso to Section 11(2)(b) and the proviso to Section 11(4)(i) of Act 2 of 1965 to one of the joint tenants fatal to an application for eviction is the question that emerges for consideration in this case.

2. Tenanted premises was let out to respondents 1 and 2 as per Ext. A1 agreement dated 21.3.1987. Respondents 1 and 2 kept the rent in arrears from 21.12.90 onwards. Petitioners sent lawyer notice A3 dated 11.10.91 to the first respondent demanding arrears of rent. Respondents inter alia contended that the petitioner had failed to issue a statutory notice under the proviso to Section 11(2)(b) to both the respondents. The notice was served on the first respondent alone. Hence there is no proper notice and therefore application filed under Section 11(2)(b) is not maintainable. Landlord's complaint is that since respondents 1 and 2 contrary to the terms of the lease deed sublet the premises to third respondent notice was sent only to first respondent. Petition was resisted by the tenant contending that in the absence of notice to 2nd respondent, the petition is not maintainable since respondents 1 and 2 being tenants-in-common. Landlord stated that respondents 1 and 2 in violation of the terms of the lease have sublet the premises to third respondent who is doing business under the name and style 'Neolights' and consequently landlord is entitled to get eviction under Section 11(4)(i) of Act 2 of 1965.

3. A joint written statement was filed by respondents 1 to 3. According to the tenant respondents are doing partnership business. Reference was made to B1 partnership deed dated 4.9.1991 executed between respondents 1 and 3. Rent Control Court and Appellate Authority concurrently found that the respondents 1 and 2 has sublet the premises to third respondent contrary to the terms of A1 lease deed. Rent Control Court however, rejected the petition on the ground that the landlord has failed to issue notice to both the tenants who have taken the premises as tenants in common and consequently it was held that petition is liable to be dismissed on failure to comply with the proviso to Section 11(2)(b) as well as Section 11(4)(i). The Appellate Authority however, taken the view that respondents 1 and 2 are joint-tenants and not tenants-in-common and consequently notice to one of the tenants is sufficient compliance of the provision to Sections 11(2)(b) and 11(4)(i).

4. A registered notice to the tenant intimating contravention of the terms of the lease is a pre-condition for filing petition under Section 11(4)(i). Tenant on being alerted, of the contravention fails to terminate the sublease within thirty days of the

receipt of the notice the landlord can seek eviction under Section 11(4)(i). So far as this case is concerned, admittedly, though notice has been addressed to both the respondents 1 and 2 in the body of the notice it was served only on the first respondent. Question arises as to whether failure to serve notice on the second respondent would affect the maintainability of the petition under Sections 11(4)(i) and 11(2)(b). A rent deed is executed in favour of respondents 1 and 2 in their joint names.

5. A joint tenancy exists where a single estate in property, real or personal, is owned by two or more persons under one instrument or act of the parties. In order to constitute an estate in joint tenancy the tenants thereof must have one and the same interest, arising by the same conveyance, commencing at the same time, and held by one and the same undivided possession. The use of the words 'joint tenants' in the appropriate place in a deed of conveyance is sufficient to create an estate of joint tenancy. A tenancy exists where one has let real estate to another to hold of him as landlord. When duly created and the tenant put in possession, he is the owner of an estate for the time being, and has all the usual rights and remedies of an owner to defend his possession. Tenants-in-common are such as held by several and distinct titles, but by unity of possession; because none knoweth his own severality, and therefore they all occupy promiscuously. Where two or more persons are seized of land in undivided shares, otherwise than by descent, they are tenants in common. The ownership of each tenant in common is distinct and several, and he is, as to his share, in the position of the owner of an entire and separate estate, whereas joint tenants compose but one owner. In the instant case A1 document would clearly show that the tenancy is joint tenancy and not tenancy-in-common. We may in this connection refer to the decision of the Apex Court in *Kanji Manji v. The Trustees of the Port of Bombay* (AIR 1963 SC 468) where the Apex Court considered the provisions of the Bombay Rents Hotel and Lodging House Rates (Control) Act (57 of 1947). In that case notice to terminate the lease was served only to one of the joint tenants. Court held that amounts to sufficient notice. It was pointed out that once it is held that the tenancy is joint, a notice to one of the joint-tenants is sufficient, and the suit for the same reason is also held to be good. Apex Court in *H.C. Pandey v. G.C. Paul* (AIR 1989 SC 1470) held that the heirs of original tenant succeed to tenancy as joint tenants

and not as tenants in common and therefore service of notice under S. 106 of the Transfer of Property Act on one of the joint tenants who acted on behalf of others was sufficient. Reference may also be made to the decision of this Court in Valiya Veettil Kannappan v. Mangot Valiyakunniyil Manikkan (AIR 1968 Ker. 229) and to the decision of the Allahabad High Court in Budhsen v. Sheela Chandra Agarwal (AIR 1978 All. 88). We are of the view the principle laid down by the Apex Court is squarely applicable to the facts of this case which we have already found in the earlier part of the judgment. Oral and documentary evidence would clearly show that the tenancy so far as respondents 1 and 2 are concerned is joint tenancy and that they are not tenants-in-common. Therefore notice issued to one of the tenants would be sufficient compliance of the proviso to Section 11(4)(i) and the proviso to Section 11(2)(b). We therefore hold that notice to one of the joint-tenants is sufficient to maintain an application under Section 11(2)(b) and also under Section 11(4)(i) of Act 2 of 1965.

6. The Rent Control Court and Appellate Authority have concurrently found that the third respondent is a sublessee and that the tenants have failed to terminate the sublease within the statutory period. Further the partnership firm on which respondents rely is not a registered partnership firm. The second respondent, one of the joint-tenants is admittedly not a partner of the firm while third respondent, the sublessee is the Managing Partner. The entire share capital was also brought by the third respondent who is entitled to 90% of the profit. This Court in Ahammed Kabeer v. Salma Beevi (1992 (1) KLT 735) held that if the original tenants have no control over the partnership business the possession of the firm can be treated as objectionable lease. Further we may also point out that if all the tenants are not partners of the firm the possession of the firm be treated as sublease. Reference may be made to the decision of the Gujarat High Court in Jekisondas Maganlal, died, by his heirs and L.Rs. & Ors. v. Abdul Rehman Haji Ahmedbhai and Ors. (AIR 1975 Guj. 205). We are therefore convinced that Ext.B1 document was created only to defeat the provisions of the Rent Control Act. The first and second respondent have therefore subleased the premises to the third respondent violating the provisions of Ext.A1 lease deed. Consequently the Rent Control Petition would stand allowed so far as claim of the landlord under Section 11(4)(i) is concerned.

7. Considering the entire facts and circumstances of the case and considering the fact that third respondent is conducting business in the tenanted premises we are inclined to grant time upto 30.8.2004 to the third respondent to vacate the premises on condition that the respondents would file an undertaking in the form of an affidavit before the Rent Control Court within one month from today stating that they would vacate the premises within the aforesaid time and that they would pay arrears of rent if any and also future rent.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com