

Sainaba Vs. Shamsudeen

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Court : Kerala

Decided On : Jun-30-2004

Reported in : 2004(2)KLT863

Judge : K.S. Radhakrishnan and; J.M. James, JJ.

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

Appeal No. : R.C.R. No. 119 of 2003

Appellant : Sainaba

Respondent : Shamsudeen

Advocate for Def. : Dinesh R. Shenoy, Adv.

Advocate for Pet/Ap. : C. Khalid,; N. Gopinatha Panicker and; P. Viswambaran

Disposition : Revision petition dismissed

Judgement :

ORDER

K.S. Radhakrishnan, J.

1. Can a tenant remaining in possession of the tenanted premises challenge the legality of a Muslim gift deed executed in favour of the landlord on the ground that there has not been a delivery of property, is the question that has come up for

consideration in this case.

2. Petition schedule building was gifted in favour of the present landlord by the father as per gift deed No. 3689/95 of Sub Registry Office, Aluva. Landlord-tenant relationship existed between the petitioner's father and the respondents before the execution of the gift deed. Petitioner's father died on 18.9.2000. Subsequent to his death petitioner continued the C class business conducted by his father. Landlord wanted the tenanted premises so as to conduct a stationary shop and ladies store. Rent Control Petition was filed under Sections 11(2)(b) and 11(3) of Act 2 of 1965. Tenant resisted the petition contending that there is no bona fides in the plea. It is stated that the petition was not maintainable since petitioner is not the owner of the premises. Further it is also contended that unless and until delivery is effected, gift deed will not

come into effect as per the Mohammedan law. Further it is pointed out that landlord is conducting business in the adjacent room of the tenanted premises and consequently he is not entitled to get eviction under Section 11(3). At best petitioner could seek eviction only under Section 11(8) of the Act.

3. Landlord got himself examined as PW.1. PWs.2 and 3 were also examined. Exts. A1 to A17 documents were produced and marked. Second respondent before the Rent Control Court was examined as DW.1. DWs. 2 and 3 were also examined. PW.2 was the Commissioner. Exts. B1 to B3 were marked on the side of the tenant. After considering the oral and documentary evidence, Rent Control Court found that petition is maintainable and the landlord is entitled to get eviction under Section 11(3) of the Act. Tenant took up the matter in appeal before the Appellate Authority which was dismissed confirming the finding of the Rent Control Court. Rent Control Court and the Appellate Authority held that landlord is entitled to get eviction under Section 11(3) of the Act. It was also found that tenant is not entitled to get the benefit of the second proviso to Section 11(3).

4. Counsel appearing for the petitioner Sri. C. Khalid submitted that rent control petition is not maintainable since landlord is not the owner of the premises. Counsel submitted that even though gift deed was executed it will get the legal validity only if the property has been conveyed. Since there has not been delivery

of property there is no valid gift under Mohammedan law and hence petition is not maintainable. Counsel submitted that petition under Section 11(3) would not lie since landlord has already got possession of the nearby shop room. Consequently if at all a petition would lie that would lie only under Section 11(8) of the Act. Counsel appearing for the respondent Sri. Dinesh R. Shenoy tried to sustain the order of the courts below.

5. We find it difficult to accept the contention of the counsel for the revision petitioner that rent control petition is not maintainable. Tenant is not disputing the execution of the gift deed in favour of the landlord. Contention is that under Mohammedan law gift would become valid only if there is a delivery of property and since the tenant is in possession, delivery could not be effected. Contention is that since property is in the possession of the tenant there is no actual delivery and with the result landlord has no title. In other words, contention is that only if the tenant is evicted building could be put in the possession of the landlord and then only landlord will get valid title to the property.

6. We are of the view, such a hypertechnical argument cannot be accepted on the side of the tenant. Tenant is only in de facto possession. De jure possession is with the landlord. Denial of title by the tenant must be bona fide. Tenant cannot blow hot and cold after remaining in possession. Tenant cannot be heard to contend that delivery has not been effected. In other words, tenant cannot stand in the way of executing any valid gift to the landlord by his father. We are of the view, such a contention is not available to the tenant. We are of the view tenant has no locus standi to question the legality of the gift deed. We therefore reject the contention.

7. We are also not in a position to say that landlord ought to have filed petition under Section 11(8) of the Act. In the Rent Control Petition need urged is to start a business in stationary items and ladies stores. Bona fide need is to start independent business and not expansion of business. Here in this case landlord has not intended to expand the C class business conducted by his father. Further the other room came into possession subsequent to the filing of the Rent Control Petition. Therefore, we are not prepared to say that petition under Section 11(3) is

not maintainable. Both the Rent Control Court and the Appellate Authority have concurrently found that tenant is not entitled to the benefit of the second proviso to Section 11(3). We find no illegality, irregularity or impropriety in the orders passed by the Courts below to be interfered with in our revisional jurisdiction. The Revision Petition is dismissed. However, considering the facts and circumstances of the case, tenant is given time upto 31.10.2004 for vacating the premises on condition that the tenant should file an undertaking in the form of an affidavit before the Rent Control Court within one month from today stating that he would vacate the premises within the aforesaid time.

8. We find an amount of Rs. 10,000/- is due towards rent to the landlord from November 1999 onwards. In such circumstances we are inclined to direct the tenant to pay Rs. 5,000/- within one month from today and to pay the balance amount of Rs. 5,000/- within another one month. If the tenant fails to pay the amount as above, landlord is entitled to get the order executed.

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