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Ratheesh Kumar Vs. Jithendra Kumar

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Court : Kerala

Decided On : Mar-22-2005

Reported in : 2005(2)KLT669

Judge : R. Bhaskaran and; M.N. Krishnan, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11(2), 11(16) and 20; Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Sections 25; ;Code of Civil Procedure (CPC) - Sections 115 - Order 3, Rules 1 and 2; ;Evidence Act - Sections 60 and 120

Appeal No. : R.C.R. No. 401 of 2004 etc.

Appellant : Ratheesh Kumar

Respondent : Jithendra Kumar

Advocate for Def. : N.D. Premachandran, Adv.

Advocate for Pet/Ap. : S. Sanal Kumar and; Bhavana Velayudhan, Advs.

Disposition : Petition dismissed

Judgement :
ORDER

R. Bhaskaran, J.

1. These Rent Control Revisions are filed against the common judgment of the Additional Rent Control Appellate Authority, Alappuzha, in R.C.A. Nos. 20, 37, 38, 40, 41 & 442 of 2001. There were six Rent Control Petitions filed by the same landlord against six separate tenants. The tenants were in occupation of a line building in Alappuzha Town. The landlord sought eviction of the buildings on the ground of arrears of rent as against the respondents in R.C.P.Nos. 20, 22 and 25 of 1997. He also sought eviction on the ground of bona fide need for occupation against all the respondents. The parties are here-in-after referred to according to their status in the Rent Control Petitions.

2. The Rent Control Petitions were filed stating that the 10 rooms having Municipal Numbers AMCW.19/496 to 503 and 485 and 517 belonged to the landlord as per partition deed No.2465/1987 of SRO, Alappuzha. For the purpose of disposal of these revisions, it is not necessary to state the facts of each case as the facts are more or less similar. All the Rent Control Petitions are filed by the landlord through his power-of-attorney, Chandresh T.Lodhaya, Sunder Nivas, C.C.N.B.Road, Alappuzha. In R.C.P. No. 20 of 1997, the landlord contended that the tenant had taken the room on a monthly rent of Rs. 150/- and the rent was defaulted from December, 1994 onwards. The notice terminating the tenancy was sent on 14.5.1996. The petitioner is in bona fide need of the petition schedule shop room with other rooms for putting up a residence for him after renovation. He is residing with his brother Chandresh. The counter-petitioner has approached the landlord after receipt of notice and requested for time to vacate the room. But he did not vacate the premises and the Rent Control Petition was filed. There is vacant land on the back side of the petition schedule building. For the better enjoyment of the land, there is no convenience passage. Hence the western most 3 rooms bearing Nos, 493, 494 and 495 have to be demolished. The petitioner has obtained necessary sanction from the Local Authority to demolish the other rooms for his use. The petitioner is having financial capacity to meet the expenses for the renovation.

3. In the objections filed, the tenants contended that Chandresh Lodhaya has no right to file the Rent Control Petition on behalf of the landlord. The petitioner is not the landlord of the properties. In R.C.P.No. 20 of 1997, it was contended that the

rate of rent claimed in the petition is not correct. The counter-petitioner is a kudikidappukaran in the plaint schedule building. It will fetch a monthly rent of Rs. 3/- only. There was no agreement to surrender and the counter-petitioner has sent a reply stating the true and correct facts. There is no arrears of rent as alleged in the petition. There is no bonafide need for the petitioner. He has another residence in Alappuzha and other buildings in other places. He is not residing with his brother Chandresh. The allegation that at present there is no convenient passage for going to the back side of the petition schedule building is not correct. The petition schedule building is not liable to be demolished. The Local Authority did not grant any sanction. The petitioner has no plan and licence to reconstruct or renovate the building. The petitioner has no ability or financial capacity for the renovation. The petitioner has other buildings of his own in Alappuzha. The contentions in the other Rent Control Petitions are also same except with regard to the rent claimed in respect of each building.

4. The Rent Control Court found that as per Ext. A22 power-of-attorney executed by the landlord PW.1 has got every authority to file the petition seeking eviction. The Rent Control Court also found that all the respondents are in possession of the respective rooms under the same landlord on tenancy arrangement and that the petitioner has got the right of the landlord as per Ext. A4 partition deed of 1987. The Rent Control Court found that there is no bona fides in the denial of title by the tenants or in claiming kudikidappu right over the petition schedule shop rooms. It was also found that the tenants failed to pay arrears of rent (except in the case of the respondents in R.C.P. Nos. 21, 26 and 27 of 1997) due to the petitioner even after accepting notices served upon them and that they were liable to be evicted under Section 11(2)(b) of the Act. The Rent Control Court found that PW1 was competent to give evidence on behalf of the landlord and that the landlord has established bonafide need for getting eviction of the entire rooms.

5. All the respondents filed appeals before the Rent Control Appellate Authority. The Appellate Authority has confirmed the findings of the Rent Control Court and has dismissed the appeals.

6. In these Rent Control Revisions, the learned counsel for the petitioners contended that the main claim of the landlord is for eviction of the respective tenants on the ground of bonafide need. The competent person to speak about the bona fide need is the landlord himself. The non-examination of the landlord, according to the counsel for the petitioners, is fatal to his case and PW1 is not the person competent to give evidence in the place of the petitioner though he may be competent to give evidence as a witness on behalf of the petitioner. According to the learned counsel, bona fide need is a state of mind which is to be explained by the person who needs the buildings for his own occupation. In this case, the landlord has claimed eviction of three rooms bearing door Nos. 19/493, 494 and 495 for the mere purpose of having an entry to the back side of the petitioners' property. The petitioner has never stated either in the Rent Control Petition or through PW1 as to the purpose for which he wanted to put the land behind the buildings after demolishing the three shop rooms and creating an entry to the back side of the property. It is also pointed out that there is a pathway having 2.15 metres width on the western extremity of the entire buildings and if the purpose was to have a wider pathway, it was even sufficient to demolish a portion of one of the rooms on the extreme left of the rooms for a pathway. It was pointed out that for the purpose of proving the bona fide need and the purpose for which the buildings were to be demolished, no Commission was taken. The learned counsel for the revision petitioners also contended that the petitioner has no case that he wanted to construct a residential building for his residence after demolishing the existing buildings. His only case is that he wants to renovate the line rooms and to reside there with his family. In this context also the evidence of the landlord is very material. Whether a person of his status will stay with family in these line rooms without demolition and re-construction especially when he has got 61 cents of land in the same compound for constructing a residential building is to be stated by him on oath. Ext. A23 is the plan submitted before the Local Authority for renovation of the existing building. That plan itself shows a passage in between the two buildings. According to the learned counsel for the landlord, since there is a common roof for all the buildings, it is not possible to take a vehicle through that passage. What exactly is the width of the passage and whether a vehicle can be taken without demolishing the roof is also not brought out in evidence nor any

Commission taken out for that purpose.

7. According to the learned counsel for the landlord, Ext.A22, the power of attorney gives ample power to PW1to file the Rent Control Petitions and to prosecute the same and that PW1 is competent to give evidence as landlord in his capacity as power-of-attorney-holder of the landlord.

8. The questions for consideration in these revisions are (1) whether the petitioner has established bona fide need as alleged in the Rent Control Petitions, (2) whether there are arrears of rent, and (3) whether there is bona fide denial of title of the landlord.

Point No. 1

9. Though the learned counsel for the revision petitioners contended that Ext. A22 the power-of-attorney executed by the landlord in favour of PW1 is insufficient to enable PW1 to file the Rent Control Petitions, we are not impressed with that argument. A reading of Ext.A22, the power-of-attorney would clearly show that powers were given to him to file necessary application before Court and to prosecute the same on his behalf. According to the learned counsel for the revision petitioners, as per Section 11(16) of the Kerala Buildings (Lease and Rent Control) Act, there should be a previous written consent of the landlord to enable the landlord as an agent to apply for eviction of a tenant. We do not find any reason to hold that Ext.A22 will not amount to a written consent as it is a general power-of-attorney giving powers to PW1 to commence, carry on or defend all actions and other proceedings concerning any property whether movable or immovable or any part thereof or concerning anything in which the landlord was a party and to compound, compromise or submit to arbitration all actions, suits, accounts, claims and disputes between him and any other person and to engage any Pleader or Advocate or Lawyer to conduct any case, suit or other proceedings concerning anything in which he has any interest. Though Ext.A22 does not specifically refer to the filing of the Rent Control Petitions against the respondents, we are of opinion that it is sufficient written consent as contemplated in Section 11(16) of the Act. By enacting Section 11(16), the intention of the Legislature was only to prevent an agent who was receiving rent on behalf of the landlord from

filing a Rent Control Petition without his previous written consent for the purpose of evicting a tenant. Since Ext.A22 shows the written consent in a general way, there is nothing to show that it is insufficient for the purpose of filing the Rent Control Petitions. This view of ours is supported by the decision of the Division Bench of this Court in Aravindakshan v. Raghavan, (2000 (1) KLT 486).

10. The more important question seriously pressed before us is whether PW1 is capable of giving evidence as landlord or establish the bona fide need of the landlord. According to the learned counsel for the revision petitioners, Ext.A22 power-of-attorney at the most, enables him to file the Rent Control Petitions only. But whether there is real bona fide need or not is to be spoken to by the landlord himself since it is his claim for eviction on the ground of bona fide need that has to be established in Court and to prove that he is expected to give best evidence. There is no case for the landlord that he was incapable of giving evidence in the Court. The only excuse put forward is that he was always on tour for the business purpose and was not available in station. But PW1 has admitted in evidence that the landlord has no difficulty in giving evidence and it was he who sent him out without giving evidence. He also admitted that he has got only hearsay evidence about his brother's need. The very words of PW1 in this context can be quoted. He stated as follows in page 12 of the original deposition:

These admissions would show that it was PW1 who sent out the landlord without giving evidence in Court. PW1 has no bonafide need. The petitioner has no difficulty in coming to the Court. He is capable of giving evidence in the case than PW1. PW1 has got only hearsay knowledge about the need set up by the petitioner. In such circumstances, we have to consider whether the evidence adduced by PW1 is sufficient to pass an order of eviction of the respondents from their respective habitats.

11. Before going into the details, one argument of the learned counsel for the respondent has to be considered at this jucture. According to the learned counsel for the respondent, this Court sitting in revision has no jurisdiction to re appreciate the evidence and come to a different conclusion than the one arrived at by the fact finding authorities. We are aware of this Court's attenuated jurisdiction under

Section 20 of the Act. But when a question of law is raised and that question of law goes to the root of the matter depriving the Rent Control Court and the Appellate Authority jurisdiction to grant an order of eviction without the necessary evidence, in such cases, this Court can and should interfere in appropriate cases. This is not a case of reappreciation of evidence and coming to a different conclusion which was held to be not permissible in exercise of power under Section 20 by this Court in Raghavan v. Raju, 1998 (2) KLT 394. The learned counsel also relied on the decision of the Supreme Court in D. Radhakrishnan v. M. Loorduswamy, (2001) 10 SCC 641. In that case also, the Supreme Court held that though the power of revision under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, was wider than Section 115 of the Code of Civil Procedure, the High Court could not exercise that jurisdiction as an Appellate Court. But it was made clear that the scope of interference was limited to examining and satisfying itself by the High Court as to whether the procedure followed by the forum below is regular or not and whether there was any illegality or impropriety in the decisions arrived at. Going by the test laid down by the Supreme Court we are of the view that when the landlord requires the building for him bonafide use and he is the only person who can speak about his need and he is not examined, the finding of the Rent Control Court as well as the Appellate Authority based on the evidence of his brother suffer from vice of a decision based on no evidence.

12. The question whether a power-of-attorney holder can depose in the place of the principal and instead of the principal for the acts done by the principal and not by the power-of-attorney holder came up for consideration before the Supreme Court in Janki Vashdeo Bhojwani v. Indusind Bank Ltd., 2005 (2) KLT 265 (SC) = (2005) 2 SCC 217. The Supreme court held as follows:

'Order 3, Rules 1 and 2 C.P.C. empower the holder of power-of-attorney to 'act' on behalf of the principal. In our view, the word 'acts' employed in Order 3 Rules 1 and 2 CPC confines only to in respect of 'acts' done by the power-of-attorney holder in exercise of power granted by the instrument. The terms 'acts' would not include deposing in place and instead of the principal. In other words, if the power-of-attorney holder has rendered some 'acts' in pursuance of power-of-attorney, he may depose for the principal in respect of such acts, but he cannot depose for the

principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the mutter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined'.

The Supreme Court referred to the decision in Vidhyadhar v. Manikrao, (1999) 3 SCC 573, wherein it was held that 'where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct....'. It was categorically held by the Apex Court that a general power-of-attorney holder cannot be allowed to appear as a witness on behalf of the plaintiff in the capacity of the plaintiff. The divergent views of the High Courts with regard to scope and content of Order 3, Rule 2 of the Code of Civil Procedure were considered by the Supreme Court and it was specifically held that the power-of-attorney holder of a party can appear only in his personal capacity and cannot appear on behalf of the party in the capacity of that party. The view taken by the Bombay High Court in Humberto Luis v. Floriano Armando Luis (2002), 2 Bombay CR 754, to the contrary and holding that to 'act' as per Order 3 Rule 2 CPC would include 'depose' was found to be unsustainable. The Supreme Court upheld the reasoning of the Rajasthan High Courts in Shambhu Dutt Shastri v. State of Rajasthan, (1986) 2 WLN 713, and Ram Prasad v. Hari Narain, AIR 1998 Raj 185. In the light of the authoritative pronouncement of the Supreme Court, the evidence of PW.1 as if he was giving evidence by the landlord himself cannot be accepted. This Court in Shaji v. Reghunandanan, 1999 (3) KLT SN Page 82 Case No. 85, also took the view that as regards the evidence in a case, the rule is that the best evidence must be let in. If the evidence of the complainant is required for proving any point, the power-of-attorney cannot substitute him as a proxy and give evidence on his behalf or speak to matters which are within his personal knowledge. It will be open for the prosecution to examine the power-of-attorney as a witness, but that does not mean that he is competent to* speak to all the facts relating to the case. Another Division Bench of this Court in Thomas John v. Kochammini Amma, 1994(2) KLT571, also took the view with respect to establishing the bonafide need in a Rent Control Petition for eviction of a tenant. It was held that when the need alleged is that of the landlord himself for his own

occupation and he approaches the Rent Control Court with a request for eviction, it goes without saying that the need has to be established by him by appropriate evidence. Bona fide, means the state of mind. That state can be manifested only by the person who entertains a desire to have the building for his own occupation, None of the persons who need the building has chosen to speak about his need. It was held that it could not therefore be said that either the landlord has established the need for own occupation or that the need alleged was bonafide.

13. The learned counsel for the respondent relied on certain decisions of this Court to contend for the position that in all cases where the landlord seeks eviction on the ground of bonafide need, the landlord himself need not be examined as a witness, He has placed reliance on the decision in Bhaskaran v. Unni, 1984 KLT 1016. In that case, the husband gave evidence on behalf of the wife who was the landlady. It was found that the husband was more competent to speak about the material facts such as termination of his service which necessitated the return to home State. Section 120 of the Indian evidence Act states that husband or wife of any party to the suit in all civil proceedings shall be competent witnesses. On the other hand, Section 60 of the Indian Evidence Act specifically states that oral evidence must be direct in all cases, that is to say - if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it. If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it. If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says that he perceived it by that sense or in that manner. If it refers to an opinion or to the grounds on which that opinion is held it must be the evidence of the person who holds that opinion on those grounds.

14. The learned counsel for the respondent also brought to our notice the decision of Justice John Mathew in Subaida v. Krishnan, 1986 KLT 663. The landlord was a Muslim pardanashin lady and her husband gave evidence in the Rent Control Petition. It was held that dismissal of petition for eviction on the ground that the landlady herself was not examined in Court was incorrect. On the facts of that case the conclusion could be justified since the husband gave evidence on behalf of his wife and the wife was a pardanashin lady. The learned Judge in fact relied

on the decision of the Madras High Court in V.R. Sha and Anr. v. N. Visalakshi, 1983 (2) RCJ 610, to hold that it is not an inflexible rule that the landlord himself must give evidence in all cases. It will depend upon the facts of each case. The learned counsel also relied on the decision of this Court in Devayani v. Pallickaparambil Hamza Haji, 1997 (1) KLJ 230. That was a case where this Court held that even if the person for whose benefit and who was the dependent of the landlord was not examined, it could not be stated that the bona fide requirement could not be proved. But it was held that it would have been more proper for the landlord's son for whose bona fide need the landlord required the building was examined. In that case, though the landlord was examined, the case was remanded to the Rent Control Court giving liability to both sides to adduce fresh evidence. Therefore, if the landlord needs the building for his own occupation he must depose that he needs the building for own occupation and he must be prepared to be cross-examined.

15. The learned counsel for the respondent also relied on various decisions of this Court to contend for the position that the tenant cannot dictate to the landlord as to how he should accommodate himself. He relied on the decision in Ramachandran v. Gopinathan, 2003 (2) KLT 694, and it was held in that decision that the tenant cannot dictate whether the building is suitable for the use of the landlord. If the landlord thinks that a house with five rooms and kitchen is sufficient for a family of five members and that it will not affect his social status, there is no reason to reject the claim that he bona fide requires the building for his own use. It is true that the tenant cannot dictate as to how the landlord should adjust his needs and whether even without affecting the tenant he can very well continue in the present residence. PW.1, the brother has given evidence stating that the landlord is at present residing with him and that building belongs to him. He was with him for the last 25 years. The learned counsel for the revision petitioner in R.C.R. No.30 of 2005 pointed out on the basis of the entries in the ration card that the names of the wife and two children of the landlord are removed from the ration card and they are not residing with him. These are in the realm of appreciation of evidence and we will not be justified in indulging in the same. The question whether there is any evidence at all in a case to sustain the claim under a bona fide need is different from reappreciation of evidence. As already noted earlier, the petitioner wants

demolition of the three rooms occupied by the three families for enabling him to have an entry to the back portion of the property. He has no case so far either pleaded or proved as to the purpose for which he wants to use the backyard of the property after getting entry. This is not without any significance because if he had stated that he wanted to construct a residential building in the 61 cents necessarily his bona fide need for occupation of the line rooms will not be available. Therefore, his non-mentioning of the need after getting entry to the back portion of the line building is intentional. There is also no evidence as to whether the entire three rooms have to be demolished for having an entry to the back portion especially when there is an entry from the main road on the western side with a pathway having 2.15 metres width. It could be seen from the plan submitted before the Local Authority and marked as Ext.A23 that there is another entry to the property through the middle of the buildings. Regarding the width of-that entry and whether vehicles can be taken inside the property through that is not brought out by taking out a Commission and requesting the Commissioner to submit a plan showing the details of various points through which the petitioner can get into the back side of his property. Therefore, the direction to demolish the three rooms bearing Nos. 19/493, 19/494 and 19/495 merely for the purpose of the entry to the backside is without any evidence. It is true that a tenant can be evicted even for the purpose of creating a pathway to the residence of the landlord. But the question as to whether it is necessary to demolish all the three rooms for the purpose of the entry to the backside of the property has not been considered by the Rent Control Court or the Appellate Authority. If it is for mere occupation of the other building, PW.1 has admitted that even without demolishing building Nos. 493 to 495 the other rooms can be renovated. It is also agreed before us by both sides that the landlord has obtained vacant possession of the three rooms in the row of rooms with door Nos. 491, 492 and 486. In that respect also, whether there is any necessity for displacing the tenants occupying door Nos. 493, 494 and 495 has not been considered by the Rent Control Court. According to the Appellate Authority, the landlord wanted to demolish the westernmost three rooms and to have access to the backside for the convenient residence of the landlord in the building. That is for the landlord to establish and it cannot be presumed by the Court.

16. The learned counsel for the respondents pointed out that none of the respondents have entered in the witness box to deny the evidence adduced by PW1. In fact that is the main reason why the Rent Control Court as well as the Appellate Authority held against the respondents. It is true that non-examination of the respondents would have been very material in these cases, if the landlord had given evidence himself showing his bona fide need and the Rent Control Court had found that on that evidence the bona fide need was established. We have come to the conclusion that the evidence of PW1 who is the brother of the landlord is not a substitute for the evidence of the landlord himself in the light of the decision of the Supreme Court in Janki, Vashdeo Bhojwani v. Indusind Bank Ltd, 2005 (2) KLT 265 (SC) = (2005) 2 SCC 217. If PW.l was not competent to give evidence in the place of the landlord merely on the basis of the power-of-attorney, it will be a case where there is no evidence to substantiate the bona fide need set up in the Rent Control Petitions.

17. Similar is the case with regard to the six rooms which are sought to be evicted for renovation and residence of the landlord. It is for him to establish as to whether he will reside in the line building after renovation especially when he has got 61 cents of land in the same compound and he is a businessman not even having time to give evidence in his own case. It is true that the tenant or the Court cannot dictate as to how he should use his buildings. But when the question of bonafide is to be tested by the court, the court can insist on the evidence of the person himself who wants the building for his own occupation. The learned counsel for the respondent then contended that in such a case the landlord may be given an opportunity to examine himself and adduce further evidence in the case. The revision petitioners also requested for an opportunity to adduce evidence in the case. Since we are holding in revision that the evidence of the power of attorney holder is not a substitute for the evidence of the petitioner in the Rent Control Petition and the landlord himself has to give evidence to establish his bona fide need, we are inclined to give an opportunity to both sides to adduce evidence in the case.

Point No. 2

18. The Rent Control Court has found that the respondents in R.C.P.Nos. 20, 22, 25 of 1997 have kept rent in arrears and that the landlord is entitled for an order for eviction under Section 11(2)(b) of the Act. The respondents in the above Rent Control Petitions were issued with notices claiming rent from December, 1994 (RCP No. 20 of 1997), November, 1995 (R.C.R No. 22 of 1997) and April, 1993 (R.C.P. No. 25 of 1997). Though the tenants denied the claim on the ground that they are in occupation as kudikidappukars, that claim was found against. Exts. A27 to A35 counterfoils of receipts kept by the landlord showed payment of rent. Exts.A1, A10 and A13 are the lawyer notices demanding arrears of rent. The tenants did not adduce any evidence to substantiate their contentions. Since, on the materials on record, both the Rent Control Court as well as the Appellate Authority found that the respondents in these Rent Control Petitions have kept rent in arrears and that is a pure finding of fact, we do not think that there is any scope for interference. We, however, grant time for deposit of arrears of rent to the respondents in the three Rent Control Petitions upto 25.5.2005.

Point No.3

19. The only question to be considered on this point is whether the denial of title by the tenants is bona fide. Though the learned counsel for the revision petitioner in R.C.R.No. 30 of 2005 contended that the lease in petitioner's favour is a composite lease in 2 cents and the building, we are not in a position to accept this contention since the revision petitioner is occupying the room in a line building and it is not an independent building. Though the revision petitioners denied title of the landlord and claimed kudikidappu right, they have not stated how they got possession of the respective rooms. It is true that in the Rent Control Petitions also, the actual date of entrustment to each of the tenants is not mentioned. The counter-petitioners in R.C.P. Nos. 20 & 22 of 1997 have executed rent deeds which were produced and marked as Exts.A25 and A37 respectively. The respondent in R.C.P. No. 25 of 1997 has sent Ext.39 letter informing that there is no possibility of increasing the rent. Ext. A42 is the letter sent by the landlord to counter-petitioner in R.C.P. No. 26 of 1997 for enhancement of rent and by Ext.A43 the tenant has informed that he is not prepared to increase the rent. Similarly, Ext.A47 is the objection filed in the earlier R.C.P. filed as R.C.P. No. 19

of 1984 wherein he had admitted his possession as tenant from the present landlord. He has sent Ext.A49 letter requiring maintenance to be done and approached the Revenue Divisional Officer, Alappuzha, for removal of branches of a tree which was standing near the premises let out to him. Ext.A51 is the proceedings of the R.D.O. Ext.A52 series are the coupons of the money orders sent by him to the landlord. Ext. A4 is the partition deed by which the present landlord got title to the property and as per Ext. A5 he has paid basic tax. From all these documents, it is clear that the denial of title is without any bona fides. Their claim for kudikidappu cannot be entertained since admittedly they are in possession of the rooms in a line building and a Full Bench of this Court in Muhammad v. Imbichi, 1974 KLT 738 (FB) has held that portions of a building used as dwelling place cannot be treated as a hut and the occupants of such building cannot claim kudikidapu right. On the above reasoning, the finding of the authorities below that there is no bona fide denial of title is only to be upheld.

20. On the basis of our finding on point No. 1, we allow these Rent Control Revisions and set aside the judgment of the Rent Control Appellate Authority and the Rent Control Court and remand the cases to the Rent Control Court to enable the parties to adduce fresh evidence. They shall appear before the Rent Control Court on 19.5.2005. The parties shall bear their costs in these revisions. Order on LA. No. 211 of 2005 in R.C.R. No. 30 of 2005.

Dismissed.

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