

Annie George Vs. Jamal

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SooperKanoon Citation : sooperkanoon.com/724539

Court : Kerala

Decided On : Apr-10-2003

Reported in : 2003(2)KLT530

Judge : S. Sankarasubban and; K.K. Denesan, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11(3)

Appeal No. : C.R.P. No. 1210 of 2002

Appellant : Annie George

Respondent : Jamal

Advocate for Def. : S. Santhosh,; P. Suresh,; Dinesh Mathew Muricken and

Advocate for Pet/Ap. : M.P. Ramnath, Adv.

Disposition : Civil revision petition allowed

Judgement :

ORDER

S. Sankarasubban, J.

1. This Civil Revision Petition is filed against the judgment in R.C.A. No. 86 of 2002 of the Rent Control Appellate Authority, Ernakulam. The first respondent in the Civil Revision Petition, T.A. Jamal filed the petition for eviction. The petitioner

in the Civil Revision Petition Annie George is the first respondent in the Rent Control Petition and Vasudevan is the second respondent in the Rent Control Petition.

2. The husband of the petitioner late Dr. O.A. George was conducting a Medical Clinic under the name and style 'A.G. Hospital'. The petitioner is the tenant of the building No. XI/100. The said building is situated in the first floor in a large building complex. The second respondent Vasudevan is the tenant in occupation of a separate building bearing No. XI/101 of Kalamassery Municipality. The Rent Control Petition was filed for evicting the petitioner for the purpose of residence of the landlord. So far as the second respondent is concerned, the petition was filed for eviction for commercial purpose, vi., starting a business in Ice cream Parlour or fruit juice stall and a Fast Food counter. Thus, a single petition was filed by the landlord for evicting the two tenants.

3. The petitioner in the Civil Revision Petition filed objections raising two grounds against the maintainability of the petition. According to her, the petition is bad for misjoinder of cause of action. The petitioner further raised the contention denying title of the landlord. These two issues were heard together by the Rent Control Court and the Rent Control Court passed order on 16.2.2002. According to the Rent Control Court, the first issue regarding the misjoinder was decided earlier and hence, it was not necessary to decide it later. So far as the second question is concerned, it held that the denial of title is not bona fide.

4. Against the above order, the petitioner in the Rent Control Petition preferred R.C.A. No. 86 of 2002. The Appellate Court upheld the order passed by the Rent Control Court and dismissed the petition. It is against the above order that the present revision is filed.

5. We heard learned counsel for the petitioner Sri. M.P. Ramnath and learned counsel for the respondents Sri. Suresh.

6. Shri. Ramnath contended that the order passed by the court below is not correct. According to him, there are two cause of actions; one against the first respondent in the Rent Control Petition and the other is against the second

respondent in the Rent Control Petition. The landlord wanted eviction of the first respondent in the Rent Control Petition on the ground that he wants that building for the purpose of his residence and wants to evict the second respondent in the Rent Control Petition on the ground that he wants the building for the purpose of starting Ice cream Parlour, etc. There are two different tenancies and two different tenants. The Appellate Court took the view that the contention is a technical one and that the Rent Control Petition was filed in 1999. There was no misjoinder of cause of action.

7. In *Sulthan v. Mohanan* (2000 (3) KLT 338) a Division Bench consisting of Balasubramanyan, J. (as he then was) and Hassan Pillai, J., considered the question with regard to the ground of reconstruction. There, this Court held as follows: 'On principle it appears to us that when a landlord seeks eviction on the ground that the building needs reconstruction, what the landlord is projecting is the need to reconstruct the entire structure and not some of the rooms in the building, which could also qualify as a building as per the definition contained in the Act. Normally a landlord - unless there be exceptional cases - cannot ask for reconstruction of only one room in the very many rooms in a building or a structure. He could only ask for a renovation as provided under Section 11(5) of the Act. So when a reconstruction is involved with the corresponding obligation in the landlord to offer the reconstructed building to the tenant or tenants, reconstruction can only be of the entire structure or of the one building of which the various rooms form part and in such a situation, an application for eviction can be and in fact ought to be, of the entire structure and not of the various units in that structure. What is important is that when a landlord seeks an order for eviction on the ground of reconstruction, the occupants - tenants shall be given an opportunity to resist the claim and all that is needed is to implead all the tenants in occupation so as to give them that opportunity of being heard. That has happened in this case. The landlord had made the application for eviction of the entire structure impleading all the occupants of that structure'. The Division Bench relied on the decisions reported in *Devassia v. St. Mary's Forane Church* - 1983 KLT 172 and *S.M.G. Chetty v. Ganeshan* (AIR 1975 SC 1750). The decision in 1983 KLT 172 was a case relating to reconstruction. In that decision, Chundrasekhara Menon, J. while analysing the position held as follows: 'Under Section 11(4) of the Act, if the

building is in such a condition that it needs reconstruction and if the landlord requires bona fide to reconstruct the same and if he satisfies the Court that he has the plan and licence if any required and the ability to rebuild and if the proposal is not made as a pretext for eviction, a tenant could be evicted.The principal question in the case would be whether the landlord bona fide requires the building for reconstruction'. Thus, the court held that a single petition is maintainable. In Vasudevan v. Balakrishnan (1986 KLT 988) Pareed Pillay, J. (as he then was) considered a similar question. In that case there were six tenants - defendants. The plaintiff filed the suit against all these tenants. Defendants 3, 4 and 5 raised the contention that a single suit against all the six defendants is not maintainable. The learned Munsiff held that since there is misjoinder of causes of action, the suit was not maintainable. The court held as follows: 'Merely because the suit notice was served on all the defendants and that they refused to vacate the premises it cannot be said that the refusal would give a right to the plaintiff to claim relief in respect of, or arising out of, the same act or transaction or series of acts or transactions so that he could file a single suit against all of them. Order I Rule 3 postulates that two conditions must be satisfied where two or more defendants can be joined in the same suit. The first condition is that plaintiff must allege a right to refer against them in respect of the same act or transaction or series of acts or transactions. The second condition is that if separate suits were brought against the defendants any common question of law or fact would arise. The above two conditions must exist together. Existence of one of the conditions alone is not sufficient. In the present case each defendant is in possession of separate portions of the building under separate tenancy arrangements. Apart from the fact that the defendants are occupying portions of the same building there is nothing common among them to be agitated in the suit. As such shop room is separately occupied by different tenants and as they are let out to them under different tenancy arrangements, it cannot be said that a single suit can be filed against all of them'.

8. According to us, the causes of action against the two tenants are different. There are two tenancies and two tenants. The cause of action against the first respondent is the need of the landlord to shift his residence. The cause of action against the second respondent is to start an Icecream Parlour, etc. There the

second respondent can raise the contention regarding the proviso to Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act. Thus, we find that there is misjoinder of cause of action in the case and the petition is liable to be dismissed for that. So far as the next question of bona fide denial is concerned, we agree with both the courts that no case has been made by the tenant.

9. Before we end we should state that the Rent Control Court was not correct in holding that the issue of misjoinder of cause of action was decided earlier. We find that the decision was made by the Court without hearing both the parties. The decision can be given only after hearing both the parties.

10. In the above view of the matter, the Civil Revision Petition is allowed. There is a misjoinder of cause of action in the rent control proceedings. The landlord/petitioner is given the option to proceed with the Rent Control Petition against one of the respondents. He can file new petition with regard to the other respondent such steps may be taken before 31.5.2003.