

Prema Ramakrishnan Vs. Salmath

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Court : Kerala

Decided On : Jun-06-2006

Reported in : 2006(3)KLT284

Judge : M. Ramachandran and; A.K. Basheer, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11(2) and 11(3)

Appeal No. : C.R.P. No. 2556 of 2002

Appellant : Prema Ramakrishnan

Respondent : Salmath

Advocate for Def. : K. Ramachandran, Adv.

Advocate for Pet/Ap. : P. Chandrasekhar, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

M. Ramachandran, J.

1. Concurrent finding entered into respectively by the Rent Controller, Tirur in R.C.P No. 23 of 1994 and the Appellate Authority, Manjeri in R.C.A. No. 28 of

1995 is challenged by the tenant in these proceedings.

2. Mr. P. Chandrasekhar, appearing for the petitioner tenant had confined his argument on one issue, namely as to the effect of the demise of the petitioner before the Rent Control Appellate Authority during the pendency of the appeal. He submits that the Appellate Authority had failed to take notice of the impact in its proper perspective. Advertence was made to the decisions of this Court in Kutty Krishnan v. Cheriya Raran 2001 (3) KLT SN 29 (C.No. 41) as well as Jayarajan v. Yesoda 2003 (2) KLT 325.

3. On the other hand, learned Counsel for the landlords placed heavy reliance on the decision of the Supreme Court, reported as Kamleshwar Prasad v. Pradumanju Agarwal AIR 1997 SC 2399 as well as Mathew V. Thomas v. Sali Sunny 2003 (1) KLT SN 40 : 2003 (1) KLJ 186.

4. The landlord, deceased Kammu, had filed an application under Section 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act (for short, the Act). According to him, the room was let out to the tenant in the year 1984, where she was running a Clinical Laboratory. He had been abroad and after coming to his native place, he wanted to start a wholesale business in stationery and grocery, and as he had no other premises to start the business, he had required the tenant to vacate the room, but it had been resisted.

5. The authorities below held that the landlord was entitled to get vacant possession, although the tenant had raised a contention that there was no bona fides in the claims made under Section 11(3) of the Act and it is only a pretext for eviction.

6. The order was passed for eviction on 22.8.1995. An appeal had been preferred there from, but pending the appeal, the original landlord (Sri. Kammu) had passed away. A contention thereupon had been raised that the bona fide need, on which the claims rested, no more subsist. The Appellate Authority had been addressed that there was nothing on record to show that the legal heirs, who had been brought into the array of parties representing the landlord, ever wished to engage in any business that had been proposed to commence by deceased Kammu.

7. However, the Appellate Authority held that the contention as above was difficult to be accepted. It was held that the need pleaded could not be considered simply as personal. No circumstances were present to show that wife and children could not conduct the said business. Thereupon the appeal was dismissed.

8. Mr. Chandrasekhar had, with reference to the judgments referred to earlier, reargued the contentions, but we find that it is difficult for him to successfully field the arguments. Although there was not much of materials brought before the authority to show that what was intended was a family business, nevertheless the alleged paucity of materials in those region, according to us, is still insufficient for us to conclude that the need was really personal.

9. In Kutty Krishnan's case (cited supra), the Court had taken notice of the caution that was to be exercised while examining the impact of subsequent events. Of course, the position is well settled that in moulding the relief, the situation which was available as on the date of the application need not unnecessarily bind the Courts and changed circumstances do have an impact as it ought to be. In Jayarajan's case (cited supra), the landlord/wife had pleaded for the cause of her husband, who was a dependent on her, for facilitating starting of a business. Mr. Chandrasekhar points out that the situation was identical, namely that the husband had returned from Abu Dhabi service and wanted to start a grocery shop. Nevertheless we find that findings had been entered into by a Division Bench specifically holding that 'after the death of her husband, there was no need for starting the business'. It was in view of the above that the Court observed that the need became abated after the death of her husband.

10. We have also to take notice of the observations of the Supreme Court in Kamleshwar Prasad's case (cited supra) that bonafide need for starting the business does not lapse on the death of the landlord, as could be carried on by his widow.

11. As pointed out by Sri. K. Ramachandran, appearing for the respondents, the facts of the case really assume importance in such a situation. We also notice that in Mathew V. Thomas v. Salt Sunny 2003 (1) KLT SN 40 : 2003 (1) KLJ 186, a Division Bench had held that the need could not extinguish on the death of the

original applicant. The Court was relying on the judgment of the Supreme Court in *Pasupuleti Venkateswarlu v. Motor and General Traders* : [1975]3SCR958 .

12. It is brought to our attention by the counsel for the respondents that Kammu had left children, who are majors, and it would have been possible for them to start the business once vacant possession was obtained. Taking notice of the situation that the Courts below had entered a definite finding that the tenant was never entitled to protection of the second proviso to Section 11(3) of the Act, when the landlord had established bona fides and eviction had been ordered, especially on the facts and circumstances of the case, we do not think interference is just or equitable.

13. The authorities are clear that the bona fide need may survive a deceased landlord, and it is not as if the tables are to be turned as against the legal representatives of the landlord once he leaves the scene. The provisions of the Act cannot be construed in a manner so as to confer undue benefit to a tenant, because of a bereavement suffered by legal representatives of the landlord. We cannot assume that Sri. Kammu had intended to start the business for himself alone. He was the head of the family and after coming from abroad was attempting a consolidation. When his children and wife were residing along with him, it has to be presumed that the need spoken to by him as well as the need of his dependents. We feel that only compelling reasons should have been there to persuade us otherwise. To foresee that, which lies before in daily life is prime wisdom; Sri. Kammu was preparing himself and his dependents cannot be robbed of the benefits of his foresight normally. The deceased was not a professional intending to open up on his own. He was proposing to carry on a business, which requires only ordinary skills. The burden is always on the party who alleges that the need projected was purely personal, which vanished by his demise. One cannot of course expect sportsman spirit in the context, but it will be too cruel to go on reasoning than being reasonable in such situation. The approach the Appellate Authority took was humane, reasonable and acceptable and not one to be disturbed in exercise of revisional jurisdiction. Further it is not as if the petitioner is without remedy in case the legal representatives remain idle once they secure vacant possession.

14. Consequently, the Civil Revision Petition is dismissed. No order as to costs.

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