

Raghavan Vs. Valsaraj

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Court : Kerala

Decided On : Jul-15-2004

Reported in : 2004(3)KLT134

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

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11(17) and 20; Code of Civil Procedure (CPC) - Sections 115

Appeal No. : C.R.P. No. 202 of 2003

Appellant : Raghavan

Respondent : Valsaraj

Advocate for Def. : T. Sehthumadhavan,; Pushparajan Kodoth and; Jayesh Mohan

Advocate for Pet/Ap. : M.C. Sen,; M.P. Sreekrishnan and; Shahna Karthikeyan

Judgement :

K.S. Radhakrishnan, J.

1. Whether execution of a fresh lease deed between the landlord and the tenant after 1.4.1940 would extinguish or disrupt the prior continuous occupation and hence fatal to a claim under Section 11 (17) of Act 2 of 1965 is the question that

arises for consideration in this case.

2. Counsel for the landlord placing reliance on Ext.B5 dt. 1.5.48 submitted the said document has to be treated as a fresh entrustment of lease to the tenant and hence whatever rights accrued to the tenant prior to the execution of the said deed would stand extinguished. Revision petitioner herein filed a petition under Section 11(3) claiming surrender of tenanted premises for the purpose of running a textile shop for the two of his sons who are unemployed. Schedule premises originally belonged to one Kallyanikutty Amma which was let out to one Gopalan Chettiar on 14.5.1948 on a monthly rent of Rs. 40/-. Part of the building numbered as 10/334 was sublet to the revision petitioner on 28.5.1953. Later room No.10/333 was partitioned by Gopalan Chettiar and a portion was let out to 4th respondent and another portion was sublet to first respondent. Kallyanikutty Amma later sold her right in the petition schedule room to the petitioner as per document No. 882/83. Gopalan Chettiar is no more. His wife and children are respondents 1 to 3. Petition schedule building Bona fide required for starting a textile shop.

3. Respondents 1 to 3 resisted the petition. It was stated that room No. 10/334 and its upstairs portion was taken on lease by Gopalan Chettiar on 1.3.1937 from Lakshmi Amma. The adjacent room No. 10/333 was taken on lease by Gopalan Chettiar on 31.10.1937. However, rent deed happened to be executed in the name of his friend. Kotheri Kelu though Gopalan Chettiar was paying the rent. Bona fide need urged by the landlord was also disputed. Landlord in order to establish his case got himself examined as PW.1. PW.2 was also examined on his side. A1 to A5 documents were produced. First respondent examined as RW.1. RW.2 was also examined to show possession of the respondents prior to 1948. Exts.B1 to B11 documents were produced on the side of the respondents.

4. Rent Control Court after considering oral and documentary evidence came to the conclusion that the need urged by the landlord is Bona fide and ordered eviction and the protection claimed by respondents under Section 11(17) was negated. Rent Control Court did not accept the contention that the rent was being paid to the landlord Sankunni Kurup and others in the year 1940 and before. Evidence of RW.2 was also disbelieved.1 Court concluded that evidence on record

would show that Gopalan Chettiar had executed rent receipt with respect to the petition schedule building in the year 1948 and that it was a fresh entrustment. On the said reasoning the protection claimed under Section 11(17) was rejected and ordered eviction. Respondents 1 and 2 took up the matter in appeal. Appellate Court found that they are entitled to get benefit of Section 11 (17) and the Rent Control Petition was dismissed.

5. Counsel appearing for the revision petitioner Sri. M.C. Sen contended that the Appellate Authority misunderstood the scope of Ext.B5 which was direct lease by Kally anikutty Amma to Gopalan Chettiar. Counsel submitted Appellate Authority failed to examine the effect of Ext.B3 kychit. Further it was also pointed out that B3 does not contain signature of landlady. Further it was also stated B7 would clearly show that the landlady herself was receiving rent and receipt was issued to Gopalan Chettiar. Further it was also stated B5 would not show that entrustment was prior to the year 1940. In any view of the matter counsel submitted if at all there was any right the same got extinguished on execution of B5.

6. Counsel appearing for the respondent Sri. T. Sethumadhavan on the other hand contended that Ext.B5 would positively show that Gopalan Chettiar was in possession of the premises prior to the said date. Counsel submitted that Gopalan Chettiar had obtained possession of the tenanted premises on 31.10.1937 and his friend Kotheri Kelu executed kychit in respect of the schedule building for and on behalf of Gopalan Chettiar. Reference was also made to Ext.B4 hand book maintained by Gopalan Chettiar which would show that rent was paid by Chettiar in respect of the petition schedule room. Ext.B5 according to the counsel, is a letter sent by Kally anikutty Amma on 1.5.1948 demanding enhancement of rent. Counsel also referred to the evidence of RW.2 who was writing accounts of Gopalan Chettiar. Counsel submitted there is no reason to disbelieve the evidence of RW.2.

7. The crucial document on which counsel on either side addressed their arguments is Ext.B5. Counsel for the revision petitioner submitted that the Appellate Authority completely misread Ext.B5 and failed to note that a fresh lease transaction originated from the date of Ext.B5. Emphasis was made on the word

'direct'. Counsel submitted whatever rights the lessee had on that date stood extinguished and the parties are governed by a fresh lease.

8. We find it difficult to accept the stand taken by the revision petitioner. We have perused Ext.B5 and the only inference that is possible is that Gopalan Chettiar was in possession prior to the said date of Ext.B5. B5 specifically refers to conduct of jewellery and stationery business in the two rooms mentioned therein by Gopalan Chettiar. Rate of rent also stipulated therein as Rs. 40/-. We have perused Ext.B4 hand book which shows that payment of rent at the rate of Rs. 12.50 per month. Top portion of the book it is stated rent receipt book executed by the landlord in 1939. It is also stated that it has been executed by Sankunni Kurup on behalf of Lakshmi Amma. In the second page of Ext.B4 it is stated that the rent receipt book of the previous 13 months is missing and this book is for the period from 14th month onwards. The first endorsement for receipt of rent in 2nd page of Ext.B4 is dated 5.11.39. It says that towards the arrears of rent upto 27.10.39 Rs. 37.50 is received. This endorsements signed by Sankunni Kurup. In the same page next receipt dt. 17.2.1940 signed by Sankunni Kurup. If we read the recital in B5 coupled with B4 the only conclusion that is possible is that Gopalan Chettiar was in possession prior to the year 1948. B3 is a lease deed executed by Kelu in favour of Lakshmi Amma on 31st October, 1937 and the only conclusion that is possible is that Kelu was occupying for and on behalf of Chettiar. Karyasthan of Chettiar was also examined as RW.2. The entries in B4 has been proved by him. Corresponding entries are found in B9, B 10, B11, all prior to the year 1940. The Appellate Authority in our view is correctly found that Chettiar was in possession prior to 5.11.1939.

9. We are of the view sitting in this revisional jurisdiction this Court is not justified in upsetting the reasoning of the Appellate Authority unless it is showed that reasoning is perverse or illegal. Reasoning adopted by the Appellate Authority is more probable taking into consideration of recitals in Ext.B5. In this connection we may refer to few decisions of the Apex Court in Rukmini Amma Saradamma v. Kallyani Sulochana (JT 1992 Supp. SC 314) which was later followed by the Apex Court in Ubaiba v. Damodaran (2000 (1) KLT 24 SC). Apex Court held that though the revisional power under the Rent Act may be wider than Section 115 of the

Code of Civil Procedure it cannot be equated even with the second appellate power conferred on the Civil Court under the Code of Civil Procedure. Apex Court held that the revisional Court will not be entitled to reappraise the evidence and substitute its own conclusion in the place of the conclusion of the Appellate Authority. On facts we are therefore in agreement with the reasoning of the Appellate Authority and we do not find any reason to interfere with the judgment in our revisional jurisdiction.

10. The scope of Section 11(17) came up for consideration in *Kodiyil Abdu v. Kodiyil Pathumma & Ors.* (1998 (1) KLJ 538). While interpreting A1 document on the facts of that case this Court came to the conclusion that previous tenancy came to an end and hence it was held that the revision petitioner in that case cannot claim protection under Section 11(17) of the Act. Plea of implied surrender was raised in *Viswanathan v. Abdul Hameed* (2000 (3) KLT 712). This Court negated the plea of implied surrender and held as follows:

'What Section 11(17) contemplates is, 'occupation' as tenant continuously from a date prior to 1.4.1940 and the section does not insist that the occupation must be under the same or original transaction of lease. What is needed is only continuous occupation as a tenant even if it be after fresh attornment, or execution of periodic rent deeds or by holding over. We are therefore of the view that the theory of implied surrender relied on by the landlord in this case on the execution of Ext. A2 by the tenant, is of no avail in the face of the continued occupation of the building by his predecessor and by the tenant from 14.10.1933.'

The circumstances under which Ext.B5 was executed have already been elaborately considered by the Appellate Authority. We have found that Gopalan Chettiar was in possession prior to the date of execution of B5. The state of things which was in existence on the date on which B5 was executed is discernible from the document itself. If a thing or a state of things is shown to exist, an inference of its continuity within a reasonably proximate time both forwards and backwards may sometimes be drawn. We may in this connection refer to a decision of the Apex Court in *Ambika Prasad v. Ram Ekbal Rai* (AIR 1966 SC 605). Apex Court has examined the scope of Section 114 of the Evidence Act and held that in

appropriate cases, an inference of the continuity of a thing or state of things backwards may be drawn under that section, though on this point the section does not give a separate illustration. The rule that the presumption of continuance may operate retrospectively has been recognised both in India and England.' Referring to several decisions Apex Court stated to what extent that presumption may be drawn both backwards and forwards which depends upon the nature of the thing and the surrounding circumstances. We are of the view the principle laid down by the Apex Court is squarely applicable to this case. The state of things which was existence on the date of the document has to be ascertained. We are inclined to infer continuity of the state of things backward and forward. The facts encircling B5 would enable the Court to draw such a presumption forward and backward. Under such circumstance the only inference that can be drawn is that Gopalan Chettiar was in possession on the date of execution of B5.

11. Section 11(17) employs a non obstante Clause which gives enacting part of the section in case of conflict an overriding effect over the provision or Act mentioned in the non obstante clause. The words 'tenant who has been in continuous occupation' would show that emphasis is on the continuous occupation. Occupation includes possession as its primary element. Once it is shown that the tenant is in occupation prior to the execution of the fresh lease deed he is in 'continuous occupation' within the meaning of Section 11(17) and fresh lease deed executed between the landlord and tenant would not extinguish the continuous occupation so as to defeat the protection given under Section 11(17). There is no question of wiping off, annihilating or destructing the right conferred on the tenant by Section 11(17). Emphasis is on continuous occupation. In our view Ext.B5 is not a fresh lease deed, assuming so, it has not disrupted or extinguished the continuous occupation of Chettiar prior to the date of execution of B5. On facts we are convinced that the predecessor in interest of the tenant Gopalan Chettiar was in continuous occupation of the petition schedule building prior to 1.4.1940 as a tenant and not liable to be evicted since they are entitled to get the protection of Section 11(7) of the Act. Appellate Authority has rightly found that the respondents were in occupation from 1.4,1940 as tenants.

Under such circumstance this revision lacks merits and the same would stand dismissed.

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