

Devammadas Vs. Ramachandran Nair

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Court : Kerala

Decided On : Jun-09-2005

Reported in : 2005(3)KLT647

Judge : R. Bhaskaran and; K.R. Udayabhanu, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 2, 2(3), 11, 11(1), 11(2), 11(3), 11(4) and 11(16)

Appeal No. : R.C.R. No. 27 of 2005

Appellant : Devammadas

Respondent : Ramachandran Nair

Advocate for Def. : G. Ram Mohan,; G.P. Shinod and; V. Manu, Advs.

Advocate for Pet/Ap. : G.S. Reghunath, Adv.

Judgement :

ORDER

R. Bhaskaran, J.

1. This revision is filed at the instance of the landlord who sought eviction of the tenant from the tenanted premises under Sections 11(2)(b), 11(3), 11(4)(ii) and (iv) of the Kerala Buildings (Lease and Rent Control) Act. The Rent Control Court

allowed the application under Sections 11(2)(b), 11(3) and 11(4)(iv), while disallowed the claim under Section 11 (4)(ii) of the Act. In appeal, the Appellate Authority set aside the order of eviction on all the grounds and dismissed the Rent Control Petition.

2. The respondent obtained the petition schedule building from the revision petitioner/landlord as per rent deed executed in 1984. According to the landlord, the tenant did not pay any rent subsequently. She wanted to demolish the building and construct a residence-cum-commercial complex for increasing her income and for her better living. It is further stated in the Rent Control Petition that since the landlord wanted the tenant to vacate, he became inimical towards her and caused damage to the building. In the objections filed by the tenant, it was stated that the petition was not maintainable though he admitted that he was a tenant. He disputed the rent claimed as Rs. 300/-. According to him, it was only Rs. 30/-. He also contended that the contentions raised in the petition are against the decision in O.S. No. 1771 of 1991. The landlord has stated in the previous proceedings that she had parted with the title over the plaint schedule building and her daughter was the present owner. It was also contended that for improving the living condition and for further income of the landlord, there was no necessity to evict the tenant as the petitioner and her daughter were rich having numerous palatial buildings, most of them rented out to various persons. In the Rent Control Court the tenant pressed the question of maintainability of the Rent Control Petition as the landlord had already parted with her right in favour of her daughter. Relying on the definition of the word 'landlord', the Rent Control Court found that the petitioner was still a landlord and an order of eviction could be passed in her favour if other conditions are satisfied. The Rent Control Court also found that the need alleged by the landlord for reconstruction was bona fide. The Appellate Authority has however found that after the gift of the property by the petitioner in favour of her daughter as per registered settlement deed dated 12-4-1989, the Rent Control Petition filed by the mother in 1997 claiming herself to be the owner of the property and also claiming that recovery of possession was required for her bona fide need and for reconstruction for advancing her living standard was not at all maintainable. The Appellate Authority also found that though the daughter had executed a power-of-attorney in favour of the mother which was produced at the

fag end of the trial, the same would not make any difference in the result as the Rent Control Petition was not filed for and on behalf of the daughter or for the bona fide need of the daughter. Therefore, it was found that the order of eviction granted by the Rent Control Court was not sustainable.

3. In this revision, the learned counsel for the revision petitioner repeated the contentions of the petitioner in the Rent Control Petition before the Rent Control Court as well as the Appellate Authority. According to the learned counsel, the petitioner is a landlord within the definition of the term in the Kerala Buildings (Lease and Rent Control) Act and is entitled to file the petition. He also contended that even if the landlord had parted with title of the property in favour of her daughter, the daughter has executed a power-of-attorney in her favour and has authorised her to file the Rent Control Petition. For that reason also, it is argued that the Rent Control Petition is maintainable. It is also argued that the petitioner in the Rent Control Petition had filed I.A. Nos. 760 and 761 of 1998 for impleading the daughter as second petitioner and also for reviewing the order for disposal and reopening the case for evidence. As per separate orders dated 13-2-1998 and 11-2-1998 those petitions were dismissed. According to the learned counsel, those petitions should have been allowed. The learned counsel for the respondent on the other hand supported the reasoning of the Appellate Authority and argued that on the pleadings and evidence now available, no other conclusion was possible than the one arrived at by the Appellate Authority.

4. The points arising for consideration in this revision are (i) whether the Rent Control Petition filed by the petitioner after execution of the gift deed in favour of the daughter was maintainable. (2) whether the petitioner could put forward her need for additional income and better living by demolition of the building and reconstruction of the same when she had no right in the property, (3) whether the correctness of the dismissal of I.A. Nos. 760 and 761 of 1998 by the Rent Control Court can be considered in this revision, and (4) whether the denial of eviction on the ground of arrears of rent was justified.

Points No. 1 and 2

5. The main argument of the learned counsel for the revision petitioner is that in spite of the fact that the landlord had executed Ext.A3 gift deed in favour of her daughter, she was collecting rent from the tenant and as per the definition of the word 'landlord' in Section 2(3) of the Act, 'landlord' includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others. According to the learned counsel, as per the Explanation to Sub-section (3) of Section 2 of the Act, even a tenant who sub-lets shall be deemed to be a landlord within the meaning of the Act in relation to the sub-tenant. Section 2 starts with the caution, 'in this Act, unless the context otherwise requires'. Therefore, the meaning of the definition of the word 'landlord' has to be understood in the context in which the Rent Control Petition is filed. This is clear from the further provision in Section 11(16) of the Act which states that no person who is receiving or is entitled to receive the rent of a building merely as an agent of the landlord shall, except with the previous written consent of the landlord be entitled to apply for the eviction of a tenant. Therefore, by mere receipt of the rent as an agent of the daughter by itself is insufficient to sustain the maintainability of a petition filed for eviction of a tenant. According to the learned counsel, in view of the power-of-attorney executed by the daughter, there is written consent and for that reason also the judgment of the Appellate Authority is unsustainable. There is no contention before us that the gift deed executed in favour of the daughter is a sham document and that it has not been acted upon. If Ext. A3 is a document which is acted upon, the right of the landlord has vested in her daughter and in the absence of the daughter as she was out of India, the mother may continue to collect the rent for and on behalf of her daughter. But she will not be able to ask for eviction for her bona fide need as she has ceased to be the landlord.

6. After the landlord divested herself of her right in the property in favour of her daughter, it is the daughter who is the owner of the property. The learned counsel for the revision petitioner emphasised the fact that nowhere in Section 11 of the Act, the statute uses the word 'owner', but it only uses the word 'landlord'. Therefore, according to the learned counsel, ownership of the building has nothing to do with the right as the landlord and as per Explanation to Section 2(3) of the Act, even a tenant who sub-lets is deemed to be a landlord in relation to the sub-

tenant. The concept of ownership cannot be totally ignored while considering the provisions in the Act. The definition of the word 'landlord' is an inclusive definition. A similar provision in the Bihar Buildings (Lease, Rent and Eviction) Control Act was under consideration of the 'Supreme Court in M.M. Quasim v. Manoharlal : [1981]3SCR367 . It was held by the Apex Court that even though the definition of 'landlord' was couched in very wide language, a person claiming possession on the ground of his reasonable requirement of the leased building must show that he is a landlord in the sense that he is the owner of the building and has a right to occupy the same in his own right and a mere rent collector though may be included in the expression landlord in its wide amplitude, cannot be treated as a landlord for the purposes of Section 11(1)(c) of that Act. Again in A.V.G.P. Chettiar & Sons v. T. Palanisamy Gounder : AIR 2002 SC2171 , the Supreme Court held as follows:

'The definition of 'landlord' is an enabling provision in the sense that it enables persons who are not the owners to ask for eviction under the Act. But it does not mean that a person who has claimed to be the landlord qua owner can jettison his case as pleaded in his eviction petition and establish his claim on the basis that he was otherwise entitled to claim as landlord of the suit premises. As held in Trojan & Co. v. R.M.N.N. Nagappa Cheltiar : [1953]4SCR789 'it is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found.'

Therefore, the contention of the learned counsel for the revision petitioner that the petitioner in the Rent Control Petition is a landlord even for the purpose of filing an application for eviction on the ground of bona fide need cannot be sustained and there is no dispute that the revision petitioner had parted with the rights in the property in favour of her daughter.

7. The learned counsel for the revision petitioner argued that in the absence of a denial of title of the petitioner in the Rent Control Petition by the respondent in the objections filed, the Appellate Authority was not justified in considering the question whether the petitioner in the Rent Control Petition was the landlord of the building. In the objection filed by the tenant, there is clear averment to the effect

that the petitioner has stated in the previous proceedings that she had parted with title over the schedule building and her daughter is the present owner. PW.1 has admitted that she had gifted the property to her daughter. Though she had stated that she had reserved life interest for herself in the gift deed, there is no evidence for the same and when she was questioned in cross-examination, she admitted that she did not know about it. She also admitted that she was prosecuting the case on the basis of the power-of-attorney. The question of bona fide denial of title will arise only when there is real dispute between the parties with regard to the title of the landlord. Where there is no dispute that landlord had gifted the property to the daughter before the filing of the Rent Control Petition, the court is entitled to proceed on that basis. It is only when there is dispute with regard to title, such dispute has to be decided by the Civil Court as per Section 11 (1) of the Act.

8. The learned counsel for the revision petitioner also contended that the tenant is estopped from questioning the title of the landlord in view of Ext.B1 judgment. That was a suit filed by the tenant for injunction against forceful dispossession. The defendant also filed a counter claim to restrain the plaintiff from entering into the building, as according to the defendant, the plaintiff was only a licensee. When a suit for injunction is filed against forceful possession, the question to be considered was whether the plaintiff was entitled to be in possession of the property until evicted under due process of law. Even if there was any statement in the plaint that the plaintiff was a tenant under the defendant, it may not be conclusive evidence between the parties. In *Nagubai v. B. Shama Rao* : [1956]1SCR451 , the Supreme Court has held as follows:

'An admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It can be shown to be erroneous or untrue, so long as the person to whom it was made has not acted upon it to his detriment, when it might become conclusive by way of estoppel.'

When the petitioner was aware of the true facts with regard to the execution of the gift deed in favour of her daughter, she cannot claim the benefit of estoppel as there was no mistake or ignorance as to the real state of things.

9. The learned counsel for the revision petitioner then contended that even if there was any defect in the filing of the Rent Control Petition, the same was cured by production of Ext.A4 power-of-attorney in favour of the revision petitioner by the daughter. A reading of the power-of-attorney would show that it enabled the mother to act on her behalf and for her benefit. The landlord has no contention that eviction is required for the purpose of her daughter and she was filing the Rent Control Petition on behalf of the daughter. On the other hand, the definite case put forward is that the building is to be demolished and a residence-cum-commercial complex constructed for increasing the income of the petitioner. Therefore, the eviction sought under Section 11(3) of the Act cannot be allowed and the finding of the Appellate Authority in that respect is absolutely correct.

10. Since eviction is sought also on the ground of reconstruction of the building under Section 11 (4)(iv) of the Act and since the daughter has executed a power-of-attorney in favour of the mother, the question whether an order of eviction can be passed under that provision can also be considered in this revision. The learned counsel for the revision petitioner relied on the decision of the Division Bench of this Court in *Ratheesh Kumar v. Jithendra Kumar* (2005 (2) KLT 669) and contended that if the landlord executes a power-of-attorney, the same can be treated as a valid consent as required under Section 11 (16) of the Act and therefore the Rent Control Petition filed by the petitioner even if she is to be taken as an agent is maintainable. In Section 11 (4) (iv) of the Act also there is an element of bona fides to be proved by the landlord as the sub-section reads as follows:

'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:

Provided that the landlord who evicts a tenant and does not reconstruct completely the building within a time which may be fixed or extended by the Rent Control Court, shall on a petition before that Court be liable to a fine of rupees five hundred, if it is proved that he has wilfully neglected to reconstruct completely the

building within such time:

Provided further that the Court shall have power at any time to issue directions regarding the reconstruction of the building and on failure of compliance by the landlord, to give effect to the order in any manner the Court deems fit and in appropriate cases to put the tenant back in possession or award to the evicted tenant damages equal to the excess rent he has to pay for another building that is occupying in consequence of such eviction:

Provided further that the tenant who was evicted shall have the first option to have the reconstructed building allotted to him with liability to pay its fair rent; or'.

In this case, the requirement is put forward as that of the petitioner and not of the landlord herself. More over, what is proposed to be constructed as can be seen from Ext. A5 is a residential building and if reconstruction is to be allowed under Section 11 (4)(iv) of the Act, the tenant has the first option to occupy an equivalent space in the reconstructed building. When the tenant is doing business and the petition schedule property is used as a non-residential building, he cannot be provided with any space in the residential building of the landlord after it is constructed. Therefore, even though Section 11(4)(iv) was included in the Rent Control Petition as one of the provisions under which eviction was sought, the real intention of the petitioner in the Rent Control Petition was to construct a residential building and not to reconstruct a non-residential building. Since the element of bona fides is required to be proved under Section 11(4)(iv) also and eviction is not sought for the need of the landlord but of the petitioner in the Rent Control Petition who was not the landlord at the relevant time, denial of that relief by the Appellate Authority was fully justified.

Point No. 3

11. If is true that the petitioner in the Rent Control Petition filed I.A. Nos. 760 and 761 of 1998 for amendment of Rent Control Petition and impleading the daughter of the petitioner as an additional petitioner, the same were dismissed by the Rent Control Court and the order of dismissal was not challenged. Though before the Appellate Authority, it was the tenant who filed the appeal, the landlord did not

make any request to consider the correctness of the order of dismissal of the two I.As. In the revision also, there is no ground taken to the effect the dismissal of the applications was wrong. These applications were filed after the evidence was closed and the case was heard. If the impleadment is allowed, the entire averments in the Rent Control Petition also will have to be changed and fresh evidence entertained. The Rent Control Court has given valid reasons for not reopening the case and impleading the daughter as additional petitioner after the entire evidence was over. We do not find any reason to hold that the applications were wrongly decided.

Point No. 4

12. Though we have found that the petitioner is not entitled to get an order of eviction on the ground of bona fide need or on the ground of need for reconstruction, the claim for arrears of rent stands on a different footing. The Appellate Authority has denied an order of eviction under Section 11 (2)(b) only for the reason that the petitioner in the Rent Control Petition was not the landlord and the actual landlord has not joined in the Rent Control Petition. But it is an admitted fact that the tenant was paying rent to the revision petitioner and the actual landlord has executed a power-of-attorney in favour of the petitioner in the Rent Control Petition to file necessary suits to safeguard her interest in the property. In the objection filed by the tenant, he has admitted that he was paying rent regularly to the petitioner. The learned counsel appearing for the respondent did not point out any reason for denying an order of eviction under Section 11 (2)(b) of the Act. The Rent Control Court found that the respondent has defaulted payment of rent from 1991 onwards. That was based on the admission of C.Pw.3 who is the respondent in the Rent Control Petition. The Appellate Authority has found that he has not paid rent after 1991. When the respondent claims himself to be a tenant in respect of the petition schedule shop room on a rent of Rs. 30/- per month and he has not paid the rent from 1991 onwards and the petitioner has been authorised to file suits on behalf of the real owner as per the power-of-attorney, it may not be proper to deny the relief merely for the reason that in the Rent Control Petition the petitioner is not described as the power-of-attorney of her daughter. Even if the petitioner is to file the Rent Control Petition in her individual capacity since she

was admittedly collecting rent she may come under the inclusive definition of the 'landlord' at least for the purpose of collecting rent. In that view of the matter, we set aside the findings of the Rent Control Appellate Authority and grant an order of eviction under Section 11(2)(b) of the Act. It goes without saying that the respondent can pay the entire arrears of rent within one month to set aside the order under Section 11(2)(c) of the Act.

In the result, the Rent Control Revision is partly allowed. The findings of the Appellate Authority under Sections 11(3) and 11(4)(iv) of the Act are upheld and the finding under Section 11(2)(b) of the Act is set aside and the Rent Control Petition is allowed to the extent of granting eviction under Section 11 (2)(b) of the Act. Parties shall bear their costs in this revision.

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