Chandrakala Vs. Soman

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Court : Kerala

Decided On : Sep-17-2004

Reported in : 2004(3)KLT432

Judge : K.S. Radhakrishnan and; K. Thankappan, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11(2) and 11(3); Registration Act - Sections 17 and 49; Transfer of Property Act

Appeal No. : C.R.P. No. 2926 of 2000

Appellant : Chandrakala

Respondent : Soman

Advocate for Def. : V. Giri, Adv.

Advocate for Pet/Ap. : Dinesh R. Shenoy, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

K.S. Radhakrishnan, J.

1. This Court in Paul v. Saleena, 2004 (1) KLT 924 held that unregistered lease deeds cannot be pressed into service to create, declare, assign, limit or extinguish

any right title or interest in or to the property comprised in the document. In the instant case an unregistered lease deed was executed between the parties on 15.12.1992 leasing out the tenanted premises for a period of two years on a monthly rent of Rs. 450/-. The lease deed contained a clause whereby the rent can be revised after the expiry of two years on mutually agreed terms and if the terms cannot be mutually agreed, the rent will be increased by 25% at the end of the cycle of every two years. Landlady took up the stand that the tenant is legally obliged to pay monthly rent at the rate of Rs. 562.50 from 16.12.1994. In spite of repeated demands the tenant failed to pay rent from 1.1.1995. Registered notice dated 1-6.6.1995. was issued by the landlady to the tenant demanding the arrears of rent with interest. Landlady also wanted the tenanted premises for the purpose of starting a business in flour mill, curry powder and allied items.

2. Tenant resisted the petition contending that the tenant has no liability to pay any amount more than Rs. 450A per month by way of rent. Rent at the rate of Rs. 450/- was sent by money order, but the same was refused by the landlady. Further it is also pointed out that the clause in the rent deed is unconscionable and it was executed without free consent of the tenant. Further landlady was in a dominating position and that clause was inserted at her instance. It is also stated that since the document being an unregistered one the same cannot be relied upon so as to create any right in favour of the landlady. Further, it was pointed out that at best it can be used only for collateral purpose.

3. The landlady got herself examined as PW1 and produced A1 to A4 documents. Tenant got himself examined as RW1 and Accommodation Controller was examined as RW-2. No documentary evidence was adduced on the side of the tenant. Ext.X1 is a file of Parur Municipality. Rent Control Court took the view that the term regarding enhancement of rent by 25% at the end of the cycle of every 2 years cannot be considered as a mutually agreed one and hence is not enforceable. Further it is also noticed that the tenant had expressed his willingness to pay the rent at the rate of Rs. 450 per month, but the same was not received by the landlady. Further it is also contended that there is no bona fides in the plea of the landlady. Rent Control Court noticed that the landlady had expressed a desire to start business in 1990, but the Rent Control Petition was filed only on

28.8.1995. Further it was also noticed that the landlady has got other buildings vacant earlier, but the same was not utilised for starting the business. Further it was also noticed that no special reasons have been shown by the landlady for not using the said premises. Rent Control Petition was allowed under Section 11(2)(b) holding that the tenant is bound to pay an amount of Rs. 450/- per month. Bona fide need was found against and was rejected.

4. Landlady took up the matter in appeal. Appeal was dismissed. Appellate Court rejected the claim of the landlady for enhanced rent on the basis of the various clauses in the unregistered lease deed. Appellate Authority also noticed that no steps were taken by the landlady for revision of rent. Court noticed that mutual consultation is a pre-condition before invoking the second limb of the clause relating, to revision of rent. It is stated that only when mutual consultation fails second limb of the clause would apply. In view of the above mentioned circumstances Appellate Authority dismissed the appeal.

5. The Rent Control Court and Appellate Authority have rejected the prayer of the landlady for revision of rent on different grounds. The lease deed is admittedly an unregistered one. This Court has laid down the law in Paul's case (supra) that an unregistered lease deed cannot be pressed into service to create, declare, assign, limit or extinguish any right, title or interest in or to the property comprised in the document. Reference may also be made to the decision of the Apex Court in Anthony v. K.C. Itoop, AIR 2000 SC 3523. Under Section 49 of the Registration Act no document requiring registration under Section 17 or by any provision of the Transfer of Property Act is to affect any immovable property comprised therein or to be received as evidence of any transaction affecting such property unless it is registered. An unregistered document cannot be admissible in evidence to prove its terms, though it can be put in evidence for collateral purpose. The term of lease, claim for enhanced rent are not collateral purpose. Rate of rent is an important ingredient of the rental agreement. If the landlady wanted to create any right in her favour for revision of rent after a period of two years the same could be done only through a registered document. Unregistered lease deed cannot be pressed into service to create any right for revision of rent. Consequence of non-registration of a document has been dealt with in Section 49 of the Registration

Act. Section 49 bars reception in evidence of document or proceeding which is required to be registered under Section 17 of the Registration Act but not registered. Unregistered lease deed could at best be looked into for ascertaining the commencement of possession, rate of rent or similar other provisions which are collateral to the principal transaction. Since the document is unregistered one, in our view, if the landlady wanted a revision of rent, the remedy available to the landlady is to approach the Rent Control Court for fixation of fair rent. Therefore we are in agreement with the finding of the Rent Control Court and Appellate Authority that the landlady is entitled to get rent only at the rate of Rs. 450/- per month or otherwise fixed by the Rent Control Court by way of fixation of fair rent.

6. We have already indicated that both the Rent Control Court and Appellate Authority have concurrently found that the landlady is not entitled to get eviction under Section 11(3) of the Act. Tenant pressed into service the first proviso to Section 11(3) which was found favour by the Rent Control Court and Appellate Authority. Building was available with the landlady, but she did not entertain any desire to start business at that time. Further before this Court tenant has filed I.A.440/04. It is stated during the pendency of the appeal another room bearing No.XVII/74 owned by the landlady and situated near the tenanted premises was vacated on 11.10.94. The aforesaid room is also having the same area as that of the tenanted premises. Further it is also stated another room No. 21/109 (new number) has also got vacated. The same is also similar to the tenanted premises. Landlady did not start any business in any of these rooms which came into her possession during the course of proceedings. There is no serious dispute with regard to this averment though she tried to contend that one of the rooms has been put in possession of her husband. We are of the view Rent Control Court and Appellate Authority have rightly found that there is no bona fides in the plea of the landlady. Over and above no reasons have been stated by the landlady as to why she has not started the business in the rooms which came into her possession during the pendency of the proceedings. Under such circumstance we find no reason to grant the reliefs prayed for in this revision.

Revision would stand dismissed.