Sreekumar Vs. Parameswaran

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Court : Kerala

Decided On : Mar-11-2005

Reported in : 2005(4)KLT492

Judge : R. Bhaskaran and; M.K. Krishnan, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 7, 7(1), 7(2), 7(3), 11, 11(2), 11(3) and 11(4)

Appeal No. : R.C.R. No. 255 of 2003

Appellant : Sreekumar

Respondent : Parameswaran

Advocate for Def. : Asok M. Cherian,; K.R. Vinod,; T.R. Renjith and;

Advocate for Pet/Ap. : A.K. Seshadri, Adv.

Judgement :
ORDER

R. Bhaskaran, J.

1. This revision is at the instance of the 2nd respondent in R.C.P.No. 13 of 1999 on the file of the Rent Control Court, Ernakulam. The landlord invoked most of the Sub-clauses in Section 11 of the Kerala Buildings (Lease and Rent Control) Act in

the Rent Control Petition. To be specific, the petition was filed under Sections 11(2)(a), (b), 11(3), 11(4)(i), 11(4)(ii) and 11(4)(v). The 2nd respondent alone contested the case and this revision is at his instance.

2. The case of the landlord as petitioner in the Rent Control Petition is that the petition schedule shop room was originally let out to Krishna Panicker, husband of the 1st respondent, in 1968. After the death of Krishna Panicker, the shop room was rented out to the 1st respondent on 5-1-1977 on a monthly rent of Rs. 80/-. The rent was increased from time to time and the present rent is Rs. 500/-. The rent upto May, 1998 was paid by the 1st respondent. The petitioner's second son depending on him intends to start a business to himself. There is no other suitable shop room in his possession. Therefore the petition schedule shop room is needed bona fide for running a business by the petitioner. He sent a notice demanding arrears of rent and vacating the shop room. The notice was returned with an endorsement 'refused'. The first respondent has sub let the petition schedule shop room to the 2nd respondent without the consent of the petitioner. The 2nd respondent is now running a grocery shop. The petitioner came to know about it when he received letter, dated 21-7-1998 from the 2nd respondent with a demand draft of Rs. 500/- towards rent of the petition schedule shop room for the month of June, 1998. The petitioner returned the draft denying any relationship with him. The petitioner sent a registered notice to the 1st respondent with a copy to the 2nd respondent to terminate the sub-lease. The 1st respondent refused to receive the notice and 2nd respondent received the notice. The 1st respondent has ceased to occupy the tenanted premises continuously for more than six months and he is liable to be evicted under Section 11(4)(v) of the Act also. The first respondent has also made material alteration in the tenanted shop room by making permanent structures such as fixing concrete slabs on the walls of the shop room thereby destroying or reducing its value and utility materially and permanently without the consent of the landlord. Therefore, he is liable to be evicted under Section 11(4)(ii) the Act.

3. The 1st respondent has filed an objection. The 1st respondent contended that he has ceased to be a tenant since 1979 and thereafter Sreedharan Pillai, father of the 2nd respondent, was the tenant. After his death, his legal heirs are the

tenants. As all the legal heirs are not made parties in the Rent Control Petition, it is bad for non-joinder of neccessary parties. The 1st respondent has never paid any rent since 1979. The list respondent was unable to conduct the business after two years of the death of her husband and hence she surrendered the tenancy to the petitioner in 1979 and sold the remaining stocks to Sreedharan Pillai, who took the room on rent from the petitioner. The 2nd respondent filed a detailed objection. The petitioner's right as landlord is admitted and the original tenant was Krishna Pillai was also admitted. In 1979, the 1st respondent surrendered the building to the landlord and in that year the father of the 2nd respondent Sreedharan Pillai took the petition schedule shop room on rent. The petitioner was collecting rent personally from Sreedharan Pillai. Sreedharan Pillai expired on 23-5-1988 and thereafter the 2nd respondent as his legal representative continued the business. The bona fide need alleged is false. The petitioner's second son is doing business in furniture and plastic goods. There are sufficient number of rooms with the petitioner even if the son of the petitioner wants to do any other business. The sub lease alleged is false and is made with ulterior motive. The 2nd petitioner is a tenant as legal representative of Sreedharan Pillai, the original tenant of the building. The petitioner resides adjacent to the petition schedule shop room and was aware of the real facts. The allegation of making alterations in the building is also denied. Even if the tenant has put any slab it has not reduced its utility of the building. The petitioner wanted huge amounts for effecting essential repairs. The repairs were effected under his supervision. The petitioner is not entitled for any of the relief prayed for in the Rent Control Petition.

4. As already stated earlier, the Rent Control Court as well as the Appellate Authority accepted the ground under Sections 11(2)(b), 11(4)(i) and 11(4)(v) and ordered eviction on those grounds.

5. The question to be considered in this revision are (1) whether the finding under Section 11(4)(i) is correct, (2) whether the order of eviction under Section 11(2)(b) is sustainable, and (3) whether the tenant has kept the room vacant for more than six months to enable the landlord to get vacant possession of the premises under Section 11(4)(v) of the Act.

6. That the original tenant was the husband of the 1st respondent Krishna Panicker was not in dispute. After his death, the 1st respondent has executed a rent deed. Ext.A1 is the rent deed by the 1st respondent and Ext.A2 is the rent dead executed by her husband Krishna Panicker in 1968. The contention of the 2nd respondent in this case is that after two years of the death of Krishna Panicker, the 1st respondent surrendered the building to the landlord and Sreedhara Pillai obtained the premises on rent in 1979 from the petitioner directly and he was conducting business in the shop room. When both the 1st respondent and her husband had executed rent deeds for getting possession of the building, it was only natural to expect Sreedhara Pillai also to execute a rent deed if he was entrusted with the petition schedule building on tenancy arrangement. That Sreedharan Pillai is the husband of the 1st respondent's sister is not in dispute. According to the landlord, after the death of the husband of the 1st respondent, Sreedhara Pillai was assisting the 1st respondent in doing business. There was nothing to suspect about the presence of Sreedharan Pillai in view of the relationship. It was only after the death of Sreedharan Pillai that the 2nd respondent sent the rent by demand draft with a covering letter that the landlord became aware of the transfer of possession. He has rightly rejected that demand draft as the 2nd respondent could not be recognised as an independent tenant. The learned counsel for the revision petitioner strenuously contended that from 1979 onwards Sreedharan Pillai was doing business and the petitioner who was living in the adjacent building could not be permitted to pretend ignorance of these facts. This contention could have been accepted but for the fact that Sreedharan Pillai was the husband of the 1st respondent's sister and his presence as a person assisting the 1st respondent could not be objected to by the landlord. When the 1st respondent does not claim possession for occupation of the building and she was the admitted tenant of the building and 2nd respondent could not establish the separate tenancy arrangement between Sreedharan Pillai and the petitioner and that the 2nd respondent claims as legal heir of the tenant under the petitioner which is denied by the landlord the transfer of possession by the tenant in favour of the 2nd respondent without the consent of the landlord has to be presumed. A Division Bench of this Court in Raghavan v. Sreedhara Panicker 2001 (1) KLT 772 : 2001 (1) KLJ 523 considered a similar situation and it was held, after referring to

various decisions of the Supreme Court, as follows:

'Of course, in our Act, a written consent is not insisted upon. But, in the context of Section 11(4)(i) of the Act and the insistence on the existence of an authorisation in the lease, for the subletting which is the other saving provision in favour of the tenant, it is certainly clear that the consent contemplated by Section 11(4)(i) of the Act is a consent to the subletting before the subletting and mere knowledge, inaction or the receipt of rent by the landlord even after somebody else is let into the building, would not lead to the loss of the right of the landlord under Section 11(4)(i) of the Act to evict the tenant. On a true interpretation of Section 11(4)(i) of the Act in the light of the decisions referred to, we must hold that the view expressed in Kalyanasundararam's case (1985 KLT 922) cannot be accepted as correct. The said decision does not laid down the correct law.'

As noticed earlier, it was only when the 2nd respondent sent a demand draft with a covering letter asserting his right as tenant that the landlord became aware of such assertion and he has acted quickly. In the light of the authoritative pronouncement of this Court in the decision referred to above we hold that the finding on sub lease by the Rent Control Court as well as the Appellate Authority is correct.

Point No. 2

7. According to the petitioner, the 1st respondent has paid rent till May, 1998. The case of the revision petitioner is that the landlord has refused to accept the rent after May, 1998. The Rent Control Court as well as the Appellate Authority found that the landlord was justified in refusing rent by the 2nd respondent who is not a tenant of the building. Therefore, the finding on arrears of rent from July, 1998 till 7-9-1998 is correct and the tenant is liable to pay the arrears from July, 1998 till the date of Ext.A4 notice. The point is found against the revision petitioner.

Point No. 3

8. Both the authorities below found that the tenant has kept the building vacant for more than six months for the reason that the 1st respondent did not occupy the building for six months. In all cases where a person other than a tenant is in

possession of the building, it can be contended that the tenant has ceased to occupy the building continuously for six months. But we are of opinion that the intention of the Legislature in providing Section 11(4)(v) in the Statute was not to take care of such contingencies. For satisfying Section 11(4)(v), there must be cessation of the occupation of the building for six months without reasonable cause. If the building is occupied by a sub tenant, it cannot be said that there is cessation of occupation of the building. We are supported by a Full Bench decision of the Allahabad High Court in R.M. Devi v. R.C. & E Officer : AIR1976 All517 . The Full Bench said as follows:

'The phrase 'ceasing to occupy' when construed in connection with the landlord connotes 'stopping to use it for his own use and vacating it for being let out'. Hence in the case of landlord the phrase 'has vacated' or 'has ceased to occupy' would connote the same thing, that is, the landlord has 'vacated the accommodation for being let out'. There is obviously no difficulty in visualising that situation. However, what would be the position when a tenant withdraws his personal physical user of an accommodation and allows another person to occupy it under a sub-lease? Should it be said that the tenant has 'ceased to occupy' the accommodation? Again, if the tenant sub-lets a portion of his tenanted accommodation should it be said that he has ceased to occupy and only that portion but the entire accommodation even though he is in actual physical occupation of the remaining portion?

In our view, the tenant will not be said to have 'ceased to occupy' either the whole or a portion thereof when he sublets it. Sub-letting is not completely prohibited by Section 7 or any other provision of the Act. The only requirement is that prior permission in writing of the landlord and the District Magistrate should be had before sub-letting is done. With the prior permission of the landlord and the District Magistrate a sub-lease may be created. But to say that as soon as sub-lease is made and the sub-tenant enters into possession the accommodation falls vacant or that the tenant ceases to occupy it within the meaning of Section 7(1) or (2) enabling the District Magistrate to allot it to another person is to set up an anomaly. That would set at naught the permission given by the District Magistrate under Sub-Section (3). It was not the intention of the Legislature that the District

Magistrate by granting the permission under Section 7(3) to the tenant in chief to sub-let would on the tenant acting on that permission and sub-letting the accommodation place the tenant in a precious position.'

Therefore, the finding of the authorities below that the landlord is entitled for an order of eviction even under Section 11(4)(v) is unsustainable and is set aside.

In the result, the R.C.P. is disposed of by confirming the finding on Section 11(4)(i) and Section 11(2)(b). The filing on Section 11(4)(v) vacated. The parties shall bear their costs in this revision.