

**Libi Vs. Devassy**

**Libi Vs. Devassy**

**SooperKanoon Citation :** [sooperkanoon.com/728576](http://sooperkanoon.com/728576)

**Court :** Kerala

**Decided On :** Jul-15-2003

**Reported in :** 2003(3)KLT685

**Judge :** A. Lekshmikutty, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151 - Order 21, Rules 97, 99, 100, 101 and 103

**Appeal No. :** Ex. S.A. No. 7 of 2003

**Appellant :** Libi

**Respondent :** Devassy

**Advocate for Def. :** Caveator T.N. Manoj, Adv.

**Advocate for Pet/Ap. :** Chelur G. Sreekumar, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**A. Lekshmikutty, J.**

1. The appellant is the petitioner in E.A. No. 296/2002 in E.P. No. 1086/2002 in R.C.P. 10/98 on the file of the Principal Munsiff Court, Irinjalakuda. E.A. No. 296/2002 is filed by the petitioner under Order XXI Rule 97, 99, 100, 101 and 103

read with Section 151 of the Code of Civil Procedure for a declaration to the effect that the order passed in RCP 10/98 is not binding on the petitioner in the E.A. for the reason that in the said proceedings she was not made a party and there was no representation on behalf of the petitioner. An order for eviction was obtained by the 1st respondent in R.C.P. No. 10/1998. The petitioner was not a party to the rent control proceedings. Only respondents 2 and 3 herein were counter petitioners in the R.C.P. The disputed shop room was taken on lease by the father of the appellant late Sri. George and since his death about 15 years back, the tenancy right over the same devolved upon the appellant and other legal heirs of late George. Respondents 2 and 3 are two of the legal heirs of late George. The building was taken on rent by the father of the appellant from the original landlord Varghese. The first respondent herein purchased the building on 28.12.1995 and after the purchase, petition for eviction was filed. At the time of the proceedings, the appellant was a minor. She was not impleaded as a respondent in the said proceedings and she was not represented in the said proceeding by a duly authorised guardian or next friend. The Rent Control Court ordered eviction on the ground of bona fide requirement of the landlord against which an appeal was filed by respondents 2 and 3 before the Appellate Authority (Rent Control) and that also culminated in favour of the landlord. Ultimately revision petition was filed before this Court which was also dismissed on 7.3.2002. E.A. was filed before the Execution Court for declaring the right of the appellant over the scheduled building. She, being a minor at the time of the proceedings a fraud has been practised on the appellant. The landlord has not made any bona fide enquiry to ascertain the legal heirs of the deceased tenant. It was in the circumstances the claim petition was filed.

2. The first respondent landlord filed objection contending that business in the premises was being run by respondents 2 and 3 on behalf of the other joint tenants. Tenancy right devolved on the wife and children of the original tenant as joint tenants and there has been substantial representation on behalf of the legal heirs. There is no independent right for the appellant and the attempt of the present appellant is only to protract the proceedings. Respondents 2 and 3 filed counter statement supporting the petition. The appellant was examined as PW1 and Ext. A1 was marked. No evidence was adduced by the respondents. In spite

of the evidence, the trial court dismissed the application holding that there is substantial representation of the estate. Against the said order, A.S. No. 47/2003 was filed which also ended in dismissal. Against the said judgment, this appeal is filed by the claim petitioner.

3. Substantial questions of law involved in this case are:

i) Whether the petition filed by the appellant is maintainable?

ii) Whether the judgment of the court below is perverse?

Points :

4. The grievance of the appellant is that she was not impleaded in the proceedings though she is one of the legal heirs of deceased George, who was the tenant of the building. The 2nd respondent is the wife and 3rd respondent is the eldest son of the deceased. There are other legal heirs of deceased George. The first respondent without making any enquiry impleaded 2nd and 3rd respondents in the R.C.P. proceedings and obtained order of eviction. Admittedly, the appellant is not claiming any independent right over the building. Her case is that she is one of the legal heirs of deceased George and since she is not impleaded, the order of eviction will not bind her. It is in evidence that after the death of original tenant, respondents 2 and 3 were conducting the business in the premises. Even though, the appellant is one of the legal heirs, as observed by the court below there was substantial representation in the proceedings. As per law, the legal heirs of the original tenant are joint tenants and since there was substantial representation in the proceeding, any one of the legal heirs can proceed with the proceedings. It has come out in evidence that against the order of eviction passed by the Rent Control Court, respondents 2 and 3 filed appeal before the Appellate Authority (Rent Control) and against the said judgment, C.R.P. also has been filed before this Court. There was no averment in the affidavit filed by the petitioner that she is having any independent right in the schedule building. It is also come out in evidence that 2nd and 3rd respondents filed a suit against the first respondent from forcible eviction. The contention of respondents 2 and 3 herein was that after the death of George, they are conducting business in the premises on behalf of

the other legal heirs of deceased George. In such circumstances, the courts below have rightly appreciated the case and dismissed the application. There was substantial representation for the appellant in the proceedings and hence it binds her also. There is no merit in the appeal. The judgment of the court below are not perverse. The appeal fails and it is dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**