

Antony Vs. Kesavan and ors.

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Court : Kerala

Decided On : Jan-04-2007

Reported in : 2008(1)KLJ767

Judge : P.R. Raman and; K.T. Sankaran, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11(2), 11(3) and 11(4); Tamil Nadu Buildings (Lease and Rent Control) Act

Appeal No. : C.R.P. No. 2057 of 2000 B

Appellant : Antony

Respondent : Kesavan and ors.

Advocate for Def. : P. Vijaya Bhanu,; Mini John Paremalil and; M. George Tho

Advocate for Pet/Ap. : S.V. Balakrishna Iyer and; M.M. Krishnan, Adv.

Judgement :

ORDER

K.T. Sankaran, J.

1. The landlord is the revision petitioner. The Rent Control Petition was filed by him against the first respondent herein (since deceased) and the predecessor in interest of respondents 2 to 8 under Sections 11(2)(b), 11(3), 11(4)(ii) and 11(4)(v)

of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as the 'Act'). Before the Rent Control Court, the ground under Section 11(2)(b) was not pressed by the landlord. The Rent Control Court found that the bona fide need urged by the landlord is not genuine and dismissed the petition under Section 11(3) of the Act. The Rent Control Court allowed the Petition under Sections 11(4)(ii) and 11(4)(v). The tenants challenged the order of the Rent Control Court in appeal before the Rent Control Appellate Authority. The landlord challenged the correctness of the finding under Section 11(3), in the appeal filed by the tenants. The Appellate Authority allowed the appeal in part and dismissed the Rent Control Petition under Section 11(4)(v) of the Act. The direction for eviction under Section 11(4)(ii) was modified by the Appellate Authority and the tenants were directed to surrender a portion of the petition schedule building to the landlord.

2. The case of the landlord is that the petition schedule building was taken on rent by the first respondent Kesavan and his since deceased brother Paran jointly as per Ext.A1 rent deed. Each of the tenants was to pay Rs. 20/- per month to the landlord as rent. Thereafter, the rent was enhanced to a total sum of Rs. 100/-. The tenants used the building in such a manner as to destroy or reduce its value or utility materially and permanently. The wooden planks used as ceiling in one room were removed and those planks were used for construction of the residential building of Paran. A door was cut open inside the building so as to enter from one room to the other. It was also contended that one portion of the building was not used for more than six months and, therefore, the landlord would be entitled to an order of eviction under Section 11(4)(v). The bona fide need urged by the landlord is that he bona fide needs the building to start a stationery and hardware business in the premises.

3. The tenants disputed the bona fide need. They also contended that the lease was not as per Ext.A1 rent deed. The building was taken on rent in 1950 by Kesavan and Paran from the father of the landlord fixing a monthly rent of Rs. 10/-. In one room a grocery shop was being conducted and in the other room a tea shop was being run. The rent was subsequently enhanced. The building is being; used for the residence and the business by the tenants. The facts stated by the landlord to support the grounds for eviction under Sections 11(4)(ii) and 11(4)(v)

were also denied by the tenants.

4. Execution of Ext.A1 was not specifically denied by the tenants in evidence. Ext.A1 shows that the building consists of five rooms and three doors. It is also seen from Ext. A1 that two shop rooms have shutters ('nirappalaka'). The purpose of lease was for running a grocery shop and tea shop as revealed from Exhibit A1. Ext.A1 further shows that one room is provided with wooden ceiling. It has come out in evidence that Kesavan and Paran were running separate business in the two rooms. The eastern room was being occupied by Kesavan and the western room was being used by Paran. The report submitted by the Commissioner as Ext.C1 would indicate that a door is provided separating the two shop rooms and that the door is comparatively new. The Commissioner could not find any wooden ceiling in the western room. Documentary evidence would also indicate that Kesavan and Paran were separately paying rent to the landlord. The Commissioner's report would further indicate that Paran is having a house about 50 metres away from the petition schedule building and that (sic) is residing with family in the petition schedule building. The Commissioner could also find indications of a tea shop being run in the front varanda of the building. It is also clear from the Commissioner's report that the shutters of the western room could not be opened from the front side as it is closed from inside the room. The Commissioner could not find any business being run in the two rooms and that those rooms were found to be used for resident. The Commissioner stated that he could ascertain that the western room was not opened from the front side for the last about four to five years of his inspection.

5. The Rent Control Court, relying on Exts.B1 and C1, held that respondents 2 to 8 (the legal representatives of deceased Paran) ceased to occupy the room taken on rent by Paran, for a period of more than six months continuously, so as to attract Section 11(4)(v) of the Act. The case put forward by the tenants that Kesavan and Paran were jointly doing business in the building was not accepted by the Rent Control Court. On this point, the Appellate Authority reversed the finding of the Rent Control Court and held that eviction cannot be ordered under Section 11(4)(v). This finding was arrived at by the Appellate Authority on the ground that there is no case for the landlord that Kesavan has ceased to occupy

the portion of the petition schedule building entrusted to him. Coming to the question as to whether an order under Section 11(4)(v) could be granted in respect of the western portion occupied by Paran, the Appellate Authority held that it is not relevant as to who occupies the building and the stress is on the question whether there is occupation or not. Relying on the Commissioner's report, the Appellate Authority held that Kesavan and family are occupying the western portion as well, and, therefore, no order for eviction under Section 11(4)(v) could be granted. The Appellate Authority did not recognise the lease as an integral one but took the view that Kesavan and Paran were occupying different portions of the building as tenants. It was further held that even assuming that the lease is an integral one comprising both the premises, the landlord cannot claim eviction under Section 11(4)(v) as cessation of occupation of a portion of the building is not a ground for eviction under Section 11(4)(v).

6. As far as the ground under Section 11(4)(ii) is concerned, the Appellate Authority considered the oral evidence in the case and the Commissioner's report and held that the ceiling planks were removed from the building and that the tenants have used the building in such a manner so as to attract Section 11(4)(ii). However, the Appellate Authority took the view that since the planks were removed from the portion entrusted to Paran, were removed from the portion entrusted to Paran, an order under Section 11(4)(ii) could be passed only as against his legal representatives, namely, respondents 2 to 8 in the Rent Control Petition.

7. As regards the ground under Section 11(3), the Appellate Authority confirmed the finding of the Rent Control Court and held that the landlord has not made out the bona fide need urged by him.

8. The parties (sic) by Ext.A1. Ext.A1 would disclose that the tenancy is a joint one in favour of Kesavan and Paran. Though Kesavan and Paran conducted separate business in two rooms and though they paid rent separately to the landlord, it cannot be held that two separate tenancies were created or recognized as per Ext.A1. The nature of the building as disclosed in Ext.C1 Commissioner's report and the admitted existence of a door connecting the two rooms allegedly occupied

by Kesavan and Paran, would indicate that the tenancy was an integral one in respect of the whole building. Payment of rent separately by the two persons who took a joint lease is not always a material factor in deciding whether the tenancy is one or separate. Running of two separate business in separate portions of the building which is the subject of tenancy, is also not an overriding factor to find that the joint tenancy in favour of the two persons was treated and recognized by the landlord as two separate tenancies. The nature of the building, the physical features of the same, the nature of the business conducted in the premises, whether the business conducted by the two persons are independent ones, whether there is any partnership between the parties, whether there is any arrangement for profit sharing, whether there is any understanding between them to share the expenses, whether profession tax is being paid jointly, whether electricity charges and/or water charges are separately assessed and paid, are all relevant factors in deciding whether the parties treated the transaction as constituting separate tenancies though there was only a single document under which the lease was created. Nature and character of the building in the present case does not admit of any such construction favouring creation of two tenancies. Unequivocal terms in Ext.A1 lead us to the conclusion that the tenancy is a single tenancy in favour of Kesavan and Paran.

9. In *Habibunnisa Begaum and Ors. v. Doraikannu Chettiar (deceased by L.Rs.) and Ors.* : AIR 2000 SC152 , the Supreme Court considered the question whether partial ejectment was possible under the Tamil Nadu Buildings (Lease and Rent Control) Act and it was held as follows:

2. The only question that arises in this case is as to whether it was open to the High Court to split the single tenancy by ordering partial ejectment of the tenant from the premises let out to him. In *S. Sanyal v. Gian Chand* : [1968]1SCR536 , it was held that where a contract of tenancy was a single indivisible contract and in the absence of any statutory provision to that effect, it is not open to the Court to split the tenancy. Law, therefore, is that where there is a single indivisible contract of tenancy, it cannot be split by a Court unless there is statutory provision to that effect. In the present case it is not disputed that the contract for Door Nos. 27 and 28. It is also not disputed that there is no provision in the Tamil Nadu Buildings

(Lease and Control) Act empowering the Court to order partial ejectment of a tenant from the premises by splitting the single indivisible tenancy. For these reasons it was not open to the High Court to (sic) the tenancy and ordered for (sic) ejectment of the tenant from the premises.

10. In *Fathima v. Saidali Bafakhy* 2001 (2) KLT 857 it was held that the subject matter of lease to the tenant being the entire building, it is not open to the landlord to seek eviction of portions of that building under Section 11(3) of the Act. In *Tellicherry W. Co-operative Society v. Safiya Beebi Umma* 2002 (3) KLT 863, it was held that splitting of tenancy is not contemplated under the Kerala Buildings (Lease and Rent Control) Act and that there is no provision in the Act for granting partial eviction of the premises.

11. In the light of these principles, we are of the view that the finding of the Appellate Authority that there are two tenancies is not correct. Since the Appellate Authority found that the tenant used the building in such a manner to reduce its value or utility (sic) and permanently and as we agree with that finding, on that finding itself, the landlord is entitled to get an order of eviction in respect of the whole building. The Appellate Authority was not justified in granting an order of eviction only in respect of the western portion of the building. We set aside the finding of the Appellate Authority under Section 11(4)(ii) to that extent and allow the application under Section 11(4)(ii) as against all the respondents and in respect of the whole building. As regards the order under Section 11(4)(v), on the finding that the tenancy is an integral one, the conclusion arrived at by the Appellate Authority is to be sustained. We are also not inclined to disturb the concurrent findings of the authorities below under Section 11(3) of the Act. We also notice that the order of eviction as ordered by the Appellate Authority was confirmed by the dismissal of C.R.P. No. 1664 of 2000, filed by the legal representatives of Paran, at the admission stage itself, without issuing notice to the landlord.

12. In the result, the Civil Revision Petition is allowed in part and an order of eviction is passed against the respondents in the revision, who are the legal representatives of Kesavan and Paran, under Section 11(4)(ii) of the Act. It has

come out in evidence that at present the family of Kesavan are occupying the building for their residence and for running a petty tea shop. Considering the facts and circumstances of the case, we are inclined to grant three months' time to the respondents to vacate the premises on condition that they shall file an affidavit within one month before the Rent Control Court agreeing to vacate the premises on or before the expiry of three months and also on condition that they shall pay the arrears of rent till date to the landlord within a period of one month.

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