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Court : Kerala

Decided On : Jun-11-2002

Reported in : 2003(1)KLT289

Judge : J.B. Koshy and; M. Ramachandran, JJ.

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

Appeal No. : C.R.P. No. 1088 of 1994

Appellant : Narayanan

Respondent : Soudhabi

Advocate for Def. : Gouri Sankar Rai, Adv.

Advocate for Pet/Ap. : Kodoth Sreedharan and; Sreeprakash K. Nair, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

J.B. Koshy, J.

1. The revision petitioner was the second respondent in R.C.P. No. 6 of 1986, on the file of the Rent Control Court, Kasaragod. The respondent/landlady filed the Rent Control Petition for eviction under Sections 11(3) and 11(4)(i) of the Kerala

Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'), on the ground of bona fide need of the landlady and allegation of sublease by the tenant. It is alleged that the revision petitioner/second respondent in the Rent Control Petition was a sublessee under the original tenant, first respondent in the eviction petition. It was their joint contention that the first respondent in the R.C.P. took the premises on lease but, thereafter, he started business in partnership with the revision petitioner. Therefore, there is no exclusive transfer of possession to the second respondent as first respondent himself continues to be the tenant and there is no sublease. The Rent Control Court found that the partnership formed by the original tenant with the revision petitioner was dissolved. There was a clear finding of fact by the Rent Control Court that the partnership set up was only to defeat the provisions of the Act. In other words, partnership is a sham and it was brought into existence for disguising subletting in reality. Against that the revision petitioner and the original tenant jointly filed appeal. During pendency of the appeal the original tenant died. His legal heirs were not impleaded. Therefore, the appellate authority dismissed the appeal as abated as the appeal filed by the second respondent/revision petitioner is not maintainable as he was not at all a tenant. Landlord has connection at all with this case.

2. We extract paragraphs 5 and 6 of the judgment of the appellate authority as follows:

'5. During the pendency of the appeal, the first appellant, the lessee of the petition schedule shop room was dead, and the legal representatives were not prepared to come on record. No step has been taken as per Rule 10 of the Act to implead the legal heirs of the first appellant who died on 22.12.1992 within the stipulated period. The trial court has already found that 2nd appellant is a sub-lessee. In that count, the 2nd appellant has no locus standi to proceed with the appeal as he is not the, lessee of the building and even according to his contention he was occupying the building along with the appellant and he has no independent right. So the appeal by the 2nd appellant alone is not maintainable.

6. On hearing both sides, it is clear that the 2nd appellant being a sublessee, he has no right to proceed with the appeal after the death of first appellant, the lease

holder. The appeal is abated.'

3. It is the contention of the revision petitioner that he is entitled to file appeal and court should not have dismissed the appeal filed by him as not maintainable mainly because of the explanation to Section 11(4)(i). Explanation to Section 11(4)(i) reads as follows:

'11. Eviction of tenants:-

4.....(i).....

Explanation:- Where on the partition of a joint family or the rights of co-tenants or on the dissolution of a firm, the right of the joint family or the co-tenants or the firm under a lease is vested in a member of the joint family, or a co-tenant or a partner, as the case may be, whether by act of parties or otherwise, no transfer by the tenant of his right under the lease shall be deemed to have taken place within the meaning of this clause; or The explanation only shows that if the tenant is a joint family member, partition of a joint family, if tenancy is taken by co-tenants or tenancy is partnership merely by dissolution of the firm, death of tenant, etc. the rights of the family, firm or co-tenant will not be defeated. In this case, admittedly even accepting the contention of the revision petitioner in the Rent Control Petition, the lease was taken up by the original tenant/first respondent in R.C.P. alone in his personal right and that he subsequently formed partnership with the revision petitioner who was the second respondent in the Rent Control Petition. So the original tenant continued to be as tenant and when he was alive he was subsequently doing business in partnership and there was no exclusive transfer of possession to the partnership. But partnership firm was not the tenant. After the death of the tenant, partnership also dissolved as there were only two partners and one died. When he dies, in the absence of legal representatives, the tenancy right will automatically goes. Admittedly, the legal representatives of the original tenant are not interested and, therefore, after the death of the original tenant they did not prosecute the case. They themselves did not come for impleadment. Even the revision petitioner did not take any steps to make them parties. Without the original tenant the revision petitioner has no right to continue in the premises and, therefore, his appeal will not be maintainable. That question was considered by

the appellate authority.

4. It was argued on the basis of the decision reported in *Upper India Cable Co. v. Bal Kishan* ((1984) 3 SCC 462) that on the death of one of the partners, suit will not abate when suit is instituted against a firm. No special reliefs were claimed against any of the partners personally. It was held that death of those partners who were impleaded as formal parties during the pendency of the second appeal before the High Court will not make the second appeal abated as legal representatives of the deceased partner were not made parties. There firm was the party and no individual reliefs were claimed against any of the deceased partners. In this case, firm was not the tenant. It was not a party. The original tenant, the first respondent in the Rent Control Petition, died after order of eviction was passed by the Rent Control Court, during the pendency of the appeal and his legal representatives are not made parties in the appeal. They have no interest in the matter. The firm was not a party even in the rent control proceedings. Therefore, the principles laid down in the decision in (1984) 3 SCC 462 is not applicable in this case. If firm was the tenant perhaps death of one of the partners will not have much difference especially in view of the explanation of Section 11(4)(i) as well as the decision in *Upper India Cable Co. 's case* (supra).

5. It is further contended that a sub-tenant will become a statutory tenant and they have got special rights and they can continue the proceedings in view of the decision in *Vashu Deo v. Balkishan* ((2002) 2 SCC 50). This decision if relied on will go against the petitioner as it will tantamount to admitting that petitioner was a sub-tenant and it will be in consonance with the pleading of the landlord in the petition, that there was subletting and eviction can be caused under Section 11(4)(i) for subletting.

6. We refer to the decision of the Supreme Court in *G.K. Bhatnagar (D) by Lrs. v. Abdul Alim* (JT 2002 (Suppl. 1) SCC 155), wherein it was held that when a tenant allows another person to enter into partnership for running his business, there is no exclusive transfer of possession if the partnership is not a sham. But he cannot resign thereafter from the firm and make the firm as tenant or other co-partner as a tenant and that partnership firm or co-tenant will not get any special right to

continue occupation. Similarly, when he dies only his legal representatives will be entitled to pursue the claim and not the firm as partnership firm was not the tenant and he himself was the tenant. An identical question was considered by a single Bench of this Court in *V.P. Varid v. Kamalam* (1985 KLT 1066), wherein it was held that when the lessee entered into the partnership and started business of the partnership in the tenanted premises, the arrangement entered into was between the lessee and the respondent. The landlord was never a consenting party to this arrangement. During the period when original tenant was alive there was no transfer of possession. When tenant ceased to exist, the tenancy right was taken over by the partner and if tenancy is taken over he will become a sub-lessee. In paragraph 8 it was observed as follows:

'8. The tenancy created under Ext. A1 was one between the landlord and Sri. Peter. When Peter entered into the partnership and started business of the partnership in the tenanted premises, the arrangement entered into was between Peter and the 6th respondent. The landlord was never a consenting party to this arrangement. There is nothing in evidence to show that the landlord had accepted the partnership arrangement. During the lifetime of Peter he was conducting the business and managing all the affairs of the firm. During that period there was no transfer of possession of tenancy in favour of another, because the tenant himself was a partner. When the tenant ceased to exist, the tenancy right was taken over by the 6th respondent. This taking over of the premises by the 6th respondent can only be by a transfer from the original tenant as far as the landlord is concerned. In other words, this change of possession is one falling within the mischief of Section 11(4)(i) of the Act.'

7. As held by a learned single Judge of this Court in *Jacob v. Jacob* (1977 KLT 224) granting of permission to the firm to conduct business in the building does not amount to transfer of exclusive possession so long as the original tenant continues to remain as a partner of the firm. The decision is entirely different when he resigns or dies or serves his connection with the partnership. Otherwise, it will be easy for a tenant to sub-lease the tenancy by forming a partnership, then resigning from the partnership, making the partnership firm or the other partners as tenants of the premises. In this case the Rent Control Court found that the revision

petitioner is only a sub-tenant and partnership with the original tenant was a sham arrangement and that because of the sub-lease the landlord is entitled to evict the original tenant. After the order of eviction the original tenant died, pending appeal though he jointly filed the appeal. His legal representatives were not impleaded in the appeal filed by the alleged sub-tenant. Even the revision petitioner did not take any steps to implead the legal representatives of the original tenant. Therefore, the matter is abated as against the real tenant and the revision petitioner has no right against the landlady as admittedly, he has not taken any lease from her. He is a total stranger and appeal filed by him is not maintainable.

In the circumstances, we see no ground in the Revision Petition. The Civil RevisionPetition is, therefore dismissed.

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