

Charulatha Vs. Manju

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Court : Kerala

Decided On : Sep-24-2003

Reported in : 2004(1)KLT290

Judge : K.S. Radhakrishnan and; Pius C. Kuriakose, JJ.

Acts : Kerala Buildings (Lease and Rental Control) Act, 1965 - Sections 11(1)

Appeal No. : R.C.P. No. 58 of 2003

Appellant : Charulatha

Respondent : Manju

Advocate for Def. : K. Ramachandran and; D. Kishore, Advs.

Advocate for Pet/Ap. : Pirappancode V. Sreedharan Nair,; S.P. Aravindakshan Pillay,;

Disposition : Revision petition dismissed

Judgement :

C. Kuriakose, J.

1. The respondent in a Rent Control Petition against whom orders of eviction are passed under Section 11 (2)(b) and Section 11 (3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Rent Control Act') is

the revision petitioner.

2. Going by the allegations in the R.C.P., the petition schedule building belongs to the respondent in this revision and the same is only a portion of a larger building. The building was let out to the revision petitioner on 12.4.1970 on a monthly rent of Rs.20/- which was enhanced to Rs.75 in 1979 and again enhanced to Rs.100 in 1981. The allegation in the context of Section 11(2)(b) is that rent has not been paid since March, 1985 notwithstanding the issuance of statutory notice. In the context of Section 11(3) the allegations are that the landlady who is an employee of the Governor's Secretariat in Raj Bhavan, Thiruvananthapuram and who is presently staying at Chathannoor in Kollam District is finding it inconvenient to attend to her official duties and bona fide needs to accommodate herself and her family in the schedule building.

3. The petition was stiffly resisted by the revision petitioner who contended that there is no landlord-tenant relationship between herself and the landlady. She also contended that the landlady had no right or title over the schedule building and that any document relied on by the landlady for title can only be a sham document. Neither she nor any of her predecessors-in-interest ever took the building on lease. She started residing in the building way back in 1964, when her grandfather one Damodaran Pillai who was the occupant of the building took her to the same. She also contended that since 1964 she has been in uninterrupted possession of the building adverse to the rights of any other owner and has perfected a title for herself. As regards the claim for own occupation she contended that the landlady never attended to her official duties in Raj Bhavan and has no intention whatsoever to continue her service in the Raj Bhavan since she is permanently settled down in Chathannoor, her matrimonial home alongwith her husband. She further contended that the landlady's husband and her mother are very substantial people having many buildings of their own in Thiruvananthapuram City and specific reference was made to a palatial building by name Sanku Chakram in Thiruvananthapuram which allegedly remains vacant and belongs to landlady's mother. It was further contended that the landlady's husband is a doctor who owns a big hospital at Chathannoor and accordingly it was contended that the claim under Section 11(3) is not bona fide.

4. On the basis of the pleadings the Rent Control Court formulated four relevant points for determination including the following points:-

1. Is there any landlord-tenant relationship between the petitioner and the counter-petitioner?

2. Has the counter-petitioner committed default in payment of rent from March, 1985 as alleged by the petitioner?

3. Is the petitioner in bona fide need of the petition-schedule building?

At trial the evidence on the side of the landlady consisted of Exts.A1 to A16, oral testimonies of PWs. 1 to 4 and Ext.C1 commission report. The evidence on the side of the respondent consisted of Exts.B1 to B5 and the oral testimonies of two witnesses CPWs. 1 and 2 apart from Ext.X1 report of the State Forensic Laboratory regarding the genuineness of the signatures on Ext.A3 dated 31.1.1979. Answering point No. 1 the Rent Control Court found placing reliance mainly on Ext. A3 rent chit and the report of the Forensic Science Laboratory that there is landlord-tenant relationship between the parties. The other two points were also answered in favour of the landlady and accordingly the Rent Control Court ordered eviction under Section 11(2)(b) as well as Section 11 (3) and allowed the R.C.P. with costs.

5. Even though the revision petitioner very actively participated in the trial before the Rent Control Court, her learned counsel did not cross-examine PW.4, brother-in-law of the landlady or PW.3, the Joint Director of the Forensic Science Laboratory. In the appeal preferred by the revision petitioner, the first request was for a remand back to the Rent Control Court for cross-examination of these two witnesses. This request was opposed. The Appellate Authority instead of remanding the case recalled the two witnesses who were cross-examined before that Authority. Additional documents were marked on either sides as Ext.X2(a) series, X2(b) series, Exts.A17, A18 and Exts.B6 to B10. The Appellate Authority formulated the points for determination including point No. 1 'Whether the denial of title set up by the appellant is bona fide?' The appeal was dismissed confirming the findings entered by the Rent Control Court and holding that the denial of title is

not bona fide and ordering eviction.

6. Heard Shri. Pirappancode V.S. Sudheer, learned counsel for the revision petitioner and Shri. K. Ramachandran, learned counsel for the respondent. All the records were brought down and we have perused them.

7. Inviting our attention to the second proviso to Section 11(1), Shri. V.S. Sudheef submitted on the authority of *A V.G.P. Chettiar v. T. Palanisamy Gounder* ((2002) 5 SCC 337) that if there was prima facie support for the revision petitioner's case on the materials placed before the court, the court was bound to refer the parties to a civil court. According to the learned counsel, the cardinal question was whether there was landlord-tenant relationship between the parties to the Rent Control Petition in the absence of which the Rent Control Petition will not be maintainable. The late production of Ext.A3 document, the non-mentioning of the existence of such a document in Ext.A4 lawyer's notice and in the R.C.P. filed after Ext.A7 reply was received, the unusual situation of Ext.A3 being written on different stamp papers purchased from different vendors on different dates were highlighted by the learned counsel as suspicious circumstances attending on Ext.A3. According to the learned counsel Ext. A3 was either forged or concocted and there was implicit evidence on the document itself to hold so. The learned counsel submitted that the landlady's explanations regarding the suspicious circumstances highlighted by the revision petitioner should stand rejected in view of PW. 1' s assertion in cross-examination that Ext.A3 had been entrusted with her advocate even while Ext.A4 was issued. Differences in the door number of the building mentioned in Ext. A3, the situation of both the attesting witnesses to Ext.A3 being the landlady's own men were also pointed out by the learned counsel as suspicious circumstances. The counsel found fault with the authorities below for not having pursued the steps for production of the stamp register from the Sub Treasury regarding the stamp papers on which Ext.43 was written and submitted that the landlady's version that Ext.A3 was written by the revision petitioner on the basis of a previous rent deed executed by one Bhargavi Amma was not at all convincing in the absence of evidence to hold that Bhargavi Amma was the occupant of the building prior to 12.4.1970. According to the counsel, the revision petitioner' case regarding title was much more probable than that of the landlady

and he relied on Ext.B6 electoral roll published in the Gazette, an ancient document and payment of property tax in the local authority till 1973 in the name of Gourikutty Amma under whom the revision petitioner's grandfather claimed in this regard. The learned counsel highlighted the discrepancies in the door numbers of the building as disclosed in the documents relied on by the landlady and submitted relying on Ext.B2 certificate issued by the local authority that these discrepancies made out a strong prima facie case regarding the bona fides of the title dispute raised by the revision petitioner. The learned counsel referred in this connection to Ext.B3 school admission register and Exts.B9, B5 and B4 extracts of the property tax assessment registers and submitted that even as regards the correct name of the building which according to the revision petitioner is Chempakassery Puthen Veedu, there is genuine dispute. Taking us through various passages in the testimonies of CPW. 1 and PW. 1, the learned counsel submitted that the landlady had no clear idea even as to how she came to have title. According to him, the adverse decree suffered by his client in O.S. 1430 of 1990 was pending in appeal before the District Court and this Court in O.P. No. 12484 of 1998 filed by the revision petitioner had observed that it is the civil court which should have the final say in the matter of title to the building. Counsel also submitted that there was evidence in abundance to hold that his client came into occupation of the building long prior to the date when the tenancy according to the landlady commenced. Relying on the decisions such as Ishwari Prasad v. Mohammad Isa (AIR 1963 SC 1728) the learned counsel submitted that expert's evidence which was nothing more than mere opinion ought not to have been accepted without caution and the observation of the Appellate Authority that oral evidence cannot outweigh the opinion of the expert was erroneous. In support of his argument that the existence of landlord-tenant relationship was a pre-requisite to maintain a rent control petition, the learned counsel relied on decisions such as H.S. Rikhy v. New Delhi Municipality (AIR 1962 SC 554) and Robert Welress v. Mammu (1985 KLT 1121). The learned counsel would cite a decision of the Calcutta High Court in G.S. Mukherjee v. State (AIR 1977 Cal. 125) and submit that it was incorrect to accept the argument that the R.C.P. was prepared much prior to the date of its signing. The learned counsel requested us at least to postpone the actual eviction till culmination of the civil proceedings presently going

on before the District Court. Notwithstanding his lengthy submissions in the context of denial of title and existence of landlord-tenant relationship, the learned counsel did not address serious arguments regarding the merits of the grounds of eviction concurrently found against the revision petitioner except to state that the claim under Section 11(3) cannot be bona fide on account of the landlady's husband being a successful medical practitioner put up permanently at Chathannoor and the landlady no longer needing employment and her mother having a palatial residential building at Thiruvananthapuram.

8. Shri. K. Ramachandran, learned counsel for the landlady would meet the elaborate submissions of Shri. Sudheer in a precise fashion. After explaining to us the rival claims in the case as to title, Shri. Ramachandran submitted that essentially the revision petitioner's claim was that she had perfected a title for herself by adverse possession and limitation. The learned counsel submitted that the blemishes pointed out by the revision petitioner regarding the title documents relied on by the landlady were very trivial and what was important was that the revision petitioner never disputed the title of the landlady's sister Chandrika over the adjacent portion of the same building. According to the learned counsel, the revision petitioner is not entitled to deny the landlady's title since she does not admit her status in the building to be that of a tenant. In this context Shri. Ramachandran relied on *Janaki Amma v. S.V. Vidya Samajam* (1992 (2) KLT 826). The learned counsel distinguished *A. V.G.P. Chettiar* (supra) and submitted that the said decision was given by the Supreme Court under Section 10(2)(vii) of the Tamil Nadu Statute worded differently and that in that case there was even documentary evidence to hold that the tenants denial was bona fide. Relying on *Aboobacker v. Girija* (1995 (1) KLT 553), Mr. Ramachandran submitted that under Section 11(1) the court will have to be satisfied that there are strong or at least substantial grounds or sufficient materials in support of the plea of denial of title. Title in the context of the rent control law, the learned counsel submitted on the authority of *S. Thangappan v. P. Padmavathy* ((1999) 7 SCC 474), is not proprietary title. The learned counsel further submitted that the finding concurrently entered by the authorities below that the denial in this case is not bona fide is not liable to be interfered with in revision and referred to *Gouthami v. Indira Kunjammu* (1994 (2) KLT 201) in this regard. Regarding the landlady's eligibility for obtaining

eviction on the ground of bona fide need, the learned counsel submitted that due to the extra thrust even for the defence of denial of title, the revision petitioner was not very serious in resisting the said ground. As for the blame placed on the landlady for not having produced the copies of the rent receipts, the learned counsel submitted that contention cannot be countenanced since receipts were issued to the revision petitioner and the landlady never had a case that she was keeping counterfoils or duplicates or other copies. The learned counsel reminded us of the narrowness of the revisional jurisdiction and submitted that the need of the landlady an employee of the Raj Bhavan Secretariat presently, put up at Chathannoor scores of Kilometres away from Thiruvananthapuram to come over to Thiruvananthapuram so as to enable her to discharge her duties more conveniently and promptly cannot be branded even for a moment as not bonafide.

9. The foremost question to be decided in this case is whether the authorities below were right in holding that the revision petitioner's denial of the landlady's title is not bona fide. To answer that question, we will presently consider the merit of Shri. K. Ramachandran's submission that denial of title to warrant an enquiry regarding its bona fides under Section 11(1) is not a plea which can be raised by anybody and everybody. The second proviso to Section 11(1) reads as follows:-

'Provided further that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Rent Control Court shall decide whether the denial or claim is bonafide.....'

(Underlining ours)

K.T. Thomas, J. as a Judge of this Court in Janaki Amma (supra) observed as follows:-

'In order to attract the second proviso to Section 11 (1) of the Act, the title of the landlord should have been denied by the tenant. Then alone the Rent Control Court would be obliged to decide whether such denial is bona fide.....In the rent control proceedings persons other than a tenant are not permitted to deny the title of the landlord.'

Janaki Amma (supra) was a case where the landlord had not admitted the status of the person who raised the plea of denial of title to be that of a tenant. In the instant case, the landlady's position is that the revision petitioner is her tenant. But is that enough? The revision petitioner does not admit that she is the landlady's tenant or for that matter anybody else's tenant. To a query put by us Mr. Sudheer submitted that according to the revision petitioner her status is not that of a tenant under anybody. It can be noticed from Section 11 and many other provisions of the Rent Control Act and from many judicial precedents including some cited by Mr. Sudheer that to maintain an R.C.P., landlord-tenant relationship is essential prerequisite. The Rent Control Court is a court exclusively constituted to govern the rights and liabilities of landlords and tenants. We are therefore of the view that to enable a person to raise a plea of denial of title warranting an enquiry under Section 11 (1) before the Rent Control Court regarding the bona fides of that plea, the person raising the plea must admit that his status in the building is that of a tenant even when he contends that the petitioner in the R.C.P. is not his landlord.

10. What exactly is the concept of title in the context of Section 11 (1) of the Rent Control Act? Is it proprietary title or title as landlord which going by the statutory definition of that term only means entitlement to receive rent? Our survey of various decisions rendered by different High Courts under the relevant provisions of the Rent Control statutes in currency in the States of Andhra Pradesh, Bihar, Goa, Orissa, Pondicherry, Rajasthan, Tamil Nadu, Uttar Pradesh and Thripura and our own statute and the Commentaries of R.C. Kochatta, R.D. Agarwal and M/s. R.Mathrubhutham and R.Sreenivasan clearly indicate that essentially what is contemplated is not proprietary title but only title as landlord in which alone a tenant should ordinarily be concerned. We also share the same view. But we have noticed that a Division Bench of this Court in Ibrahim v. Treesa Poulose (2003 (2) KLT SN P. 50 Case No. 64) observed that denial of landlord-tenant relationship is different from denial of the title of the landlord. As extracted from the full text of that order, the following are the relevant passages in Ibrahim (supra):

'It is true that in his reply the tenant had stated that there was no landlord-tenant relationship between the parties. In our view, the denial of landlord-tenant relationship is different from denial of the title of the landlord. Unless the

respondent in the R.C.P. denied the title of the petitioner as landlord the second proviso to Section 11(1) will not be attracted. In this case there was no such denial of title of the landlord by the tenant. Even assuming that the denial of landlord-tenant relationship amounted to denial of title of the landlord by the tenant, in the facts and circumstances of the case we have no hesitation to hold that the said denial was not bona fide.'

(underlining ours)

Ibrahim was a case where the respondent in the R.C.P. admitted that to begin with his status was that of a tenant under the petitioner in the R.C.P. and that pursuant to an agreement for sale executed between him and the petitioner, the landlord-tenant relationship had become extinct. Their Lordships of the Division Bench approved the decision of Balakrishnan, J. in *Hijra Umma v. Razack* (1991 (2) KLT 700) and held that the agreement for sale in favour of a tenant by itself will not result in termination of the landlord-tenant relationship. We do not mean to say that proprietary title is absolutely irrelevant in all cases coming under Section 11(1). Proprietary title can assume relevancy in a given case where a person who admits that he is a tenant under somebody else contends that the petitioner is the R.C.P. cannot be the landlord for want of proprietary title. Section 116 of the Evidence Act lays down a rule of estoppel which completely estops a tenant from denying the title of the landlord. The Supreme Court in *J.J. Lal (P) Ltd. v. M.R. Murali* ((2002) 3 SCC 98) considered the above estoppel and held:-

'the rule of estoppel contained in Section 116 of the Evidence Act which estops the tenant from denying the title of the landlord at the commencement of the tenancy and the estoppel continues to operate so long as the tenant does not surrender possession over the tenancy premises to the landlord who inducted him in possession. The tenant is not estopped from denying the title of the landlord if it comes to an end subsequent to the creation of the tenancy nor is he estopped from questioning the derivative title of a transferee of his landlord'.

It is thus open to a tenant to deny the proprietary title of his own landlord on the ground was given obiter. That observation though correct in that case be confined to the facts of that case.

11. In the instant case, the revision petitioner who does not admit that she is a tenant contends that she is presently having title or that she is in possession or permissive occupation under some other titleholder. This contention does not amount to a plea of denial of title warranting an enquiry by the Rent Control Court under Section 11(1). The revision petitioner very well knew that she should seek remedies from the regular civil court at her own instance and not on the basis of any finding by the Rent Control Court. O.A. 1430 of 1990 was filed by her seeking declaration of her title and consequential injunction. That suit was dismissed. May be, a belated appeal has been filed. According to us, the question whether that decree has attained finality need not bother us since we are of the view that the revision petitioner should get her remedies regarding title from the civil court and the authorities under the Rent Control Act could have even avoided the detailed enquiry undertaken by them on the short score that the revision petitioner did not admit her status to be that of a tenant.

12. Now we will proceed to examine the legality, regularity and propriety of the other findings entered by the authorities below, reminding ourselves of the limits of our jurisdiction under Section 20 of the statute. De hors the plea of denial of title it is necessary that the landlady should establish the existence of landlord-tenant relationship between her and the revision petitioner. Ext. A3 dated 31.1.79 is certainly the only document relied on by the landlady in this regard. The defence to Ext.A3 was one of total denial. The contention was that Ext.A3 is a forged and concocted one. Answering this contention the landlady brought in Ext..C1 report from the expert attached to the State Forensic Science Laboratory regarding the purported signatures of the revision petitioner on Ext.A3, a report which was proved to the very hilt by the oral testimony of PW.3. We notice that the authorities below have appreciated the expert's evidence with the required caution. We also have scanned the standard signatures marked Exts.A1 to A10 which are signatures of the revision petitioner put by her in the acquittance register maintained by her employers and Section 1 to Section 37, specimen signatures procured from her by the court and made our own comparison of those signatures with the questioned signatures on Ext..A3. We are not persuaded to disagree with the views of the Appellate Authority in the context of the genuineness of the revision petitioner's signature on Ext..A3. Each one of the so-called suspicious

circumstance highlighted by the learned counsel for the revision petitioner were considered by the Appellate Authority. According to us also, the explanation offered by the landlady for the late production of Ext.A3 and non-mentioning of Ext.A3 in the R.C.P. is reasonably convincing. It is a matter of common knowledge that lease deeds especially when they are written on insufficiently stamped papers are produced by parties only when such production becomes absolutely necessary. It is also not uncommon that proceedings like suits and Rent Control Petitions are prepared in lawyers' chambers as soon as the period mentioned in the suit notice is over and actual filing is made omitting to make corrections or insertions on the basis of the reply notice received late and not noticed by the draftsmen. Though ideally initial proceedings like the complaints and original petitions are to be drafted and filed after exercising utmost care and crucial documents are produced alongwith the original proceedings themselves, we cannot ignore the reality that in day-to-day practice situations that we come across are not ideal. The purchase of stamp papers on two different dates from two different places would certainly arouse suspicion at first blush. But the defence having been one of total denial of the signatures and such defence having been rightly put out by the authorities below, the above circumstances highlighted by the revision petitioner will not be of much significance. The Appellate Authority has given well reasoned findings regarding all the circumstances highlighted before him. We, in these proceedings, are not much concerned with the proprietary title of the landlady. We will only observe that the very plea of title by adverse possession taken up by the revision petitioner pre-supposes an admission by her regarding the landlady's title or the title of somebody under whom the landlady derives title. The controversy raised regarding the Corporation door numbers, present and previous, and name of the building also is not of much consequence when it is noticed that ultimately it is conceded by everybody that there is no real dispute as to the identity of the building presently in the possession of the revision petitioner as the building over which the landlady claims title and seeks eviction. Importantly the revision petitioner does not dispute the title of the landlady's sister over the adjacent portion of the building claimed under the very same documents. The finding of the Appellate Authority in the context of the plea of denial of title and denial of landlord-tenant relationship are well reasoned and based on evidence. The only

defence in the context of Section 11(2)(b) was the case of denial of landlord-tenant relationship. That defence failed and there is no case that Section 11(2)(b) intimation notice has not been issued. This being the position, eviction order under Section 11(2)(b) was inevitable. But that order is liable to be vacated by making requisite deposits under Section 11(2)(c). As for the eviction under Section 11(3), the building being residential in nature, the only question is whether the need and the claim are bona fide. That the landlady was employed in the Raj Bhavan Secretariat is not in dispute. The defence is only that she is permanently put up in her matrimonial home with her doctor husband and is not attending to her duties at Raj Bhavan after the marriage and that her mother owns a building at Thiruvananthapuram. The authorities below concurrently turned down these defences on the basis of evidence. The other building at Thiruvananthapuram admittedly belongs to landlady's mother. The schedule building is the only building in Thiruvananthapuram belonging to the landlady. We are of the view that the findings concurrently entered by the authorities below that the landlady needs to accommodate herself in the schedule building so as to enable her to attend to her duties at Raj Bhavan are reasonable.

The result is that the revision fails and the same is dismissed. The parties will suffer their respective costs.