

ismail Vs. Kesavan

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Court : Kerala

Decided On : Dec-16-2003

Reported in : 2004(2)KLT56

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

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

Appeal No. : Crl.P. No. 3132 of 2001

Appellant : ismail

Respondent : Kesavan

Advocate for Def. : S. Radhakrishnan, Adv.

Advocate for Pet/Ap. : T.M. Abdul Latheef, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

K.S. Radhakrishnan, J.

1. Tenant is the revision petitioner. Eviction was sought for under Section 11(3) of Act 2 of 1965, before the Rent Control Court Schedule building was let out to the respondent tenant for a monthly rent of Rs. 1025/- for a period of one year from

9.2.1994. Tenanted building is situated in an important locality of Cochin City at Jews Street. Respondent tenant is conducting a fruit stall in the tenanted premises. Petitioner's son P.K. Santhosh bona fide requires the schedule building for his own business. Tenant has other buildings of his own so as to conduct his business. Petitioner therefore sent a notice to the tenant to vacate the premises. Tenant did not vacate the premises. Hence petitioner moved the rent control petition.

2. Tenant resisted the petition stating that the need is not bona fide and that the attempt of the landlord is only to sell away the property after evicting the tenant. Further it was also stated that petitioner's son does not bona fide require the premises and that he is away in gulf countries. Landlord got himself examined as PW1. Landlord's son was examined as PW-2. Exts.A1 to A4 documents were produced on the side of the landlord. Tenant got himself examined as RW-1. RW-3 is Accommodation Controller. RW-2 was also examined on the side of the tenant. Rent Control Court after examining the oral and documentary evidence came to the conclusion that the need urged by the landlord is bona fide and also held that the tenant is not entitled to get the benefit of second proviso to Section 11(3) as well. The said order was confirmed in appeal by the Appellate Authority, against which this revision petition has been preferred.

3. When the revision petition came up for admission counsel appearing for the tenant placed reliance on the decision of the Apex Court in *Koyilerian Janaki and Ors. v. Rent Controller, Cannanore and Ors.*, (2000) 9 SCC 406, and contended that since there is no pleading to the effect that son is dependent on the landlord petition for eviction is not maintainable. Counsel took us through Rent Control Petition as well as oral evidence and contended that in the absence of any pleading courts below are not justified in granting eviction. Counsel appearing for the respondent landlord on the other hand, contended that the tenant has not disputed the status of the son who is dependent on his father. Counsel also took us through the oral evidence of PW2 son, PW1 and also pleadings of the parties. We may refer to the Rent Control Petition wherein the need was highlighted as follows:

'The petitioner's need to occupy the building for his son's business is honest, bona fide, reasonable and genuine Petitioner is entitled to get an order of eviction against the respondent on the ground of bona fide need for occupation of his son P.K. Santhosh for his livelihood'.

In the objection the tenant has stated as follows:

'The statement that the petitioner's need to occupy the building for his son's business is honest, bona fide, reasonable and genuine is utter falsehood. There is absolutely no bona fides and truth in the said need. The said need is not genuine. The need put forward is unreasonable and dishonest. Petitioner's son Shri. Santhosh and his wife are employed in a Gulf Country. He has no intention to start a business at Ernakulam'.

We have also gone through the oral evidence of PW-1, PW-2 and also the tenant. True, there is no specific pleading either in the petition or in the oral evidence that the son is a dependant on the landlord. Tenant has not raised a contention either before the Rent Control Court or before the Appellate Authority that the son is not dependent on the landlord and consequently the need is not bona fide. In the objection filed in the rent control petition also tenant has no case that the son is not dependent on the landlord. Tenant has no case much less any evidence adduced to show that either the landlord or his son has got other building of their own.

4. Counsel appearing for the tenant Sri. T.M. Abdul Latiff submitted it is bounden duty of the petitioner landlord to plead and prove that the son is a dependent on the landlord for a building for his occupation. In this connection, we may refer to the decision of the Apex Court cited before us on the question of pleadings regarding dependency wherein the Apex Court examined the question as to whether daughter and son-in-law, both medical practitioners are dependent on the landlord. Landlady moved application for eviction stating that she bona fide need the building for occupation of her married daughter and son-in-law who are medical practitioners after demolishing the premises for reconstruction. Rent Control Court found there is no relationship of landlord-tenant between the parties and dismissed the petition. Appellate Authority however, allowed the appeal and

held that the need urged by the landlady is bona fide. Tenant filed revision before the District Judge. District Judge found that the landlady has neither pleaded the material ingredients of Section 11(3) of the Act in her petition for eviction nor led any evidence in that respect. Revision was accordingly allowed and the order of the Appellate Authority was set aside. The High Court however under Article 227 of the Constitution interfered with the order of the District Judge and set aside the order. Tenant took up the matter in appeal before the Apex Court. Apex Court examined the language of Section 11(3) and the question of dependency and held as follows:

'Language of Section 11(3) of the Act is plain and simple and there is no ambiguity in it. A perusal of Section 11(3) shows that if the landlord is in bona fide need of the building for occupation by any members of the family dependent on him he may apply to the Rent Control Court for eviction of the tenant. Thus where eviction of a tenant is sought by a landlord for occupation of any member of his family, the landlord is required to plead and substantiate three ingredients. Firstly, a person for whose need the premises is required is a member of the landlord's family. Secondly, such member of the family is dependent on the landlord and thirdly, there is a bona fide need. In the absence of any one of the three ingredients, the petition by a landlord under Section 11(3) would fail. In the present case, what we find is that, there was pleading to the effect that the building is needed for the married daughter and son-in-law. However, there is no pleading as regards the fact that the married daughter and the son-in-law are dependent on the landlady. The word 'family' has not been defined in the Act. However, for the sake of argument we may assume that the married daughter and son-in-law are members of the landlady's family. In that case the landlady was to further plead and substantiate that they are dependent on her. Unless it is pleaded that the married daughter and the son-in-law are dependent on the landlady, a petition under Section 11(3) of the Act cannot succeed on the mere allegation that the building is needed for the occupation of the married daughter and the son-in-law. We are, therefore, of the view that in the absence of any pleading that the married daughter and the son-in-law are dependent on the landlady the appellate court was not justified in allowing the petition of the landlady on the ground that the landlady bona fide required the building for occupation of her married daughter

and son-in-law'.

We may also refer to another decision of the Apex Court in *Rizhakkayil Suhara v. Manhantavida Aboobacker*, 2001 (2) RCR 490. Question urged before the Apex Court was whether the daughter and son-in-law of the landlord, with three children, living separately, could be said to be dependent on the landlord. Apex Court noticed that a plain reading of Section 11(3) shows that it enables a landlord to seek possession of the building from his tenant by making an application to the Rent Control Court if he bona fide needs the building for his own occupation or for the occupation by a member of his family dependent on him. The sub-section takes note of not only bona fide need of the landlord but also the need of the members of his family dependent on him. Where the landlord's bona fide needs the building not for his own occupation but for occupation of a member of his family, it must be shown that such a member of his family is dependent on him. Ultimately Apex Court remitted the matter to District Judge to examine the question whether the landlord's daughter who owns residential and non-residential buildings is dependent on the landlord. Apex Court in *Omkar Nath v. Ved Vyas*, AIR 1980 SC 1213, held that a landlord seeking ejection of his tenant from the residential building for his own occupation has to plead and prove the ingredients specified in the section. The statute being designed to protect tenants from unreasonable eviction it has taken care to put restrictions which must be rigorously construed to fulfil the purpose of the statute.

5. In *Krishna Iyer v. Parvathy Ammal*, 1988 (2) KLJ 156, this Court held that pleadings of the parties form the foundation of their case on which issues are raised, evidence let in and findings arrived at for deciding litigations. Parties are bound by pleadings. A case not set up cannot be allowed to be proved. If evidence is let in outside the pleadings, it cannot normally be looked into. From the pleadings the opposite party must know what is the case he has to answer and prove. On taking the entire circumstances emerged in the case, if the Court feels that no prejudice has been caused to the counter petitioner tenant due to lack of pleadings of the petitioner, it is not proper to deny the relief to the petitioner on the ground that there is no pleading. What emerges is that a landlord may apply to the Rent Control Court for an order of eviction if he bona fide needs the building for his

own occupation or the landlord bona fide needs the building for occupation by any member of his family dependent on him. Dependency does not mean financial dependency, but dependency for the building which belongs to the landlord. In our society generally son, daughter, son-in-law, daughter-in-law, brother, sister etc. are members of the family and would in many cases depend upon the head of the family. The Kerala Rent Control Act does not define the term 'family'. But what constitutes the family in a society depends upon ancestry, birth, blood relations, common lineage, line of descent and the habits and ideas of persons constituting the family. In short its ambit has to be determined with regard to the socio-economic milieu of the parties. But there must be sufficient pleading that they are dependent upon the landlord, so that, in the given case, the tenant could disprove the dependency showing that the landlord or dependent has got his own building in their possession and hence there is no dependency. Though meticulous pleadings may not be insisted upon though landlord has to plead material averments, that is, all the ingredients which are necessary to constitute the grounds for eviction under Section 11(3) of which dependency is also material. In other words, the pleadings must be such that essential materials which constitute the ground pleaded must be projected lest it may cause prejudice to the tenant. So far as this case is concerned we are in agreement with the counsel for the tenant that there is lack of pleadings with regard to the dependency of the son.

6. However, we may hasten to add as far as this case is concerned we need not reject the eviction petition for the sole reason that there is no proper pleadings and we need not accept the contention of the tenant that the matter is to be remitted back to the Rent Control Court. This case can be disposed of taking note of the subsequent events. While the matter was pending before the appellate authority the landlord died and the property was enured to the petitioner as per a Will executed by the father. In other words, he is not a dependent now, but the owner and the landlord himself. Consequently lack of pleading would not cause any prejudice to the tenant since the bona fide need has been established.

7. Under such circumstance we are inclined to uphold the order of the Rent Control Court and Appellate Authority and dismiss the revision. Considering entire facts and circumstances of the case we feel it is only just and proper to grant time

to the tenant upto 31.3.2004 for vacating the premises provided he files an undertaking before the Rent Control Court within one month that he would vacate the premises within the aforesaid time and that he would pay arrears of rent if any and also future rent.

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