

Jayarajan Vs. Yesoda

Jayarajan Vs. Yesoda

SooperKanoon Citation : sooperkanoon.com/731532

Court : Kerala

Decided On : Dec-13-2002

Reported in : 2003(2)KLT325

Judge : S. Sankarasubban and; A. Lekshmikutty, JJ.

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

Appeal No. : C.R.P. No. 658 of 1994

Appellant : Jayarajan

Respondent : Yesoda

Advocate for Def. : T.A. Ramadasan and; A.K. Alex, Advs.

Advocate for Pet/Ap. : A. Mohammed Mustaque, Adv.

Disposition : Civil revision petition allowed

Judgement :

ORDER

S. Sankarasubban, J.

1. Revision petitioner is the tenant in R.C.P. No. 147 of 1991 on the files of the Rent Control Court, Thalassery. The petition for eviction was filed by the landlady

under Section 11(2)(a)(b) and Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as 'the Act').

2. According to the petitioner, the petition schedule building was let out to the tenant on a monthly rent of Rs. 140/- on the strength of a 'kaichit' dated 27.10.1989. It was stated that the rent upto 27.10.1989 had been paid. It is further alleged that the landlady's husband was in bona fide need of starting a grocery business in the petition schedule building in order to enable him to earn a decent living. Her husband who was earlier employed in Abu Dhabi has returned to India six years ago. He has no other building in his possession and is dependent on the landlady for the building.

3. In the counter statement, it was contended by the revision petitioner that the alleged need is not true or genuine and the landlady's husband being very affluent was not in need of any such building and that he was looking after his estate. The need has been set up as a pretext to evict the petitioner who is eking out his livelihood from the meager income that he derives from the business which is being carried on in the petition schedule building. It was further contended that even assuming such a need existed there were other buildings available with the landlady. It was further contended that the petitioner was solely depending on the income from the furniture business and there was no other building available in the locality. Further, it was stated that it was because the tenant refused to enhance the rent that the petition has been filed.

4. Before the Rent Control Court, the landlady was examined as PW1 and the revision petitioner was examined as RW1. Exts. A1 to A3 were marked on the side of the landlady. The Rent Control Court allowed the petition under Sections 11(2) and 11(3) of the Act.

5. Pleadings in the petition will show that the husband of the landlady had returned from Abu Dhabi six years ago. The Rent Control Court found that the bonafide need was established and hence allowed eviction. The petitioner filed an appeal as R.C.A. No.28 of 1993 before the Rent Control Appellate Authority, Thalassery. Pending the appeal, the landlady's husband died, it was for her husband that the bona fide need was made. This was brought to the notice of the court. It was

contended that the proceedings had abated. But the appellate court did not accept this contention and dismissed the appeal. It is against that the present revision is filed.

6. The main question urged before this Court is that the proceedings are abated with the death of the husband of the landlady. The Rent Control Petition was filed for bonafide need of the landlady's husband. The landlady's husband was employed in Abu Dhabi and he retired 6 years ago and he was depending on the meager income derived from his prior earnings. He wanted to start a grocery shop. He was depending on the landlady for the facility of the building. The above averments will show that the husband of the landlady was in need of the building. It was not for the purpose of the family. If that be so, the proceedings cannot be continued. On the other hand, what was contended by the landlady is that the need was bona fide, because according to her, the family needed more income and it can be derived only by resorting to some other business.

7. We heard learned counsel for the petitioner and learned counsel for the respondent.

8. It is true that there is a catena of decisions showing that in case where a bona fide need comes to an end during the pendency of the proceedings, the petition lapses. So also, if the order of eviction has become final on the ground of bona fide, execution is not barred. In this case the order of eviction has not become final, since the appeal was pending. In *Shantilal Thakordas and Ors. v. Chimanlal Maganlal Telwala* (1976 (4) SCC 417) it was held as follows: 'If the law permitted the eviction of the tenant for the requirement of the landlord 'for occupation as a residence for himself and members of his family', then the requirement was both of the landlord and the members of his family. On his death the right to sue did survive to the members of the family of the deceased landlord. We are unable to take the view that the requirement of the occupation of the members of the family of the original landlord was his requirement and ceased to be the requirement of the members of his family on his death. After the death of the original landlord the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and the occupation of the other members of the

family. Many of the substituted heirs of the deceased landlord were undoubtedly the members of his family and the two married daughters and the children of a deceased daughter in the circumstances could not be held to be not members of the family of the deceased landlord.' The court went to hold thus: 'But even so the appellants cannot succeed in this appeal. Firstly it is doubtful whether the requirement of the premises by the landlord for occupation by the partnership firm in which he is a partner will be tantamount to 'occupation by himself. It is further held thus: If the requirement of the plaintiff is also of the heirs, the suit cannot be dismissed on the ground of death of the plaintiff - where premises were required for the partnership firm of the plaintiff and on his death one of the sons did not join the firm, the suit is liable to be dismissed'. Raghunalh G. Panhale (dead) by Lrs. v. Chaganlal Sundarji and Co. (JT 1999 (8) SC 219) is another concerning the subject, in the above decision, it was held thus: 'Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 uses the word the premises are reasonably and bona fide required by the landlord for his own occupation etc. The requirement must be both reasonable and bona fide. The word 'reasonable', connotes that the requirement or need is not fanciful or unreasonable'.

9. So far as the present case is concerned, the bona fide requirement made by the landlady is that her husband wanted to start business. No doubt, husband was to start business for the purpose of maintaining of family. But that does not mean that the need becomes that of the husband and the members of the family. After death of her husband, there was no need for starting the business. In that view of the matter, we are of the view that the need alleged has become abated after the death of her husband.

10. In the light of the above, we hold that the proceedings are abated on the death of the husband of the landlady. Civil Revision Petition is allowed and the judgment of the court below is set aside and dismiss the R.C.P.