

Chella Rowthar Vs. Remabhai

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Court : Kerala

Decided On : Jan-27-2011

Reported in : ILR2011(1)Ker975

Judge : Pius C.Kuriakose; N.K.Balakrishnan, Jj.

Acts : Central Reserve Police Force (CRPF) Act - Section 11(3)

Appeal No. : R.C.R. No.215 of 2010

Appellant : Chella Rowthar

Respondent : Remabhai

Advocate for Def. : SRI.M.GOPIKRISHNAN NAMBIAR, Adv.

Advocate for Pet/Ap. : SRI.VINOD KUMAR.C, Adv.

Judgement :

1. The tenant is in revision. The landlord who retired from CRPF sought eviction under Section 11(3) of the Act contending that he bonafide needs the petition schedule building for starting a stationery business for eking out the livelihood of himself and his family members as he has no other source of income other than the pension he gets.

The tenant contended that the need projected is not bonafide. The Rent Control Court after considering the oral and documentary evidence adduced by

the parties ordered eviction of the revision petitioner under Section 11(3) of the Act. His appeal, RCA No.14/2005 was dismissed.

2. The tenant contends that subsequent to the dismissal of the RCA, the landlord expired and so the need does not survive.

According to the revision petitioner the subsequent event ie; the factum of death of the original landlord has to be taken into account and as there is no evidence to show that the need was for family members as well, order of eviction cannot be sustained.

3. We have heard the learned counsel for the revision petitioner and respondent at length.

4. Whether the death of the landlord long after the dismissal of RCA would be sufficient to non suit the respondents (the LRs of the original landlord) is the short question that falls for consideration in this revision. The learned counsel for the revision petitioner relied upon the Supreme Court decision in Seshambal v. Chelur Coporation [2010(1) KLT 834 (SC)] to buttress his submission that subsequent events have also to be taken into account. That was a case where the Rent Control Petition was filed by the landlords, the husband and wife. During the pendency of the revision before the High Court, the landlord- husband passed away leaving his wife, Seshambal. Seshambal, who was the appellant before the Apex Court passed away during the pendency of the appeal. Hence, her 3 daughters sought substitution as legal heirs of the appellant. It was found that one daughter was living with her family at Coimbatore and another daughter in Bihar.

The third daughter was settled in America. Relying on the earlier decisions of the Supreme Court in Pasupuleti Venkateswarlu v. Motor and General Traders [(1975) 1 SCC 770], Om Prakash Gupta v. Ranbir B. Goyal [(2002) 2 SCC 256], Hasmat Rai v. Raghunath Prasad [(1981) 3 SCC 103] and Baba Kashinath Bhinge v. Samast Lingayat Gavali [1994 Supp (3) SCC 698], it was held that the Court could take note of the subsequent events.

The eviction petition in that case was totally silent about the requirements of any member of the family of the owners-petitioners. Neither before the Rent Controller nor before the Appellate Authority it was argued that the requirement in question was not only the requirement of the landlords but also the requirement of any other member of their family whether dependent upon them or otherwise.

The specific case put forward in that case was that of the deceased-widowed owner of the demised premises and not of any member of her family. The fact situation in that case is entirely different from the facts obtained in this case. In Hasmat Rai's case it was observed by the Apex Court that if the tenant is in a position to show that the need or requirement of the landlord no more exists because of subsequent events, it would be open to him to point out such events and the court, including the Appellate Court, has to examine, evaluate and adjudicate upon the same.

In the decision in Ramesh Kumar v. Kesho Ram [1992 Supp (2) SCC 623] it was held :

"The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief."

5. Sri.M.Gopikrishnan Nambiar, the learned counsel for the landlord submitted that in this case the subsequent development, namely the factum of death of the landlord has no material impact on the rights and obligations of the parties and as such the respondents cannot be non-suited.

In Seshambal's case cited supra it was also observed by the Apex Court :

"if the deceased landlords had any dependent member of the family we may have even in the absence of a pleading assumed that the requirement pleaded extended also to the dependent member of their family."

In the aforesaid decision it was further observed :

"The position may indeed have been differentiated if in the original petition the petitioner-owners had pleaded their own requirement and the requirement of any member of their family dependent upon them. In such a case the demise of the original petitioners or any one of them may have made little difference for the person for whose benefit and bonafide requirement the eviction was sought could pursue the case to prove and satisfy any such requirement."

Sri.Gopikrishnan Nambiar further submits that the deceased couple in that case did not have any dependent member of the family for whose benefit they could have sought eviction on the ground that she required the premises for personal occupation. Thus the fact situation in that case is entirely different. Thus according to the learned counsel Sri. Gopikrishnan Nambiar the dictum laid by the Apex Court in Seshambal's case is actually in favour of the respondents in this case.

Sri.M.Gopikrishnan Nambiar has also relied on the decision in Prema Ramakrishnan v. Salmath [2006 (3) KLT 284] where it was held :

"The authorities are clear that the bonafide need may survive a deceased landlord, and it is not as if the tables are to be turned as against the legal representatives of the landlord once he leaves the scene. The provisions of the Act cannot be construed in a manner so as to confer undue benefit to a tenant, because of a bereavement suffered by legal representatives of the

landlord. The deceased was not a professional intending to open up on his own. He was proposing to carry on a business, which requires only ordinary skills. The burden is always on the party who alleges that the need projected was purely personal, which vanished by his demise."

The Supreme Court decision in *Gaya Prasad v. Pradeep Srivastava* [2001 (1) KLT 753 (SC)] has also been relied upon in this connection by the learned counsel for the landlords. The principle enunciated in *Ramesh Kumar's* case was followed in *Kamaleshwar Prasad v. Pradumanju Agarwal* [JT 1997 (4) SC 425 = 1997 (4) CC 413] where it was held that the crucial date normally is the date of filing the petition. In *Gaya Prasad's* case it was held that the subsequent events to overshadow the genuineness of the need must be of such a nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events.

In *Hasmat Rai's* case cited supra emphasis laid was that the subsequent events should have wholly satisfied the requirement of the party who petitioned for eviction on the ground of personal requirements. The decision in *Shakuntala Bai and others v. Narayan Das and others* [(2004) 5 SCC 772] has also been cited by the learned counsel for the landlords to fortify his submission that the crucial date for deciding the requirement is the date of institution of the proceedings.

6. Bearing in mind the principles adumbrated in the aforesaid decisions it has to be now seen whether the need projected by the original landlord was only of his own need or of his family members also. It was stated in the pleadings that he was getting only a meagre income from his pension which was insufficient for eking out the livelihood of himself and his family members and so he intends to conduct a stationery business in the petition schedule building.

In evidence it was further stated that his eldest son was unemployed and for eking out the livelihood of the family the stationery business has to be conducted.

Therefore, the argument advanced by the learned counsel for the revision petitioner that the need ceased on the death of the landlord does not appeal to us.

7. The learned counsel for the landlord has also pointed out that the appeal was dismissed as early as on 8.8.2008. The revision petition was filed only on 27.7.2010, after the legal heirs of the landlord filed execution petition. It is submitted that the original landlord which had already secured the order of eviction expired on 28.4.2009; 8 months after the judgment was pronounced by the learned Appellate Authority.

Only because the order of eviction was not executed before the death of landlord the tenant has chosen to file this revision petition. Those aspects also have to be duly taken note of. We are fully satisfied that the need was not only of the original landlord but also of his family members and as such the argument canvassed by Sri.Vinod Kumar, the learned counsel for the revision petitioner that the need does not survive must necessarily fail.

The revision petition is hence dismissed.

8. Sri.Vinod Kumar, the learned counsel for the revision petitioner has made a fervent request to grant one year time to vacate the premises.

Though this request is opposed by the learned counsel for the respondent, we are inclined to grant one year time from today to the tenant to vacate the tenanted premises but on following conditions:-

The tenant should discharge entire arrears of rent if any within one month from today. The tenant shall file an affidavit within three weeks from today undertaking to give peaceful surrender of the petition schedule building to the respondents within one year from today and that he will pay occupation charges at the current rent rate promptly and regularly as and when it falls due. It is made clear that the tenant will get the benefit of time granted as above only if he files the affidavit on time and honours the undertakings contained therein.

