

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

OP(C) .No. 440 of 2015 ()

AGAINST THE ORDER IN IA NO.2110/2014 IN OS 126/2012 of MUNSIFF COURT,
MANJERI

PETITIONER:

SALEEM BABU AGED 48 YEARS
S/O.POOKKODAN MUHAMMED BAPPUTTY
THINNAKKAL HOUSE, MORAYOOR AMSOM DESOM, PO.MORAYOOR
MALAPPURAM DISTRICT.

BY ADVS.SRI.K.M.SATHYANATHA MENON
SMT.KAVERY S THAMPI

RESPONDENT:

HYDRU, S/O.MOIDEENKUTTY
MANGALATH HOUSE, CALICUT AIR PORT P.O
MALAPPURAM DISTRICT, PIN-673 008.

R1 BY ADV. SRI.BABU S. NAIR
R1 BY ADV. SRI.K.RAKESH

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 09-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

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APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 - TRUE COPY OF THE ORDER DATED 14-8-2014 OF THE MUNSIFF COURT
MANJERI IN I.A.2110/2014 IN O.S.NO.126/2012.

RESPONDENT'S EXHIBITS: NIL

RKC

TRUE COPY

PA TO JUDGE

**ANTONY DOMINIC &
P.V.ASHA, JJ.**

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O.P(C) No.440 of 2015
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Dated this the 9th day of October, 2015

JUDGMENT

Antony Dominic, J.

This original petition is filed under Article 227 of the Constitution of India seeking to quash Ext.P1 order passed by the Munsiff's Court, Manjeri dismissing I.A.No.2110 of 2014 filed by the petitioner in O.S.No.126 of 2002. The petitioner is the tenant and the respondent is the land lord of a premises. In the Munsiff's Court, Manjeri there are four civil suits between the parties. Details of which are as follows:

2. O.S.No.126 of 2002 is a suit filed by the petitioner against the respondent seeking an injunction against eviction otherwise than in accordance with law from the tenanted premises. O.S.No.107 of 2013 is a suit filed by the respondent against the petitioner seeking mandatory injunction to require him to remove unauthorized construction allegedly made by him. O.S.No.192 of 2013 is also a suit filed by the petitioner against the respondent seeking an order of injunction against him.

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O.S.No.593 of 2013 is yet another suit filed by the petitioner claiming damages against the respondent. In the Rent Control Court, Manjeri respondent land lord has also filed R.C.P.No.17 of 2013 seeking eviction of the petitioner under sections 11(2),(b), 11(3) and 11(4) of the Kerala Building (Lease and Rent Control) Act. In O.S.No.126 of 2012, the petitioner filed I.A.No.2110 of 2014 seeking joint trial of the suits along with R.C.P. No.17 of 2013. In that I.A. the court below has passed Ext.P1 order holding that original suits cannot be jointly tried along with Rent Control Petition. It is this order under challenge before us.

3. We heard the learned counsel for the petitioner and the learned counsel for the respondent. Relying on the judgment of the Apex Court in ***State Bank of India Vs. Ranjan Chemicals Ltd. And another*** (2007 (1) SCC 97) and judgments of this Court in ***Kuruvilla Abraham Vs. John*** (1995 (1) KLT 161), ***Sathyaseelan Vs. Madhavan Kalanadhan*** (2002 (1) KLT 913) and ***Jose Antony Thottassery Vs. Anil Kuruvilla & others*** (2012 (1) KLT 531), the counsel for the petitioner contended that the suits and the Rent Control Petition are connected and that the civil court would have been well within its jurisdiction in

jointly trying original suits along with Rent Control Petition. However this contention was refuted by the counsel for the respondent land lord stating that law is settled that the civil court cannot try a rent control petition filed under the Rent Control Act. He relied on the judgments of this Court in ***Kunjali Hassan Kurup Vs. Abdul Sathr Sait*** (1963 KLT 407) and ***Perinigottukara Namboodiri Yogakshema Sabha Vs. Sreelatha*** (2005 (2) KLT 480). On this basis the counsel sought dismissal of the original petition.

4. We have considered the submissions made. The short question that arises for consideration is whether the learned Munsiff was right in concluding that a petition filed under the Rent Control Act cannot be jointly tried with original suits. The jurisdiction to try the original suit is conferred on the civil courts. On the other hand insofar as proceedings under the Rent Control Act are concerned, Section 3 of the Act authorises the Government to appoint by notification a qualified person to be a Rent Control Court. Section 11 of the Rent Control Act provides that notwithstanding anything contrary to contain in any other law or contract a tenant shall not be evicted, whether in

execution of a decree or otherwise, except in accordance with the provisions of the Act. In this case, the Munsiff has been appointed as the Rent Control Court. Though the Munsiff's Court entertained original suits and in its capacity as the Rent Control Court, the Munsiff has entertained petition filed under the Rent Control Act, jurisdictions exercised are different and distinct and there is no overlapping of the jurisdiction. It was therefore that in ***Kunjali Hassan Kurup Vs. Abdul Sathr Sait*** (1963 KLT 407) where this Court interfered with the orders passed by the Munsiff's Court of Krishnapuram which was also the Rent Control Court under the Rent Control Act, which tried a small cause suit for arrears of rent along with a petition for eviction under the Rent Control Act. The reasoning adopted by this Court is evident from paragraph 2 of the judgment, which reads thus:

"Under S.3(1) of Act XVI of 1959 the government may, by notification in the Gazette, appoint a person who is or is qualified to be appointed, a Munsiff to be the Rent Control court. This provision reveals that the Rent Control Court is only a persona designata. In this case it so happened that the person appointed as Rent Control Court happened to be the Musnif as well.

Nevertheless, the two courts, viz., the court of the Munsif and the Rent Control Court, are exercising two different jurisdictions and the learned Munsif should not have tried the small cause suit and the petition for eviction jointly."

5. Similarly in ***Perinigottukara Namboodiri Yogakshema Sabha Vs. Sreelatha*** (2005 (2) KLT 480), where an application for transfer of a rent control petition to the sub court for trial and disposal along with original suit was rejected by this Court on the ground that there is total lack of jurisdiction in the Sub Judge's Court to deal with an eviction under the Kerala Buildings (Lease and Rent Control) Act, since Sub Court is not a Rent Control Court notified under section 3 of the Rent Control Act. Therefore law is settled that a civil suit and rent control petition cannot be jointly tried.

6. However this legal hurdle was sought to be overcome by the learned counsel for the petitioner by placing reliance on judgment of the Supreme Court in ***State Bank of India Vs. Ranjan Chemicals Ltd. And another*** (2007 (1) SCC 97). That was a case where the State Bank of India had moved an application before civil court where one of its defaulter had filed a

suit praying that the said suit be transferred to the Debt Recovery Tribunal for being jointly tried along with the original application filed by the Bank, since both the proceedings arose out of the same cause of action and the suit by the defaulter was really in the nature of a counter claim for set off. The prayer was rejected by the civil court and the order was confirmed by the High Court also. The Supreme Court reversed that order and directed transfer of the civil suit to the Debt Recovery Tribunal taking note of the fact that under section 19(6) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Debt Recovery Tribunal had the power to entertain the claim for set off or a counter claim, arising out of the same cause of action and has also the power to treat the counter claim as a Cross suit. It was found that the suit arose out of the same cause of action and that the claim in the suit was more in the nature of a counter claim.

7. In our view this reasoning of the Apex Court can have no relevance to this case for the reason that civil court cannot try a petition under the Rent Control Act nor are we in a position to agree that the Rent Control Petition arose out of the same cause

of action or that the claim of the land lord is in the nature of a counter claim. Therefore the principles laid down by the Apex Court in the above judgment is of no help to the tenant to sustain his prayer.

8. In so far as the judgments in ***Kuruvilla Abraham Vs. John*** (1995 (1) KLT 161) and ***Sathyaseelan Vs. Madhavan Kalanadhan*** (2002 (1) KLT 913) are concerned, the principles laid down in these two judgments are that even after extending Rent Control Act to an area, civil suit can still be filed for recovery of arrears of rent. Though this principle is not open to a doubt, the fact that the suit is maintainable in civil court for recovery of arrears of rent, according to us, will not advance the case of the petitioners in any manner. ***Jose Antony Thottassery Vs. Anil Kuruvilla & others*** (2012 (1) KLT 531) in fact is a case where the prayer made before this Court for transfer of a civil suit to the Debt Recovery Tribunal, where an appeal under section 17 of the SARFAESI Act was pending. Judgment shows that the view taken is that in the absence of any provision in the SARFAESI Act which enables the opposite party to make a plea of set off or counter claim in the Debt Recovery

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Tribunal, a suit filed in the civil court, even if it is in the nature of a Cross suit, the question of transfer does not arise. We also notice that this judgment was rendered after referring to the judgment in ***State Bank of India Vs. Ranjan Chemicals Ltd. And another*** (*supra*). In our view this judgment not only do not help the petitioner but in fact against him.

The upshot of the above discussion is that the order passed by the learned Munsiff that a petition filed under the Kerala Buildings (Lease and Rent Control) Act cannot be jointly tried along with this original suits does not suffer from any legal infirmity justifying to be upset in a proceedings under Article 227 of the Constitution of India.

The original petition fails and is dismissed.

Sd/-
ANTONY DOMINIC,
JUDGE.

Sd/-
P.V.ASHA,
JUDGE.

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