

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

RRev.No.105 of 2012 (E)

AGAINST THE JUDGMENT IN RCA 14/2011 OF RENT CONTROL APPELLATE
AUTHORITY (DISTRICT COURT), KASARAGOD DATED 14-02-2012

AGAINST THE ORDER IN RCP 26/1999 of RENT CONTROL COURT (PRL.MUNSIFF),
KASARAGOD DATED 14-06-2011

REVISION PETITIONERS/APPELLANTS/PETITIONERS 2 TO 4:

1. B.RAJARAMA RAO, AGED 55 YEARS,
S/O LATE B.RAMA RAO, HINDU
INSURANCE COMPANY EMPLOYEE
RESIDING AT SHANTHA DURGHAMBA ROAD
KASARAGOD KASABA VILLAGE
KASARAGOD TALUK AND DISTRICT.
2. SHAMINI V.PADIYAR
AGED 50 YEARS, DAUGHTER OF LATE B.RAMA RAO
WIFE OF V.V.PADIYAR, RESIDING AT CAR STREET, BRAHMAVAR
UDUPI TALUK AND DISTRICT, P.O.BRAHMAVAR
KARNATAKA STATE.
3. DEEPIKA, AGED 48 YEARS, WIFE OF ANAPPA RAO
RESIDING AT BRAHMAKOOTLU IN BANTWAL TALUK
P.O.THUMBE, D.K.DISTRICT, KARNATAKA STATE.

BY ADV. SRI.JACOB ABRAHAM

RESPONDENT/RESPONDENT & CROSS OBJECTOR/RESPONDENT:

E.NARAYANA, AGED ABOUT 70 YEARS, SON OF KUNHAYYA ACHARY,
HINDU, BLACKSMITH, RESIDING AT DOOR NO.KMC, XXIV-414,
SHANTHA DURGHAMBA ROAD, KASARAGOD KASABA VILLAGE
P.O.KASARAGOD, KASARAGOD DISTRICT-671 321.

BY ADV. SRI.V.V.ASOKAN
BY ADV. SMT.RUKHIYABI MOHAMMED KUNHI

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 06-
04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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Dated this the 6th day of April, 2015.

ORDER

Antony Dominic, J.

Heard the learned counsel for the petitioner and learned counsel appearing for the respondent.

2. Petitioners' predecessor filed R.C.P.No.26/1999 on the file of the Rent Control Court, Kasaragod for eviction of the respondent under Sec. 11(3) and 11(2)(b) of the Rent Control Act. The need projected was that he bonafide needed the building for the occupation of his daughter. Before the Rent Control Court, the tenant contended inter alia that the petitioner did not have title over the property and that he had acquired kudikidappu rights. The Rent Control Court considered the matter and held that in view of the title dispute raised by the tenant, the Rent Control Petition was not maintainable and referred the parties to the civil court. The landlord challenged the order of the Rent Control Court in R.C.A.No.1/2001. The Appellate Authority by its judgment dated 15.12.2010, set aside the order of the Rent Control Court holding that

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the dispute of title raised by the tenant was not a bonafide one. Thereafter, the Appellate Authority ordered that “the RCP is remanded to court below for adjudication upon the claim of appellant regarding the arrears of rent and bonafide requirement”. The matter was reconsidered by the Rent Control Court and the court rejected the ground under Sec. 11(3) of the Act and ordered eviction under Sec. 11(2)(b) of the Act. The tenant deposited the arrears of rent and got the order of eviction vacated as provided under Sec. 11(2)(c) of the Act. The landlord filed R.C.A.No.14/2011 before the Rent Control Appellate Authority, Kasaragod, challenging the order of the Rent Control Court to the extent it denied the eviction under Sec. 11(3) of the Act. Though the tenant did not file any appeal, he filed a cross objection. The appeal and cross objection were considered and the appellate court by its judgment dated 14.2.2012, set aside the order of eviction passed by the Rent Control Court and remanded the case to the Rent Control Court for referring the matter to the Land Tribunal as provided under Sec. 125(3) of the Kerala Land Reforms Act. It is aggrieved by the above judgment of the Appellate Authority, this Revision is filed by the landlord.

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3. Having heard the counsel for the parties, we feel that the first issue to be answered is regarding the maintainability of the cross objection filed by the tenant. The answer to the issue has to be in favour of the landlord in view of the judgments of this Court in Ganesh v. Varghese reported in 2005 (1) KLT 282 and Susheela v. Balakrishnan reported in 2014 (1) KLT 1004, wherein this Court has held that such a cross objection, in the absence of any provision into that effect in the Act, is not maintainable. However, this Court has also clarified in the former judgment that the respondent in the appeal can take advantage of the principles of Order XLI Rule 22 and canvass against the findings which are against him.

4. In so far as the correctness of the order passed by the Appellate Authority remanding the case to the Rent Control Court for reference under Sec. 125(3) is concerned, that order in our view is untenable for two reasons. First of all, in the judgment in R.C.A.No.1/2001, the Appellate Authority remanded the case to the Rent Control Court only for adjudication upon the claim of the landlord regarding the arrears of rent and bonafide requirement. It was considering that limited scope of remand, that the Rent Control Court passed order of eviction under Sec. 11(2)(b) of the Act. When an appeal

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against that order was filed before the Rent Control Appellate Authority, the Appellate Authority is also bound by the limited remand ordered by it in R.C.A.No.1/2001. If that be so, the Appellate Authority could not have travelled outside and remanded the case again for reference under Sec. 125(3) of the Kerala Land Reforms Act.

5. Secondly, following the judgment of the Apex Court in Thomas Antony v. Varkey reported in 2000 (1) KLT 12, a Division Bench of this Court has held in Anantharajan v. State of Kerala reported in 2004 (2) KLT 119 that reference to a Land Tribunal cannot be made in a case where the tenant has not adduced any evidence even prima facie warranting a reference. It was also held that in order to attract Sec. 125 of the Kerala Land Reforms Act, it has to be specifically shown that the land has been leased for commercial purposes and the tenant has constructed a shed for such purpose before 25.5.1967. In so far as this case is concerned, not only that the tenant has not adduced any evidence, but also even in the pleadings the tenant has only raised a vague plea without any substantiating facts or evidence. In such a case, in the light of the above judgments, the Appellate Authority could not have ordered reference under Sec. 125(3) of the Kerala Land Reforms Act.

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6. For the aforesaid reasons, we are unable to sustain the order passed by the Rent Control Appellate Authority, Kasaragod in R.C.A.No.14/2011 and the said order is set aside.

7. Pointing out the fact that the rent control proceedings are of the year 1999, the learned counsel for the petitioners requested this Court to consider his case under Sec. 11(3) of the Act on merits. However, a reading of the Appellate order in R.C.A.No.14/2011 shows that the Appellate Authority has not examined this aspect of the matter and has not also not pronounced on this issue either way. In such circumstances, despite the genuineness of the above request made by the counsel, we feel only it appropriate that the case should be considered by the Appellate Authority.

8. In such circumstances, setting aside the order passed by the Rent Control Appellate Authority, Kasaragode in R.C.A.No.14/2011, the case is remanded to the Appellate Authority for considering the case of the revision petitioners for eviction of the respondent-tenant under Sec. 11(3) of the Kerala Building

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(Lease and Rent Control) Act, 1965. We also direct the Appellate Authority to hear and dispose of the matter, as expeditiously as possible, at any rate, within three months from the reopening of the courts after summer holidays.

9. Parties are directed to appear before the Rent Control Appellate Authority, Kasaragode, on 3.6.2015. Registry will return the document to the court concerned.

The Rent Control Revision stands disposed of as above.

ANTONY DOMINIC,
Judge.

ALEXANDER THOMAS,
Judge.

bkn/-