

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

RCCRev..No. 144 of 2012 ()

RCA 8/2009 of RENT CONTROL APPELLATE AUTHORITY, ERNAKULAM,

RCP 43/2000 of RENT CONTROL COURT, KOCHI

REVISION PETITIONER(S)/RESPONDENT/PETITIONER:

**M/S.KADEEJA BAI CHARITIES
XLI-1313, ARANGATH ROAD, ERNAKULAM
KOCHI - 18, A REGISTERED TRUST
REPRESENTED BY ITS MANAGING TRUSTEE
K.E. MOHAMMED BABU SAIT
S/O. HAJI EASA HAJI ABDUL SATHAR SAIT, AGED 62 YEARS
RESIDING AT XLI-121, KRISHNASWAMY ROAD, ERNAKULAM
KOCHI -35.**

**BY ADVS.SRI.SHAJI P.CHALY
SRI.R.SANJITH
SMT.LIJITTA G.MATHEW
SRI.P.A.ABDUL JABBAR
SMT.C.S.SINDHU KRISHNAH**

RESPONDENT(S)/APPELLANTS/RESPONDENTS:

**1. B.M.HABEEBULLAH
AGED 60 YEARS, S/O. P.A. MOHAMMED KOYA, C.C NO. 6/394
395, BAZAR ROAD, MATTANCHERY
KOCHI -2.**

**2. M/S. MASS RECREATION CLUB,
C.C. NO. 6/394, BAZAR ROAD, MATTANCHERY
KOCHI -2, REPRESENTED BY ITS SECRETARY.**

**R2 BY ADV. SRI.P.M.JOSHI
R2 BY ADV. SRI.K.T.SAJU**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 30-01-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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R.C.Rev.No. 144 of 2013

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Dated this the 30th day of January, 2015

O R D E R

ANTONY DOMINIC, J.:

The landlord, who filed R.C.P.No. 43/2000 on the file of the Rent Control Court, Kochi, seeking eviction of the respondents under Secs.11(2)(b) and 11(4)(1) of the Rent Control Act, is the petitioner herein. During the pendency of the R.C.P., the tenant had paid arrears of rent and therefore there was no adjudication insofar as the ground under Sec.11(2)(b) is concerned, the Rent Control Court by its order dated 17.11.2008 allowed the petition and ordered eviction under Sec.11(4)(1). That order of the Rent Control Court was challenged by the respondents in R.C.A.No. 8/2009. The Rent Control Appellate Authority, Ernakulam, by its judgment dated 15.2.2011 held that the 2nd respondent (alleged sub tenant) was the tenant and on that basis, allowed the appeal. It is aggrieved by this judgment, the landlord has filed this revision.

2. We heard the learned counsel for the petitioner and the learned counsel appearing for the respondents. We have considered the submissions made.

3. The only issue that arises for consideration is whether the finding of the Rent Control Appellate Authority that the 2nd respondent was the tenant and not a sub tenant, as contended by the petitioner, is justified in the light of the materials available in the case.

4. According to the case of the petitioner, it was by Ext.A-3 dated 1.10.1997 that tenancy was created in favour of the 1st respondent. It was alleged that, contrary to the terms of Ext.P-A3, the 1st respondent sub-leased the premises to the 2nd respondent. However, the evidence before the Rent Control Court shows that at least from 1986 onwards the 2nd respondent was in occupation of the premises in question. This was evident from Exts.B-1, B-3 and B-5. In fact the Rent Control Court itself, with reference to the above documents, concluded in para 9 of its order that the contention of the petitioner that the tenancy originated only on 1.10.1997 cannot be accepted. Once it is found that the 2nd respondent was in possession of the building prior to Ext.A-3, it was incumbent upon the landlord to have proved that before the execution of the said document the tenancy of the 2nd respondent had come to an end

and that possession of the building was surrendered and handed over to the 1st respondent with whom Ext.A-3 was entered into. On this vital aspect, there is no evidence at all. Further, evidence of PW-1 shows that he admitted that even prior to 1997, the name board of the 2nd respondent was there in the building in question. He has also admitted that through out the period, it was the 2nd respondent who was paying the rent by cheque and that the 2nd respondent discontinued payment only when bill collector of the petitioner stopped collection of rent. According to PW-1, it was in these circumstances, that on 9.2.2000 Ext.A-6 cheque was issued by the 2nd respondent through post. All these therefore indicate that the 2nd respondent was in occupation of the room in question prior to the execution of Ext.A-3 and even subsequent to Ext.A-3. This therefore suggests that the execution of Ext.A-3 did not affect the tenancy or occupation of the premises by the 2nd respondent and it was taking note of this fact that the Rent Control Appellate Authority came to the conclusion that the 2nd respondent was the tenant and that therefore there is no sublease as contemplated in Sec.11(4)(1) justifying an order of eviction. We do not find any error

in the view taken by the Appellate Authority, warranting interference with its judgment in R.C.A.No.8/2009. The Revision fails and is dismissed.

Sd/-
ANTONY DOMINIC, JUDGE

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Sd/-
ALEXANDER THOMAS, JUDGE

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P.S. to Judge