

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN
&

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

SATURDAY, THE 31ST DAY OF MAY 2014/10TH JYAISHTA, 1936

RCR..No. 171 of 2012 (B)

AGAINST THE JUDGMENT IN RCA.NO.54/2010 ON THE FILE OF THE RENT
CONTROL APPELLATE AUTHORITY (II ADDL.DISTRICT JUDGE),
ERNAKULAM DATED 17-02-2012.

AGAINST THE ORDER DATED 4.6.2010 IN I.A.NO.136/2010 IN
RCP.NO.18/2009 ON THE FILE OF THE RENT CONTROL COURT
(ADDL. MUNSIFF), KOCHI.

REVISION PETITIONER/APPELLANT/PETITIONER:

SAJI, S/O.LATE SHAMSU, AGED 41 YEARS
RESIDING IN H. NO. 1/1532,
1533 SOUTH THAMARAPARAMBU,
FORT KOCHI VILLAGE, KOCHI TALUK.

BY ADV. SMT.VANAJA MADHAVAN

RESPONDENTS/RESPONDENTS:RESPONDENTS:

1. METTILDA @ METTY, AGED 47 YEARS
RESIDING AT H. NO. TC 9/1254,
C.P. GOPALA PANICKER LANE,
SASTHAMANGALAM VILLAGE
THIRUVANANTHAPURAM - 695 001.
2. STEFFY, D/O. METTILDA @ METTY, AGED 19 YEARS
RESIDING AT H. NO. 9/1254, THIRUVANANTHAPURAM- 695 001..
3. SALES, S/O. METTILDA @ METTY,
AGED 18 YEARS, RESIDING AT H. NO. TC 9/1254
C.P. GOPALA PANICKER LANE, SASTHAMANGALAM VILLAGE
THIRUVANANTHAPURAM - 695 001..

R1 TO 3 BY ADV. SRI.JOSEPH EDAKKATT

R1 TO 3 BY ADV. SRI.C.A.CHACKO

THIS RENT CONTROL REVISION HAVING COME UP FOR HEARING
ON 31-05-2014, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER

THERE IS NO REPRESENTATION FOR THE PETITIONER. THE RENT
CONTROL REVISION IS THEREFORE, DISMISSED FOR DEFAULT.

SD/- K.T.SANKARAN, JUDGE

31/05/2014

SD/-A.MUHAMED MUSTAQUE, JUDGE

I.A.NO.1116/2012 IN R.C.R.NO.171/2012

DISMISSED

SD/- K.T.SANKARAN, JUDGE

31/05/2014

SD/-A.MUHAMED MUSTAQUE, JUDGE

//TRUE COPY//

AHZ/

**P. N. RAVINDRAN
&
BABU MATHEW P. JOSEPH, JJ.**

R. C. R. No.171 of 2012

Dated this the 8th day of October, 2015

ORDER

P. N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.18 of 2009 on the file of the Rent Control Court, Kochi. The respondents are the petitioners therein. They have in R.C.P.No.18 of 2009 prayed for an order of eviction under section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as the "Act", for short.

2. R.C.P.No.18 of 2009 was instituted on 23-09-2009 on the averment that the landlords bona fide need the petition schedule building for their own occupation. It is stated that they are presently residing at Thiruvananthapuram, in a rented house and therefore, they are in urgent need of the petition schedule building. The petition schedule building in R.C.P.No.18 of 2009 is described as "two rooms of the building bearing CC No.1/1532 and one room and a veranda of building bearing CC No.1/1533 together with the appurtenant

structures like latrine and bathroom having electric and water connections etc., assessed in the joint names of late A.P.Peter and the first petitioner therein, namely Mettilda @ Metty Peter”.

3. Upon receipt of notice, the tenant entered appearance and filed a counter statement dated 02-12-2009. In paragraph 1 thereof he contended that the first petitioner in R.C.P.No.18 of 2009 is not the wife of late A.P.Peter who passed away in the year 2008, that Peter died a bachelor and that on his death his rights devolved on his next of kin. The tenant contended that the first petitioner in R.C.P.No.18 of 2009 is not the owner of the petition schedule property or the landlord of the petition schedule building. The tenant also filed I.A.No.136 of 2010 on 20-01-2010 praying for that the claim of title put forward by the first petitioner in the rent control petition in respect of the petition schedule property may be decided as a preliminary issue. In the affidavit filed in support of the said application as well, he contended that the first petitioner in R.C.P.No.18 of 2009 is not the wife of late A.P.Peter and that she was married to Victor Paul Kuv who passed

away on 08-05-2007. In paragraph 5 of the affidavit filed in support of the said application, he contended that the question whether the first petitioner in R.C.P.No.18 of 2009 has ownership over the petition schedule building has to be referred to a civil court in view of the fact that she is not the legally wedded wife of late A.P.Peter.

4. The first petitioner in R.C.P.No.18 of 2009 opposed the said application contending that she is the absolute owner of the petition schedule property by virtue of sale deed No.3036 of 1991 dated 26-07-1991 of SRO Kochi, executed by late A.P.Peter. She further contended that she is the legally wedded wife and petitioners 2 and 3 in R.C.P.No.18 of 2009 are the children of late A.P.Peter, that Sri.A.P.Peter obtained the property as per settlement deed registered as document No.1870 of 1986 of SRO Kochi and that it was upheld by the Sub Court, Kochi in O.S.No.318 of 1994. The rent control court considered the rival contentions and held that the petitioners in the rent control petition are the legal heirs of late A.P.Peter. The rent control court also took note of the fact that late A.P.Peter has executed

a sale deed in respect of ½ share over 2.5 cents of land and the building therein as per sale deed dated 26-07-1991 registered as document No.3036 of 1991 of SRO Kochi in favour of the first petitioner in R.C.P.No.18 of 2009. The rent control court accordingly held that the denial of title is not bona fide. The tenant carried the matter in appeal by filing R.C.A.No.54 of 2010 on the file of the Rent Control Appellate Authority, Ernakulam. By judgment delivered on 17-02-2012, the rent control appellate authority concurred with the rent control court and dismissed the appeal. Hence, this revision.

5. We heard Smt.Vanaja Madhavan, learned counsel appearing for the petitioner and Sri.C.A.Chacko, learned counsel appearing for the respondents. We have also gone through the pleadings and the materials on record. Smt.Vanaja Madhavan, learned counsel for the petitioner contended that late A.P.Peter was a bachelor; that the first petitioner in R.C.P.No.18 of 2009 was married to Sri.Victor Paul Kavu who died on 08-05-2007, that on the death of late A.P.Peter his rights devolved on his next of kin and therefore, by no stretch of imagination

can it be said that the petitioners in the rent control petition have title to the petition schedule property. She further contended that even assuming that late A.P.Peter has executed Ext.A10 sale deed in favour of the first petitioner in the rent control petition, it is only in respect of 1.25 cents of land together with a portion of the building standing thereon and therefore, the petitioners in the rent control petition are not entitled to maintain a petition for eviction.

6. Per contra Sri.C.A.Chacko, learned counsel for the respondents contended that the competent civil court has in Ext.A6 judgment delivered on 11-02-2000 in O.S.No.318 of 1994 upheld settlement deed No.1870 of 1986 dated 06-06-1986 of SRO, Kochi, executed by Smt.Rosy Peter, mother of late A.P.Peter in respect of 2.5 cents of land and the portion of the building therein; that a copy of the settlement deed was produced and marked as Ext.B1 in that suit; that late A.P.Peter who was the first defendant therein had filed a written statement contending that after the settlement deed in his favour, he had re-constructed the room and veranda of the building then in

existence with door No.1 of 1532; that the re-constructed building was assigned door No.1/1533 and that he has as per Ext.B6 sale deed dated 26-07-1991 registered as document No.3036 of 1991 of SRO Kochi which was produced and marked in O.S.No.318 of 1994 assigned half share over the property covered by Ext.B1 to his wife Mettilda @ Metty Peter. Learned counsel submitted that Ext.A6 judgment establishes the fact that late A.P.Peter has recognized and accepted Mettilda @ Metty Peter as his wife, that A.P.Peter was the owner of 2.50 cents of land wherein the petition schedule building is situate; that A.P.Peter has also executed a sale deed conveying undivided half share in the petition schedule premises and the appurtenant land to Mettilda @ Metty Peter and therefore, it cannot be said that the first petitioner in the rent control petition has no title to the petition schedule premises. Learned counsel for the respondents submitted that in such circumstances, the rent control court and the appellate authority were perfectly justified in holding that the denial of the landlords' title by the tenant is not bona fide.

7. We have considered the submissions made at the Bar by learned counsel on either side. We have also gone through the pleadings and the materials on record. The tenant does not dispute the fact that late Rosy Peter has executed a settlement deed in favour of her son late A.P.Peter. His contention is that A.P.Peter died a bachelor and that the first petitioner in the rent control petition is not his legally wedded wife. In our opinion, the question whether A.P.Peter had married the first petitioner in the rent control petition is wholly irrelevant at the present stage of the proceedings. It is evident from the materials on record, more particularly Ext.A6 judgment in O.S.No.318 of 1994 on the file of the Sub Court, Kochi, and Ext.A10 sale deed dated 26-07-1991 that late A.P.Peter has assigned half share over 2.5 cents of land situated in Sy.No.1046 of Fort Kochi village, Ernakulam district and building therein in favour of the first petitioner in the rent control petition as per Ext.B6 sale deed produced in that suit. As a matter of fact, late A.P.Peter has in Ext.B6 sale deed described Smt.Mettilda @ Metty Peter as his wife. When examined as

DW1 in O.S.No.318 of 1994, late A.P.Peter had deposed that he has executed a sale deed in favour of his wife Mettilda @ Metty Peter. From the materials on record, the conclusion is inescapable that Mettilda @ Metty Peter has title over the petition schedule property. If she is the legally wedded wife of late A.P.Peter, on the death of A.P.Peter, half share will devolve on her. Even if she is not the legally wedded wife of late A.P.Peter, in the light of Ext.A10 document which the tenant cannot challenge, she will get half share in the petition schedule property. In such circumstances, we are in agreement with the rent control court and the appellate authority that the denial of title is not bona fide. The first petitioner in the rent control petition as a co-sharer of the property is entitled to bring an action for eviction. As a co-sharer, she has title over every inch of the property. It is only after a partition by metes and bounds that she will be allotted separate share. That eventuality has not so far happened. So, one can say with certainty that she is the owner of the petition schedule property. The petitioner cannot therefore dispute the title of the first petitioner in the

rent control petition and contend that the said issue should be referred to the civil court for decision.

For the reasons stated, we hold that there is no merit in the instant revision petition. It fails and it is accordingly dismissed with a direction to the Rent Control Court, Kochi, to try and dispose of R.C.P.No.18 of 2009 within four months from the date of receipt of a certified copy of this order. The parties shall suffer their costs.

Sd/-
P. N. RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE