

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

RCRev..No. 264 of 2013 ()

AGAINST THE JUDGMENT IN RCA 65/2006 of RENT CONTROL APPELLATE
AUTHORITY, ADDL.DISTRICT JUDGE, THALASSERY DATED 08-02-2013

AGAINST THE ORDER IN RCP 73/2004 of PRL.M.C., KANNUR DATED 28-01-2006

REVISION PETITIONER/RESPONDENT/RESPONDENT:

R.VASUDEVAN, AGED 62 YEARS
S/OL.RAGHAVAN NAIR, ANJARAKKANDY AMSOM DESOM
NOW RESIDING AT BUILDING NO.C.P.III-586
NEAR CANAL PALAM, VALIYANNUR , PO VARAM
KANNUR.

BY ADVS.SRI.M.RAMESH CHANDER (SR.)
SRI.ANEESH JOSEPH
SMT.DENNIS VARGHESE

RESPONDENT/APPELLANT/PETITIONER:

V.LAKSHMANAN, AGED 74 YEARS
S/O.ANANDAN, BUSINESS, KANHIRODE AMSOM DESOM
PO KANHIRODE, KANANUR-670 592.

R1 BY ADV. SRI.P.M.PAREETH

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD
ON 08-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

**K.SURENDRA MOHAN &
P.V.ASHA, JJ.**

R.C.R No.264 of 2013-C

Dated this the 8th day of June, 2015

O R D E R

Surendra Mohan, J.

The tenant in RCP No.73/2004 of the Rent Control Court, Kannur, has filed this revision challenging the judgment of the Rent Control Appellate Authority, Thalassery in Rent Control Appeal No.65 of 2006, ordering eviction on the ground of arrears of rent. RCP No.73 of 2004 was filed by the respondent/landlord seeking eviction under Section 11(2)(b) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as the 'Act' for short). According to the landlord, the tenanted building was taken on rent by the petitioner as per Ext.A2 kychit on a monthly rent of Rs.800/-. The tenanted building is a residential one in which the petitioner is residing with his family. The contention of the respondent was disputed by the petitioner. It was contended that, the petitioner was not a tenant of the respondent. The signature in Ext.A2 kychit was disputed by the tenant. The case of the tenant is that, the residential building in the property was constructed by the tenant at a cost of Rs.2

lakhs, having been permitted to do so by the respondent/landlord. Since the building belonged to the tenant, there was no rental arrangement as alleged and no rent was also being paid.

2. The evidence in the case consists of Exts.A1 to A7 documents and the oral evidence of PWs 1 and 2 on the side of the landlord and Ext.B1 document and the oral evidence of RWs 1 and 2 on the side of the tenant. Ext.C1 report of the expert who compared the signature in Ext.A2 and C2 photographs were marked as court exhibits.

3. The Rent Control Court on an appreciation of the evidence held that there was no landlord-tenant relationship between the parties. Therefore, the Rent Control Petition was dismissed holding that the remedy of the landlord was to file a suit for recovery of the land and building on the strength of his title. The order of the Rent Control Court was challenged by the respondent/landlord in RCA No.65 of 2006. On a re-appreciation of the evidence, the appellate authority has found that the order of the Rent Control Court was wrong, unsustainable and liable to be set aside. The appellate authority found that the petitioner was the tenant of the respondent and

that there were arrears of rent and therefore eviction has been ordered. The petitioner is aggrieved by the said judgment.

4. The learned Senior Counsel Advocate M.Ramesh Chander, appears for the petitioner and Advocate P.M.Pareeth appears for the respondent.

5. According to the learned counsel for the petitioner, the appellate court seriously erred in discarding the expert evidence in the present case. It is pointed out by the learned counsel that the expert has in Ext.C1 report categorically found the signature in Ext.A2 to be not that of the petitioner. The Rent Control Court had relied on the opinion of the expert and had arrived at a proper conclusion that Ext.A2 was a fabricated document. If so, there is absolutely no evidence to support the case pleaded by the landlord. In the absence of a rental arrangement, the only remedy available to the respondent was to approach this Court for recovery of possession. It is contended that the Rent Control Court does not have the power to adjudicate disputes regarding title. Therefore the Rent Control Appellate Authority went wrong in entering findings on the above aspect. It is the further contention of the learned counsel that the tenant had constructed the building spending money. It

was for the said reason that, no rent was stipulated in respect of the building. In the absence of a rental arrangement, the possession of the tenant was permissive occupation. Ext.B1 document is relied upon to point out that, the electric connection of the building is in the name of the tenant. The learned counsel also placed reliance on the decisions of this Court to contend that the proper course to be adopted by the Rent Control Court as well as the appellate authority was to decide under Section 11 (1) of the Act whether the denial of title by the tenant was bonafide or not. If the denial was bonafide, then the Rent Control Court loses jurisdiction to try the question of title.

6. The landlord on the other hand contended that the Rent Control Appellate Authority had approached the dispute in the proper perspective. It is also contended that the appreciation of the evidence by the Rent Control Court was faulty and the conclusions arrived at, wrong. Therefore, the said conclusions have been set aside. According to the learned counsel, there are no grounds available to interfere in revision with the judgment of the rent control appellate authority.

7. Heard. The petitioner tenant does not dispute the title of the respondent landlord regarding the land. It is also not

in dispute that Ext.A1 is the title deed of the respondent. A reading of Ext.A1 shows that what has been conveyed to the respondent landlord as per the said document is the land along with a building therein. In other words, Ext.A1 evidences the existence of a building even at the time of purchase of the property. The petitioner/tenant has not adduced any evidence to support his contention that he had constructed the building in the property. It is true that Ext.B1 shows the electric connection in respect of the building to be in the name of the petitioner. However, the said document cannot justify a conclusion that the petitioner has title to the building. On the contrary, Ext.A1 shows that a building was already in existence in the property, at the time of execution of the title deed. It is the above aspect that has been taken note of and relied upon by the Rent Control Appellate Authority. We find that the said conclusion is correct.

8. The Rent Control Court had found that Ext.A2 was a genuine document, relying on Ext.C1 and the evidence of the expert as RW2. It is no doubt true that, in Ext.C1 the expert has opined that the signature in Ext.A2 is not that of the petitioner tenant. However, it is settled law that the opinion of an expert is only an item of evidence that has to be considered by a court,

together with the other evidence available in the case. The opinion of an expert cannot be said to be conclusive or binding on the court. In the present case, RW2 has deposed that she has no technical qualification regarding the work of comparing signatures. Her qualification is B.Sc(Hon.) and LLB. According to her, she has been comparing signatures for the past 4 years having been initiated into the profession by her father. The learned counsel for the petitioner vehemently argued that being a person with knowledge and long experience in comparing signatures, her evidence should not be discarded. However, it is necessary to appreciate the evidence of the expert, along with the other evidence available in this case. PW2 is one of the witnesses to Ext.A2 document. He had deposed in court that, he had seen the petitioner putting his signature to Ext.A2. In other words, he is a witness to the execution of the document. Though he had been cross examined, nothing has been brought out to discredit his testimony. It is true that the Rent Control Court had discarded his evidence since PW2 was known to the respondent landlord for a period of 10 years. However, the said statement cannot be a ground to discard his evidence in court. We notice that there was not even a suggestion when he was in

the witness box that, he had not actually witnessed the execution of the document. Therefore, his evidence to the effect that he had seen the petitioner putting signature to Ext.A2, has not even been challenged. When there is direct evidence to show that Ext.A2 was duly executed, the expert evidence which is essentially based on surmises cannot be used to disbelieve the direct evidence. Added to the above, is the fact that even according to RW2 she does not possess any professional qualification to compare signatures and to express an opinion as done by her in the present case, except to assert that she has 34 years of experience. Since there is the direct evidence of PW2, the Rent Control Appellate Authority was right in accepting the said evidence and finding that Ext.A2 was duly executed. As per the terms of Ext.A2, the rent in respect of the premises could be paid by the tenant at any time. In fact the case of the tenant is that he has never paid the rent in respect of the premises. Therefore, the order of eviction granted by the Rent Control Appellate Authority is sustained.

9. The learned counsel for the petitioner has contended that, the authorities below ought to have enquired into the question as to whether the denial of title by the tenant was

bonafide or not. If it is found that the denial of the title was bonafide, the matter should have been referred to the civil court. Reliance is placed on the Full Bench decision of this Court in **Parthakumar v. Ajith Viswanathan** [2006(2) KLT 250 (F.B)] to contend that, the procedure stipulated by Section 11(1) of the Act was not complied with in the present case. It is true that, in the present case no preliminary objection regarding the title of the landlord was raised by the tenant. The parties had gone to trial before the Rent Control Court on the pleadings in the Rent Control Petition and the counter statements filed. Evidence was also adduced on all points. Based on the evidence, the Rent Control Court held against the landlord. The order of the Rent Control Court has been set aside by the appellate authority. The Rent Control Court has not entered any finding as to whether the denial of title was bona fide or not. However, we are not satisfied that an omission to enter a specific finding regarding bonafides of the denial of title would vitiate the proceedings in any manner. We have already found that there is no evidence to support the dispute regarding title of the respondent raised by the petitioner/tenant. Therefore, the Rent Control Appeal has been rightly allowed. Though the mandate of Section 11(1) has

not been fully complied with, that does not render the judgment under revision, invalid in any manner.

10. The learned counsel for the petitioner has also placed reliance on the decisions in **Chandrasekharan Nair N. v. M/s.Olympic Credit Corporation, Kottayam and Anr.** [2014 (2) KLT 242(D.B)] and **Susheela v. Deepika** [2014(1) KLT 660] to support his contention that the opinion of the expert is a relevant factor that the court is bound to consider. There can be no quarrel regarding the said proposition. We have already considered the opinion of the expert and found that since better evidence was available, the opinion of the expert was of no consequence.

For the above reasons, we find no grounds to interfere with the judgment of the Rent Control Court. The Revision fails and is accordingly dismissed, but without prejudice to the right of the petitioner to set aside the above order of eviction in exercise of the right under Section 11(2)(c) of the Act.

Sd/-

(K.SURENDRA MOHAN, JUDGE)

Sd/-

(P.V.ASHA, JUDGE)

rtr/

/true copy/

P.S to Judge