

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

OP (RC).No. 65 of 2015 (O)

(AGAINST THE ORDER DT.31.3.2015 IN I.A.2778/2014 IN RCP 2/2014
OF RENT CONTROLLER (MUNSIFF), CHITTUR)

PETITIONER/RESPONDENT:

GOPINATHAN P.A. AGED 48 YEARS
S/O ACHUTHAN, AMRUTHA FRUIT STALL
CHITTUR VILLAGE AND TALUK, PALAKKAD DISTRICT.

BY ADVS.SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENT/PETITIONER:

LEELADEVI @ LEELA
D/O RAJAN, CHENNAMPURA VEEDU, VILAYODI
VILAYODI P.O., VANDITHAVALAM VILLAGE, CHITTUR TALUK
PALAKKAD DISTRICT 678 508.

THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON
02-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (RC).No. 65 of 2015 (O)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE RENT CONTROL PETITION (;AGES 1 & 3 TO 7)
IN RCP NO.2/2014 ON THE FILE OF RENT CONTROLLER (MUNSIFF), CHITTUR.

EXHIBIT P2: TRUE COPY OF THE OBJECTION DATED 26.6.2014 FILED IN
EXT.P1 PETITION.

EXHIBIT P3: TRUE COPY OF THE PLAINT IN OS NO.307/2014 ON THE FILE OF
THE MUNSIFF COURT, CHITTUR.

EXHIBIT P4: TRUE COPY OF THE WRITTEN STATEMENT FILED IN EXT-P3 SUIT.

EXHIBIT P5: TRUE COPY OF THE IA NO.2778/2014 FILED IN EXT.P1 RENT
CONTROL PETITION.

EXHIBIT P6: TRUE COPY OF THE OBJECTION FILED IN EXT.P5 PETITION.

EXHIBIT P7: TRUE COPY OF THE ORDER DATED 31.3.2015 PASSED IN EXT.P5
PETITION.

RESPONDENT(S) ' EXHIBITS NIL

JJ

/TRUE COPY/

P.S.TO JUDGE

'CR'

K. SURENDRA MOHAN & MARY JOSEPH,JJ.

O.P(RC) NO. 65 OF 2015

Dated this the 2nd June, 2015.

JUDGMENT

Surendra Mohan, J.

The petitioner has filed this original petition challenging Ext.P7 order of the Rent Control Court (Munsiff), Chittur in I.A.2778/2014 in RCP 2/2014. As per the impugned order, the request of the petitioner to try the Rent Control Petition jointly with a suit O.S.307/2014 has been dismissed.

2. According to the counsel for the petitioner Shri.Sajan Varghese the issues that arise for consideration as well as the questions to be decided in both the proceedings are the same. Therefore, it is contended that the court below erred in dismissing the application for joint trial. The learned counsel also places reliance on various decisions to point out that there is no prohibition in allowing such a prayer.

3. We have heard the counsel for the petitioner at length. We notice that, the Rent Control Petition, RCP 2/2014 is pending before the Rent Control Court, Chittur. O.S.307/2014 is pending before the Munsiff's Court, Chittur. It is true that, both the jurisdictions are exercised by the same court. However, the fact remains that both the proceedings are instituted under different enactments. The suit is instituted under the Code of Civil Procedure whereas the Rent Control Petition is instituted under the Kerala Buildings (Lease and Rent Control) Act, 1965. The powers conferred on the Rent Control Court as well as the Munsiff's Court by the respective enactments are also different. The petition seeking joint trial of the Rent Control Petition along with the Original Suit is produced as Ext.P5. A perusal of Ext.P5 shows that the petition is filed under Section 151 of the Code of Civil Procedure. Though the provision shown is Section 151 the petition is actually filed before the Rent Control Court. The petition has been opposed by the respondent by filing Ext.P6

objections. It is after considering the objections that Ext.P7 order has been passed. The Rent Control Court has found that the Rent Control Petition as well as the Original Suit are to be tried in exercise of different jurisdictions. Therefore, the Rent Control Court has accepted the objections raised by the respondent in Ext.P6 and has dismissed the same. We find no infirmity in the said order.

4. The counsel for the petitioner has placed reliance on the decision of this Court in *Kunjali Hassan Kurup v. Abdul Sathr Sait* [1963 KLT 407]. While considering a similar question *T.C.Raghavan, J* has held in the said case that the Munsiff's Court as well as the Rent Controller are exercising two different jurisdictions and therefore, the action of the court in trying a small cause suit and petition for eviction jointly was unsustainable. The counsel has contrasted the above dictum with the dictum in *Kajaria Co.(P) Ltd. v. Vimala Bai* [1967 KLT 575] where *P.T.Raman Nayar, J* (as he then was) had to consider whether the joint trial of a suit for eviction

before the Munsiff's Court and two applications under Sections 5 and 11 respectively of the Kerala Act 16/1959 before the Rent Control Court, both courts presided over by the same person, was sustainable or not. His Lordship has answered the question in the following words:–

“The suit was tried by the Munsiff in his capacity as such, and the mere fact that along with the suit he tried the two applications in his capacity as the the Rent Control Court does not deprive him of his capacity or his jurisdiction as a Munsiff. So long as the law, both substantive and procedural, governing the different matters is followed I do not think a joint trial involving the concurrent exercise of both jurisdictions is illegal, and the worst that can be said is that, in the absence of the consent of the parties, a joint trial would be undesirable, perhaps improper.”

What is to be noted from the above passage is that, in the said case the action that was under challenge was sustained for the additional reason that the joint trial was with the consent of parties.

5. The counsel has placed reliance on the decision in *Perinigottukara Namboodiri Yogakshema Sabha v. Sreelatha* [2005(2)KLT 480] where, (Pius C.Kuriakose, J) (as he then was) had to consider whether a Rent Control Petition could be transferred to the Sub Court, Thrissur where a civil suit was pending. This Court has considered the question raised in paragraph 7 of the judgment as follows:-

“The power to transfer rent control proceedings from one Rent Control Court to another is provided for by the Rules framed under the Statute. R.14 of the Kerala Buildings (Lease and Rent Control) Rules, 1979 confers power on the Rent Control Appellate Authority to transfer Rent Control Petitions from one Rent Control Court to another Rent Cotrol Court within its jurisdiction. R.17 similarly deals with the power of the revisional authority to transfer rent control appeals from the file of one Appellate Authority to another Appellate Authority. The transfer powers conferred on various authorities under the Kerala Buildings (Lease and Rent Control) Rules cannot in any way affect the general powers of the High

Court to order transfer and withdrawal of suits, appeals and other proceedings. But then S.24(1) (b)(ii) of the Code of Civil Procedure provides that transfer has to be to a Court competent to try and dispose of suit, appeal or proceedings which is ordered to be transferred. There is total lack of jurisdiction in the Subordinate Judge's Court, Thrissur to deal with an eviction petition under the Kerala Buildings (Lease and Rent Control) Act, since that Court is not a Rent Control Court notified under S.3(1) of that Statute. The Subordinate Judge's Court, Thrissur cannot have jurisdiction to entertain Annexure-C Rent Control Petition even if the building scheduled to Annexure-C were situated in Thrissur Corporation within the territorial limits of that Court.”

The above observations are relied upon by the learned counsel to contend that the power of transfer had not been exercised for the only reason that transfer of the Rent Control Petition was sought to the Subordinate Judge's Court that had no jurisdiction to exercise the powers of Rent Control Court. Therefore, according to the learned counsel had the transfer

been sought to a Rent Control Court, the same would have been allowed. Such a conclusion does not follow from the paragraph extracted above. This Court did not have an occasion in the said case, to consider whether an original suit could be transferred to a Rent Control Court or the vice versa or tried jointly. Therefore, the above observations of this Court cannot be relied upon to support such a conclusion.

6. The learned counsel has also placed reliance on a Division Bench decision of this Court in *Mukundan v. Katyusha* [2013(2)KLT 981]. In the said case, this Court had to consider whether the Family Court had the jurisdiction to try jointly, four proceedings initiated under different enactments but pending before it. In the said case, proceedings seeking maintenance from the husband, a petition for divorce, another petition for return of gold and yet another petition for return of money were pending before the same Family Court. It was contended that, since the proceedings were all instituted under different enactments joint trial was not

permissible. It was also pointed out that, the proceedings for challenging the orders to be passed in each proceedings was also different. Repelling the said contention, this Court found that Section 10 of the Family Courts Act 1984 read with Section 19 thereof confer power on the Family Court to order joint trial. It is necessary to immediately notice that, there is no such provision available either to the Munsiff's Court under the Code of Civil Procedure or to the Rent Control Court under the Kerala Buildings (Lease and Rent Control Act, 1965. Therefore the dictum in the said case cannot have any application to the facts of the case.

7. As noticed above, the dictum of the decision in *Kajaria Co.(P)Ltd. v. Vimala Bai (supra)* is to the effect that in the absence of consent by the parties to the litigation, joint trial of a Rent Control Petition along with an original suit would not be proper. In the present case, the application for joint trial filed by the petitioner is opposed by the respondent. Ext.P6 is a copy of the objections. In the face of

such opposition the court below was fully justified in dismissing the petition. The counsel for the petitioner has tried to make out a case that the Rent Control Court is not a persona designata as held by the Hon'ble Supreme Court in *Gopalan v. Aboobacker* [1995(2)KLT 205(SC)]. The distinction between a persona designata and a court has been set out in the said decision. It is pointed out that the said decision has been followed in *Abdul Rehiman v. Hameed Hassan Peruvad & Others* [1992(2)KLT 794] also.

8. We are of the view that, the question as to whether the Rent Control Court is a persona designata or not does not assume significance in the present case. It is true that the Munsiff is designated by notification of the State Government under Section 3 of the Rent Control Court to try Rent Control Cases. The authority under the Rent Control Act has been designated as the Munsiff exercising jurisdiction over the area, which is, according to the dictum of the Hon'ble Supreme Court a clear pointer to the fact that the Rent Control Court is

not a persona designata. However, what assumes importance in the present case is that it is the court that tries the proceedings that has to decide whether two cases should be jointly tried or not. As rightly contended by the counsel for the petitioner this Court has in Navabharat Vignan Trust v. Nasihudeen [2013(1)KLT 310] held that before ordering joint trial the court has to be satisfied that there is a common question of law or fact arising in the cases and that the act or transaction that gives rise to the relief is common in all such suits. However, the said case related to the joint trial of two suits. In sharp contrast, in the present case what is at issue is whether the joint trial of a Rent Control Petition along with a suit should be ordered. No such question had come up for consideration before this Court in the decision relied upon by the counsel. Therefore, we do not find any substance in the said contention. In other words it is necessary that apart from a uniformity of the issues that arise for consideration in both the proceedings, the question as to whether they arise

within the same jurisdiction also would require consideration, before joint trial could be ordered.

For the foregoing reasons, we find no infirmity in the impugned order of the Rent Control Court in I.A.2778/2014 in RCP 2/2014. This original petition is therefore dismissed.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
MARY JOSEPH
Judge

jj

/True copy/

