

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

OP (RC).No. 110 of 2015 (O)

PETITIONER :

HARI, AGED 62 YEARS
S/O. SANKARAN, KUNNAPPILLY HOUSE, CHERAI MURI
PALLIPPURAM VILLAGE, KOCHI TALUK, PIN CODE-683514.

BY ADVS.SRI.P.VISWANATHAN
SRI.SUNIL N.SHENOI

RESPONDENT :

PREMANANDAN, AGED 40 YEARS
S/O. SADANANDAN, NINTHASTHALATH HOUSE
KUZHUPPILLYKARA, KUZHUPPILLY VILLAGE, KOCHI TALUK
PIN CODE-683513. REPRESENTED BY POWER OF ATTORNEY HOLDER
DR. SALINI W/O. PREMANANDAN- DO- -DO-

THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON 15-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (RC).No. 110 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1. THE COPY OF E.P. NO. 155 OF 2014 IN R.C.P. NO. 1 OF 2014 FILED BY THE RESPONDENT HEREIN BEFORE THE RENT CONTROL COURT, NORTH PARUR.

EXT.P2. THE COPY OF THE OBJECTION FILED BY THE PETITIONER HEREIN IN E.P. NO. 155 OF 2014 IN R.C.P. NO. 1 OF 2014 FILED BEFORE THE RENT CONTROL COURT, NORTH PARAVUR.

EXT.P3. THE TRUE PHOTOSTAT COPY OF E.A. NO. 258 OF 2014.

EXT.P4. THE TRUE PHOTOSTAT COPY OF THE OBJECTION FILED BY THE RESPONDENT HEREIN IN E.A. NO. 258 OF 2014.

EXT.P5. THE TRUE PHOTOSTAT COPY OF E.A. NO. 259 OF 2014 FILED BY THE RESPONDENT HEREIN.

EXT.P6. THE TRUE PHOTOSTAT COPY OF THE OBJECTION FILED BY THE PETITIONER HEREIN IN E.A. NO. 259 OF 2014.

EXT.P7. THE TRUE PHOTOSTAT COPY OF THE ORDER DATED 8-12-2014 IN E.A. NO. 258 OF 2014.

EXT.P8. THE TRUE PHOTOSTAT COPY OF THE ORDER DATED 8-12-2014 IN E.A. NO. 259 OF 2014.

EXT.9. COPY OF THE ORDER DATED 28-7-2015 IN R.C.R.P. NO. 1 OF 2015 ON THE FILES OF THE ADDITIONAL DISTRICT COURT JUDGE, NORTH PARUR.

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

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

O.P.(R.C.).No.110 of 2015

Dated this the 15th day of September, 2015.

J U D G M E N T

P.N.Ravindran, J.

The petitioner is the tenant in R.C.P.No.1 of 2014 on the file of the Rent Control Court, North Paravur. By order passed on 23.06.2014, the Rent Control Court allowed R.C.P.No.1 of 2014 and directed the petitioner/tenant to vacate the petition schedule shop room and to put the landlord in possession thereof within one month from that date. Such an order was passed under sections 11(2)(b), 11(3) and 11(4)(ii) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. When the order for eviction was not complied with, the respondent/landlord filed E.P.No.155 of 2014 under Order XXI Rules 10 & 11 of the Code of Civil Procedure. The said application was filed as one presented before the Rent Control Court, North Paravur.

2. Upon receipt of notice, the petitioner/tenant entered appearance and filed Ext.P2 objections wherein he *inter alia* contended that the Rent Control Court has no jurisdiction to entertain the execution petition. The contention evidently was based on section 14 of the Act which stipulates that every order made under section 11 shall be executed by the Munsiff or if there are more than one Munsiff, by the Principal Munsiff having original

jurisdiction over the area in which the building is situated as if it were a decree passed by him. It is not in dispute that there is only one Munsiff's Court in North Paravur and that court is also the Rent Control Court. The objections raised by the tenant did not find acceptance at the hands of the court below, which overruled the objections and ordered delivery. The tenant thereupon filed E.A.No.258 of 2014 wherein he prayed for a review of the order passed by the execution court on 10.11.2014. The tenant contended relying on section 14 of the Act that an execution petition will lie only in the Munsiff's Court and not in the Rent Control Court.

3. The court below considered the rival contentions and dismissed E.A.No.258 of 2014 by Ext.P7 order passed on 08.12.2014. By a separate order passed on the same day (Ext.P8), the court below allowed E.A.No.259 of 2014, the application filed by the landlord to amend E.P.No.155 of 2014 by changing the name of the court. Challenging Exts.P7 and P8 orders, the tenant filed R.C.R.P.No.1 of 2014 on the file of the Court of the Additional District Judge and Rent Control Appellate Authority, North Paravur. By Ext.P9 order passed on 28.07.2015, the Appellate Authority concurred with the trial court, upheld the impugned orders and dismissed the revision petition. The tenant has, aggrieved thereby, filed this original petition under Article 227 of the Constitution of India.

4. The main ground raised in the instant original petition is that as the Court of the Munsiff of North Paravur alone can execute an order for eviction passed by the Rent Control Court, North Paravur, the Rent Control Court ought to have returned the original of E.P.No.155 of 2014 instead of entertaining it, on the ground that the execution petition is not maintainable. It is contended that as the execution petition was not properly instituted and was instituted in the wrong court, the Rent Control Court could not have ordered delivery or allowed the application filed by the landlord to amend the execution petition for the purpose of describing the execution petition as one filed in the Court of the Munsiff of North Paravur.

5. We heard Sri.P.Viswanathan, learned counsel appearing for the petitioner and Sri.Julian Xavier, learned counsel appearing for the respondent. We have also gone through the impugned orders. Shorn of details, the main contention raised by the learned counsel for the petitioner is that the Rent Control Court erred in entertaining the petition for execution. The fact however remains is that the Rent Control Court, North Paravur is also the Munsiff who is empowered to execute an order for eviction passed by the Rent Control Court. In such circumstances, nothing prevented the landlord who had filed E.P.No.155 of 2014 from withdrawing that execution petition and filing a fresh execution petition in the Munsiff's Court. The court below has by the impugned order only

facilitated that by allowing an amendment of the application for the purpose of describing the execution petition as one filed in the Court of the Munsiff. The said order is one passed by the Court of the Munsiff and not by the Rent Controller. In such circumstances, notwithstanding the fact that the execution petition was filed in a wrong court as no prejudice has been caused to the petitioner/tenant and as the tenant has no objection other than the objection raised by him in Ext.P2 objections that the Rent Control Court cannot execute the decree, we are not inclined to interfere with the impugned orders. As stated earlier, the impugned orders do not affect the rights of the petitioner or cause any real prejudice to him.

We, therefore decline jurisdiction and dismiss the original petition.

Sd/-
P.N.RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P.JOSEPH
JUDGE