

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

OP (RC).No.144 of 2015 (O)

(AGAINST THE ORDER DTD. 6.11.2015 IN I.A.NO.118/2014 IN R.C.P.NO.63/2011
OF THE RENT CONTROL COURT, CHAVAKKAD)

PETITIONER/RESPONDENT:

K. BALAKRISHNAN NAIR, AGED 88 YEARS,
S/O.KUNJU AMMA, KOTHATTIL HOUSE, ORUMANAYOOR DESOM
CHAVAKKAD TALUK, THRISSUR DISTRICT.

BY ADV. SRI.RAJIT

RESPONDENT/PETITIONER:

GANESHAN, AGED 63 YEARS,
S/O.SUBRAMANIA IYER, ALUKKAL HOUSE
SREE NARAYAN SAMOOGHAM ROAD, GURUVAYUR AMSOM DESOM
CHAVAKKAD TALUK.

R1 BY ADV. SRI.K.RAMACHANDRAN
R1 BY ADV. SMT.MALINI K.MENON

THIS OP (RENT CONTROL) HAVING BEEN FINALLY HEARD ON 02-12-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (RC).No. 144 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS:

P1 TRUE COPY OF THE RENT CONTROL PETITION FILED BY THE RESPONDENT BEFORE THE RENT CONTROLLER CHAVAKKAD

P2 TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN THE ABOVE RENT CONTROL PETITION

P3 TRUE COPY OF THE RENT CONTROL PETITION FILED BY THE RESPONDENT IN R.C.P.NO.72/2013

P4 TRUE COPY OF THE LAWYER NOTICE ISSUED BY T.S.JANAKI AND P.BALASUBRAMANIAM @ PRADEEP

P5 TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED BY THE GURUVAYOOR MUNICIPALITY TO THE RESPONDENT

P6 TRUE COPY OF THE AFFIDAVIT IN I.A.118/2014 IN R.C.P.63/2011 FILED BY THE PETITIONER

P7 TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT TO EXT.P6 APPLICATION

P8 TRUE COPY OF THE ORDER DTD.13.2.2014 IN OP(RC)25/2014

P9 TRUE COPY OF THE ORDER DTD.6.11.2015 IN I.A.118/2014 IN RCP NO.63/2011

P10 TRUE COPY OF THE ORIGINAL PETITION THAT WAS ORIGINALLY DRAFTED.

RESPONDENT'S EXHIBITS:

EXT.R1(a): TRUE COPY OF THE RENEWED BUILDING PERMIT ISSUED ON 16.4.2015 BY THE ASST. EXECUTIVE ENGINEER, GURUVAYOOR MUNICIPALITY.

// TRUE COPY //

P.A TO JUDGE.

P.N.RAVINDRAN & ALEXANDER THOMAS, JJ.

O.P(RC).No.144 Of 2015

Dated this the 2nd day of December, 2015.

J U D G M E N T

Ravindran, J.

The petitioner is the tenant in R.C.P.No.63 of 2011 on the file of the Rent Control Court, Chavakkad, a petition filed by the respondent-landlord for an order of eviction under section 11 (4)(iv) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act' for short). The landlord had, in the petition for eviction, averred that the building is more than 100 years old, that it needs reconstruction, that he has applied for and obtained the requisite permit and plan from the Guruvayoor Municipality and that he has the ability to reconstruct the building. He had also offered to let out one room in the reconstructed building to the tenant, subject to payment of fair rent.

2. Upon receipt of notice, the tenant entered appearance and filed a counter statement dated 16.8.2011

O.P(RC).No.144 Of 2015

wherein he contended that though the building was constructed in the year 1927 it does not need reconstruction. He also contended that the landlord has created documents to make it appear that he is the exclusive owner of the property and that it was in view of the fraud thus practised by the landlord that he entered into the tenancy arrangement with the landlord. He had however averred that he does not dispute the fact that he had executed a rent deed dated 1.1.2009 in favour of the landlord. He also contended that the Will stated to have been executed by late Subramania Ayyar in favour of his wife is a forgery and that the landlord's sisters and brother and the wife and son of a pre-deceased brother are co-owners of the petition schedule building. Long after the tenant filed his counter statement, he filed I.A.No.118 of 2014 contending that the sister-in-law of the landlord and her son have instituted O.S.No.120 of 2014 before the Court of the Subordinate Judge of Chavakkad, for partition of the properties of late Subramania Ayyar including the petition schedule building, that in that suit,

O.P(RC).No.144 Of 2015

the validity of the Will stated to have been executed by late Subramania Ayyar in favour of his wife is under challenge and therefore, until the said suit is decided, the trial of R.C.P.No.63 of 2011 should not be proceeded with. The landlord opposed the said application by filing a counter statement. The rent control court considered the rival contentions and dismissed I.A.No.118 of 2014 by Ext.P9 order passed on 6.11.2015. The said order is under challenge in this original petition filed under Article 227 of the Constitution of India wherein the petitioner seeks the following reliefs:

- "i. Set aside Ext.P9 order dtd. 6.11.2015 in IA No.118/2014 in RCP No.63/2011 of the Rent Controller, Chavakkad.
- ii. Direct the Rent Controller, Chavakkad to defer the proceedings in RCP No.63/2011 until the decision is taken in O.S.No.120/2014 pending before the Sub Court, Chavakkad.
- iii. Grant such other relief deemed fit to this Hon'ble court."

3. It is contended that the question whether the Will executed by late Subramania Ayyar in favour of his wife is a forgery or it is a valid Will arises for consideration in O.S.No.120 of 2014, that the plaintiffs therein have in Ext.P4 notice informed

O.P(RC).No.144 Of 2015

the tenant that they also have right over the tenanted premises, that on a complaint filed by them, the Secretary, Guruvayoor Municipality had issued Ext.P5 notice dated 13.9.2013 calling upon the landlord to show cause why the plan and permit issued by the Municipality should not be cancelled and therefore, as the exclusive title of the landlord is in dispute in the suit, the rent control court erred in dismissing I.A.No.118 of 2014. It is contended that if pending disposal of O.S.No.120 of 2014, an order of eviction is passed and later the suit is decreed allotting the petition schedule building to some one other than the landlord in the instant case and that person does not reconstruct the building, the rights available to the tenant under section 11 (4)(iv) of the Act will be rendered illusory and meaningless. The tenant further contends that in a case where eviction is sought under section 11(4)(iv) of the Act, the landlord should have exclusive title to the building, that in the instant case, the landlord does not have exclusive title to the building and therefore, the petition for eviction is not maintainable.

O.P(RC).No.144 Of 2015

4. We have considered the submissions made at the Bar by Sri.Rajit, learned counsel appearing for the petitioner and Sri.K.Ramachandran, learned counsel appearing for the respondent. We have also gone through the pleadings and the materials on record. It is evident from the stand taken by the tenant that he is relying on a claim made by the sister-in-law and nephew of the landlord for partition of the site of the petition schedule building by instituting a suit, O.S.No.120 of 2014 before the Court of the Subordinate Judge of Chavakkad. The tenant contends that until the suit is tried and finally disposed of, the rent control petition should not be proceeded with. It is the tenant's contention that as the landlord in the instant petition is not the exclusive owner of the land, the plan and permit could not have been issued to him. Reliance is placed on rule 7(12) of the Kerala Municipality Building Rules, 1999 in support of the said contention. It is also contended relying on Rules 7 (1) and 7 (9) of the said rules that a person applying for a building permit has to produce documents to prove ownership, that the consent

O.P(RC).No.144 Of 2015

of the other co-owners is also required if there is more than one owner, that in the instant case, the sister-in-law and nephew of the landlord have filed a suit claiming partition of the site of the petition schedule building and other properties on the ground that they are co-owners and therefore, no reliance can be placed on the plan and permit produced by the landlord along with the rent control petition. It is contended that in any case the local authority, which issued the permit, has issued a notice calling upon the landlord to show cause why the permit and plan should not be cancelled and therefore, for that reason also, it is only desirable that until the suit is tried and disposed of, the trial of rent control petition is adjourned. It is also the tenant's contention that the landlord in the instant case cannot institute a petition for eviction under sec.11(4)(iv) of the Act for the reason that he is only a co-owner.

5. It is evident from the pleadings before us that it is relying on the claim for partition made in O.S.No.120 of 2014 on the file of the Court of the Subordinate Judge of Chavakkad by the

O.P(RC).No.144 Of 2015

sister-in-law and nephew of the landlord, that these contentions are raised. The document of title in respect of the petition schedule building stands in the name of the landlord. He claims title under an assignment deed executed by his late mother. His mother in turn obtained the property by virtue of a Will executed by her husband, late Subramania Ayyar. It is relying on the aforesaid documents of title, that the local authority issued the permit and plan in respect of which Ext.P5 show cause notice was issued. The landlord has along with an affidavit produced materials to show that the proceedings contemplated in the show cause notice were dropped and the plan and permit which were originally issued on 25.3.2011 and were valid till 24.3.2014 were renewed for a further period of three years commencing from 25.3.2014 and ending with 24.3.2017. Though rule 7 of the Kerala Municipality Building Rules, 1999 stipulates that an application for building permit should be accompanied by documents to prove ownership over the site where the building is proposed to be put up and it also stipulates that if the land is

O.P(RC).No.144 Of 2015

owned by more than one person the consent of the other owners is necessary, that does not by itself mean that the landlord in the instant case is only a co-owner. He had produced the document of title before the local authority for obtaining the plan and permit. Even assuming that someone else has questioned his title, the local authority cannot conduct a roving enquiry and decide whether there is any defect or cloud in his title and deny the permit. That question can be considered only by the competent civil court. The local authority cannot ignore the registered instrument of sale executed by the landlord's mother in his favour on the ground that the Will whereunder she got title is alleged as one fraudulently brought about. Such a finding can be entered only by a competent civil court after trial. Going by the materials presently on record, the landlord in the instant case is not a co-owner. We therefore, find no merit or force in the contention of the tenant that the landlord in the instant case is a co-owner and therefore he is not entitled to maintain a petition for eviction. The mere fact that the sister-in-law and nephew of the landlord

O.P(RC).No.144 Of 2015

have instituted a suit for partition, does not ipso facto lead to the situation that unless and until the suit is dismissed, the landlord is in the position of a co-owner. The position in our opinion is to the contrary. Unless and until the suit for partition is decreed, the landlord in the instant case cannot be said to be a co-owner. The documents of title as they stand, establish the fact that he is the full owner of the property. The question raised by the tenant does not therefore really arise for consideration in the instant case. It is evident from the conduct of the tenant that he is taking advantage of a suit instituted by the near relations of the landlord for partition of the site of the petition schedule building, to see that the trial of the rent control petition is delayed. Viewed in the light of the averments in the counter statement which was filed more than two years prior to the institution of the suit, wherein the contention raised by the near relations of the landlord are raised, the submission made by the learned counsel appearing for the landlord that the suit for partition is one engineered by the tenant does not seem to be far off the mark. We therefore find no

O.P(RC).No.144 Of 2015

reason to interfere with the impugned order. This Original Petition as also I.A.No.118 of 2014 are in our opinion an abuse of the process of the court.

The Original Petition fails and it is accordingly dismissed with a direction to the Rent Control Court, Chavakkad, where R.C.P.No.63 of 2011 is pending, to try and dispose of the case, expeditiously, and in any event, before the civil courts close for the summer vacation of 2016.

Registry to communicate a copy of this judgment for compliance.

P.N.RAVINDRAN, JUDGE.

ALEXANDER THOMAS, JUDGE.

bkn/-