

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

RCRev..No. 118 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 222/2010 of ADDL. D.C. & SESSIONS
COURT - III, THALASSERY DATED 27-01-2015

AGAINST THE ORDER/JUDGMENT IN RCP 21/2009 of MUNSIF COURT,
KUTHUPARAMBA DATED 12-07-2010

REVISION PETITIONER(S)/APPELLANT IN RCA NO.222/2010-APPELLATE
AUTHORITY-ADDL.DISTRICT JUDGE III, THALASSERY/RESPONDENT IN
RCP.21/2009 -RENT CONTROL COURT-,MUNISIFF, KUTHUPARAMBA

MERADAN ASSOOTTY AGED 58 YEARS
S/O.MAMMU, BUSINESS, PROPRIETOR
NEW SWAPNA VASTHRALAYAM, IRITTY, KEEZHUR AMSOM DESOM
POST IRITTY, THALASSERY TALUK, KANNUR DISTRICT
KERALA STATE

BY ADVS.SRI.B.KRISHNAN
SRI.R.PARTHASARATHY
SRI.V.P.MAHAMMOOD
SMT.SEEMA

RESPONDENT/RESPONDENT IN RCA NO.222/2010-APPELLATE AUTHORITY-
ADDL.DISTRICT JUDGE III, THALASSERY/PETITIONER IN RCP.NO.21/2009-RENT
CONTROL COURT MUNSIF, KUTHUPARAMBA/LANDLORD:

CHANDROTH PARAYIL SAINABA, AGED 38 YEARS
W/O.MOIDEEN, HOUSEWIFE
PRESENTLY RESIDING IN ARALAM AMSOM DESOM
POST ARALAM, THALASSERY TALUK, KANNUR DISTRICT
KERALA STATE 673101

R1 BY ADV. SRI.K.ABDUL JAWAD(CAVEATOR)
R BY SRI.K.ABDUL JAWAD

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
10-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JJ

K. SURENDRA MOHAN & MARY JOSEPH,JJ.

R.C.R. NO.118 OF 2015

Dated this the 10th June, 2015.

O R D E R

Surendra Mohan, J.

This revision is filed by the tenant in RCP 21/2009 of the Rent Control Court, Kuthuparamba and the appellant in RCA 222/2010 of the Rent Control Appellate Authority, Thalassery, aggrieved by the order of eviction passed against him on grounds under Section 11(2)(b and Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (the 'Act' for short).

2. The case of the respondent landlady was that vacant possession of the shop room was needed for her to start a textile business. The tenant is also doing a business in textiles. The shop room was taken on rent by Ext.A1 kychit dated 28.2.1997 on a monthly rent of Rs.400/-. According to

the landlady the rent is remaining in arrears since February 2009. The need of the landlady was disputed by the tenant alleging that the same was only a ruse for eviction. The Rent Control Court tried the petition. Exts.A1 to A24 documents were marked on the side of the landlady. She also examined herself as P.W.1. Ext.B1 document was marked on the side of the tenant. He examined himself as R.W.1. On a consideration of the evidence on record, the Rent Control Court found that the landlady had succeeded in establishing both the grounds. Accordingly, an order of eviction was granted under Section 11(2)(b) as well as Section 11(3) of the Act. Though the tenant carried the matter in appeal, RCA 222/2010 before the Rent Control Appellate Authority, Thalassery, the Appellate Authority has, on a reappraisal of the evidence, confirmed the findings of the Rent Control Court. The tenant challenges the judgment of the Appellate

Authority.

3. According to Adv.B.Krishnan who appears for the petitioner tenant, as per Ext.A24, the landlady had sought vacant possession of another shop room. The said shop room was later on transferred to a third party by Ext.A22 dated 27.2.2006. Therefore, according to the learned counsel the claim of bonafides put forward in the present case cannot be accepted as genuine. The counsel takes strong exception to the manner in which the issue has been considered by both the authorities below and points out that due weightage has not been given to the said objectionable conduct of the landlady. The further contention of the counsel for the petitioner is that, apart from the tenanted building that belongs to the landlady the tenant is also in possession of another room just adjacent on the western side, which belongs to the mother of the landlady. It is contended that, as per

Ext.A1 kychit a right of way has been provided to the room on the western side. Eviction of the tenant from the present room would leave the tenant with no means of access to the room behind. The findings of the authorities below on the said aspect also are wrong and requires to be interfered with in revision.

4. Adv.K. Abdul Jawad who has filed a caveat on behalf of the landlady opposes the contentions of the counsel for the petitioner. According to the learned counsel the shop room with respect to which Ext.A24 petition for eviction had been filed was sold in the year 2006 because the landlady needed funds for other purposes. The present Rent Control Petition is filed only in the year 2009, three years thereafter. Therefore, the said fact cannot be held against the claim of bonafides made by her at present. According to learned counsel, the tenanted room was purchased by her father in

the name of the landlady as per Ext.A23 on 3.7.1981. The shop room had been given on rent to the tenant on 28.2.1997. Eviction is sought only after a period of five years. Eviction is sought only for the reason that the landlady wants to do business in textiles. With respect to the claim of the right of way made on behalf of the tenant, it is pointed out by the learned counsel that the crucial ingredients necessary to put forward such a claim, viz. existence of a dominant tenement and servient tenement are absent in the present case. The tenant's rights are confined to the terms of Ext.A1 rental arrangement. The right of a lessee to make any such claim is barred by Section 12 of the Indian Easements Act, 1882. Therefore, the counsel seeks dismissal of the revision.

5. Heard. A copy of Ext.A1 has been made available for our perusal by the counsel. We notice that Ext.A1 is a 'kychit' executed by the tenant in favour of the landlady. What has

been stated therein is only that an entry has been provided from the tenanted shop room to the godown behind and that the said state of affairs is accepted by the landlady. We are not satisfied that the said term confers any right of way on the tenant, as contended. The said clause is only a recognition of the state of affairs existing as on the date of creation of the tenancy. The said clause is obviously provided to safeguard the interests of the tenant, lest a contention is raised by the landlady that she had demolished the western wall of the shop room, unauthorisdelly. As rightly pointed out by the counsel for the respondent, the means of access to the godown behind, is through a path way outside the building, the existence of which has been reported by the Advocate Commissioner in his report. We also notice that in Section 12 of the Indian Easements Act, 1882 there is a bar against a lessee claiming a right of easement for the beneficial

enjoyment of another property of his own. In the present case, the claim is for enjoying another shop room which is in his possession again as lessee. Any right claimed by the lessee is only on behalf of the landlady. Therefore, this is not a situation in which the concept of easement has any application.

6. With respect to the question as to whether transfer of a shop room as per Ext.A22 could be held against the landlady both the authorities below have found that the transfer had been made much prior to the date of filing of the present Rent Control Petition. Ext.A22 is dated 27.2.2006 while the Rent Control Petition has been filed only in the year 2009. The Rent Control Appellate Authority being the final fact finding authority and the question of bonafide need being a question of fact, we do not find any grounds to upset the concurrent findings of the authorities below. Therefore it is

held that the judgment of the Appellate Authority does not suffer from any illegality, impropriety or irregularity warranting interference in revision.

7. As a last submission, the counsel for the petitioner sought for the grant of some time to surrender vacant possession of the premises to the landlady. The request is opposed by the counsel for the respondent. Having considered the respective contentions, we are satisfied that it is necessary to grant time to the tenant up to 31.12.2015 to surrender vacant possession of the premises.

In the result:

- i) This revision is dismissed.
- ii) The tenant is granted time up to 31.12.2015 to surrender vacant possession of the premises to the landlady on condition that he files an affidavit before the Rent Control Court, Kuthuparamba in RCP 21/2009 within a period of two

weeks of the date of receipt of a copy of this order, undertaking to surrender vacant possession of the premises to the landlady on or before 31.12.2015 and pays all arrears of rent that are remaining unpaid in respect of the tenanted premises and also continues to pay rent in respect of the premises without any delay or default until he surrenders vacant possession thereof to the landlady. It is made clear that in the event of the tenant failing to comply with any of the conditions stipulated above he shall forfeit the benefit of the above directions.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
MARY JOSEPH
Judge

jj

