

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

R C Rev..No. 220 of 2015 ()

AGAINST THE JUDGMENT IN RCA 7/2014 of ADDL. RENT CONTROL APPELLATE AUTHORITY-II (II ADDL.D.C., TRIVANDRUM) DATED 01-07-2015 WHICH WAS FILED AGAINST THE ORDER IN I.A.8174/2013 IN RCP NO.51/2012 OF RENT CONTROL COURT, THIRUVANANTHAPURAM.

REVISION PETITIONER/APPELLANT/PETITIONER IN IA NO 8174/13/ RESPONDENT IN RCP:

SASIKUMAR, AGED 43 YEARS,
S/O JUSTUS, RESIDING AT T.C.19/131(2), VPS 300(13),
ANJALI, VATTAVILA, THIRUMALA,
THIRUVANANTHAPURAM.

BY ADV. SRI. THIRUMALA P.K. MANI

RESPONDENT(S)/COUNTER PETITIONER IN IA NO 8174/13/ PETITIONERS IN RCP:

1. SURENDRAN, AGED 53 YEARS (DIED)
S/O BHASKARAN PILLAI, RESIDING AT T.C.17/2168,
PADMA BHASKAR, SREEPURAM ROAD, POOJAPPURA,
THIRUVANANTHAPURAM, -695 012
2. HEMALATHA, AGED 52 YEARS,
W/O SURENDRAN (DIED), RESIDING AT T.C.17/2168,
PADMA BHASKAR, SREEPURAM ROAD, POOJAPPURA,
THIRUVANANTHAPURAM -695 012
3. VINEETHA S.H., AGED 27 YEARS,
D/O SURENDRAN (DIED), RESIDING AT T.C.17/2168,
PADMA BHASKAR, SREEPURAM ROAD, POOJAPPURA,
THIRUVANANTHAPURAM, -695 012
4. NEETHA, AGED 22 YEARS,
D/O SURENDRAN (DIED), RESIDING AT T.C.17/2168,
PADMA BHASKAR, SREEPURAM ROAD, POOJAPPURA,
THIRUVANANTHAPURAM -695 012

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 08-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.T.O.

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

R.C.R No.220 of 2015

Dated this the 8th day of September, 2015

O R D E R

Surendra Mohan, J.

The tenant is in revision before us challenging an order of the Rent Control Court, Thiruvananthapuram in I.A.No.8174 of 2013 in R.C.P No.51 of 2012, confirmed by the Additional Rent Control Appellate Authority-II, Thiruvananthapuram in R.C.A No.7/2014. As per the impugned proceedings of the authorities below, it has been found that the question of maintainability raised by the revision petitioner against the Rent Control Petition was not sustainable. The short facts of the case are the following:

2. The revision petitioner is the Respondent in R.C.P No.51 of 2012 of the Rent Control Court, Thiruvananthapuram. The Rent Control Petition was filed under Sec.11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as "the Act" for short). The original landlord who filed the Rent Control Petition died during the

pendency thereof. After his demise, additional Respondents 2 to 4 were impleaded as his legal representatives. They are the Respondents before us. According to the original landlord, the building bearing Door No.T.C.19/131(2) and five cents of land comprised in survey No.1023/1-1 of Thirumala Village on which the building is situate, had been purchased by him from the revision petitioner as per registered Sale Deed No.1963/2010 dated 30.06.2010. Since the original landlord wanted one year's time to vacate the building for the reason that he needed to identify a suitable accommodation for himself to shift, it was agreed that he could continue to occupy the building on a monthly rent of Rs.3,000/-. He also executed a rental agreement on 29.07.2011 evidencing the tenancy. However, the revision petitioner did not vacate the premises as agreed. Instead, O.S.No.30 of 2012 was filed before the Munsiff's Court, Thiruvananthapuram, seeking an order of injunction against forcible dispossession. The same is pending. According to the original landlord, he required the building for his own occupation.

3. The revision petitioner resisted the petition for eviction, contending that, despite the execution of the sale

deed, no physical possession of the property was handed over to the landlord for the reason that, the entire sale consideration had not been paid. Therefore, the revision petitioner continued in occupation of the premises. The rent deed, according to the revision petitioner, was executed in the said circumstances only for the purpose of safeguarding the interests of the original petitioner in the Rent Control Petition. The same was not a document therefore intended to be given effect to. The proper remedy for the landlord is to file a suit for recovery of possession. The Rent Control Petition, according to the revision petitioner, was not maintainable. The schedule thereof included immovable property also. Pointing out the above facts, I.A.No.8174 of 2013 was filed disputing the landlord/tenant relationship.

4. The Rent Control Court considered the contentions of the respective parties and by an order dated 02.12.2013, found that the Rent Control Petition was maintainable, and that, the denial of title of the landlord was not *bonafide*. The tenant carried the matter in appeal to the Rent Control Appellate Authority, Thiruvananthapuram. On a re-appreciation of the contentions advanced by either side, the Appellate

Authority has by its judgment dated 01.07.2015 confirmed the order of the Rent Control Court. The revision petitioner is aggrieved by the said proceedings.

5. According to Sri. Thirumala P.K. Mani, who appears for the revision petitioner, the legal representatives of the original landlord have during the pendency of the Rent Control Petition sold the building as well as the property to a stranger. Therefore, the need projected in the Rent Control Petition does not survive. On the above ground, it is contended that it is necessary to interfere with the proceedings against which this revision has been filed.

6. Having heard the learned counsel appearing for the revision petitioner and having perused the proceedings of the authorities below, we are not satisfied that any interference therewith in revision is either called for or warranted. We find that the authorities below have addressed the issues in the correct perspective and that, the finding that the denial of title of the landlord was not *bonafide* is fully justified. Therefore, we find no ground to admit this revision or to grant any of the reliefs sought for.

7. With respect to the contention of the revision petitioner that the tenanted property itself has been sold by the legal representatives of the original landlord to a third party, we find that no such contention was raised before the authorities below. According to the learned counsel, this is for the reason that the sale has taken place only subsequently. It shall therefore be open to the revision petitioner to raise such contention before the Rent Control Court by filing a separate petition for the said purpose. Needless to observe that if such a contention is raised, the Rent Control Court shall consider the same and shall pass appropriate orders in the matter, in accordance with law.

With the above observations, this Rent Control Revision is dismissed.

Sd/-
**K. SURENDRA MOHAN
JUDGE**

Sd/-
**SHAJI P. CHALY
JUDGE**

//true copy//

P.S. to Judge

St/-