

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

RRev..No. 235 of 2015 ()

AGAINST THE JUDGMENT IN RCA 26/2012 of
I ADDL. DISTRICT COURT, PALAKKAD DATED 09-04-2015

JUDGMENT IN RCP 100/2010 of PRL.MUNSIFF COURT, PALAKKAD DATED 08-02-2012

REVISION PETITIONER/APPELLANT/RESPONDENT:

JOSE KOMBAN, AGED 55 YEARS,
S/O.K.R.LONA, MITHILAPURI, RAMANATHAPURAM,
PALAKKAD NO.II VILLAGE, PALAKKAD TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT/RESPONDENT/PETITIONER:

P.CHANDRASEKHARAN, AGED 61 YEARS,
S/O.PAKKEERISWAMY PILLAI, RAJAPUTHRA STREET,
SULTHANPET, PALAKKAD TALUK, PALAKKAD-678 001.

BY ADV. SRI..RAJESH SIVARAMANKUTTY (CAVEATOR)

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 15-10-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

R.C.R. NO. 235 OF 2015

Dated this the 15th October, 2015.

O R D E R

Surendra Mohan, J.

The tenant is in revision before us challenging the order of eviction granted by the Rent Control Court, Palakkad in RCP 100/2010 and confirmed by the Rent Control Appellate Authority, Palakkad in RCA 26/2012. The respondent landlord had filed the Rent Control Petition seeking eviction of the tenant on grounds under Sections 11(3), 11(4)(iii) and 11(8) of the Kerala Buildings (Lease and Rent Control Act, 1965 (the 'Act for short). According to the respondent landlord he was residing in a portion of the very same building of which the tenanted premises forms a part. His children have grown up and were aged 24 and 21 years respectively at the time of filing the Rent Control Petition. He requires additional

space for the accommodation of his grown up children. It was pleaded that, he could repair the tenanted premises and use the same as part of his residence.

2. The need of the landlord was contested by the tenant pointing out that the tenanted shop room had only an area of 110 sq.ft. The lease was initially taken by his father. The tenant is conducting a business of book binding in the shop room. The books that are bound in the said shop room are being sold in another shop room where the tenant is conducting sale of books. It was also contended that, the tenanted premises could not be used as part of the residential building of the landlord. According to the tenant, there were absolutely no bonafides in the need that was put forward. The real intention of the landlord was to demolish the building and to construct a shopping complex there, in the process, denying the tenant, the option of reallocation under Section 11 (4)(iv) of the Act. It was therefore contended that, the Rent

Control Petition was only to be dismissed.

3. The Rent Control Court tried the Rent Control Petition on the above pleadings. The landlord examined himself as P.W.1 and marked Exts.A1 to A3 documents on his side. The tenant examined himself as R.W.1. There is no documentary evidence on the side. Ext.C1 commission report has been marked as court exhibit.

4. On an appreciation of the evidence on record, the Rent Control Court came to the conclusion that the landlord was entitled to an order of eviction under Section 11(8) and 11(4)(iii) of the Act. The aggrieved tenant carried the matter in appeal before the Rent Control Appellate Authority, Palakkad. The Appellate Authority on a reappraisal of the evidence on record has confirmed the order of eviction granted by the Rent Control Court. The tenant is before us in revision aggrieved by the said judgment.

5. According to Adv Jacob Sebastian who appears for

the tenant, the premises in question has only an area of 110 sq.ft. The rent in respect of the premises is Rs.1500/- per month. He has been regularly paying the rent and there are no arrears. Relying on the evidence of the landlord as P.W.1 it is contended that admittedly the building in question stands on a land having an extent of $2 \frac{1}{4}$ cents. Out of this, $\frac{3}{4}$ cents is owned by the brother of the landlord to whom the said property has been allotted in partition. It has been stated by P.W.1 when he was examined that his brother's son had authorized him to seek eviction of the tenant from the said portion for the reason that he needed the said space as the parking area for his sons' business. According to the counsel for the tenant, it is clear from the above statement of the landlord that, his intention is to demolish at least a portion of the building and to provide parking space for the business of his brother's son. The above statement gives an insight into the real intention of the landlord which is only to

demolish the building and to make fresh constructions therein. In view of the above, it is contended that the need for additional accommodation projected by the landlord was bereft of any bonafides whatsoever. With respect to the contention that the tenant is in possession of another shop room the contention is that, the business carried on from the said premises is entirely different from what is being carried on from the tenanted premises.

6. Adv. Rajesh Sivaramankutty appears for the respondent landlord. According to the learned counsel, the authorities below have addressed all the objections put forward by the tenant in the proper perspective. It has been found that, the tenanted premises and the residential portion of the landlord were separated only by a single wall and that the entire building could be used as a single unit. Though another room was in the possession of the landlord, the same was dilapidated and was not capable of being utilised for any

purpose. According to the learned counsel, there are absolutely no grounds to interfere with the concurrent findings of the authorities below, in exercise of the supervisory jurisdiction of this Court.

7. Heard. It is an admitted fact that, though the petitioner tenant is conducting the business of book binding from the tenanted premises, the books bound there are being sold from another premises occupied by him. It is clear from the above that, in addition to the tenanted premises, the tenant is in possession of another premises. When it is shown that the tenant is in possession of another premises it is for the tenant to prove by positive evidence that the said additional premises occupied by him, is insufficient for accommodating the business that is being carried on by him from the tenanted premises. There is absolutely no evidence in this case, on the above aspect. Since the activity that is being conducted by the tenant from the premises occupied is

binding books which are admittedly sold from the other premises occupied by him, even if the business carried on from the tenanted premises is shifted to some other place there would not be much of an inconvenience to the tenant.

8. On the other hand, the landlord is in need of additional accommodation for his residence, which has been found to be bonafide and genuine by both the authorities below. He has grown up children, who require to be provided with proper accommodation. The authorities below have found that, going by the commission report Ext.C1, the premises presently occupied by him is starved of space. Therefore, the need for additional accommodation put forward by him cannot be found fault with. The comparative hardship that would be suffered by the parties, is also more in the case of the landlord. As already found above, since the tenant's activity of binding books could be shifted to some other place even a little further away from the present

premises and could be conducted without affecting his business in sale of books that is admittedly conducted from another shop room that is convenient and suitable for the purpose. The above being the position viewed in any perspective we find no grounds to interfere with the findings of the authorities below, in revision. The authorities below have considered the issues properly and have entered findings that are perfectly justified in the facts and circumstances of this case. Therefore, this revision is only to be dismissed.

9. As a last submission, the counsel for the revision petitioner sought for the grant of one year's time to surrender vacant possession of the premises. The counsel for the respondent landlord opposes the grant of such a long time pointing out that the tenant is in fact putting the tenanted premises only to a limited use. It is contended that without any difficulty the activity could be shifted to any other room. The counsel for the revision petitioner on the other hand

points out that his business is a running business and therefore shifting of the same requires the identification of a suitable premises not far from the other shop room occupied by him. Having considered the contentions of the respective parties, we are of opinion that it is necessary to grant six months time to the petitioner to surrender vacant possession of the premises to the landlord. However such grant of time shall be subject to appropriate conditions.

In the result:

i) The rent control revision fails and is accordingly dismissed.

ii) The revision petitioner tenant is granted time up to 15.4.2016 to surrender vacant possession of the premises to the landlord on condition that, he files an affidavit before the Principal Munsiff's Court, Palakkad in RCP100/2010, within a period of two weeks of the date of receipt of a copy of this order unconditionally undertaking to surrender vacant

possession of the tenanted premises to the landlord on or before 15.4.2016. It shall be a further condition for the grant of such time that, the tenant pays to the landlord the rent in respect of the premises each month, without any delay or default until vacant possession is surrendered.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
SHAJI P.CHALY
Judge

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