

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

RCRev..No. 276 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 91/2012 of RENT CONTROL APPELLATE
AUTHORITY, ERNAKULAM DATED 25-05-2015

AGAINST THE ORDER/JUDGMENT IN RCP 19/2011 of RENT CONTROL COURT
ERNAKULAM DATED 31-10-2012
REVISION PETITIONER(S)/APPELLANTS/RESPONDENTS NO 1 & 2:

1. KUNJU PATHUMMA AGED 68 YEARS
W/O. LATE ABDUL REHIMAN, H.NO 50/1787
BEERAN PARAMBU LANE, POST ELAMAKKARA, EDAPPILLY NORTH
KOCHI 26

2. MAJEED AGED 43 YEARS
S/O.LATE ABDUL REHIMAN, H.NO 50/1787
BEERAN PARAMBU LANE, POST ELAMAKKARA, EDAPPILLY NORTH
KOCHI 26

BY ADV. SRI.S.MUHAMMED HANEEFF

RESPONDENT(S)/RESPONDENT/PETITIONER:

RAZIA YOUSUF, AGED 59 YEARS
W/O. MUHAMMED YOUSUF, "SOUBHAGYA, WHITE WAY HOUSE
ORUMANYOOR P.O, THRISSUR 680 512

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
13-11-2015, ALONG WITH RCR. 277/2015, RCR. 282/2015, RCR. 286/2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**P.N. Ravindran &
Babu Mathew P. Joseph, JJ.**

R.C.R.Nos.276, 277, 282 and 286 of 2015

Dated this the 13th November, 2015

O R D E R

P.N. Ravindran, J.

The petitioners are the tenants in R.C.P.Nos.17, 18, 19 and 21 of 2011 on the file of the Rent Control Court, Ernakulam, petitions for eviction filed by the respondent/landlord for an order evicting the tenants from different portions of the same building under sections 11 (2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. The petitioners herein entered appearance and filed counter statements resisting the prayer for eviction. They contended that late Abdul Rahimankutty, the father of the petitioner before the rent control court who owned a large extent of properties in and around Ernakulam and was a religious and pious person, orally gifted the petition schedule buildings to their predecessors in the year 1960. They contended that the said gifts were accepted and delivery of possession was effected and they are in possession as owners of the respective buildings. In other words, they denied the landlord-tenant relationship between the parties.

2. After filing a counter statement in the aforesaid lines, the respondents before the rent control court also filed separate applications praying that the issue regarding denial of title may be

tried as a preliminary issue. The rent control court thereupon framed the following issue:

“Whether the denial of landlord-tenant relationship raised by the respondents is bonafide?

3. Before the rent control court the landlord examined herself as PW1 and produced and marked Exts.A1 to A7. On the side of the respondents the petitioner in RCR No.277 of 2015 (the second respondent in R.C.P.No.18 of 2011) was examined as RW1 and a neighbouring resident was examined as RW2. The rent control court considered the rival contentions and held, relying on the overwhelming documentary evidence available in the case on hand, that the respondents before it viz. the petitioners herein have failed to prove the oral gift set up by them. The rent control court accordingly held that the denial of landlord-tenant relationship is not bonafide. Aggrieved thereby, the respondents in the rent control petitions filed R.C.A.Nos.91, 92 and 93 of 2012 and 65 of 2013 on the file of the Rent Control Appellate Authority, Ernakulam. By a common judgment delivered on 25.5.2015, the appellate authority concurred with the rent control court and dismissed the appeals. Hence, these revision petitions.

4. We heard Shri S. Muhammed Haneef, learned counsel

appearing for the petitioners and Shri P. Viswanathan, learned counsel appearing for the respondent who has lodged a caveat. We have also gone through the impugned judgment/order. The rent control court and the appellate authority have held that though the petitioners herein have set up an oral gift by the predecessor-in-interest of the respondent herein way back in the year 1960, they have not so far effected mutation in the revenue records or paid the property tax in respect of the buildings or land tax in respect of the property. The rent control court and the appellate authority have also held that the three essential ingredients required for an oral gift under the Mohammadan Law, viz. the declaration of gift by the donor, acceptance of the gift by the donee and the delivery of possession of the property to the donee pursuant to such a gift, have not been proved.

5. After hearing learned counsel appearing on both sides at length, we are not persuaded to hold that the respondents before the rent control court have established the fact that they are in possession of the petition schedule buildings as owners thereof. As held by the appellate authority, the documentary evidence in these cases, viz. the receipts evidencing payment of property tax and land tax disclose continued acts of possession and ownership by the landlord. The

evidence also discloses that there was a partition in the family of the landlord and the petition schedule properties were set apart in common to the share of the landlord's mother and her siblings and after the death of the mother the other co-owners released their share to the landlord as per Ext.A2 release deed executed in the year 1992. The evidence in the case thus adequately establishes the fact that the petitioner before the rent control court is the owner of the property. On the other hand, the respondents before the rent control court, viz. the petitioners herein have not produced any evidence to prove that they are in possession as owners of the property. As observed by the appellate authority, the respondents in the rent control petition have not effected mutation in the revenue records or paid property tax in respect of the buildings standing in the property or paid land tax in respect of the site where the petition schedule buildings are situate. In other words, apart from the ipse dixit of the petitioners there is no material to establish their contention that late Abdul Rahimankutty had orally gifted the petition schedule properties to their predecessors in the year 1960. The petitioners are not relations. They belong to different families. They have no case that the gifts were made at one point of time.

6. In such circumstances, we are not persuaded to hold that the

impugned judgment/order suffer from any illegality or infirmity. The revision petitions fail and are accordingly dismissed with a direction to the Rent Control Court, Ernakulam where R.C.P.Nos.17, 18, 19 and 21 of 2011 are pending, to try and dispose of the same expeditiously and in any event, within an outer limit of four months from the date of receipt of a copy of this judgment.

Registry to communicate a copy of this order to the Rent Control Court, Ernakulam for compliance.

(P.N. Ravindran, Judge.)

(Babu Mathew P. Joseph, Judge.)

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