

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH**

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

RCRev..No. 322 of 2015 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 21/2013 of RENT CONTROL APPELLATE
AUTHORITY, KOLLAM DATED 04-09-2015**

**AGAINST THE ORDER/JUDGMENT IN RCOP 6/2010 of RENT CONTROL COURT, PUNALUR
DATED 11-10-2013**

REVISION PETITIONER/RESPONDENT/RESPONDENT:

**YOUSUF, AGED 57 YEARS
S/O.AHAMMED KUTTY, TEA SHOP-III GATE , PAPER MILL P.O.,
PUNALUR VILLAGE, KOLLAM - 691 001.**

**BY ADVS.SRI.ARUN BABU
SRI.G.HARIPRASAD**

RESPONDENT/APPELLANT/2ND PETITIONER:

**NAZARUDEEN, AGED 57 YEARS
S/O.SULAIMAN KUNJU, SHYLAJA MANSIL, PAPER MILL.P.O
PUNALUR VILLAGE, KOLLAM-691 001.**

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
09-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

vpv

P.N.RAVINDRAN & BABU MATHEW P. JOSEPH, JJ.

R.C.R.No.322 of 2015

Dated this the 9th day of December, 2015

ORDER

P.N.Ravindran, J.

The petitioner is the tenant in R.C.(O.P.)No.6 of 2010 on the file of the Rent Control Court, Punalur, a petition filed by the respondent herein and his mother for an order of eviction under section 11(2)(b) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as "the Act" for short. The landlords had in R.C.(O.P.)No.6 of 2010 averred that the tenant has kept the rent in arrears from 15.09.2009 onwards. It was contended that though the landlords had caused Ext.A1 notice dated 28.10.2010 to be issued demanding payment of arrears of rent with interest and notice charges, the tenant has not cleared the arrears.

2. Upon receipt of notice, the petitioner entered appearance and filed a counter statement wherein he admitted the averment in the rent control petition that he had taken the petition schedule premises on rent from Sulaiman Kunju, the predecessor-in-interest of the landlords. He had also stated that he is willing to pay rent from 6.08.2010 and not from 15.09.2009.

3. Before the rent control court, the second petitioner (the sole respondent herein) was examined as PW1 and Exts.A1 to A6 were produced and marked. The tenant examined himself as DW1, another witness as DW2 and produced and marked Exts.B1 and B2. After the trial of the case commenced, the tenant filed I.A.No.2311 of 2012 on 8.10.2012 to amend the counter statement by raising a contention to the effect that the suit documents produced by the petitioner in the rent control petition do not come within the purview of the Registration Act and cannot therefore be received into evidence. He also wanted to raise a plea that the petitioners before the rent control court have no possession or ownership over the property or the building. He also sought to incorporate an averment in paragraph 6 of the counter statement to the effect that he is willing to pay rent from 6.08.2010 and not from the date of petition by adding the words "if the petitioner proves his right to receive the rent". That application was heard and dismissed by the rent control court. The rent control court however framed an additional issue as to whether denial of title by the counter petitioner is bonafide or not. The rent control court thereafter proceeded to consider the question whether Ext.A3 gift deed stated to have been executed by Sulaiman Kunju in favour of the second petitioner before the rent control court proves the title of the landlords over the petition schedule building. The rent control court held that

the tenant is not precluded from denying the derivation of title by the landlords on the strength of Ext.A3 gift deed and held that the denial of title is bonafide. The rent control court accordingly dismissed R.C. (O.P.)No.6 of 2010 by order passed on 11.10.2013.

4. While R.C.(O.P.)No.6 of 2010 was pending, the first petitioner therein passed away and the second petitioner therein was recorded as her legal heir. The second petitioner in R.C.(O.P.)No.6 of 2010 carried the matter in appeal by filing R.C.A.No.21 of 2013 on the file of the Rent Control Appellate Authority, Kollam. By judgment delivered on 4.9.2015, the rent control appellate authority set aside the order passed by the rent control court and remanded R.C.(O.P.)No.6 of 2010 to the rent control court for fresh trial and disposal after deleting additional issue No.5. The appellate authority also set aside the finding entered by the rent control court that the denial of title is bonafide. The said judgment is under challenge in this revision petition filed by the tenant under section 20 of the Act.

5. We heard Sri.Arun Babu, learned counsel appearing for the petitioner. We have also gone through the pleadings and the materials on record. As noticed by the appellate authority, the tenant has not in the counter statement filed by him denied the landlord's title. It was only after the trial commenced that he came forward with I.A.No.2311 of 2012 to amend the counter statement to raise a plea that the

landlord does not have possession or ownership over the petition schedule building. That application was dismissed by the rent control court. The petitioner did not challenge that order. Notwithstanding the fact that the tenant was not permitted to raise a plea denying the landlord's title, the rent control court proceeded to frame additional issue No.5 and decided the issue against the landlords without entering a finding as to whether the landlords have title or not. The rent control court held that section 116 of the Evidence Act does not bar the tenant from denying the derivative title of the landlords and having regard to the fact that the tenant has declined to pay rent to the second petitioner, entered a finding that the contention regarding the denial of title is bonafide.

6. The appellate authority has after an elaborate consideration of the pleadings and the materials on record held that the denial of title is not bonafide. In coming to the said conclusion, the appellate authority has relied on the decision of a Division Bench of this court in **Charulatha v. Manju** [2004 (1) KLT 290] wherein it was held that to enable a person to raise a plea of denial of title warranting an enquiry under section 11(1) of the Act, the person raising the plea must admit that his status in the building is that of a tenant even when he contends that the petitioner in the rent control petition is not his landlord. The Division Bench also held that it is open to a tenant to

deny the proprietary title of his own landlord on the ground that the landlord's title came to an end subsequent to the creation of tenancy.

7. In the instant case, the tenant has not raised a plea that the landlord does not have title over the petition schedule building. He has no case that Sulaiman Kunju, the predecessor-in-interest of the landlord did not have title over the petition schedule building. The only averment which was sought to be incorporated in the counter statement by filing I.A.No.2311 of 2012 is that the petitioners in the rent control court do not have possession and ownership over the property or the building. The petitioner does not dispute the fact that the petitioners before the rent control court are the wife and son of Sulaiman Kunju. Though Ext.A3 gift deed stated to have been executed by Sulaiman Kunju is challenged on the ground that it is inadmissible in evidence, even assuming that such a document had not come into existence, as the second petitioner before the rent control court is none other than the son of Sulaiman Kunju, on the death of Sulaiman Kunju the property will devolve on him as his legal heir. The petitioner had, in the counter statement, admitted that he is ready and willing to pay rent to the petitioners in the rent control court with effect from 6.8.2010. He had not in Ext.A2 reply notice which was sent on receipt of Ext.A1 notice issued on the instructions of the landlords, denied the title of the landlords. In such circumstances, we

are of the opinion that the rent control court erred in entering a finding that the denial of landlords' title by the tenant is bonafide. The appellate authority was therefore perfectly right in setting aside the order passed by the rent control court and remanding the rent control petition for fresh trial and disposal after deleting issue No.5. As the necessary pleadings had not been raised, the rent control court could not have in our opinion framed additional issue No.5. The said issue was in our opinion rightly deleted by the appellate authority.

After hearing learned counsel for the petitioner at length we are not satisfied that the petitioner has made out any grounds warranting interference with the impugned order of remand. The revision petition fails and is accordingly dismissed with a direction to the Rent Control Court, Punalur to try and dispose of R.C.(O.P.)No.6 of 2010 expeditiously and in any event before the summer vacation of 2016.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

/true copy/

P.A. To Judge