

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

OP (RC).No. 156 of 2014 (O)

(RCP.3/10 & 6/14 OF RENT CONTROL COURT, KAYAMKULAM)

PETITIONER(S):

A.UNNIKRISHNAN
RESIDING AT EDAVALLIL VEEDU, PERINGALA P.O.
KAYAMKULAM.

BY ADVS.SRI.R.RAJASEKHARAN PILLAI
SRI.R.SREEDHARAN NAIR
SMT.SABINA JAYAN

RESPONDENT(S):

1. ROY KOSHY JOHN
S/O.C.K. JOHN, LOVEDALE HOUSE, T.C 13/606
KANNAMMOOLA WARD, VANCHIYOOR VILLAGE
THIRUVANANTHAPURAM FROM POOSARI BUNGLOW
CHIRAKKADAVOMMURI, KAYAMKULAM VILLAGE.690502.
2. ALIAMMA JOHN
W/O.C.K. JOHN, -DO-
3. RENNY MEERA GEORGE
W/O. RAJI GEORGE, CHITTEZHATHU BUNGALOW, ANGADICKAL,
CHENGANNUR-689121.
4. REJANI SUNIL PHILIP,
W/O. SUNIL PHILIP, KOLETHU HOUSE, J.P. NAGAR
THIRUVALLA, RESIDING AT FLOOR NO. 6, FLAT NO. 603
BLOCK NO. 10, BPRJ BHARI TOWER, YOUSEL AL
BADEER STREET, OPP. SALMIA PARK, SALMIA
KUWAIT.
5. KOSHY THANKACHAN,
RESIDING AT POOSARI BUNGLOW, CHIRAKKADAVOMMURI
KAYAMKULAM VILLAGE.690502

R5,R1-R4 BY ADV. SRI.PHILIP T.VARGHESE
R5,R1-R4 BY ADV. SRI.THOMAS T.VARGHESE
R5,R1-R4 BY ADV. SMT.ACHU SUBHA ABRAHAM
R5,R1-R4 BY ADV. SMT.K.R.MONISHA

THIS OP (RENT CONTROL) HAVING BEEN FINALLY HEARD ON 06-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (RC).No. 156 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE JUDGMENT DATED 11/04/2011 IN O.P (RC) 786/2011

EXHIBIT-P2-TRUE COPY OF THE ORDER DATED 05/08/2011 INM R.C.P 3/2010 OF THE
RENT CONTROL COURT, KAYAMKULAM.

EXHIBIT-P3-TRUE COPY OF THE COMMON ORDER DATED 25/10/2013 IN I.A 863/2010,
I.A 866/2012 AND I.A 867/2012 OF THE MUNSIFF COURT, KAYAMKULAM.

EXHIBIT-P4-TRUE COPY OF THE PETITION DATED 29/05/2014 SUBMITTED BY THE 5TH
RESPONDENT IN R.C.P 6/2014 BEFORE THE RENT CONTROL COURT,
KAYAMKULAM.

EXHIBIT-P5-TRUE COPY OF THE PARTITION DEED OF 2012.

/True copy/

PS to Judge

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

O.P(RC).No.156 of 2014

Dated this the 6th day of March, 2015

JUDGMENT

Antony Dominic, J.

1.This original petition is filed by the Legal Representative of the tenant against the predecessor-in-interest of respondents 1 to 4, the landlord, who initially filed O.S.3/2000 before the Sub Court, Mavelikkara for fixation of fair rent and for recovery of arrears. During the life time of the landlord, the said suit was returned and was re-presented before the Munsiff Court, Kayamkulam, where, it was re-numbered as O.S.220/08. The original landlord expired on 10.4.2008. On 4.3.2009, his brother, the 5th respondent herein, filed I.A.546/09 seeking impleadment in the suit. During the pendency of that IA, consequent on the judgment of this Court in Edger Ferus v. Abraham Ittycheria [2004 (1) KLT 767] as confirmed by this Court in Edger Ferus v. Abraham Ittycheria [2009 (4) KLT 673], section 5 of the Kerala Buildings (Lease & Rent Control) Act, 1965 stood revived and therefore, the suit was converted as RCP.3/2010. Subsequently, by order dated 7.12.2010, IA.546/09 was allowed and the 5th

respondent was impleaded as a party to the RCP. That order passed by the trial court was challenged by the petitioner herein, Legal Representative of the original tenant, in OP(RC).786/11 before this Court. By Ext.P1 judgment, this Court set aside the order and directed re-consideration of the matter.

2. Subsequently, Ext.P2 order was passed by the Rent Control Court dismissing I.A.546/09 and the related applications. Still further, the Legal Representatives of the deceased landlord who instituted OS.3/2000 filed I.A.Nos.863/12, 866/12 and 867/12 seeking to set aside abatement, to condone the delay of 1409 days and for impleadment respectively. Though these prayers were opposed, the trial court, by Ext.P3 order dated 25.10.2014, allowed the IAs. It is challenging this order, seeking a declaration that RCP.3/10 on the file of the Rent Control Court, Kayamkulam is non est ab initio as the same has been abated in 2008 and for quashing Ext.P3 order, this original petition is filed.

3.This petition contains challenge against Ext.P4 also. But the petitioner has already given up that prayer

without prejudice to his right to challenge the same separately and hence we are not called upon to examine that prayer.

4. Heard learned counsel for the petitioner and learned counsel appearing for the respondents and considered the submissions made.

5. The main submission is that consequent on the death of the original landlord (who instituted O.S.3/2000), as early as on 10.4.2008, the proceedings initiated against him has abated and therefore, the impleadment should not have been allowed by Ext.P3 order passed on 25.10.2014. Although this contention would sound attractive, on a closer scrutiny of the same, we do not find any substance in it. By Ext.P3, the trial court allowed the three interlocutory applications. Among the three, I.A.863/12 was for setting aside the abatement and I.A.866/12 was for condonation of delay in applying for the same. When the delay is condoned and the abatement is set aside, that order would take effect from 10.4.2008 when the death has occurred. In other words, the impleadment of Legal Representatives allowed by order in I.A.867/12, by

virtue of Ext.P3 order, takes effect from 10.4.2008 the date of death of the original landlord. It cannot be such that the proceedings on account of abatement were non est as contended by the petitioner.

6.The surviving question would be whether the trial court was justified in passing Ext.P3 order. Admittedly, the order passed is one bringing on record the Legal Representatives of a deceased petitioner. From the materials available before this Court, we are not in a position to think or conclude that they could be accused of any laches on their part disentitling them from prosecuting the case further. We are not, therefore, inclined to think that Ext.P3 order suffers from any illegality or perversity. Original petition fails.

It is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

k kb.