

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

RCRev.No. 111 of 2014 ()

AGAINST THE ORDER/JUDGMENT IN RCA 36/2008 of I ADDL.RENT CONTROL
APPELLATE AUTHORITY, THRISSUR DATED 29-10-2013

AGAINST THE ORDER/JUDGMENT IN RCP 58/2004 of RENT CONTROL
COURT, THRISSUR DATED 11-04-2008

REVISION PETITIONER(S)/APPELLANTS 1,3 & 4/RESPONDENT 3,5,6:

1. SANTHA
D/O.LATE NATARAJAN, NADATHARA, THRISSUR.
2. N.VIJAYANAND
S/O.LATE NATARAJAN, PATTALAM ROAD, THRISSUR.
3. N.ARUNADEVI
D/O.LATE NATARAJAN, PATTALAM ROAD, THRISSUR.

BY ADVS.SRI.DINESH R.SHENOY
SRI.H.KIRAN

RESPONDENT(S)/RESPONDENTS 1&2/PETITIONER & R2 IN RCP:

1. THANKARATHINAM
S/O.DORAYAPPAN NADAR, CHELAKOTTUKARA DESOM
CHIYYARAM VILLAGE, THRISSUR TALUK, PIN-680 026.
2. DORAYAPPAN,
S/O.MARIMUTHU NADAR, NO.XXIV, KOUDER STREET
POLLACHI TOWN, VILLAGE, COIMBATORE DISTRICT-642 001.

R1 BY ADV. SRI.G.SREEKUMAR (CHELUR)
R1 BY ADV. SRI.K.R.ARUN KRISHNAN

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
18.03.2015, THE COURT ON 30.03.2015, PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

R.C.R.No.111 of 2014

Dated this the 30th day of March, 2015

O R D E R

Antony Dominic, J.

1.The first respondent filed RCP.58/14 on the file of the Rent Control Court, Thrissur seeking eviction of the predecessor of the petitioners, late Sri.Natarajan, under sections 11(2)(b), 11(3) and 11(4)(i) of the Kerala Buildings (Lease & Rent Control) Act, 1965, hereinafter, the 'Act', for short. During the pendency of the petition, the first respondent therein, Sri.Natarajan, expired and his Legal Representatives got themselves impleaded as additional respondents 3 to 6 therein. The Rent Control Court, by its order dated 11.4.2008, allowed the petition. That order was challenged before the Rent Control Appellate Authority, Thrissur in RCA.36/08 and the Appellate Authority, by its judgment dated 29.10.2013, dismissed the appeal. It is these proceedings, which are challenged before us.

2.We heard the learned counsel for the petitioners and the learned counsel appearing for the first

respondent. The second respondent remained ex parte throughout.

3. In brief, the case of the first respondent landlord was that the schedule premises originally belonged to one Pechiyammal and that by Ext.A1 rent deed dated 14.10.1982, she leased out the premises to the second respondent, who inducted the predecessor of the petitioners, into the schedule premises as a sub-lessee and that he was carrying on business since then. It is to be noticed here that the 2nd respondent is the father of the 1st respondent and the deceased, is his brother.

4. Subsequently, Smt. Pechiyammal alienated the property in favour of one Varghese in 1985. It is stated that thereafter, by Ext.A2 document of 1998, the first respondent purchased the property from Varghese. According to him, though the acquisition of the property was intimated to the second respondent tenant, rent was not paid and default was committed. Long thereafter, on 21.1.2004, first respondent issued notice to the deceased sub-tenant and the

second respondent who is his father, demanding eviction under sections 11(2)(b), 11(3) and 11(4)(i) of the Act. Though the second respondent, the tenant, received the notice, he did not reply to the same. According to him, the deceased sub-tenant replied to the notice on receipt thereof. In spite of all this, since vacant possession of the premises were not surrendered and the sub-lease also was not terminated, the first respondent filed RCP.58/04.

5. Before the Rent Control Court, the first respondent was examined as PW1. One Ravikumar, a Legal Representative of the deceased sub-tenant, who also expired later, was examined as RW1. Exhibits A1 to A11 and B1 to B16 were marked. Advocate Commissioner was examined as CW1 and Commission reports were marked as C1 and C1(a). On conclusion of the trial, the Rent Control Court rejected the prayer made under section 11(2)(b) and allowed the prayer under sections 11(3) and 11(4)(i). This order of the Rent Control Court was confirmed by the Rent Control Appellate Authority by dismissing RCA.36/08 filed by

the petitioners herein. It is challenging these proceedings, this revision is filed.

6. Before us, learned counsel for the petitioners contended that the first respondent has suppressed various facts in the pleadings and evidence. He also raised the contention denying the title of the landlord. According to him, the predecessor in interest of the petitioners was the lessee under Pechiyammal, the original landlord and Ext.A1 rent deed of 14.10.1982 is a fabricated document which could not have been relied on or acted upon. He also submitted that Ext.A1, an unregistered rent deed could not have even been marked in evidence or referred to by the court. According to the learned counsel, in a proceedings before the Rent Control Court, when title is denied, the court cannot adjudicate the matter any further and should have left the matter for the decision of the civil court. It is stated that in this case, despite having made a bonafide plea of denial of title of the landlord, on untenable grounds, the Rent Control Court proceeded to adjudicate the matter on merits and ordered

eviction. This, according to the counsel, is totally illegal. Counsel also contended that the burden of proving the alleged sub-tenancy was entirely on the landlord and that the landlord should win his case on his own strength and not on the weakness of the case pleaded by the tenant. It is stated that the Rent Control Court and the Appellate Authority have passed the impugned orders ignoring this settled legal position.

7. On the other hand, counsel for the first respondent landlord submitted that this is a clear case of sub-tenancy where the sub-tenant was unable to produce any document substantiating his case of tenancy under Pechiyammal. Counsel, therefore, submitted that once the deceased is accepted as the sub-tenant, he can neither dispute title of the landlord nor can he raise any plea for the benefit of the provisos to section 11(3). On this basis, learned counsel submitted that the order passed by the Rent Control Court as confirmed by the Appellate Authority does not suffer from any illegality justifying interference.

8. We have considered the submissions made. Considering the nature of the dispute involved, we feel the primary issue that arises for consideration is whether the plea of sub-tenancy found concurrently by the lower courts deserves to be upheld. In this context, the indisputable fact that both parties trace the original title to Smt. Pechiyammal has to be taken into account. According to the landlord, while Pechiyammal has held title over the property in question, by Ext.A1 dated 14.10.1982, the second respondent, his father, took the property on lease. It is stated that while the second respondent continued as lessee, he inducted the deceased sub-tenant into the premises and that since then, it was the deceased sub-tenant who had exclusive possession of the building. It is also his case that in the mean while, in 1985, Pechiyammal alienated the property to Varghese and that he acquired title over the property by Ext.A2 sale deed of 1998.

9. On the other hand, the contention raised by the petitioners is that their predecessor-in-interest took the building on lease from Pechiyammal and that

the said lease was an oral one. According to them, Ext.A1 rent deed of 14.10.1982 is a fabricated document and it being an unregistered one, cannot be even looked into.

10. In so far as the claim made by the first respondent regarding his title to the property by relying on Ext.A2 of 1998 is concerned, there is nothing before us to doubt the genuineness of Ext.A2. Reference to Ext.A2 shows that there is a recital that the property alienated is being held by the second respondent on lease. In so far as Ext.A1 is concerned, it is true that this document is dated 14.10.1982 and is a certified copy of an unregistered lease deed. The period of the lease was for one year. Such a lease deed is a document which is compulsorily registrable under section 17 of the Registration Act. Despite this, the document has been marked and has been received in evidence. It is true that a lease deed such as Ext.A1, which is a document that is compulsorily registrable, can be looked into for collateral purposes. The term 'collateral purpose' has been explained by a Division

Bench of this Court in the judgment in Aniyan T.V. v. T.K.Raveendran [2012 (4) KHC 811], where, in paragraphs 19 and 20, it has been held thus:

"19. Though S.49 of the Registration Act bars reception of an unregistered document in evidence, which is required to be registered under S.17 of the Registration Act, the Apex Court in *Champalal v. Samrathbai* (AIR 1960 SC 629) was of the view that prohibition under S.49 is not against the filing of the document and what is prohibited is the admissibility of the same in evidence so as to affect immovable property falling under S.17. The Apex Court in *Dinaji and Ors. v. Daddi & Ors.* (AIR 1990 SC 1153) had considered the effect of an unregistered document which is required to be registered under S.17 of the Transfer of Property Act. It was observed that such a document will not avail to create, declare, assign, limit or extinguish any right, title or interest in or to the immovable property made mention of in the document. In other words, an unregistered document cannot be used for the purpose of establishing that the document created or declared or assigned or limited or extinguished a right to immovable property.

20. The trend of judicial opinion is to the effect that unregistered documents which are compulsorily registrable under S.17 of the Registration Act can be looked into only for collateral purposes. Collateral purpose has a limited scope and meaning. It is possible to lay down some haphazard illustrations on the point in the light of judicial pronouncements.

Purposes which are collateral in nature:-

- a) For proving the nature and character of possession of the tenant (Per Satish Chand Mukhan & Ors. v. Goverdhandas Byas & Ors. (AIR 1984 SC 143)).
- b) For ascertaining whether the purpose of lease was residential or not.(Per Rai Chand Jain v. Miss Chandra Kanta Khosla (AIR 1991 SC 744)).
- c) For ascertaining the commencement of possession, rate of rent etc. (Per Pieco Electronics and Electricals Ltd. v. Smt. Tribeni Deve (AIR 1990 Cal.135)).

Purposes which are not collateral:

- a) For ascertaining whether the lessee is entitled to create a sub lease or not. (Per M/s. Bajaj Auto Ltd. v. Bahari Lal Kolhi (AIR 1989 SC 1806)).
- b) For ascertaining the term of lease. (Per Ishwar Dutt v. Sunder Singh (AIR 1961 J&K 45).
- c) For ascertaining the term in a lease regarding notice of eviction. (Per M/s. Jagajit Industries Ltd. Rajiv Gupta (AIR 1981 Del. 359)).
- d) For ascertaining the date on which the tenancy began. (Per Zarif Ahmad & Anr. v. Satish Kumar & Anr. (AIR 1983 All. 164)).
- e) For ascertaining as to who is the tenant and on what terms he has been created a tenant (Per Haran Chandra Chakravarti v. Kaliprasanna Sarkar (AIR 1932 Cal. 83))."

11. Reading of the above shows that according to the Division Bench, purposes which are collateral in nature include the purpose of proving the nature and character of possession of the tenant. If such limited reliance of Ext.A1 is permissible in law, it can safely be concluded that this document shows that the nature and character of the possession of the second respondent over the demised premises is that of a tenant. Once it is accepted that the first respondent has, by producing Exts.A1, A2 and by his oral evidence, at least prima facie proved that the second respondent was the tenant, then, in view of the admitted factual position that the deceased was in exclusive possession and that the petitioners are continuing the same, it is up to them to explain the relationship between themselves and the landlord. In this context, we may make reference to the judgment of the Division Bench of this Court in Chakolas Silk House v. A.S.Ismail Sait [1999 (1) KLJ 116], where, this Court inter alia held that when it is shown that a person other than the original tenant is in exclusive possession, the burden is on the tenant to disprove the prima facie case of sub-letting

established by the landlord. This Court has also held in Sadasivan Chettiar v. Rajendran [2005 (1) KLT 653] that there may be situations where the tenant altogether vanishes from the scene or transplants himself or his business to some other premises and somebody is found in exclusive possession of the premises so as to exclude even the tenant from enjoying the premises or the business carried on therein. According to this Court, these are situations which call for an explanation of the tenant because the arrangement under which a stranger to the contract of tenancy seems to be in exclusive possession of the premises is something within the exclusive knowledge of the tenant and that it is in such situations that in the absence of satisfactory explanation forthcoming from the tenant, courts come to legitimate interference of objectionable transfers of tenancy.

12. With this in view, we shall now examine the case. As we have already stated, the case pleaded is that the predecessor-in-interest of the petitioners obtained possession of the demised premises on lease

from Pechiyammal and going by the averments in the objections, this was an oral lease and that it was on the strength of the oral lease that their predecessor continued possession of the schedule premises which right has been inherited by them. Even according to the petitioners, Pechiyammal was alive during the time when the RCP was contested. However, for no explainable reason, despite the fact that Pechiyammal was the best witness who could have spoken about the arrangement under which their predecessor occupied the premises, they did not choose to examine her as a witness on their side. Although they contend that since inception, the deceased was carrying on business in the schedule premises and that he had obtained a sales tax registration in 1981, they have not produced the certificate of sales tax registration or any document to show that the business was started as claimed by them.

13. Yet another aspect is that when RW1, the deceased, was examined, in his cross examination, he has repeatedly asserted that there are documents proving the lease he obtained from Pechiyammal and also

evidence of payment of rent to Pechiyamma1. Here again, for no reason whatsoever, these documents also have not been produced. When PW1, the first respondent herein, was examined in cross, the genuineness of Ext.A1, the rent deed of 14.10.1982 was also not disputed and no question in this behalf has been asked.

14.All these therefore show that on the one side, the first respondent, the landlord, has proved his title to the property, the lease that the second respondent, his father, had obtained from Pechiyamma1 and that the predecessor of the petitioners was in exclusive possession of the room even during the currency of the lease. In such a situation, though the burden was upon the petitioners to have proved the legitimacy of their possession, there was total failure in discharging that burden. In such a situation, the irresistible conclusion was that the deceased was a sub-tenant of the premises, entitling the landlord for eviction under section 11(4)(i) of the Act as sought for by him.

15. The other two grounds relied on by the landlord were under section 11(3) and it was also the case that the petitioners and their predecessor were disputing the title of the landlord. The question to be answered in this context is whether a sub-tenant can deny the title of the landlord and the answer, in our view, has to be in the negative. This issue does not call for much debate in view of the principles laid down by this Court itself and the two judgments which we refer in this context are Janaki Amma v. S.V.Vaidya Samajam [1992 (2) KLT 826], where, in paragraph 4, this Court held thus:

"4. The aforesaid contention cannot be upheld for the following reasons: In order to attract the second proviso to S.11(1) of the Act, the title of the landlord should have been denied by the tenant. Then alone the Rent Control Court would be obliged to decide whether such denial is bona fide. In the instant case initiated by the landlord, he described somebody else as the tenant, whereas the present petitioners are treated as only occupants under the tenant. In the rent control proceedings persons other than a tenant are not permitted to deny the title of the landlord. Of course it is open to the petitioners to contend that the person shown as tenant is, in

fact, no tenant of the building at all and that petitioners are the real tenants. If they succeed in establishing the aforesaid fact, the inevitable course open to the Rent Control Court is to dismiss the application."

16. This judgment was explained by a Full Bench of this Court in Parthakumar v. Ajith Viswanathan [2006 (2) KLT 250] thus:

"43. Charulatha v. Manju (2004 (1) KLT 290) and Janaki Amma v. S.V. Vidya Samajam (1992 (2) KLT 826) are the only specific precedents relied on by the counsel for the landlord to contend that the expression "the tenant" in the second proviso to S.11(1) must receive a strict and narrow construction to exclude any one proceeded against for an order of eviction under Ss.11(2) to 11(8) who does not admit himself to be a tenant under the claimant landlord or at least under a stranger. Janaki Amma was a case where not the person who was not proceeded against as the tenant, but some other strangers - alleged sub lessees persons who were allegedly in occupation under the tenant, attempted to deny the title of the landlord. It was in that context that the following observations were made by a learned Single Judge of this Court.

"In order to attract the second proviso to S.11(1) of the Act, the title of the landlord should have been denied by the tenant. Then alone the Rent Control Court would be obliged to decide whether

such denial is bona fide. In the instant case initiated by the landlord, he described some body else as the tenant, whereas the present petitioners are treated as only occupants under the tenant. In the rent control proceedings persons other than the tenant are not permitted to deny the title of the landlord. Of course it is open to the petitioners to contend that the person shown as tenant is, in fact, no tenant of the building at all and that petitioners are the real tenants. If they succeed in establishing the aforesaid fact, the inevitable course open to the Rent Control Court is to dismiss the application". (emphasis supplied)

44. In that case it was not the tenant or the person who was proceeded against as the tenant who attempted to raise the plea of denial of title of the landlord. The tenant in that case who was proceeded against did not significantly raise any such plea of denial of title. Any dispute about title of the landlord which the tenant (or the person proceeded against as the tenant) does not want to raise and person in occupation under the tenant wants to raise cannot be reckoned as valid denial of title of the landlord to attract the second proviso to S.11(1). This, according to us, is all that Janaki Amma is authority for. Janaki Amma is not at all authority for the proposition that a person proceeded against as tenant must first admit that he is a tenant before he claims the protection of the second proviso to S.11(1). That would be an incorrect and improper understanding of Janaki Amma. A sub-tenant or person claiming under the tenant is bound by the order of eviction passed against the tenant whether such person is or is not a

parry to the eviction proceedings. This is the unmistakable law declared in S.21 of the Kerala Buildings (Lease and Rent Control) Act. If a person in occupation/sub-tenant is bound by the order of eviction passed against the tenant even when he is not arrayed as a party in the eviction proceedings, he cannot be held to have any right to deny the title of the landlord in the course of such proceedings. It is in that context that the learned Judge in Janaki Amma made the observation extracted above. Janaki Amma can be reckoned only as authority for the proposition that the sub-tenant or other person in occupation claiming rights under the tenant are bound by the order of eviction passed against the tenant whether they are or are not parties to such proceedings and such a person who is only claiming rights under the tenant cannot be permitted to deny the title of the landlord under the second proviso to S.11(1)."

17.Law is therefore settled that a sub-tenant like the predecessor-in-interest of the petitioners cannot therefore deny the title of the landlord.

18.Section 11(3) of the Act enables the landlord to seek eviction of the tenant if he bonafide need the premises for his own occupation or for the occupation of his dependants. In so far as this case is concerned, landlord has pleaded that he was already occupying another room and he wanted the building in

question also for his occupation. This contention was fully substantiated by the evidence adduced and has been accepted concurrently by the lower authorities. Therefore, there is nothing before us to take a different view in this matter. We, therefore, do not find any reason to differ from the concurrent view taken by the Rent Control Court and the Rent Control Appellate Authority.

This revision is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

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PS to Judge