

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

RCRev..No. 215 of 2014 ()

AGAINST THE ORDER/JUDGMENT IN RCA 35/2013 of RENT CONTROL APPELLATE
COURT/ ADDL.D.C.IV,EKM DATED 05-07-2014

AGAINST THE ORDER/JUDGMENT IN RCP 33/2011 of III ADDL.M.C.EKM (RENT
CONTROL) COURT, ERNAKULAM DATED 11-04-2013

REVISION PETITIONER(S)/RESPONDENT/PETITIONER:

SADANANDAN AGED 62 YEARS
S/O.THACHERIL KUMARAN, THACHERILPARAMBIL, VYTTILA
POONITHURA VILLAGE, ERNAKULAM.

BY ADV. SRI.ABRAHAM JOHN

RESPONDENT(S)/APPELLANT/RESPONDENT:

ANTONY C. THOMAS, AGED 53 YEARS
S/O.THOMAS, CHIRAMMEL PARAMBIL HOUSE
CHILAVANNOOR DESOM, ELAMKULAM VILLAGE
KANAYANNOOR TALUK, ERNAKULAM, KOCHI - 20.

R1 BY ADV. SRI.BASIL MATHEW

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
17-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JJ

K. SURENDRA MOHAN & MARY JOSEPH, JJ.

R.C.R.NO. 215 OF 2014

Dated this the 17th July, 2015.

O R D E R

Surendra Mohan, J.

The landlord is before us in revision challenging an order of remand by the Rent Control Appellate Authority, Ernakulam in RCA 35/2013. As per the order of remand, the parties are permitted to amend their pleadings and to have the Rent Control Petition decided afresh. The Rent Control Petition RCP 33/2011 was filed by the landlord before the Rent Control Court, Ernakulam seeking an order of eviction against the tenant under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (the 'Act' for short). The need that was put forward by the landlord was that, he was a pensioner who had retired from the Corporation of Cochin. He was a Violinist who was conducting violin classes for various

students at their house. He wanted the tenanted premises for the purpose of conducting a music school.

2. The need of the landlord was opposed by the tenant. According to the tenant, the revision petitioner was not the landlord. The building originally belonged to Smt. Ammu Kumaran from whom the tenant had taken the same on rent. She passed away in the year 2007. Thereafter, the rent in respect of the premises was paid to one Hari Sharma one of her sons and later on to the revision petitioner also. For payments made to Hari Sharma no receipts were issued but the petitioner had been issuing receipts for payments made to him. According to the tenant therefore, the petitioner had no exclusive right of ownership over the tenanted building. There is also no landlord-tenant relationship between the parties. The tenant denied that the petitioner landlord was a Violinist and also contended that the need that was put

forward was only a ruse for eviction.

3. The Rent Control Court tried the petition on the above pleadings. The evidence in the case consists of Exts.A1 to A6 documents as well as the oral testimony of P.W.1 on the side of the landlord. There is no documentary evidence on the side of the tenant. Ext.C1 commission report has been marked as court exhibit. On a consideration of the evidence on record, the Rent Control Court found that the landlord had established the need under Section 11(3) of the Act. Therefore, eviction was ordered. The tenant carried the matter in appeal. The Appellate Authority on a re-appreciation of the evidence on record has remanded the matter as per its judgment in RCA 35/2013, as already noticed above.

4. According to Shri. Abraham John who appears for the revision petitioner landlord though Ext.A1 the registered will

of the late mother of the landlord had been produced in support of his claim of ownership over the tenanted building, the said document was not relied upon by the authorities below for the reason that the same was not proved in accordance with the requirements of Section 68 of the Indian Succession Act, 1925. However, Ext.A2 which is a deed executed between the sons of the deceased Ammu Kumaran ought to have been relied upon to find title in favour of the revision petitioner. According to the counsel, in Ext.A2 the other sons have admitted that the said premises have been set apart for the petitioner landlord. Even if Ext.A2 document is discarded the fact remains that the petitioner is one of the sons of late Ammu Kumaran, a fact that has not been disputed by the tenant. Therefore, at any rate the petitioner is a co-owner in respect of the premises, who is entitled to maintain the Rent Control Petition in his own right, so long as his claim

is not objected to by the other co-owners. In the present case, since no one has objected, it is contended that the findings of the Appellate Authority regarding title to the tenanted premises is without any basis. It is contended that, the Rent Control Court has considered the issues in the proper perspective and therefore, interference with the said finding by the Appellate Authority was absolutely uncalled for and unjustified.

5. With respect to the claim of bonafide need, the contention of the counsel is that, Ext.A3 certificate issued by the Chembai School of Music showed that the petitioner was conducting violin classes there. Nothing more was necessary to prove that he was a violin master. His desire to start a music school of his own in the tenanted premises, could not be found fault with. He is a pensioner who is already taking classes for students at various places. All the necessary

evidence to prove the need as well as the title of the landlord being already on record, according to the learned counsel no purpose is served by the remand. The Rent Control Petition that was filed in the year 2011 has been pending for the past many years with the prospect of the proceedings being culminated, still remaining bleak. Therefore, it is contended that the order of the Rent Control Appellate Authority is liable to be set aside.

6. Adv. Basil Mathew appears for the tenant. The counsel strongly disputes the contentions advanced on behalf of the petitioner landlord. It is contended by the learned counsel for the respondent that, the definite case of the landlord was that he was the owner of the tenanted premises having obtained title to the same as per Ext.A1 will of his mother. The will has not been proved as required by law and therefore, no reliance could be placed on the same. According to the counsel, soon

after the filing of the Rent Control Petition, an application had been moved on behalf of the tenant for the issue of a direction to the landlord to produce his document of title. Though an order was passed directing production of the document, Exts.A1 and A2 were produced only at the time of evidence. Therefore, it is contended by the counsel for the tenant that, the objections to the Rent Control Petition had been filed without having any idea about the nature of the right that was claimed by the landlord over the tenanted building. With respect to Ext.A2, the contention of the learned counsel is that, the same is a document executed among three of the sons of late Ammu Kumaran. She had seven children and therefore Ext.A2 cannot be construed as a document conferring absolute title over the tenanted premises on the petitioner. Since the title of the petitioner has not been proved, it is contended that the Appellate Authority was

absolutely right in remanding the matter. What remains is only for the petitioner to prove Ext.A1 by examining one of the attesting witnesses as required by Section 68 of the Indian Succession Act, 1925. According to the learned counsel one Hari Sharma who is another son of late Smt.Ammu Kumaran is the actual owner of the tenanted shop room. It is contended that Ext.A1 refers to an earlier will under which the said person was claiming title. Therefore according to the counsel there are no reasons to interfere with the same. The counsel has also placed reliance on a decision of the Supreme Court to contend that, it is not permissible for the landlord to shift his stand regarding title when he is claiming on the basis of a title derived from an original landlord. In so far as the bonafide need is concerned, according to the learned counsel, there is no evidence regarding the fact that the petitioner was a violin master. The tenanted premises situate by the side of a busy

road was absolutely unsuitable for starting a music school. Though the landlord has stated that he was giving classes to students at their homes, in his evidence what he has deposed is that he has conducted classes at other institutions. The tenant also has a case that a building belonging to the wife of the landlord had fallen vacant and had been given on rent after the filing of the Rent Control Petition. Therefore, under the first proviso to Section 11(3) also the bonafides of the need was liable to be found against.

7. Heard. According to the tenant, the building occupied by him was taken on rent from one late Smt.Ammu Kumaran in the year 2000. It is not in dispute that, Ammu Kumaran has passed away in the year 2007. Though the tenant has a case that that he had initially been paying rent to Hari Sharma who is one of the sons of late Smt.Ammu Kumaran, he has been paying rent to the petitioner thereafter.

It is admitted that, for payment of rent to Hari Sharma, no receipts used to be issued but that, for payment of rent to the petitioner, receipts were being issued. Therefore, the fact remains that there is absolutely no evidence regarding the contention that any rent was paid to Hari Sharma as alleged. At the same time, it is admitted that the tenant had been paying rent to the petitioner for which he was also issuing receipts. In view of the above admission the petitioner is a person who comes within the scope of the definition of landlord contained in Section 2(3) of the Act. The said provision reads as under:–

“2(3) “Landlord” includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be

entitled to receive the rent, if the building were let to a tenant.”

8. It is not in dispute that, the petitioner is one of the sons of late Smt. Ammu Kumaran. The case of the tenant is that, late Smt. Ammu Kumaran had seven children. The Rent Control Petition has been filed only by the petitioner. The case of the petitioner in the Rent Control Petition is that, he had acquired title to the tenanted premises under Ext.A1 will. Ext.A1 is a registered will. However, Ext.A1 has not been proved by examining at least one of the attesting witnesses thereto, in accordance with the stipulations contained in Section 68 of the Indian Succession Act, 1925. Therefore, the said document cannot be relied upon for any purpose. However, Ext.A2 document shows that, the same is a correction deed that has been executed between three sons of late Smt.Ammu Kumaran clarifying that the number of the

shop room shown therein required to be corrected. The shop room of which the number has been so corrected under Ext.A2 is that of the tenanted premises. It is also worth noticing that Ext.A2 is a registered document. Registration is noticed as far as the other legal heirs are concerned. Therefore, the fact remains that there has been no objection or challenge from any of the legal heirs to Ext.A2 document, which is of the year 2008. As per Ext.A2, as already noticed above, the number of the building has been corrected by the parties. It has also been reiterated that, the petitioner has absolute title to the property.

9. It is further worth noticing that, there is no dispute regarding the fact that the petitioner is one of the sons of late Smt.Ammu Kumaran. Even without placing any reliance on Exts.A1 and A2 documents, it cannot be disputed that the petitioner is one of the co-owners in respect of the tenanted

premises. It is settled proposition of law that a co-owner is entitled to maintain a Rent Control Petition against a tenant for his own bonafide need. Therefore, without going into the genuineness or legality of Exts.A1 and A2 documents, the fact remains that the status of the petitioner as a co-owner entitled to maintain a Rent Control Petition against a tenant is beyond dispute. He is also the person receiving the rent. Therefore, the Appellate Authority seriously erred in holding that the petitioner had not proved his title to the tenanted premises.

10. The counsel for the respondent has taken up a contention that a landlord who pleads that he had absolute title over the tenanted premises cannot be later on permitted to take shelter under the definition of the landlord under Section 2(3) of the Act to justify his contention that the Rent Control Petition was maintainable. The decision of the Hon'ble Supreme Court in *A.V.G.P.Chettiar & Sons v.*

T.Palanisamy Gounder [(2002)5 SCC 337] is pressed into service to support the above contention. The said case involved a situation in which, a trust had been formed which had leased out premises that belonged to the trust. Later on, the petitioner who had sought eviction of the tenant claimed that he had purchased the rights of the landlord from S.Gouthaman who was one of the legal heirs of the original landlord. S.Gouthaman had conveyed the suit property to the respondent by a registered deed. The fact had been intimated to the tenant and the tenant had attorned to the landlord by paying rent. The initial contention of the person who claimed to be the landlord was that he had purchased the rights of S.Gouthaman who had absolute rights over the property. The said contention was found to be incorrect. In the said context, the Hon'ble Supreme Court has said that just because a tenant had attorned to the purchaser by

paying rent to him, it could not be found that he was entitled to maintain the proceedings as the landlord. However, the situation in the present case is totally different. In the present case, the tenant does not dispute that the property belonged to Smt. Ammu Kumaran who passed away in the year 2007. It is also not in dispute, that the petitioner is one of the sons of late Smt.Ammu Kumaran on whom, the title of the deceased has devolved by succession, even assuming that Exts.A1 and A2 documents are not genuine. The petitioner can claim therefore, rights in respect of the tenanted premises as a co-owner. As already noticed by us above, a co-owner is entitled to maintain a Rent Control Petition against the tenant for eviction on the ground of his bonafide need. The only persons who are entitled to object to his claim are the other co-owners of the property. There is absolutely no evidence on record to show that anyone of them have

objected to the claim of the petitioner herein. Therefore, it has to be held that the denial of the revision petitioner's title by the tenant is not bonafide, as rightly held by the Rent Control Court.

11. The counsel for the petitioner has taken up the contention that though the respondent had stated in the proof affidavit that one Hari Sharma was the owner of the property there has been no cross examination of the said aspect and therefore it should be held that the said fact has been admitted by the revision petitioner landlord. In support of the above proposition, the counsel has also placed reliance on the decision in State of Kerala v. Venugopalan [1987(1)KLTSN25 (case No:28)]. However, since we have already found that the petitioner is entitled to maintain the Rent Control Petition in his capacity as a co-owner of the property, we are not satisfied that the omission to cross examine the respondent

with respect to the rights of Hari Sharma would improve matters in any way. This is for the reason that, absolutely no evidence has been let in by the tenant to show that Hari Sharma has any rights in respect of the property nor has any person come forward putting forth any such claim. There is also no evidence of any proceedings between the said person and the petitioner pending before any other Court.

12. With respect to the claim of the tenant for the benefit of second proviso to Section 11(3) we find that the tenant has not discharged the burden of proving the two ingredients under the said proviso. The burden of proving both the ingredients of the second proviso being on the tenant, it is held that the tenant is not entitled to the benefit of the said proviso.

13. On the question of bonafides of the need that has been put forward by the revision petitioner, Ext.A3 document

shows that the petitioner has been taking classes at the Chembai School of Music. Of course, the tenant has questioned the evidentiary value of the said document by contending that the same has not been proved by examining the person who has issued the same. However, the landlord has been cross examined at length and it has come out in evidence that, he has been taking classes not only at the Chembai School of Music but also at the TDM Hall where it is stated that he has 20 students learning violin under him. The said aspects have been elicited by the respondent in the cross examination. We do not find any circumstances to doubt the correctness of the testimony of the revision petitioner as P.W.1 or the certificate produced which is Ext.A3. The petitioner is a pensioner. His desire to start a music school, he being a violinist cannot be found fault with. There are no suggestions of any oblique motive on the part of the landlord

in seeking vacant possession of the premises. There are also no allegations regarding any demand for enhancement in rent, which is usually found in such cases. The above being the position, we find no justification for the interference by the Appellate Authority with the order of eviction granted by the Rent Control Court.

14. As a last submission, the counsel for the respondent sought for some time to surrender vacant possession of the premises to the landlord. The counsel for the landlord opposed the grant of any time pointing out that, the proceedings have been pending for a very long time. However, considering that the tenant is conducting a financial institution from the premises, we accept the request of the counsel for the tenant that he should be granted time up to 31.3.2016, as an exceptional case.

In the result, this Rent Control Revision is ordered as orders:

- i) The RCR is allowed.
- ii) The order of the Rent Control Appellate Authority dated 5.7.2014 in RCA 35/2013 is set aside.
- iii) The order of eviction granted by the Rent Control Court, Ernakulam in RCP 33/2011 is confirmed.
- iv) The tenant is granted time up to 31.3.2016 to surrender vacant possession of the premises to the landlord on condition that, the tenant swears to an affidavit before the Rent Control Court in RCP 33/2011 undertaking to surrender vacant possession of the premises to the landlord on or before 31.3.2016. He shall also pay the arrears of rent if any remaining unpaid and shall continue to pay the rent in respect of the premises without any delay or default until vacant

possession is surrendered to the landlord in accordance with the above directions.

v) It is made clear that the benefit of the time granted hereinabove shall not inure to the benefit of the tenant, if the premises are acquired under the provisions of the Land Acquisition Act, in the meantime.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
MARY JOSEPH
Judge

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