

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

RCRev..No. 228 of 2014 ()

AGAINST THE JUDGMENT IN RCA 41/2011 of RENT CONTROL APPELLATE AUTHORITY
(VI ADDL.DISTRICT COURT) ERNAKULAM DATED 30-01-2014

AGAINST THE ORDER IN RCP 131/2008 of RENT CONTROL COURT (III ADDL.MUNSIFF
COURT) ERNAKULAM DATED 24-03-2011

REVISION PETITIONER(S)/RESPONDENT/ADDL.RESPONDENTS 2 RO 4:

1. M.N.VALSALA, AGED 72 YEARS,
W/O.LATE P.C.SATHYADEVAN, RESIDING AT
PAVAKULATH HOUSE, KALOOR, KOCHI 17.
2. P.S.SAHITH, AGED 44 YEARS,
S/O.LATE P.C.SATHYADEVAN, RESIDING AT
PAVAKULATH HOUSE, KALOOR, KOCHI 17.
3. P.S.SATHEESH, AGED 42 YEARS,
S/O.LATE P.C.SATHYADEVAN, RESIDING AT
PAVAKULATH HOUSE, KALOOR, KOCHI 17.

BY ADVS.SRI.DEVAN RAMACHANDRAN
SRI.V.K.PEERMOHAMED KHAN
SRI.ADARSH KUMAR

RESPONDENT(S)/APPELLANT/2ND PETITIONER:

M.S.MAYA, AGED 46 YEARS,
D/O.SADANANDAN, RESIDING AT
PAVAKULAM HOUSE, KALOOR DESOM,
ELAMKULAM VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT.

R BY ADV. SRI.M.NARENDRA KUMAR

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
05-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

R.C.R.No.228 of 2014

Dated this the 5th day of March, 2015

O R D E R

Antony Dominic, J.

1.The respondent landlord filed RCP.131/08 before the Rent Control Court, Ernakulam seeking eviction of the petitioners urging grounds under section 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965. The Rent Control Court dismissed the petition. The landlord challenged that order before the Rent Control Appellate Authority by filing RCA.41/11. The appellate authority, by the impugned judgment, allowed the appeal. It is against this judgment, this revision petition is filed by the tenants.

2.Briefly stated, facts of the case are that RCP.131/08 was filed by the respondent herein and her father, both claimed to be co-owners of the building under Ext.A1 settlement deed. According to them, they bonafide needed the building for occupation of the respondent herein, second petitioner in the RCP, to start a business of ready-made garments.

3. In the RCP, the respondent impleaded therein was the husband of the first petitioner herein and the father of petitioners 2 and 3. During the pendency of the RCP, the first petitioner therein expired on 31.12.2009 and the respondent tenant expired on 24.8.2010. However, the respondent herein continued as the sole petitioner and the petitioners herein filed IA.5515/10 seeking their impleadment as Legal Representatives of the deceased tenant, which IA was allowed by order dated 4.9.2010.

4. On their impleadment, the petitioners contested the petition by filing their objection, in which, they argued that in addition to them, another son and another daughter survived the tenant and that their non-joinder was fatal to the petition. They also contended that they had no tenancy under the surviving petitioner, the respondent herein and that the surviving petitioner had another vacant room in her possession. It was also contended that the surviving petitioner had other businesses in the very same building. In other words, they disputed not

only the tenancy but also the bonafide need and claimed the benefit of the first proviso to section 11(3).

5. Before the Rent Control Court, the respondent was examined as PW1 and Exts.A1 to A3 were marked. On behalf of the petitioners, no evidence, either oral or documentary, was adduced. The Rent Control Court, by its order dated 24.3.2011, dismissed the petition finding that the respondent did not succeed in establishing that she bonafide required the scheduled building for own occupation. However, in so far as the benefit of the first proviso claimed by the petitioners is concerned, in paragraph 18 of the order, the Rent Control Court held that the tenants had the burden to prove the ingredients of the proviso and that there was no evidence adduced to prove those aspects.

6. As far as the finding of the Rent Control Court that bonafide need was not established by the landlord is concerned, it was mainly on the basis that the

respondent is conducting business in another shop by name Samridhi store. It was this order which was challenged by the respondent landlord in RCA.41/11, which, as we have already stated, was allowed by judgment dated 30.1.2014.

7. Before us, learned counsel for the petitioners contended that the Rent Control Petition was defective for non-joinder of all Legal Representatives of the deceased tenant. He also contended that the landlord was survived by two other children and that on the expiry of the original landlord, they also ought to have joined as petitioners in the RCP. Counsel further contended that since the respondent herein had another business of her own, she had no bonafide need for the building in question. He also claimed that since the landlord had another room in her possession and in the absence of any special reasons projected by her, the tenants were entitled to the benefit of the first proviso to section 11(3) of the Act.

8. These contentions were refuted by the counsel for the respondent landlord. We have considered the submissions made.

9. The first issue raised before us is that since all the Legal Representatives of the deceased tenant are not impleaded, there was non-joinder of necessary parties and that therefore, the petition was defective. In so far as this contention is concerned, admittedly, late Sri.P.C.Sathyadevan was the tenant and the sole respondent in the RCP. It was on his expiry that the petitioners herein got themselves impleaded by obtaining an order in IA.5511/10. However, the contention now raised by them is that in addition to them, the tenant was survived by another son and another daughter and that their non-joinder is also fatal to the proceedings.

10. In this context, it is relevant to state that in the affidavit filed in support of IA.5511/10, the petitioners themselves stated that the original respondent tenant was conducting a ration shop in the

petition scheduled building as a licensee and that the Legal Representatives of the deceased licensee had agreed to give no objection to P.S.Satheesh, who is her son, for obtaining the licence from the authorities and for which a consent letter of the first petitioner agreeing to give the petition schedule to conduct the ration shop for a period of one year was necessary. This, therefore, shows that according to the petitioners, it was Sri.Satheesh who had succeeded to the ARD shop that was being conducted by the deceased tenant. That apart, in this affidavit, they did not have a case that the tenant was survived by any other Legal Representatives or that anybody else had any interest in the shop.

11. In addition to this, in paragraph 9 of the objection filed by the petitioners, they positively asserted that the room is occupied "by the additional third respondent at present for conducting the ration shop and is earning for the livelihood of the family, including the additional second respondent, the widow

of the respondent". This also therefore recognises the factual position that it was none other than the third respondent who inherited the licence and was occupying the room in question. Therefore, it is not now open to the petitioners to contend that anybody else were omitted to be impleaded rendering the petition untenable.

12. There is yet another fact which also disentitles the petitioners from successfully urging this contention. Even according to them, it was the deceased tenant who was conducting the business. Once he expired and was out of the scene, the rights that were devolved to the Legal Representatives is one of a joint tenancy. If that be so, possession of one among them is on behalf of others as well. Moreover, even according to them, there are 5 Legal Representatives and among them, three are already in the party array. This therefore shows that there is substantial representation as well. This principle of substantial representation in the context of rent control proceedings has been accepted by the judgment

of this Court in Cyriac John v. Jacob Cherian [1997 (1) KLT 948] where, in paragraph 20, it has been held thus:

"20. As regards the applicability of the doctrine of substantial representation, the Rent Control Court has not considered the question at all. The Appellate Authority on the other hand, has considered the question in great detail and has held that the said doctrine has no application to the facts of the case. While holding that the doctrine of substantial representation has no application to the instant case, the Appellate Authority has relied mainly upon the decision reported in United Commercial Bank v. Dharam Pal Singh (AIR 1989 HP 56) and Joseph v. Joseph (1958 KLT 957) wherein this court has held that the doctrine cannot apply to a suit or other proceedings when it is laid. The Appellate Authority proceeded on the basis that the doctrine will apply only in a case where, pending proceedings impleadment of legal representatives of a deceased party is sought for. The Appellate Authority has also found that since the petitioner was fully aware of the existence of a legal heir and has not chosen to implead such legal heir, there is no question of applying the doctrine to the facts of the case. Further, it was also found by the Appellate Authority that the respondent cannot be treated as representing the interest of Mrs. Mary Chacko, daughter of late Jacob, who has

not been impleaded in the proceedings as a party since, respondents 1 to 3 were also not impleaded in the proceedings in their capacity as legal heirs of deceased Jacob."

13. This judgment has been followed in Mohanambal v. Veeramani [1999 (2) KLT 206] where, in paragraph 10, it was held thus:

"10. In Konnappan v. Manikkam (1967 KLT 565) His Lordship Mr. Justice P.T. Raman Nayar (as he then was) held that unless a notice terminating a tenancy under S.106 of the Transfer of Property Act is issued to all the tenants in common, there will be no due termination of the tenancy. His Lordship stated

"The rule that notice to one alone of several joint tenants in sufficient applies only to a case where the several tenants hold as joint tenants and not where, they hold as tenants in common. Where joint owners are joint tenants, there is unity of title, unity of interest and the right of survivorship in addition to unity of possession so that it might be said that any one of the joint tenants represents the entire estate. Where, however, the joint owners are only tenants in common there is only unity of possession, not of title or interest, and to

determine a tenants in common there is only unit of possession, not of title or interest, and to determine a tenancy so held in accordance with S.106 of the Transfer of Property Act, notice must be addressed to all the tenants, though proof of service on one will be prima facie proof of service, on all. In the words of the section notice must go to every party intended to be bound by it, and if it is not issued to any of the joint owners of the lease there is no determination of the lease. A lease cannot be determined piece meal and hence it follows that there is no determination even so far as the others are concerned.:

This decision was followed, by the Acting Chief Justice Mr. Justice Subramanian Poti (as he then was) in S.A.Nos. 1077 and 1975 of 1977. His Lordship held that the question being covered by the decision in *Konnappan v. Manikkam*, notice to one of the several co-tenants would not operate as a valid notice. On that basis His Lordship reversed the decree of the lower appellate court and dismissed the suits. This judgment was challenged before the Supreme Court. In the decision in *K. K. Manjerintha v. V.M.T. Kalliani* (1995 Supp (3) SCC 403) the Supreme Court reversed the decision of the Acting Chief Justice and held that in the light of the decision in *H. C. Pandey v. G. C. Paul* ((1989) 3 SCC 77), the view in *Konnappan v. Manikkam* followed by the Acting Chief Justice did not lay down the correct law. Their Lordships held that

H.C. Pandey v. G. C. Pandey the Supreme Court had held that after the death of a tenant all the heirs stepped into the shoes of the deceased tenant jointly and they are joint tenants under law. The court had held that service of notice on one of the coheirs of the tenant was sufficient service under S.106 of the, Transfer of Property Act. In H. C. Pandey v. G. C. Paul the Supreme Court laid down that it was well settled that on the death of the original tenant, subject to any provision to the contrary either negating or limiting succession, the tenancy rights devolved on the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable therefore. That is the position as between the landlord and the heirs of the deceased tenant. In other words, the heirs succeed to the tenancy as joint tenants. Therefore, when on the death of the original tenant the tenancy rights devolved upon the sons, daughters and wife of the original tenant and the notice terminating the tenancy under S.106 of the Transfer of Property Act was addressed to and served upon one of the sons of the original tenant who, paid rent on, behalf of all and acted on behalf of all the heirs of the original tenant, the notice to only one of the joint tenants could not be said to be insufficient. If the tenancy is inherited by the heirs as joint tenants and a notice to quit served on one of them is sufficient to terminate the tenancy, on principle it can be

held that an order for eviction obtained against some of the heirs would be binding on the others in the absence of fraud or collusion or in the absence of any special defence available to the particular heir left out." I therefore, overrule the contention of learned counsel for, the plaintiff that the order for eviction in R.C.O.P. 110 of 1977 can be totally ignored by the plaintiff on the ground that she was not eo nomine made a party to that proceeding. She would be bound by that order since the estate was substantially represented by her mother and brother and she could succeed in the present suit only on establishing that there was collusion between the landlord On the one hand and her mother and brother on the other and that she has a special defence available to her which could not be put forward by her mother and brother who represented the estate of her deceased father in the proceedings for eviction under the Rent Control Act."

These, therefore, show that the contention of the counsel for the petitioners regarding non-joinder of the other two Legal Representatives of the deceased tenant is not worth acceptance.

14.However, counsel for the petitioners relied on the judgment of the Orissa High Court in Biswanath Panda

v. Dr.Lokanath Panda [AIR 1977 Ori 170] where the following sentences were relied on:

"..... Where, however, the petitioners knew who all the legal representatives of the deceased were, but omitted to implead some, and their assertion is that all legal representatives have been impleaded, the doctrine of substantial representation cannot be invoked and the conduct of the defendants does not entitle them to fall back upon such doctrine."

15. In our view, the above principle laid down in the judgment cannot be of any advantage to the petitioners for the reason that in this case, the respondent did not claim that all Legal Representatives have been impleaded. In such a situation, among the two requirements for the non-application of the principle of substantial representation, the first requirement is not satisfied and therefore, this judgment cannot be of any relevance.

16. The second contention raised by the petitioners is regarding the non-joinder of all the Legal Representatives of the landlord. In so far as this contention is concerned, as we have already mentioned, the deceased father and the respondent herein, daughter, filed the petition claiming title over the property on the strength of Ext.A1 settlement deed. It is true that on the death of the father, one of the co-owners, his interest in the property was devolved of his Legal Representatives. It is also true that those Legal Representatives have not been impleaded in the petition. However, even if it is so, the status of the respondent herein, who prosecuted the petition is that of a co-owner and in law, co-owner can maintain a petition for eviction and that too, in the absence of anything to indicate that other co-owners have not agreed to the institution and prosecution of the petition. This principle has been accepted and applied by the Apex Court in the judgment in Mohinder Prasad Jain v. Manohar Lal Jain [(2006) 2 SCC 724].

17. The tenants were impugning the bonafide need of the landlord on the basis that the landlord has another business of her own. In our view, even if it is assumed that the landlord is engaged in other businesses, nothing prevents the landlord from venturing into a new business and if the landlord so decides and seeks eviction of tenant on that ground, the fact that landlord is engaged in an existing business cannot in any manner be used adverse to the landlord. Therefore, this contention has no substance at all.

18. Lastly, it was contended that since the landlord has another room in her possession, the tenant is entitled to the benefit of the first proviso to section 11(3). We are unable to accept this contention also. Though the burden is entirely on the tenants to prove the requirement of the first proviso to section 11(3) that the landlord has other building in her possession, the tenants did not adduce any evidence either oral or documentary. Landlord also did not establish this fact. In such

circumstances, this contention also cannot be accepted. Resultantly, we are unable to find any substance in the revision petition.

19. At this stage, learned counsel for the petitioners sought for a reasonable time to surrender vacant possession of the tenanted premises to the landlord. We heard the counsel for the landlord also in this regard. Admittedly, the tenants are conducting a commercial establishment in the tenanted premises. Therefore, they will have to be given a reasonable time to search out a new premises and shift their establishment. In order to enable the tenants to do so, we deem it appropriate to give him 6 months' time from today to surrender vacant possession of the building to the landlord. However, this shall be subject to the condition that within 3 weeks from today, the tenants shall file an affidavit before the execution court, unconditionally undertaking to surrender vacant possession of the tenanted premises to the landlord on or before the expiry of the 6 months allowed to him. They shall also undertake to

pay the rent till then without default. Revision
is dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

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PS to Judge