

(2015) 11 KL CK 0108
In the High Court Of Kerala
Case No : RC Rev. No. 47 of 2015 (A)

A. Sheeba Manoj

APPELLANT

Vs

Chekkootty

RESPONDENT

Date of Decision : 30-11-2015

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(3), 11(4)(i)

Citation : (2015) 11 KL CK 0108

Hon'ble Judges : P.N. Ravindran and Babu Mathew P. Joseph, JJ.

Bench : Division Bench

Advocate : C. Vathsalan, K. Rakesh Roshan and Thushara V., Advocates, for the Appellant; Shyam Padman, S.K. Saju, A. Ranjith Narayanan and John Thitheemos, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Ravindran, J.—The petitioner is the tenant in R.C.P. No. 1 of 2008 on the file of the Rent Control Court, Perambra, a petition filed by the respondent landlord for an order of eviction under sections 11(3) and 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as the "Act", for short.

2. The landlord had in the petition for eviction averred that he bona fide needs the petition schedule shop room so as to enable his son Rajeevan to start a grocery business. He had further averred that the tenant is not running any business in the petition schedule shop room and that she has sublet it to others. Upon receipt of notice, the tenant entered appearance and filed a counter statement resisting the rent control petition. She denied and disputed the bona fide need put forward by the landlord in the rent control petition and contended that she is mainly depending for her livelihood on the income derived from the business carried on in the petition schedule shop room and that no other suitable shop rooms are available in the locality to shift her business. She has also denied and disputed the allegation that she has sublet the petition schedule shop room to third parties.

3. Before the rent control court, the landlord examined himself as PW1 and produced and marked Exts. A1 to A4. The tenant examined herself as RW1 and four other witnesses as RW2 to RW5. She also produced and marked Exts. B1(a) to B2. On application filed by the landlord, an advocate commissioner was appointed to inspect the petition schedule shop room and the plan and report submitted by him were marked as Exts. C1 and C2 respectively. The advocate commissioner was also examined as CW1. The rent control court considered the rival contentions and the evidence on record and held that the bona fide need put forward is not true. The rent control court, however, held that the tenant has failed to prove the ingredients of both the limbs of the second proviso to section 11(3) of the Act. The rent control court also held, mainly relying on Ext. C2 report submitted by the advocate commissioner, the testimony tendered by him as CW1 and the landlord who was examined as RW1 and the other evidence on record including the testimony tendered by the alleged sub-lessees who were examined as RWs.2 and 3, that the tenant has failed to explain the presence of RWs.2 and 3 in the petition schedule shop room. The rent control court accordingly held that the tenant has without the knowledge and consent of the landlord, sublet the petition schedule shop room to RWs.2 and 3. Consequently, an order of eviction under section 11(4)(i) of the Act was passed on 23.12.2010.

4. Challenging the order of eviction passed by the rent control court under section 11(4)(i) of the Act, the tenant filed R.C.A. No. 20 of 2011 on the file of the Rent Control Appellate Authority, Kozhikode. Upon receipt of notice, the landlord entered appearance and filed a memorandum of cross objections canvassing the correctness of the finding entered by the rent control court under section 11(3) of the Act. The rent control appellate authority considered the rival contentions and dismissed the appeal and the memorandum of cross objections and upheld the order of eviction passed by the rent control court under section 11(4)(i) of the Act. The tenant has aggrieved thereby filed this appeal.

5. We heard Sri. C. Vathsalan, learned counsel appearing for the petitioner and Sri. Shyam Padman, learned counsel appearing for the respondent. We have also gone through the pleadings and the materials on record. The landlord had, prior to the institution of the rent control petition, issued Ext. A3(a) lawyer notice on 06.10.2007. In paragraph 2 of that notice, it was stated as follows:

"2. You were conducting stationary store under the name and style "Vipanchika fancy store". Recently it has come to the notice of my client that you have ceased to occupy the said premises and has subleased the same to third parties viz., Mr. Shameer, S/o Moideen and Mr. P.K. Rakesh, S/o P.K. Govindan Nair without the knowledge or consent of my client. Now the persons you have sublet are conducting a mobile sales and service shop under the name and style "Options Mobile Sales and Service"..... "

6. Ext. A3(b) postal acknowledgment card discloses that the original of Ext. A3(a) notice was served on the tenant on 18.10.2007. She thereupon caused Ext. A4 reply dated 25.10.2007 to be issued. In that notice, it was stated that

Shameer and P.K. Rakesh have no manner of right in the business conducted by the tenant and that they used to help her often. On the other hand, the stand taken by the tenant in the counter statement dated 28.07.2009 is that Shameer, S/o Moideen and P.K. Rakesh, S/o Govindan are persons employed by her for servicing mobile phones. The tenant who was examined as RW1 has also spoken in the same lines. The alleged sub-lessees were examined as RWs.2 and 3. Apart from ipse dixit of the tenant examined as RW1, no acceptable material was produced to show that RWs.2 and 3 are persons employed by her. Though RW1 had deposed in cross examination that she is maintaining records under the Kerala Shops and Commercial Establishments Act, 1960, no such records were produced. The tenant did not also produce the muster roll and wages register which she is bound to maintain under the Kerala Shops and Commercial Establishments Act, 1960. In short, apart from the ipse dixit of the tenant, there is no material to substantiate her contention that RW2 and RW3 are her employees.

7. It is also relevant in this context to note that when CW1, the advocate commissioner who was appointed by the court below, inspected the petition schedule shop room on 25.03.2008, RW2, Shameer alone was present. The advocate commissioner has, in Ext. C2 report, stated that though RW2, Shameer initially told him that Manoj is running a business in mobile sales and service in the petition schedule shop room, later he stated that he is running that business along with Manoj and Rajesh @ Appu. Though Ext. C2 report was filed on 25.03.2008, the tenant did not, for reasons best known to her, file objections to the said report. The rent control petition was disposed of only on 23.12.2010. The courts below have concurrently held relying on the evidence on record that the tenant has failed to explain the presence of RW2 and RW3 in the petition schedule shop room. After hearing the learned counsel on both sides and after going through the pleadings and the materials on record, we are not persuaded to take a different view and hold that the tenant has explained the presence of RW2 and RW3 in the petition schedule shop room. The tenant admittedly was not present in the petition schedule shop room when CW1 inspected it. The case set out in Ext. A4 reply notice dated 25.10.2007 was that RW2 and RW3 help her quite often. The case set out in the counter statement is that they are her employees. As stated earlier, apart from the ipse dixit of the tenant, there is no material on record to prove the contention of the tenant that RW2 and RW3 are employees only. In such circumstances, merely for the reason that the licence to run the business in mobile sales and service stands in the name of the tenant, it cannot be held that the tenant has not sublet the petition schedule shop room or transferred possession thereof to third parties without the knowledge and consent of the landlord. Though an attempt was made to show that the landlord himself had admittedly inaugurated the business in mobile sales and service, nothing has been brought out in evidence to show that the business in mobile sales and service established by RW2 and RW3 was inaugurated by the landlord.

We therefore find no good grounds to interfere with the concurrent findings

entered by the courts below. The revision petition fails and is accordingly dismissed.