
(2012) 08 KL CK 0178
In the High Court Of Kerala
Case No : R.C.R. No. 83 of 2011

Aniyan

APPELLANT

Vs

Raveendran

RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11, 11(3), 11(4)(i), 11(4)(ii), 11(9)
Registration Act, 1908 — Section 17, 49, 49(c)
Transfer of Property Act, 1882 — Section 107, 17

Citation : (2013) 1 ILR (Ker) 17 : (2013) 1 KLJ 115 : (2012) 4 KLT 786 : (2013) 1 RCR(Rent) 317

Hon'ble Judges : Pius C. Kuriakose, J;A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : Ranjith Thampan and P.A. Anitha, for the Appellant; S. Sreekumar (Sr. Advocate), P. Martin Jose, P. Prijith and Aneesh James, for the Respondent

Judgement

A.V. Ramakrishna Pillai, J

1. The tenants are before us in revision. The respondent/landlord approached the Rent Control Court seeking eviction of the revision petitioners from the tenanted premises under S. 11(3) of the Kerala Buildings (Lease and Rent Control) Act 1965(hereinafter referred to as, "the Act") for the alleged need of starting a tourist resort and also under S. 11(4)(ii) alleging that the revision petitioners have caused permanent and material damage to the buildings.

2. The revision petitioners resisted the claim contending that they have been put in possession of the premises in the year 2005 on the agreement that the lease would be for a period of 15 years and hence, the petition for eviction is premature and not legally sustainable. They further contended that the alleged need is only a ruse for eviction and the allegation regarding destruction is false. Also, it was contended that the main source of their livelihood is the industrial unit set up in the tenanted premises and no suitable buildings are available in the

locality for shifting their business.

3. The Rent Control Court found that the claim for eviction is unsustainable in the light of Ext. B2 agreement which stipulates lease for a period of 15 years. Though it was found that the need alleged by the respondent was bona fide, eviction under S. 11(3) was declined finding that the revision petitioner gets the protection under the 2nd proviso to S. 11(3). The claim under S. 11(4)(i) was also negated. Thus the petition resulted in dismissal, in toto.

4. But in appeal, the Rent Control Appellate Authority found that Ext. B2 rent deed cannot be acted upon, since it was not a registered one. The Rent Control Appellate Authority allowed the claim under S. 11(3) finding that, the revision petitioners are not entitled to the benefit under the second proviso to S. 11(3). However the rejection of the claim under S. 11(4)(ii) was upheld. Thus this revision.

5. We have heard Mr. Ranjith Thampan, the learned Senior Counsel appearing for the revision petitioners and Mr. S. Sreekumar, the learned Senior Counsel appearing for the respondent. We have also perused the impugned judgment as well as the order of the Rent Control Court.

6. The argument advanced by Mr. Ranjith Thampan is that as the revision petitioners have taken the tenanted premises on rent for a period of 15 years as per Ext.B2 agreement for conducting their industrial unit by name "Anand Oil Mills", the filing of the eviction petition before the expiry of the period of lease is contrary to the terms of the agreement and unsustainable under S. 11(9) of the Act Mr. S. Sreekumar, per contra, would submit that, as Ext.B2 is an unregistered document, it cannot be looked into for any purpose and hence the tenancy which was based on an oral agreement has to be treated as tenancy from month to month and hence the bar under S. 11(9) of the Act will not apply to this case. Thus he justified the impugned judgment.

7. Section 11(9) of the Act reads:

Where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply to the Rent Control Court before the expiry of such period.

8. The case of there vision petitioners is that in June 2005, the first revision petitioner approached the respondent for getting the tenanted premises on rent for the purpose of starting a modern oil mill and accordingly it was decided that the tenanted premises would be leased out on a monthly rent of Rs. 4000/- for a period of 15 years and they have invested lakhs of rupees availing loan from financial institutions for establishing an oil mill. This, according to the revision petitioners, was specifically under the understanding that the lease would continue for 15 years from 2005. According to the revision petitioners, incorporating the said terms including the 15 year period, an agreement was executed between the first petitioner and the respondent on 12.6.2005. Ext.B2 is

the copy of the said agreement. Ext.B2 specifies a period as contended by the revision petitioner. The respondent/landlord demanded vacant possession of the building through Ext. A1 lawyer notice alleging that he bona fide required the tenanted premises for starting a tourist resort and also alleging that the value of the property was lost by the wrongful use of the building by the revision petitioners. It is in evidence that after the expiry of three years, rent was enhanced to Rs. 4,400/- per month. We do notice that Ext.B2 is an unregistered lease deed.

9. Section 107 of the Transfer of Property Act which, in our view, would be material for arriving at a correct conclusion, states that a lease of immovable property from year to year, or for any term exceeding one year or reserving an yearly rent, can be made only by a registered instrument. Under S. 17 of the Registration Act, 1908, the lease of immovable property from year to year or for any term exceeding one year needs registration and under S. 49(c) of the Registration Act, such documents if not registered are inadmissible in evidence. It was pointed out by Mr. Ranjith Thampan that the landlord though initially had taken a contention that the lease was an oral lease, later he admitted that he had affixed signature in the original of Ext.B2. When there is a positive evidence regarding the rent agreement, as deposed by the revision petitioner, who was examined as CPW1, which is believable and when there is a clear evidence of a document in which, the term of lease is stated, the said document can be relied upon for collateral purposes of corroborating the oral testimony of CW1 regarding the specified period of lease; so submitted Mr. Ranjith Thampan. Referring to the terms of Ext.B2, it was argued that Ext.B2 only evidences the existence of an oral lease which was entered into between the parties, the terms of which were reduced to writing by the execution of Ext.B2. As Ext.B2 does not extend a legal right, but only evidences a legal right, it can be relied on for collateral purposes; this was the submission of Mr. Ranjith Thampan. It was further pointed out that even by the admission of the respondent, who gave evidence as PW1, the lease arrangement is not on the basis of Ext.B2 document and it was executed only forgetting a bank loan for the revision petitioners. Further it was argued that the subsequent conducts of the respondent such as reference to the lease arrangement dated 14.6.2005 in Ext.A1 lawyer's notice, acknowledgment of enhanced rate of rent and acceptance of the rent at enhanced rate from June 2008 and demand through a lawyer notice during the pendency of the appeal demanding the arrears of rent, as fixed by Ext.B2 i.e., at the rate of Rs. 4,400/- per month by adding 10% to the original rent of Rs. 4,000/- per month would go to show that the respondent himself has acted upon Ext.B2. Thus according to the learned senior counsel for the revision petitioner, the subsequent acts of the respondents amount to recognition of Ext.B2 and he cannot be allowed to wriggle out of the same denying the execution of Ext. B2.

10. In support of the argument that Ext.B2 did not require registration as it only evidences the existence of an oral lease, Mr. Ranjith Thampan, invited our attention to the decision of Privy Council in AIR 1932 55 (Privy Council) where it

was held that an instrument to come within the ambit of Registration Act must in itself purport or operate to create, declare, assign, limit or extinguish some right, title or interest of the value of Rs. 7100/- or upwards in immovable property. Distinction was made between a mere recital of a fact and something which in itself creates a title. Evidently, Ext.B2 is a copy of the unregistered agreement stipulating certain conditions of lease which, inter alia, specifies the period of lease also. The learned Senior Counsel for the revision petitioners wants us to rely on Ext.B2 to find that the lease was for a specified period and thus, the eviction sought for is premature.

11. The case of the respondent is that no agreement, as evidenced by Ext.B2, has been executed. So the material question before us is whether, Ext.B2 can be relied on for ascertaining the term of lease.

12. Referring to S. 11(9) of the Act, Mr. Ranjith Thampan would submit that the words "agreed upon between the landlord and the tenant" appearing in S. 11(9) of the Act mean something more than what is contemplated by the Transfer of Property Act. Referring to two decisions of this Court, the learned senior counsel argued that the Kerala Buildings (Lease and Rent Control) Act is a self contained code to which the provisions of the Transfer of Property Act does not apply.

13. The first decision relied on by the learned Senior Counsel is the one rendered by a Full Bench of this Court is in *Lelitha v. Ayissumma* (1997 KLT 587 (F.B).) In that case, the Full Bench was considering whether the provision in the lease deed for surrender of possession of the leasehold without demur, on demand made after the expiry of the term fixed is a contract to the contrary dispensing with quit notice. The question was answered in the negative. The Full Bench referring to the non obstinate clause in the beginning of S. 11 made it clear that any attempt to import the provisions relating to the law of transfer of property for the interpretation of the section would seem to be out of place. S. 11 is a self contained section and it is wholly unnecessary to go outside the Act for determining whether a tenant is liable to be evicted or not, and under what conditions he can be evicted; it was held.

14. The next decision cited by the learned Senior Counsel is *A. I. Joy Vs. Stephen Jacob and Another*, . In that case, this Court considered whether a tenant, who is facing a threat of dispossession otherwise than by filing a petition for eviction under S. 11 of Act 2 of 1965 can move a Civil Court and obtain injunction. Answering the question in the affirmative in that context, this Court held that the rent control legislation is a self contained statute and the rights and liabilities of the landlord and tenant are to be governed by its provisions and not by the provisions of Transfer of Property Act or any other law. Unfortunately, the aforesaid decisions cannot be read into the fact situation of the present case.

15. In this case, we are dealing with a question whether a particular clause contained in an unregistered lease deed can be looked into for the purpose of determining the terms of lease. Though the learned Senior Counsel for the

revision petitioners gave thrust to the words "agreed upon between the landlord and the tenant" appearing in S. 11(9), the said agreement can only be a legal agreement. An agreement is said to be legal only if it is enforceable by law. The definite case of the revision petitioners is that the lease was for a for a period of 15 years. Being a lease of immovable property from year to year exceeding one year it is compulsorily registrable under S. 17 of the Registration Act, 1908.

16. The trump card of the learned Senior Counsel for the revision petitioners is the decision in *Neelakantan Sreedharan Vs. Subba Bhakthan Narayana Bhakthan*, . In that case this Court examined whether an unregistered rent deed is admissible to prove the creation of a lease by oral agreement accompanied by delivery of possession. In the aforesaid case, the rent deed was executed by the lessor alone. It was unregistered also. There, this Court held that though it is inadmissible to prove the creation of a lease by an instrument, it is admissible to prove creation of a lease by oral agreement accompanied by delivery of possession as mentioned in S. 107 of the Transfer of Property Act. What was observed by this Court was that the rent deed can be relied on to establish the jural relationship between the parties.

17. Sri. S. Sreekumar, the learned senior counsel for the respondent, per contra, invited our attention to a catena of decisions of various High Courts and Apex Court and would argue that the unregistered lease deed can be relied on only for collateral purposes.

18. 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 Vs. Mst. Samrath Bai*, 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 *Dina Ji and others Vs. Daddi and others*, 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.

19. 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 Makhan and Others Vs. Govardhan Das Byas and Others*,).

b) For ascertaining whether the purpose of lease was residential or not (Per Rai Chand Jain Vs. Miss Chandra Kanta Khosla,).

c) For ascertaining the commencement of possession, rate of rent etc. (Per Pieco Electronics and Electricals Ltd. Vs. Smt. Tribeni Devi,).

Purposes which are not collateral:

a) For ascertaining whether the lessee is entitled to create a sub lease or not. (Per Bajaj Auto Limited Vs. Behari Lal Kohli,).

b) For ascertaining the term of lease. (Per Ishwar Dutt and Another Vs. Sunder Singh and Others .

c) For ascertaining the term in a lease regarding notice of eviction. (Per Jagatjit Industries Ltd. Vs. Sh. Rajiv Gupta,).

d) For ascertaining the date on which the tenancy began. (Per Zarif Ahmad and Another Vs. Satish Kumar and Another,).

e) For ascertaining as to who is the tenant and on what terms he has been created a tenant (Per Haran Chandra Chakravarti and Another Vs. Kaliprasanna Sarkar, .

20. The aforesaid list is not exhaustive. The net conclusion that can be drawn from the decisions referred to above is that an unregistered lease cannot be pressed into service to create, declare, assign, limit or extinguish any right, title or interest in or to the property comprised in the document. As the term of lease imposes a limit on the interest of the parties, an unregistered document cannot be relied on for ascertaining the term of lease. This position is further clarified by the Apex Court in K.B. Saha and Sons Pvt. Ltd. Vs. Development Consultant Ltd., . There, the Apex Court was considering a case where the eviction proceedings were based on the memorandum of lease agreement. The agreement was unregistered. There was a clause in the agreement-clause (9) which required the lessee to use the tenanted premises only for its particular named officer. The Apex Court found that it was an important term forming part of lease agreement and it cannot be looked into even for collateral purposes to come to a conclusion that the respondent was liable to be evicted because of violation of the aforesaid clause.

21. Viewed in that profile, we have no hesitation to hold that Ext.B2 which is an unregistered lease deed, would not stand in the way of the respondent/landlord from getting the revision petitioner evicted from the tenanted premises.

22. Both the courts below have found that the claim raised by the respondent/landlord is bona fide. The Rent Control Appellate Authority by the impugned judgment found that the tenant is not entitled to the protection of the second proviso to S. 11(3) of the Act. The said finding, though divergent is supported by evidence and legal reasoning. We do not see any reason to interfere with the finding entered into by the Rent Control Appellate Authority by exercising the

powers of revisionary jurisdiction under S. 20 of the Act, as the same does not suffer from any illegality, irregularity or impropriety. In the result, the revision fails and accordingly it is dismissed.

23. While concluding the arguments, the learned Senior Counsel for the revision petitioners made a submission that the revision petitioners have spent lakhs of rupees in the tenanted premises under the bona fide belief that they would be allowed to continue in the premises, till the expiry of 15 years and if, we do not accept the arguments advanced for and on behalf of there vision petitioners, the revision petitioners be given the maximum time possible to surrender the vacant possession of the tenanted premises. This was opposed tooth and nail by the learned Senior Counsel for the respondents. Considering all the relevant circumstances of the case, we feel ourselves justified in granting time to the revision petitioners till 31.12.2013 for surrendering vacant possession of the tenanted premises, subject to the following conditions:

- 1) The revision petitioners shall file an Affidavit, within one month from today before the Execution Court or the Rent Control Court, as the case may be, undertaking to surrender vacant possession of the tenanted premises peacefully to the respondent/landlord on or before 31.12.2013 undertaking further that arrears of rent, if any, due as on date will be discharged, within one month.
- 2) The revision petitioners shall pay charges towards use and occupation of the tenanted premises at the rate of Rs. 7,500/- per month from 1.9.12 till the date of actual surrender of the building to the landlord.
- 3) The execution proceedings, if any, pending before the Execution Court shall be kept in abeyance till 31.12.2013.

We make it clear that the revision petitioners will get the benefit of time granted as above, only if, they file the Affidavit on time, honour the undertaking contained therein and discharge the entire arrears of rent as on date.