

(1988) 03 KL CK 0055
In the High Court Of Kerala
Case No : O.P. No. 1808 of 1988

Baton		APPELLANT
	Vs	
P.S. Zainabai and Others		RESPONDENT

Date of Decision : 07-03-1988

Acts Referred:

Constitution of India, 1950 — Article 227
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11, 20

Citation : (1988) 1 KLJ 707

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : P.K. Mohammed, for the Appellant;

Final Decision : Dismissed

Judgement

T.L. Viswanatha Iyer, J.—The 1st respondent landlord filed an application for eviction of the 2nd respondent tenant, from a building in his occupation on the grounds of arrears of rent and unauthorised sub-lease falling under Sub clauses(2) and (4) (i) of Section 11 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (the Act for short). The unauthorised sub-lease was stated to be in favour of the petitioner. According to the tenant, however, the petitioner was his brother in-law who was only residing with him, and that there was no sub-lease as alleged. The Rent Control Court ordered eviction only on the ground of arrears of rent. The sub-lease alleged was found against as there was no evidence to show that the occupation by the petitioner was for valuable consideration. The prayer for eviction on the ground of sub-lease was not therefore granted. The Appellate Authority however held that the landlord was entitled to get an order of eviction on the ground of sub-lease as well. Eviction was therefore ordered on both the grounds set up by the landlord.

2. The order of the Appellate Authority, was not challenged by the tenant himself by filing any revision petition before the Revisional Court u/s 20 of the Act. The petitioner however challenged it in revision. At the hearing of the revision

petition, it was conceded by the petitioner that there was no material on which he could challenge the correctness of the order of the Appellate Authority. In view of this submission, the revisional court did not go into the merits of the case. The revision petition was accordingly dismissed. The petitioner has filed the Original Petition challenging this order under Article 227 of the Constitution.

3. Having heard Sri. P.K. Mohammed, counsel for the petitioner, I am of opinion that the order of the Appellate Authority itself was not open to challenge at the instance of the petitioner. The revision petition filed by him was not at all maintainable. It has to be noted at this stage that the tenant's definite case was that the petitioner was not a sub lessee, but his brother-in-law residing with him. The petitioner himself had remained *ex parte* in the proceedings. When the tenant himself had not chosen to challenge the order of the Appellate Authority, it was not open to the petitioner (who claimed merely to be a resident of the house, along with the tenant) to contest the order of eviction.

4. The order of the Appellate Authority is one by which the tenant has been ordered to be evicted. The petitioner has no case that he is a sub-tenant. In fact, he wants to establish that he is not a sub tenant and thereby to get the order of eviction vacated. He lays claim to challenge the order of the Appellate Authority only on the ground that he is residing in the house along with the tenant. Mere residence with the tenant is not sufficient to vest any right in the occupier to challenge the order of eviction against the tenant. The position may be different where the occupier accepts that he is a sub lessee and nevertheless claims immunity from eviction for some other reasons. The contractual relationship of lease is between the landlord and the 2nd respondent tenant. That is being terminated by the order of eviction. The tenant may acquiesce in the order and he may not, for his own reasons, be willing to continue the tenancy or to perform his obligations under the rental arrangement. He may therefore vacate or be prepared to be evicted. That in fact is the effect of his not perusing the remedies available to him to challenge the order of eviction. It is not open to strangers to the contract (like the petitioner) to compel the tenant to continue the contractual relationship, with the liability of performing his obligation under the contract. This will be the consequence if any one other than the tenant is permitted to challenge the order of eviction with the plea that the tenant is not liable to be evicted. The tenant will thereby be forced to continue a relationship (with all attendant obligations and liabilities) which he himself was prepared to relinquish. There is nothing in law which can compel a tenant to continue such a relationship and be liable to pay rent to the landlord. It is also noteworthy that the stranger in such circumstances will be under no obligations to the landlord as there is no privity of contract between them. Liabilities will therefore be thrust on the tenant against his will and despite his desire to get rid of them. A more preposterous situation cannot be envisaged. When a person wants to absolve himself of all liabilities, no one can compel him to continue to be liable, for his own benefit. This will be the consequence if the petitioner is permitted to challenge the order of eviction, with a view to get it cancelled. The petitioner who is merely a resident

in the premises, without any right in it, cannot therefore be allowed to challenge the order of eviction.

5. I derive support for this view of mine from a recent decision of the Supreme Court in *Saria Narula v. Raghbir Kaur Rahal* (1987) 4 SCC 6681. In that case, the tenant was a company. Narula was an employee of the company and he was as such in occupation of the premises. The landlady filed application for eviction of the company on the ground of bona fide need for her own occupation. That was granted. Narula's wife, (Narula having died meanwhile), who was staying in the premises sought leave to be impleaded as a party to the execution proceedings to contest the order of eviction as not binding on her. The question arose as to whether she could be so impleaded. The Supreme Court held that after the surrender of the tenancy by the company neither Narula nor his heirs had any locus standi or any right to be joined as party to the proceedings. The application for impleading filed by Narula's wife was therefore dismissed.

6. The ratio of this decision must apply to the facts of this case as well. The petitioner who is living in the house by sufferance of the tenant has no right to contest the order of eviction in question. He has no locus standi in the matter. There is therefore no ground for interference in this petition under Article 227 of the Constitution.

The Original petition is dismissed in limine.