

(1995) 01 KL CK 0039
In the High Court Of Kerala
Case No : C.R.P. No. 2754 of 1994 I

K.A. Aboobacker

APPELLANT

Vs

N. Girija
 N. Girija Vs K.A. Aboobacker

RESPONDENT

Date of Decision : 12-01-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11

Citation : AIR 1995 Ker 221 : (1995) 1 ILR (Ker) 789

Hon'ble Judges : N. Dhinakar, J;K.T. Thomas, J

Bench : Division Bench

Advocate : M.C. Sen, for the Appellant;

Final Decision : Dismissed

Judgement

Dhinakar, J.—The petitioner who unsuccessfully questioned the title of the respondent/landlord before the Courts below has preferred these Civil Revision Petitions.

2. The petitioner was originally a tenant under Mohammed and -his wife Asyamma paying Rs. 180/- and Rs. 270/- respectively as rent towards the schedule building and later the property was transferred to Balakrishnan, the respondent in C.R.P. No. 2755 of 1994 and Girija, the respondent in C.R.P, No. 2754 of 1994 by two different deeds of sale both dated 14-5-1984, which stand marked as Exts. A-5 and A-6.

3. According to the petitioner the sale deeds executed by Mohammed and his wife Asyamma were sham and nominal and they were executed only with a view to see that the petitioner is evicted from the schedule building. In support of his contention he relied on certain circumstances namely that the names of the transferee were not shown as the owners of the schedule building in the property tax assessment list for the years 1987-1988 to 1991-1992. It is also his further contention that the transferor earlier filed a petition to get him evicted from the

schedule building and having failed has transferred his property to the respondents.

4. Even at the outset we may say that we are not in agreement with the contentions raised by the petitioner. The fact that the names of the respondents were not entered in the property tax assessment list for the years 1987-1988 to 1991-92 is not a ground to show that the sale effected through Exts. A-5 and A-6 was sham and nominal. The petitioner did not let in any material to show that the transfers were not bona fide. The recitals in Exts. A-5 and A-6 clearly show that consideration has passed between the parties and there is no reason for us to doubt the recitals in the said documents. A perusal of the records shows that a request was in fact made through Ext. B-6 dated 26-8-1989, by the respondent in C.R.P. No. 2754 of 1994, to the Panchayat, requesting them to include her name in the records of the panchayat as the owner of the schedule building. It can also be seen from the records that though the sale deeds were effected in the year 1984 the petitions for eviction were filed only after a lapse of six years. If really the sale transaction was with a view to get the petitioner evicted from the schedule building then there was no reason for the respondents to have waited for six years for filing a petition before the Rent Control Court. The other contention that as the transferor failed to evict him from the schedule building the sale was effected to the respondents herein cannot also be accepted in view of the earlier discussion we have made. The petitioner relied on Section 106 of the Evidence Act and contended that it is for the respondents to show that the sale consideration actually passed between the parties. According to the petitioner as it is a fact which is especially within the knowledge of the persons they must prove it. As we stated earlier the recitals in the documents show that the sale consideration did pass during the sale, and there is nothing on record for us to come to a different conclusion.

5. In *Joseph v. Thomas* 1987 (2) KLT 1029 a single Judge of this Court while dealing with proviso to Section 11(1) held as follows:

"The enquiry conducted by the Rent Control Court is expected to be only in a summary manner. It is for the said reason that the legislature wanted such vexed and intricate questions of title to be determined by the Civil Court in the regular manner. But no tenant should be allowed to compel a landlord to resort to civil suit just because the tenant denied the title of the landlord. A bare statement denying the title is not sufficient to attract the proviso. As per the said proviso, power is given to the Rent Control Court to decide about its own jurisdiction when a tenant denies landlord's title. Such power can, be discerned from the words "the Rent Control Court shall decide whether the denial or claim is bona fide." Thus, Rent Control Court has jurisdiction to decide whether the denial of title is bona fide. Further exercise of Rent Control Court's jurisdiction depends upon the result of the exercise of its initial jurisdiction. "Bona fide" (or good faith) is a familiar term in legal parlance. Honesty, of course is one of the attributes of good faith, but that is not enough. In certain contexts that which is

done with due care and attention is said to have been done in good faith. But the word "bona fide" when used in relation to jurisdictional permutations, has a wider import and a higher degree than the other two attributes. The aspect of bona fides in the context in which it is mentioned in the proviso may be referable to the state of mind of the tenant. But when a Court has to come to a finding regarding such state of mind, there must be objective satisfaction for Court that the tenant had that state of mind. The Court, whose jurisdiction stands ousted on a finding that a certain plea or assertion made by a party is bona fide, must be in a position to hold that the plea is based on a very fair and reasonable supposition. In holding so, the Court must have the satisfaction that there are strong or at least substantial grounds, or sufficient materials in support of the plea. The Court must be in a position to say that the chances of the plea being upheld by the Civil Court are fairly on the higher side. Then alone the Rent Control Court is justified in finding that the denial of landlord's title is bona fide."

We too are of the view that the Court whose jurisdiction stands ousted must have the satisfaction that there are strong or at least substantial grounds or sufficient materials in support of the plea of the petitioner and the chances of the plea being upheld by the Civil Court must be fairly on the higher side. In this case we see no such substantial grounds or sufficient materials in support of the plea of the petitioner.

6. Learned counsel for the petitioner relied on the decision of the Supreme Court in *Devi Dass Vs. Mohan Lal*,) in support of his contention. The said decision has no application to the facts of the case in hand. In that case before the Supreme Court the Appellate Authority did not permit the counsel for the tenant to refer to the evidence adduced on the aspect that the sale deed was a paper transaction and under the circumstances the Supreme Court intervened and set aside the judgment. Further the trial Court in that case did not record any finding on the question whether the sale of the building was a bona fide transaction upon the evidence on record although the trial Court passed the order for disposal of the case. What is required in this case at the relevant stage is to satisfy the rent control Court that denial of landlord's title is bona fide. This has to be done by the tenant who makes the denial, either by producing material or by focussing on admitted or reliable circumstances. Even though the stage for adducing evidence is yet to begin the tenant cannot escape from satisfying the Court that his denial is based on materials. Here the tenant has obviously failed to do so.

7. We see no error of law apparent on the face of the record. Accordingly these C.R.Ps. are dismissed.