

(2015) 06 KL CK 0051
In the High Court Of Kerala
Case No : R.C.R. No. 264 of 2012

K.M. Kunju Mohammed and Others

APPELLANT

Vs

Ahammed

RESPONDENT

Date of Decision : 16-06-2015

Acts Referred:

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

Citation : (2015) 06 KL CK 0051

Hon'ble Judges : K. Surendra Mohan, J; Mary Joseph, J

Bench : Division Bench

Advocate : T.H. Abdul Azeez, K.P. Majeed and V.A. Ajmal, for the Appellant; Paul K. Varghese, A.A. Geetha and T.R. Ramanathan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K. Surendra Mohan, J.—The revision petitioners are the tenants. The respondent landlord had filed RCP. No. 2 of 2009, against the petitioners seeking eviction under Section 11(3) and 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as "the Act" for short). The tenants contested the petition. After trial, the Rent control Court found against the landlord on both the grounds and dismissed the Rent Control Petition. The respondent landlord challenged the order of the Rent Control Court in RCA No. 19 of 2010 before the Rent Control Appellate Authority, N. Paravur. The Appellate Authority on a reappraisal of the evidence found that the landlord was entitled to an order of eviction on the ground under Section 11(4)(i) of the Act. The findings of the Rent Control Court under Section 11(3) were confirmed. The tenants have filed this revision aggrieved by the judgment of the Appellate Authority.

2. According to Sri. T.H. Abdul Aziz who appears for the revision petitioners tenants, the petitioners are conducting textile business in the premises. It is common for a business of such nature to be conducted by the owners, through persons employed by them. The petitioners are conducting their business through their employees who are Jamal and Navas. They were the persons found

in charge of the business when the Advocate Commissioner inspected the premises. When the inspection was in progress, one of the petitioners had reached the premises. Therefore, it is evident that the tenants themselves are conducting the business and that the persons who were present in the shop room were their employees. The counsel has placed reliance on the *Irene v. V.S. Venkataraman* [(2010) 15 SCC 2711] to contend that, according to the Supreme Court, occupation by servants when the tenant was not in station would not amount to parting with possession or subletting. In the present case also, according to the counsel, absolutely no evidence has been let in to warrant a conclusion that the tenants had sublet the premises. The statements of the respondent landlord when examined as P.W. 1 pleading ignorance as to whether Jamal and Navas were not employees of the petitioners, is relied upon to contend that the ground under Section 11(4)(i) is not made out. According to the learned Counsel, the Rent Control Court had considered the issue in the proper perspective and dismissed the Rent Control Petition. It is contended that, the Appellate Authority erred in interfering with the said order and granting eviction.

3. Advocate Paul K. Varghese appears for the respondent landlord. According to the counsel, there is ample evidence in the present case for the grant of an order of eviction both under Section 11(3) and 11(4)(i) of the Act. Though the ground under Section 11(3) has been disallowed by the Appellate Court also, he was disabled from questioning the findings in respect of the said ground since eviction had been ordered. However, it is within his rights to question the findings under Section 11(3) also in the present revision. Therefore, according to the learned counsel, it is necessary to consider the ground under Section 11(3) also in this revision.

4. The learned Counsel points out that, there is a clear mention in Exhibit A1 notice regarding the fact that, the premises in question had been sublet by the tenants. The stand in the reply notice Exhibit P2 was that, the business was being conducted by the tenants themselves. However, the Advocate Commissioner who inspected the premises on 04.06.2009 has reported that the business in the premises was being conducted by one Jamal of Pukkattupady, Edappally. Both Jamal and Navas were present in the shop. Though the first petitioner had reached the premises after sometime, he was not able to make available to the Advocate Commissioner, any records of the business. It was long after the inspection, on 01.10.2009 that the tenants had submitted their objections in the Rent Control Petition. According to the objections, Jamal was a permanent employee of the tenants while Navas was a helper engaged seasonally. According to the counsel, absolutely no document or evidence has been produced to show that Jamal and Navas were so employed. No records have been produced to show that business in the premises was being conducted by the tenants themselves. Exhibits B1 to B4 documents are of the year 2010. They are created only to support the case of the tenants in the Rent Control Petition, it is alleged. Though it has been stated that bill books and other records are available, the said documents have not been produced. When RW1 was in

the box, he had pleaded ignorance regarding even the names of the manufacturers of the products that were being sold from the tenanted premises. According to the counsel, the above are factors sufficiently indicating that the premises have been sublet. The need put forth by the landlord is for starting a bakery. According to the counsel, the eviction ought to have been granted, accepting the said ground to be bonafide. The counsel has also placed reliance on various decisions in support of his contentions.

5. Heard. The first question that arises for consideration is whether the order of eviction granted by the Appellate Authority under Section 11(4)(i) is sustainable or not. The case of the landlord in Exhibit A1 notice is that, the shop room had been sublet to third parties. The stand of the tenants in Exhibit B1 is that, there was no subletting and that, they themselves were conducting the business. However, when the Advocate Commissioner inspected the premises, it was found that the business was being conducted by One Sri Jamal and Navas. It is stated by the Commissioner that, according to Sri Navas, he was employed by Jamal who was conducting the business. No licence or bill book or other documents relating to the business were available in the shop room. According to the report of the Advocate Commissioner, Jamal had told him that the records of the business were with the second petitioner herein. It is true that, according to the petitioners, Jamal and Navas are their employees. However, absolutely no evidence or records have been produced to show that they are employees of the petitioners. As per the objections to the Rent Control Petition, Jamal is a permanent employee of the shop, while Navas is engaged only seasonally. If Jamal was their permanent employee, there would certainly have been documents to evidence the said fact. Licence for conducting the business, documents to show payment of profession tax etc. are documents that would have evidenced occupation of the shop room by the petitioners. However, as rightly pointed out by the counsel for the petitioners, Exhibits B1 to B4 documents are all of the year 2010, after the filing of the Rent Control Petition. They are therefore not sufficient to support the case of tenants. In his evidence as RW1, the first petitioner herein has stated that, he was in possession of the accounts in relation to the business. Though he has been conducting the business for past 15 years he does not have any bill book. He does not even know the names of the manufacturers in whose goods he was dealing. His evidence does not inspire confidence. What emerges from the evidence on record is that, one Jamal and Navas were found conducting business in the shop room. When it is found that, persons other than the tenants are in occupation of the shop room, the burden is on the tenants to prove the jural relationship between them and the tenants. Jamal and Navas have not been examined in this case. Absolutely no evidence has been let in by the tenants to show that they are employees of the tenants. As already noticed above, the bill books, account books and other documents relating to the business are also not produced. There is no evidence of payment of any salary to the so called employees. It is clear from the above that, the tenants have not discharged the burden on them. There

is absolutely no evidence regarding the jural relationship between the tenants and the persons who were found to occupy the shop room namely, Jamal and Navas. The decision in Irene Vs. V.S. Venkataraman and Another, (2002) 2 JT 124 on which reliance is placed by the petitioners, was a case in which, servants were occupying the tenanted premises when the tenant was not in the station. In the present case, there is no evidence that the persons in occupation are the employees of the tenants.

6. With respect to the burden of proof under Section 11(4)(i) of the Act, this Court has held in Arumukhan, C.K. Vs. K.M. Rajasekharan and Others, (1999) 2 KLJ 898 as follows:--

"The initial burden to prove a transfer of possession or subletting is, of course, on the landlord. But once the landlord establishes that A was his tenant and further establishes that instead of A B was in occupation or he was conducting a business in the premises, the burden shifts to the tenant A to explain the nature of B's occupation and to establish on what basis B was let into occupation by him. In other words, it is for A in such circumstances to establish clearly the jural relationship between himself and B. We consider this to be the correct position as recognised by the decision in Abdul Rahiman Kunju v. Rent Control Revisional Authority (1992 (2) KLT 600). Once the landlord has established that a person other than the tenant is in occupation of the premises, there is no further burden on the landlord to establish the exact relationship between the person in possession and the tenant and the burden shifts to the tenant to prove the exact relationship between himself and the person in possession or occupation and to rebut the presumption of sublease arising from the occupation of the other."

7. In the present case, the tenant has failed to discharge the said burden. Usman K.S. Vs. Vidyavathi @ Vidya Kalesan and Others, (2014) 2 ILR (Ker) 115 : (2014) 1 KHC 830 : (2014) 2 KLJ 56 : (2014) 1 RCR(Rent) 345 was a case in which, the tenant admitted to the active presence of his brother for conducting business in the tenanted premises under a different name. This Court has held that the presence of even the brother was required to be explained by the tenant. The above position of law has been reiterated in a number of other decisions to which we refrain from referring, in order to avoid repetition. The result of the above discussion therefore is that, the tenants in the present case have failed to discharge their burden to explain the presence of strangers in the tenanted premises, as reported by the Advocate Commissioner and described by them as their employees. Therefore, we hold that the Rent Control Appellate Authority was justified in ordering eviction on the ground under Section 11(4)(i) of the Act. Since we have found that the order of eviction granted by the Apex Court in the present case is justified under Section 11(4)(i), we do not consider it necessary to consider the bonafides of the need put forward by the landlord under Section 11(3) of the Act. It shall be sufficient to sustain the order of eviction granted by the Appellate Court.

In the result, the Rent Control Revision fails and is accordingly dismissed.