
(2010) 06 KL CK 0089
In the High Court Of Kerala
Case No : R.C. Rev. No. 158 of 2010

Kodiyath Meethal Sajeewan

APPELLANT

Vs

Narayani and Daughter, Pooveli Sheeja

RESPONDENT

Date of Decision : 16-06-2010

Acts Referred:

Citation : (2010) 06 KL CK 0089

Hon'ble Judges : Pius C. Kuriakose, J;C.K. Abdul Rahim, J

Bench : Division Bench

Advocate : B. Krishnan, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

Pius C. Kuriakose, J.—The tenant challenges in this revision u/s 20 the order of eviction concurrently passed against him on the ground under Sub-section (3) of Section 11. The need projected by the landladies was that the building in question, which is the first floor portion of a two storied building, is needed bona fide for occupation by the second petitioner in the RCP who is the daughter of the first petitioner for the purpose of conducting tailoring business. The bona fides of the need was disputed by the revision petitioner. He contended that the real motive in filing the RCP was to let out the building after getting eviction for much higher rent. It was also contended that the RCP was liable to fail by virtue of the first proviso to Sub-section (3) of Section 11. The revision petitioner also claimed protection of the second proviso to Sub-section (3) of Section 11. Before the Rent Control Court, the second petitioner in the RCP, the daughter for whom the building was sought, gave evidence as PW1. She was believed by the Rent Control Court which held that the need projected in the RCP was bona fide. The Court also held that the tenant was unsuccessful in proving that he satisfies either of the ingredients of the second proviso to Sub-section (3) of Section 11. Accordingly, it was held that order of eviction was liable to be passed and hence the same was passed against the revision petitioner.

2. The Appellate Authority, considering the appeal preferred by the revision petitioner, reappraised the evidence. However, that authority also concurred with all the conclusions of the Rent Control Court and dismissed the RCA.

3. In this revision, various grounds have been raised assailing the judgment of the Appellate Authority and Mr. B. Krishnan, learned Counsel for the revision petitioner addressed very strenuous and persuasive arguments before us on the basis of those grounds. Mr. Krishnan submitted that PW2 was a house wife having two children including a school going daughter who was aged only 10 years. According Mr. Krishnan, it is in evidence that the mother is looking after the daughter and that the daughter requires constant attention of her mother. Mr. Krishnan further submitted that it is in evidence that the husband of PW1 is conducting a textile shop at Kakkattil some 41 K.Ms away from Puthuppanam where the petition schedule building is situated and that there is nobody in the house other than PW1 to attend to the needs of the children. In such a family background, it is highly improbable that PW1 will conceiving a genuine need of traveling 70 kms every day for the purpose of conducting business in the petition schedule building. According to Mr. Krishnan, this aspect of the matter was not considered in the right perspective by the statutory authorities. Mr. Krishnan, then submitted that it was in evidence that in the ground floor of the building, a room, in which PW1's brother was previously conducting business, was actually available to PW1 if she genuinely wanted to conduct the business. The above aspect of the matter is not correctly considered by the appellate authority.

4. We have considered the submissions addressed by Mr. Krishnan. As directed by us, Mr. Krishnan read over to us the evidence of PW1 in full. We have scanned the order of the Rent Control Court and the Judgment of the Appellate authority. On reading the evidence of PW1, the de facto claimant for the building, we find that her version regarding her children is that both the children are presently grown up and are capable of looking after themselves. So also we notice that it is not even suggested to PW1 that the room in the ground floor continues to be under the vacant possession of PW1 or her mother. Interestingly what was suggested to PW1 regarding the ground floor room was that the same is let out after the need arose to one Sunil who is presently conducting textile business by name "Golden Chain".

5. A reading of the judgment of the Appellate Authority will show that the findings entered by that authority confirming similar findings entered by the Rent Control Court that the need is bona fide and that the tenant was unsuccessful in establishing the the benefits of the second proviso are findings founded on evidence. We do not find anything unreasonable about those findings. It is very difficult to accept the argument of Sri. Krishnan that those findings and the consequent eviction order passed by the appellate authority are illegal, irregular and improper to the extent of justifying interference u/s 20. The revision necessarily has to fail.

6. As a last plea, Mr. Krishnan requested that if this Court is not inclined to admit

this revision, at least one year's time be granted to the revision petitioner to surrender. He also submitted that there is every likelihood of the respondents agreeing for continuance of the lease if an attractive rent is offered. In view of the above submission, even as we dismiss the present revision, we are inclined to issue notice to the respondents. The result is that the RCR is dismissed.

7. Issue notice to the respondents by speed post for the purpose of determining the time to be granted to the revision petitioner for surrendering the building and also for exploring the possibility of settlement. Post on 30/6/2010.

In the meanwhile, there will be a direction to the Execution Court not to order and effect delivery of the petition schedule building in favour of the respondent.