

(2015) 06 KL CK 0016
In the High Court Of Kerala
Case No : R.C. Rev. No. 120 of 2015

Kuruppan Lakshmi and Others

APPELLANT

Vs

P.C.P. Mahamood Haji

RESPONDENT

Date of Decision : 10-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(2)(a)(b), 11(2)(b), 11(3)

Citation : (2015) 06 KL CK 0016

Hon'ble Judges : K. Surendra Mohan and Mary Joseph, JJ.

Bench : Division Bench

Advocate : Sunil Nair Palakkat and K.N. Abhilash, Advocates, for the Appellant;
V. Ramkumar Nambiar, Caveator, for the Respondent

Judgement

K. Surendra Mohan, J.—The tenants/respondents in RCP 54/2001 are the revision petitioners. They had unsuccessfully challenged the order of eviction passed by the Rent Control Court, Taliparamba, in Rent Control Appeal No: 200/2013 before the Rent Control Appellate Authority, Thalassery. The petitioners are legal heirs of the original tenant who died during the pendency of the proceedings.

2. The respondent landlord had filed the Rent Control Petition seeking eviction of the tenant under Section 11(2)(b) and Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (the "Act" for short). The need put forward by the landlord was that he required the tenanted shop room for the purpose of his son who wanted to start a stationery business. The tenants are conducting business in hill produce. The tenants resisted the claim of the landlord. The parties went to trial. Exts. A1 to A10 were marked on the side of the landlord. P.Ws 1 to 3 were also examined as witnesses. Exts. C1 and C1(a) commission report and plan were marked as court exhibits. The tenants did not adduce any evidence, either oral or documentary.

3. On a consideration of the evidence on record, the Rent Control Court found that the landlord was entitled to an order of eviction both on the grounds of arrears of rent as well as the bonafide need that was pleaded. Aggrieved by the order of eviction, the tenants filed RCA No. 174 of 2003 against the same. The Rent Control Appellate Authority on a reappreciation of the evidence on record found that the order of eviction granted under Sections 11(2)(a)(b) as well as 11(3) were only to be confirmed. However, the Appellate Authority found that the question as to whether the first proviso to Section 11(3) was applicable in the present case required to be considered afresh. Therefore, the matter was remanded to the Rent Control Court. The parties did not challenge the order of remand.

4. After remand, the landlord was examined as PW1, additional documents Exts. A5 to A10 were marked. Exts. C1 and C1(a) were marked and the Advocate Commissioner was examined as P.W3. The son of the landlord, to satisfy whose need the eviction has been sought, had already been examined as P.W.2. The Rent Control Court after considering the entire evidence granted an order of eviction to the landlord. The tenant challenged the order of the Rent Control Court in Rent Control Appeal 200/2013. The Rent Control Appellate Authority has confirmed the order of eviction, on all the grounds. It is against the said judgment that this revision is filed. According to counsel for the revision petitioners Shri. Sunil Nair, the Appellate Authority has seriously erred in confirming the order of eviction in spite of the fact that the landlord's son had not been examined as a witness. According to the counsel for the petitioner since it is to satisfy the need of the landlord's son that eviction has been sought, it was absolutely necessary that he was examined in the case. When the landlord was questioned, he had stated that his son was working in the Gulf and that he was residing there with his family. It is also pointed out that, the landlord had deposed as P.W.1 that he did not know when his son would return. In the context of the above statements, I.A.1849/2014 was filed by the tenants before the Rent Control Appellate Authority under Order 41 Rule 27 of the Code of Civil Procedure for summoning and examining the son as a witness. However, the said petition was dismissed. According to the learned counsel denial of an opportunity to the tenants to examine the son of the landlord is fatal to the genuineness of the need that has been put forward by the landlord. It is contended that, the deposition of the person who needs the building is absolutely necessary for establishing the bonafides of the need that has been put forth. According to the counsel, it is necessary that the judgment of the Appellate Authority is set aside and the matter remanded for rectifying the said mistake. With respect to the applicability of the first proviso to Section 11(3), it is contended that one room owned by the landlord is kept locked by a tenant and therefore, nothing prevented the landlord from seeking vacant possession of the same. The omission to do so points to lack of bonafides. The counsel has also placed reliance on the decision of this Court in *Thomas John v. Kochammini Amma* [1994 KHC 389] to contend that an omission to examine the son of the landlord

for whose need eviction is sought, is fatal.

5. The contentions of the counsel for the petitioners are seriously disputed by Adv. Shri. V. Ramkumar Nambiar who appears for the respondent landlord. Our attention has been drawn to the terms of the remand order of the Appellate Authority to contend that, in the earlier round the order of eviction granted under Section 11(3) had been confirmed. Similarly, the finding regarding the second proviso to Section 11(3) also was confirmed. Since there was no challenge against the remand order, it is not open to the tenants to reagitate the said issues in this revision. With respect to the objection that the son of the landlord had not been examined, the counsel also points out that son had been examined as P.W.2 before the Rent Control Court and that his evidence forms part of the records. It was only when the tenants wanted him to be summoned again that the request was declined. According to the learned counsel, the tenants are interested only in protracting the proceedings. The Rent Control Petition that was filed in the year 2001 has remained pending for the last 14 years. It cannot be expected that the son of the landlord should have remained idle, in the hope of getting vacant possession of the tenanted premises some time or the other. According to the learned counsel though the son had gone abroad and was employed there briefly, he has come back and is not desirous of going back. The counsel also places reliance on the observations of the Appellate Authority, relying on the statement of P.W.1, that the son would return as and when the shop room was ready, to point out that his employment was only temporary.

6. Heard. The terms of the order of remand by the Appellate Authority in RCA174/2003 has been extracted at page 3 of the Rent Control Court's Order. They are reproduced hereunder:--

"i) RCA is allowed by way of remand.

ii) The order of the Rent Control Court, Taliparama, in RCP 54/01 u/s. 11(2)(a) (b) is confirmed.

iii) The findings of the court below that the need of the landlord is genuine and bonfide and that the tenants are not entitled to the protection contained in the 2nd proviso to Sec. 11(3) of the Act are confirmed.

iv) The order of eviction passed in RCP 54/01 u/s.11(3) of the Act is set aside and the matter is remitted back to the court below for the minimum purpose of adjudicating the question whether the claim of the landlord is hit by the 1st proviso to Sec. 11(3) of the Act. Both sides are at liberty to adduce evidence on that aspect.

v) I.A. No. 2123/06 is allowed and the copies of the Building Tax Assessment Register produced along with it are marked as Ext. B15 series. I.A. No:411/07 is partly allowed and the copy of the annual schedule maintained in respect of the building used that industries produced from the side of the landlord is marked as Ext. A4. I.A. No. 479/07 is dismissed.

vi) Parties shall appear before the court below on 24.9.2011.

vii) Both parties are directed to bear their respective cost in this appeal."

A perusal of the above terms of remand shows that, the findings of the Rent Control Court and the order of eviction granted were confirmed on both the grounds under Section 11 (2)(a)(b) as well as Section 11(3). With respect to the applicability of the second proviso also the finding of the Rent Control Court that the tenant was not entitled to the protection thereof has been confirmed. As rightly contended by the counsel for the respondent since the tenants had not challenged the terms of the remand order, the said findings have become final and binding on the tenants. The only question that was directed to be considered afresh was regarding the applicability of the first proviso to Section 11(3). We notice that after remand the Rent Control Petition was amended, incorporating necessary pleadings satisfying the requirements of the first proviso. The landlord examined himself again as P.W.1. He also took out a commission. The report and sketch are marked as Exts. C1 and C1(a). The Advocate Commissioner has been examined as P.W.3. It is pertinent to note that, the tenant did not choose to adduce any evidence even after the remand. Therefore this is a case in which there is absolutely no evidence on the side of the tenants. We notice that the son of the landlord for whose benefit vacant possession of the shop room has been sought had been examined as P.W.2 even before the remand. He has been subjected to cross examination also. Since the scope of the remand by the Appellate Authority was only to consider the effect of the first proviso to Section 11(3), a further examination of P.W.2 was absolutely unnecessary and uncalled for. This is so especially in view of the fact that the need of the landlord under Section 11(3) had been confirmed by the Appellate Authority and the tenant had not chosen to challenge the same before any higher forum. The findings regarding the bonafide need under Section 11(3) have thus become final. There was absolutely no necessity for a further examination of the son of the landlord as sought for by the tenant in filing I.A.1849/2014 before the Rent Control Appellate Authority in RCA 200/2013. Therefore the said I.A. was rightly dismissed by the Appellate Authority. It is also worth noticing that the tenants had not filed any such petition before the Rent Control Court even after remand. As rightly held by the Appellate Authority, it is not open to the tenant to summon and examine P.W.2 who was none other than the son of the landlord and the opposite party in the present case.

7. Since the son was already examined as P.W.2 in this case, the dictum laid down by this Court in the decision reported in *Thomas John v. Kochammini Amma* (supra) has no application. A further examination of the landlord's son after remand especially when the remand is confined only to a consideration as to whether the requirements of the first proviso to Section 11(3) stood satisfied, was unnecessary, as already held by us.

8. With respect to the applicability of the first proviso to Section 11(3) we find that both the authorities below have considered the issue in the proper

perspective. As already noticed above the Rent Control Petition was amended, to incorporate the necessary pleadings satisfying the ingredients of the first proviso. The landlord has examined himself as P.W.1 and has let in the evidence of the Advocate Commissioner as P.W.3. The Rent Control Court has considered the evidence in the proper perspective. The Rent Control Appellate Authority on a reappraisal of the evidence has also held that the reasons put forward by the landlord are acceptable. According to the landlord he had become the absolute owner of two shop rooms under a partition deed executed among his brothers. The two shop rooms were partitioned and converted into two four shop rooms. Out of the four shop rooms were gifted to his daughter at the time of her marriage in the year 2007. The gift deed is Ext. A8. Exts. A9 and A10 are the ownership certificates in her name. One out of the remaining two rooms was leased out to one Rasheed Abdulla. According to the counsel for the tenants, the said room is being kept locked by the tenant. However, it is admitted that the room is still in the possession of the tenant. The fact that the landlord has not initiated proceedings against the tenant cannot be held against him. It is for the landlord to decide as to which room is required by him. The remaining one room has again been divided into two and has been occupied by an NGO Association and a co-operative society. The Appellate Authority has also found that the reasons put forward for not utilising the said rooms for satisfying the need of his son were acceptable. We find no reason to take a different view of the matter. On an examination of the judgment against which this revision is filed we find no illegality, impropriety or irregularity justifying an interference with it in revision.

9. As a last submission, the counsel for the petitioner sought for some time to vacate the premises. The request is opposed by the counsel for the landlord. Having considered the rival submissions, we are of the view that it is necessary to grant time to the tenant up to 31.12.2015 to surrender vacant possession of the premises.

In the result this revision is ordered as follows:

"i) The Rent Control Revision is dismissed.

ii) The tenants are granted time up to 31.12.2015 to surrender vacant possession of the premises to the landlord on condition that one of them files an affidavit before the Rent Control Court, Taliparamba in E.P.180/2013 in RCP 54/2001 within a period of two weeks of the date of receipt of a copy of this order undertaking to surrender vacant possession of the premises on or before 31.12.2015. The tenants shall also pay all arrears of rent in respect of the premises and shall continue to pay the rent in respect of the premises without delay or default until they surrender vacant possession of the premises to the landlord. It is made clear that in the event of default in compliance with any of the conditions the tenants shall forfeit the benefit of these directions."