
(1966) 06 KL CK 0024
In the High Court Of Kerala
Case No : O.P. No. 1929 of 1965

Lalitha R. Prabhu

APPELLANT

Vs

Krishna alias Lakshmi Bai

RESPONDENT

Date of Decision : 07-06-1966

Acts Referred:

Buildings (Lease and Rent Control) Act — Section 23

Citation : (1967) KLJ 275

Hon'ble Judges : K.K. Mathew, J

Bench : Single Bench

Advocate : V.R. Krishna Iyer, P.K. Jose and T.L. Ananthasivan, for the Appellant;
K. Velayudhan Nair and M.C. Sen, for the Respondent

Final Decision : Allowed

Judgement

K.K. Mathew J.

1. Counsel for the petitioner challenges the validity of Ex. P-1 order passed by the Rent Control Court allowing an amendment of a Rent Control petition.. The landlord filed the petition for eviction of the tenants on the ground that the landlord required the building for her own use and also on the ground that the tenant had committed default in the payment of rent. The landlord had leased the building for the purpose of conducting at cinema to a firm of which the petitioner's deceased husband was a partner. A suit for dissolution of the partnership was filed by the petitioner as O.S. 2/1963 of the Tellicherry District Court. A receiver was appointed in that suit. At a public auction, the commissioner appointed in the case sold the assets of the partnership on 20th may 1964, and they were purchased by the petitioner. In pursuance to the sale the petitioner was put in possession of the building in question on 6th June 1964. The case of the 1st respondent is that the commissioner has effected the same as representative of the parties who are entitled to the assess and that the sale constitutes a transfer by the tenants of their right under the lease that the transfer is without her consent, and as the lessee has ceased to occupy the

building the landlord is entitled to get recovery of possession. It may be noted that the alleged transfer in favor of the petitioner was subsequent to the date of the filing of the rent control petition. What the 1st respondent wanted was that this ground also should be included in the Rent Control petition by way of amendment. This was allowed by the Rent Control Court and it is to quash that order that the writ petition is filed. The grounds on which the order is challenged are that the order is vitiated by an error of law apparent on the face of the record, and that the Rent Control Court has no jurisdiction to allow an amendment of the Rent Control Petition. Counsel for the petitioner relied on s. 23 of Act 16 of 1959 and said that the Rent Control Court is invested with the powers of a Civil Court under the CPC only to the limited extent as provided in that section and that there is no power in that court to amend the pleadings. The Rent Control Court relied on clause (j) of that section and stated that pleading being part of the proceedings can be amended. S. 23 (j) reads:

Subject to the conditions and limitations as may be prescribed, the Accommodation Controller, the Rent Control Court and the appellate authorities shall have the powers which are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters:

(j) power to amend any defect or error in orders or proceedings."

The submission of the petitioner's counsel was that there was no defect in any order or proceedings, and therefore there was no occasion for invoking that clause. The learned Rent Controller after referring to the various meanings of the word "defect" in the law dictionaries, came to the conclusion that there is defect in the pleadings and ordered the amendment. This is what the learned Rent Controller says in his order.

To me it appears that it will come, under the first category. If a petitioner has got several grounds for recovery of a building and in the petition filed by him any of such ground is omitted to be included, that petition can be considered to be a defective one in that respect. Viewed in that light, the non-inclusion of a valid ground in the original petition, is a defect inherent in itself and an application for including that ground is an application for curing that defect.

With great respect I am unable to agree with the Rent Control Court. The petition as framed was not defective in any sense. The ground that is sought to be added is a ground which arose subsequent to the filing of the petition. In the petition as filed the grounds urged were that the landlord required the building for her own personal occupation, and that there were arrears of rent. Those grounds if made out would have been sufficient for the landlord to recover possession of the building. Therefore it cannot be said that the non-inclusion of a ground which was not available to the landlord at the time she filed the petition is a defect in the proceedings. If the order is quashed that will not result in any injustice to the 1st respondent as it will be open to her to file a fresh petition incorporating this

ground.

2. It was argued on the basis of the ruling in Mrs. George V. Additional Munsiff 1961 K.L. J. 425 = 1961 K.L. T. 114 that the Rent Control Court has power to amend the proceedings. But that ruling does not touch the point raised here, as the ruling does not consider the question whether the non-inclusion of a ground for friction which arose subsequent to the filing of the petition is a "defect" in the proceedings.

I quash the order and allow the petition. There will be no order as to costs.