
(2011) 03 KL CK 0056
In the High Court Of Kerala
Case No : R.C. Rev. No. 201 of 2010

M. Kunhami and Others

APPELLANT

Vs

Chadayamkunnummal Parkum Kulamulla and Others

RESPONDENT

Date of Decision : 10-03-2011

Acts Referred:

Citation : (2011) 03 KL CK 0056

Hon'ble Judges : Pius C. Kuriakose, J;N.K. Balakrishnan, J

Bench : Division Bench

Advocate : R. Surendran, for the Appellant; P. Narayanan, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Balakrishnan, J.—The tenants are in revision. The landlady sought eviction of the petition schedule building on the ground of bona fide need for her own occupation. The tenant resisted the petition contending that the landlady has filed another RCP in respect of another shop room very adjacent to the petition schedule room and that the need projected is only a pretext for eviction. It was also contended that the tenants who are the legal heirs of the original tenant are depending mainly on the petition schedule building for their livelihood and that there are no other buildings available in the locality and as such they are entitled to the protection under the second proviso to Sub-section 3 of Section 11. The Rent Control Court after evaluating the evidence found that the need set up by the landlady is genuine. But it was held that the tenants are entitled to the protection under the second proviso to Section 11(3) and thus, the RCP was dismissed.

2. The learned Appellate Authority after re-appreciating the evidence concurred with the view taken by the learned Rent Controller that the need projected by P.W. 1 is bona fide. It was found relying on the Commissioner's Report, that there are other vacant buildings available in the locality and so, the tenants are not entitled to the protection under the Second proviso. Sri. R. Surendran, the

learned Counsel appearing for the tenants/revision Petitioners argued on all points raised in the revision petition. It is submitted by the learned Counsel that in respect of adjacent room, the landlady filed another RCP stating that she intends to start a tailoring shop therein. That RCP was allowed and she took delivery of that petition schedule building, but she has not occupied that room at all. So far as the petition schedule building in this case is concerned, the need set up by her is that she intends to start ready made garments. Thus according to Sri. R. Surendran, the need set up in the two petitions are different and that the landlady has chosen to file the present RCP not for her own occupation but to get eviction of the petition schedule building and to sell away the whole building.

3. It is seen that the need projected by the landlady was found to be bona fide by the Rent Control Court and also by the learned Appellate Authority. It can very well be said that the tailoring shop is only part of the business in ready made garments and that the garments prepared in the tailoring shop can be sold in the shop meant for ready made garments as well. Therefore, the need set up by the landlady cannot be found to be tainted with mala fides or with oblique motives. It is a concurrent finding. We find no illegality, irregularity or impropriety about the same.

4. It was found by the learned Appellate Authority that the revision Petitioners are joint tenants and so, the protection can be availed of by any one of them also. The claim for protection under the Second proviso was rejected mainly on the ground that the Commission Report revealed that there are other vacant buildings available in the locality. The learned Counsel for the revision Petitioners, Sri. Surendran would submit that Advocate Commissioner has also reported that when the landlords were contacted they expressed their unwillingness to rent out the buildings. But it is seen that landlords of those buildings were not examined in court. When the availability of other vacant buildings are reported by the Advocate Commissioner, unless evidence is adduced to show that those buildings are not available to let out by the landlords, it cannot be said that the finding entered by the learned Appellate Authority that the claim for protection under the second proviso should fail on account of the second limb of that proviso cannot be said to be erroneous so as to warrant interference by this Court. In view of what is stated above, we hold that the learned Appellate Authority was perfectly justified in rejecting the claim raised by the tenants for protection under the second proviso to Section 11(3). The result, therefore, is that revision is liable to fail and is dismissed.

5. The learned Counsel for the revision Petitioner made a fervent request to grant unusually long time to the tenant to vacate the petition schedule buildings. The landlords are not represented by anybody. Considering the request made by the tenants we hold that the tenant can be granted time till 30/04/12 to vacate the petition schedule building subject to the following conditions:

The revision Petitioners shall file an affidavit within three weeks from today before the execution court or Rent Control Court, as the case may be,

undertaking to surrender vacant possession of the petition schedule building to the landlord on or before 30/04/12 and undertaking further that arrears of rent, if any, due as on date will be discharged within one month and further that they will continue to pay occupation charges at the current rate till the date of actual surrender of the building to the landlord. We make it clear that the tenants will get the benefit of time granted as above only if they file the affidavit on time and honours the undertakings contained therein.