

(2005) 03 KL CK 0052
In the High Court Of Kerala
Case No : Tr.P. (C) No. 142 of 2004

Perinigottukara Namboodiri Yogakshema Sabha	APPELLANT
Vs	
Sreelatha	RESPONDENT

Date of Decision : 21-03-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24, 24(1), 25
Hindu Marriage Act, 1955 — Section 21, 21A
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(1), 11(2), 20, 3, 3(1)
Kerala Buildings (Lease and Rent Control) Rules, 1965 — Rule 14, 17
Limitation Act, 1963 — Section 5

Citation : (2005) 2 ILR (Ker) 229 : (2005) 2 KLT 480

Hon'ble Judges : Pius C. Kuriakose, J

Bench : Single Bench

Advocate : V.R. Kesava Kaimal and N.M. Madhu, for the Appellant; A.K. Seshadri, for the Respondent

Final Decision : Dismissed

Judgement

Pius C. Kuriakose, J.—This Transfer Petition seeks transfer of a petition for eviction u/s 11(2)(b) of the Kerala Buildings (Lease and Rent Control) Act, 1965 presently pending before the Rent Control Court, Ernakulam, over to the Subordinate Judge's Court, Thrissur for the purpose of joint trial with a mortgage suit pending before that Court. The petitioners are the respondents in the Rent Control Petition. Petitioners in the Rent Control Petition are the legal heirs of one Radhakrishnan who was the 7th defendant in the suit. The suit was for recovery of about Rs. 15 lakhs allegedly advanced by the plaintiff-1st petitioner to the 10th defendant in the suit, a Trust by name Pallath Prabhakaran Master Memorial Trust. The case of the plaintiff in the suit is that amounts were advanced to the defendants on the security of immovable properties mentioned in the schedule to the plaint, being equitably mortgaged in favour of the plaintiff. According to the petitioners, the building which is subject matter of the R.C.P. is

situated on one of the items of the plaint schedule property. The transfer of the R.C.P. is sought on the ground that unless the R.C.P. and the suit are tried jointly, there will be duplicity of findings and the plaint claim being much more than the rent allegedly due in respect of the building involved in the R.C.P., the plaintiff is entitled to have adjustment of the alleged rent arrears against the plaint claim. Annexure-B application, according to the petitioners, has already been filed in the suit seeking permission to make such adjustment.

2. Through a detailed counter-affidavit tiled by the respondents it is contended that the principal contesting defendants in the suit who are really accountable for the liability which is subject-matter of the suit have not been made parties to the Transfer Petition. It is further contended that the building which is subject-matter of the R.C.P. belongs exclusively to the respondents and that the said building is not subject-matter of any mortgage in favour of the plaintiff in the suit. More seriously it is contended that the Thrissur Sub Court lacks in inherent jurisdiction to entertain the Rent Control Petition now pending before the Ernakulam Rent Control Court or for that matter any other Rent Control Petition. The Ernakulam Rent Control Court alone has jurisdiction to decide Annexure-C Rent Control Petition. It is also contended that the real objective behind the filing of the Transfer Petition is to get away from the obligation of discharging the arrears of rent payable for the building and thereby to make the lives of the respondents, a hapless widow and her two minor children, all the more miserable.

3. I have heard the arguments of Sri.V.R.K. Kaimal, learned counsel for the petitioners and Sri.A.K. Seshadri, learned counsel for the respondent. I have perused the rival pleadings and scanned all the materials placed on record.

4. Even though counsel on both sides addressed arguments regarding the facts obtaining in the case also, they gave thrust to the question as to whether the Subordinate Judge's Court at Thrissur is competent to entertain Annexure-C Rent Control Petition. Mr. Seshadri based his arguments on statutory provisions such as Sections 3(1) and 11(1) of the Rent Control Act and Section 24 of the Code of Civil Procedure. Mr. Kaimal referred to various decisions including that of the Supreme Court in *Gopalan v. Aboobacker* 1995 (2) KLT 205 and *Guda Vijayalakshmi Vs. Guda Ramachandra Sekhara Sastry*, , and that of this Court in *Kajaria Co. Ltd. v. Vimala Bai* 1967 KLT 575 *Kesavan v. Parameswaran Namboodiripad* 1984 KLT 634 *District Collector v. Kerala Varma*, 1959 KLT 1178, and *Aley Antony Vs. Ouseph Chacko*, so as to fortify his submissions. Mr. Seshadri would by way of reply submit that none of the decisions cited by Mr. Kaimal will justify the impossible position that the Subordinate Judge, Thrissur can be conferred with jurisdiction for evicting a tenant who is entitled to the protection of the Kerala Buildings (Lease and Rent Control) Act.

5. Persuasive submissions of Sri. V.R.K. Kaimal notwithstanding, I am unable to accept his argument that Annexure C Rent Control Petition can be transferred over to the Subordinate Judge's Court, Thrissur for the purpose of a joint trial or even a simultaneous trial with Annexure-A Original Suit pending before that

Court. P.T. Raman Nayar, J. in *Kajaria's case* (supra) was dealing with a case where the legality of an order of joint trial of a Rent Control Petition and a suit for recovery of arrears of rent due in respect of a building which was subject-matter of Rent Control Petition came up for consideration. The same Presiding Officer in that case combined in himself the capacities of the Munsiff as well as the Rent Controller (as quite often happens). What His Lordship held was that ordering joint trial of the Rent Control Petition and the original suit cannot be held to be illegal provided the two jurisdictions are exercised by the learned Officer without violating the substantive and procedural law governing those jurisdictions. Nevertheless His Lordship also held that ordering joint trial even under such a situation in the absence of the consent of parties will be undesirable and improper. K.S. Paripoornan, J. in *Kesavan's case* 1984 KLT 634 was essentially concerned with the question whether the District Court dealing with Revision Petitions u/s 20 of the Rent Control Act was a Court subordinate to the High Court for the purpose of Section 24 of the Code of Civil Procedure. The Rent Control Petition pending before the District Court in that case arose from a case where eviction was sought on the ground of arrears of rent alone. The appeal which was pending before the High Court arose from a decree for recovery of the very same arrears of rent and in that context this Court examined the question whether the High Court is competent as a superior court to hear and dispose of the Revision Petition filed u/s 20 along with the appeal and held that there was no implied prohibition on the terms of Section 20 or Rules 14 and 17 of the Rules affecting the power of the High Court to order transfer of and to hear Revision Petitions. The position that the District Court having jurisdiction to entertain revisions u/s 20 was a Court and not a *persona designata* has been settled since long ago and therefore the principle in *Kesavan's case* cannot be of assistance to the petitioners. The judgment of the Supreme Court in *Guda Vijayalakshmi Vs. Guda Ramachandra Sekhara Sastry*, , only lays down that the power of the Supreme Court to transfer suits etc. u/s 25 of the Code is not curtailed or excluded by statutory provisions such as Sections 21 and 21A of the Hindu Marriage Act and the principles laid down in that decision also cannot come to the rescue of the petitioners. *District Collector v. Kerala Varma* 1959 KLT 1178 only reiterates the settled proposition that one of the important objectives behind ordering transfer for the purpose of joint trial is to avoid duplicity or multiplicity of findings. That case also does not deal with a situation where transfer of a suit or proceeding is sought for to a Court which totally lacks in jurisdiction. *Aley Antony Vs. Ouseph Chacko*, decided by myself was a case where the point decided was that the judgment of a Court of limited jurisdiction will operate as *resjudicata* in a later suit in a court of unlimited jurisdiction. That decision dealt with the operation of the principles of *resjudicata* in proceedings before Land Tribunals. The said decision which was rendered relying on *Sulochana Amma Vs. Narayanan Nair*, and *Church of South India Trust Association Vs. Telugu Church Council*, cannot be an authority for granting relief to the petitioners in this case.

6. Mr. Kaimal's argument that in *Gopalan v. Aboobacker* 1995 (2) KLT 205 the

Supreme Court and thereafter in *Abdul Rehiman v. Hameed Hassan*. P. 1995 (2) KLT 794 this Court held that the authorities under the Rent Control Act are full fledged and regular courts also cannot be correct. The ratio emerging from these two decisions is that the authorities under the Rent Control Act - the Rent Control Court and the Appellate Authority- are not *personae designatae* but are Courts for the purpose of Section 5 of the Limitation Act. Those decisions do not lay down that Rent Control Courts and Rent Control Appellate Authorities are regular Civil Courts. The CPC envisages as regular Civil Courts only District Courts which are described as Principal Civil Courts of original jurisdiction and Courts subordinate to the District Courts. The Civil Courts Act which deals with establishment of various categories of Civil Courts in the State does not also speak of Rent Control Courts. Rent Control Courts are established under the Rent Control Act in terms of Section 3 of that Act and are conferred with exclusive jurisdiction in matters provided for by that Statute including eviction of tenants. What has been decided in *Gopalan v. Aboobacker* 1995 (2) KLT 205 and *Abdul Rehiman v. Hameed Hassan*. P. 1995 (2) KLT 794 is not that the Rent Control Court is a regular Civil Court but only what the Rent Control Court is also a Court for the purposes of Section 5 of the Limitation Act. As noticed by K. Sreedharan, J. in *Abdul Rehiman's* case, the essential condition for any institution to qualify as a Court is that it should have the power to give a decision or a definite judgment which has finality and authoritativeness. Looking that way, nobody can dispute that the Rent Control Court is a Court.

7. The power to transfer rent control proceedings from one Rent Control Court to another is provided for by the Rules framed under the Statute. Rule 14 of the Kerala Buildings (Lease and Rent Control) Rules, 1979 confers power on the Rent Control Appellate Authority to transfer Rent Control Petitions from one Rent Control Court to another Rent Control Court within its jurisdiction. Rule 17 similarly deals with the power of the revisional authority to transfer rent control appeals from the file of one Appellate Authority to another Appellate Authority. The transfer powers conferred on various authorities under the Kerala Buildings (Lease and Rent Control) Rules cannot in any way affect the general powers of the High Court to order transfer and withdrawal of suits, appeals and other proceedings. But then Section 24(1)(b)(ii) of the CPC provides that transfer has to be to a Court competent to try and dispose of suit, appeal or proceedings which is ordered to be transferred. There is total lack of jurisdiction in the Subordinate Judge's Court, Thrissur to deal with an eviction petition under the Kerala Buildings (Lease and Rent Control) Act, since that Court is not a Rent Control Court notified u/s 3(1) of that Statute, The Subordinate Judge's Court, Thrissur cannot have jurisdiction to entertain Annexure-C Rent Control Petition even if the building scheduled to Annexure-C were situated in Thrissur Corporation within the territorial limits of that Court.

8. I am therefore of the considered view that the petitioners are not entitled to have a transfer of Annexure-C Rent Control Petition over to the Subordinate Judge's Court, Thrissur. The suit presently pending before the Thrissur sub Court

is one for sale. There is controversy between the parties even on the question as to whether the mortgaged property in that suit takes in the building which is subject-matter of the R.C.P. whatever that be, Annexure-B application has already been filed before the Thrissur Sub Court seeking a direction to adjust or appropriate the rent payable for the building which is subject matter of the R.C.P. against the plaint claim in that suit. Appropriate orders will be passed by the Thrissur Sub Court on that application and I am sure that the Ernakulam Rent Control Court will take into account that order also while considering the contentions raised by the present petitioners in the Rent Control Petition which is filed only on the ground of arrears of rent. After all, the order of eviction which may be passed against the petitioners in Annexure-C Rent Control Petition will be only on the ground of arrears of rent and the said order in a way will be only a tentative or provisional order liable to be vacated u/s 11(2)(c). If petitioners are optimistic about the merits of their case before the Thrissur Sub Court, it is for them to expedite matters and facilitate passage of appropriate orders on Annexure B application by the Sub Court, Thrissur.

The result is that the petitioners are not entitled to the transfer sought for by them. The Transfer Petition fails and the same will stand dismissed. However, there will be a direction to the Subordinate Judge's Court, Thrissur to pass appropriate orders on Annexure-B application at its earliest. In view of the above direction, there will be a further direction that the special listing of the R.C.P. for trial will be deferred till the Court reopens after mid-summer vacation.