

(2023) 01 KL CK 0070

In the High Court Of Kerala

Case No : Rent Control Revision .Nos. 60, 61, 62 Of 2018

P.V. Ramachandran

APPELLANT

Vs

Karthiyayani Amma

RESPONDENT

Date of Decision : 09-01-2023

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(1), 11(3), 11(4)(ii), 20
Registration Act, 1908 — Section 17, 17(1)(d), 49
Transfer of Property Act, 1882 — Section 107

Citation : (2023) 01 KL CK 0070

Hon'ble Judges : P.B.Suresh Kumar, J;C.S.Sudha, J

Bench : Division Bench

Advocate : Mahesh V Ramakrishnan, Pramod K., Chithra S.Babu, M.Sasindran

Final Decision : Dismissed

Judgement

C.S.Sudha, J.

1. These rent control revisions under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (the Act) have been filed against the common judgment dated 21.06.2016 in R.C.A.Nos.73/2009, 74/2009 and 75/2009 on the file of the Rent Control Appellate Authority (RCAA), Thalassery, which appeals are against the common order dated 07.03.2009 in R.C.P. Nos.25/2008, 26/2008 and 27/2008 respectively on the file of the Rent Control Court (RCC), Taliparamba. The petitioners herein are the respondents-tenants in the R.C.Ps. The respondents are the petitioners-landlords in the R.C.Ps. The parties and the documents will be referred to as described in the R.C.Ps.

2. R.C.P. Nos.25/2008, 26/2008 and 27/2008 were filed by the petitioners-landlords against the respondents-tenants seeking eviction under Sections 11(3) and 11(4)(ii) of the Act. The respondents relying on Ext.B1 agreement claimed right of permanent tenancy over the tenanted premises. The RCC considered the matter in the light of the second proviso to Section 11(1) and held the claim of

permanent tenancy to be bona fide. In the appeals filed by the landlords, the findings of the RCC has been reversed and the appeals have been allowed. The order of the RCC was set aside and the claim of permanent tenancy raised by the tenants has been found to be not bona fide. The matter was remanded to the RCC to adjudicate the question whether the landlords are entitled to an order of eviction under Sections 11(3) and 11(4)(ii) of the Act. Aggrieved the tenants have come up in revision.

3. The only point that arises for consideration is, whether the findings of the RCC or the RCAA suffer from any illegality, irregularity or impropriety.

4. Heard the learned counsel for both sides.

5. Execution of Ext. B1 agreement is not disputed by the landlords. As per Ext.B1, the predecessor-in-interest of the petitioners-landlords permitted the respondents to construct three rooms on the first floor of the building housing the three petition schedule rooms already in the possession of the tenants. Ext.B1 reveals that the tenants were in possession of rooms bearing No.TMC XI-204, 205 and 206. As per Ext.B1, tenants were permitted to construct three rooms on top of the aforesaid three tenanted premises. The amount spent for construction was agreed to be treated as a deposit. It was further agreed that the tenants can continue in the premises as long as they desired. The relevant portions in Ext.B1 agreement dated 15.03.1995 reads:-

"????? 1-)o ??? ?? ? ? ?? ? ? ??? ? ?????? ? ? ?? ?? ??????-??? ? ??? ?)????+ ?
+?? ? ??/ ??1? ???/? ??? ?? ??? ???? TMC.XI.204, 205, 206 ?? ?
1+?? ???????, ????? 2, 3, 4 ??? ? ? ? ???? , ??? ???, ? ??? ?? ?????
1-)o ??? ?? ? ? ????? ?? ? +? ??? ? ??? ?? ????? ? , ? ??1 ? ??? ?+??????
J . ??? ?? ???????+ (?? ?????) ?????????? ?? ?? ????? 2, 3, 4, 5 ??? ? ? ? ?
??? , ??? ???, ? ??? ??, ? ? ??? ??1 4 -)??+ ?????? ??? ?!?? ??? ??????????
1-)o ??? ?? ? ? ?? ? ?? ????? ?????? ?? ? ??? ! ????? 2, 3, 4, 5 ??? ?? 1?????? ?
?????????. ??? ? ?????? ?+????? ??? ? ?????? ??1?? ?? ????? ? ?????? ?J ??/ ?
^???? 1-)o ??? ?? ?????????? . 2, 3, 4, 5 ??? ??+ ?????? ??????
+ ??? ???? ???? ? ? ????????? ???? ????????? ???? ???? ???? ????
??? ????????? ???? ????????? ???? ??? ????? ?J ???c??? ??? ? ? ???? ??/ ?
^???? ????? 1-)o ??? ?? ? ? ?? ????? ???? ? ??????????????. ?????? ????? ??/??? ?
??? ??? ?????? ???? 2, 3, 4, 5 ??? ??? 1-)o ??? ?? ??? ?????
350 ? ????????????? ? ? ? ? ? +? ??/ /? ??? ???? ? ? ???? ? ? ????? 1-)o ??? ??
2, 3, 4, 5 ??? ?????????? . ??? ??? ??????
+ ???? ? ?????? ? ??? ?? ??/ / ? ??? ??????????????. ??? ??? ????? 2, 3, 4,
5 ??? ????? ? ??? ? ???? ??? ?? ????."

6. On the basis of the aforesaid recitals, the tenants have raised the claim of permanent tenancy. Here we refer to Section 17 of the Registration Act, 1908, which refers to documents that are required to be registered. Clause (d) of sub-section (1) says that leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent is required to be

compulsorily registered. Further, Section 107 of the Transfer of Property Act, 1882 says that a lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument. All other leases of immovable property can be made either by a registered instrument or by oral agreement accompanied by delivery of possession. Going by the contentions of the respondents, Ext.B1 creates a perpetual lease. Section 17 (1)(d) r/w Section 49 of the Registration Act stands in the way of any claim of perpetual lease on the basis of Ext.B1, which is an unregistered document. Ext.B1 cannot be relied on as evidence of the perpetual lease which is claimed. At best, Ext.B1 can be relied on as evidence of a collateral transaction as envisaged by the proviso to Section 49. The main transaction sought to be proved is of a lease in perpetuity. Such a transaction cannot be created by Ext.B1. In the absence of a registered document for proving the transaction of perpetual lease or lease for a period exceeding one year, Ext.B1 cannot come to the aid of the respondents-tenants. (See Food Corporation of India v. M/s. V.K. Traders, AIR 2020 SC 2256 and Sreedharan Nair v. A.G. Kannan, 2010 KHC 741). Hence the RCAA was right in concluding that the claim of permanent tenancy put forward by the tenants on the basis of Ext.B1 is not bona fide. As the ground under Sections 11(3) and 11(4)(ii) urged in the R.C.P. has not been considered by the RCC, the RCAA was right in remanding the matter. No impropriety, illegality or irregularity has been shown in the findings of the RCAA. Since the R.C.Ps. are of the year 2008, we direct the RCC to dispose of the matter within a period of one month from the date of receipt of a copy of this order. Parties to appear before the RCC on 01.03.2023. The lower court records shall be transmitted to the RCC forthwith.

In the result, the Rent Control Revisions are dismissed.

Interlocutory applications, if any pending, shall stand closed.