
(2010) 04 KL CK 0037

In the High Court Of Kerala

Case No : R.C. Rev. No. 55 of 2010

Thattil Kochuvareed Educational and Others

APPELLANT

Vs

Yamuna Raghavan and Others

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Citation : (2010) 04 KL CK 0037

Hon'ble Judges : Pius C. Kuriakose, J;C.K. Abdul Rahim, J

Bench : Division Bench

Advocate : Peeyus A. Kottam, for the Appellant; N.N. Sugunapalan, for the Respondent

Judgement

Pius C. Kuriakose, J.—The landlord/Thattil Kochuvareed Educational and Charitable Trust is in revision. The landlord sought to evict the respondents who are conducting a textile shop in the petition schedule premises which is situated on the Municipal Office road on the ground of bona fide need for own occupation. Statement of objections was filed by the respondents resisting the landlord's claim. Through the statement of objections, the bona fides of the need and the claim projected was disputed and it was contended that the tenants are entitled to the protection of second proviso to Sub-section 3 of Section 11. Various other contentions including a contention that the RCP is not maintainable was raised. But importantly, no specific contention to the effect that the title of the landlord is denied was raised. However, once the Rent Control Petition was special listed by the Rent Control Court for trial, an interlocutory application was filed by the tenant requesting that the question as to the landlord's title and the entitlement of the landlord to institute the RCP be referred to a civil court. The Rent Control Court considered the application and found that the case does not involve any question of denial of landlord's title as contemplated by Sub-section 1 of Section 11 and dismissed the application observing that the application was just an attempt of the tenants to protract the proceedings. An appeal was preferred by the tenants before the Rent Control Appellate Authority. The learned Appellate

Authority under the impugned judgment found that the landlord-tenant relationship is admitted and that the case does not involve any issue regarding the denial of landlord's title or claim of permanent tenancy. However, the Appellate Authority went on to analyse the deed of trust relating to the landlord/ Trust and found that, on the basis of the aims and objects of the Trust as incorporated in the Trust Deed the landlord is not entitled to evict the tenants. According to the Rent Control Appellate Authority, the landlord is bound to let out the building and appropriate the rental income for achieving the purposes of the Trust. Ultimately, on that reasoning the Appellate Authority found that the claim for eviction whether it be under Sub-section 3 of Section 11 or under Sub-section 8 of Section 11, was not maintainable. Observing that it is open to the landlord to seek eviction on other grounds, the appeal was allowed and the order of the Rent Control Court was set aside.

2. In this revision u/s 20, various grounds are raised and Sri Peeyus A. Kottam, the learned Counsel for the revision petitioner addressed arguments before us on the basis of all those grounds. Sri N.N. Sugunapalan, the learned senior Counsel for the respondents who resisted the submissions of Sri Peeyus supported the impugned judgment. The submission of Sri Peeyus, the learned Counsel for the revision petitioner was that the Rent Control Appellate Authority has virtually dismissed the RCP. According to him, since as presently instituted, the only eviction ground invoked is Section 11(3) and there is a concluded finding of the Appellate Authority that claim for eviction u/s 11(3) is not maintainable, the effect of the judgment is to dismiss RCP. According to Sri Peeyus, the jurisdiction of the Appellate Authority u/s 18 was to examine the correctness of the order that was impugned in the appeal. The order of the Rent Control Court which was impugned in the appeal was only to the effect that the case does not involve any question of denial of title or claim of permanent tenancy as envisaged by sub Section 1 of Section 11. Even the Appellate Authority by the impugned judgment has endorsed that view of the Rent Control Court. It was beyond the scope of the appeal to have examined the Trust Deed and uphold the contention that the RCP under Sub-section 3 of Section 11 is not maintainable. The revision petitioner/ landlord will be able to prove on the basis of evidence to be adduced in the RCP that the RCP is maintainable under Sub-section 3 of Section 11 or under Sub-section 8 of Section 11. According to the learned Counsel, the action of the learned Appellate Authority in having gone into the question of maintainability of the RCP on the terms of the Trust Deed is highly illegal, irregular or improper and warrants correction u/s 20.

3. Even though, the learned senior counsel for the respondent Mr. Sugunapalan made every endeavour to justify the judgment of the Rent Control Appellate Authority, with reference to the terms of the Trust Deed, we are of the view that it was not proper on the part of the learned Appellate Authority to have decided the question of maintainability of the RCP in an appeal which was directed against an order dismissing an application for referring the issue as to whether the denial of title by the landlord is bona fide to the civil court. As already noticed

by us, the Appellate Authority itself has found that the landlord-tenant relationship is admitted and that the case does not involve any question of denial of title and claim of permanent tenancy. Thus, there was no scope for a reference under Sub-section 1 of Section 11.

4. Then the question is whether, the claim for eviction under Sub-section 3 of Section 11 or for that matter under Sub-section 8 of Section 11 was maintainable in view of the terms of the Trust Deed. This is a question which in our opinion can be decided only after the RCP is tried and parties adduced evidence. We, therefore, are of the view that the impugned judgment of the Appellate Authority warrants interference.

5. Sri Peeyus, the learned Counsel for the revision petitioner brought to our notice that the petition schedule building has an area of about 10000 sq. ft. on the Municipal Office Road at Trichur which is one of the most important commercial thoroughfares in the Trichur Corporation. According to him, the current rent of Rs. 3,300/- is ridiculously low. He submitted that as per the prevailing rates 10000 sq. ft. of commercial area will fetch at least Rs. 2,50,000/- per mensem and he requested that this Court may at least tentatively re-fix the rent. The above request is very stiffly opposed by Sri Sugunapalan. According to him, it is only recently that the rent was enhanced to Rs. 3,300/-. He submitted that it is outside the scope of present revision to re-fix the rent.

6. The opposition of the counsel notwithstanding, we feel that the rent of Rs. 3,300/- being paid by the respondent is too low. We, therefore, are inclined to re-fix the rent tentatively at Rs. 6,600/- per mensem. We make it clear that the re-fixation is tentative and it is open to either of the parties to approach the Rent Control Court with a regular application u/s 5 for fixation of fair rent.

7. The result of the above discussion is as follows:

The judgment of the Rent Control Appellate Authority is set aside. The RCP is remanded back to the Rent Control Court. That court is directed to enquire into the RCP and to decide all the questions arising for decision on the basis of the evidence which comes on record. The questions to be decided will include the eligibility of the landlord to get eviction on any of the grounds invoked; the maintainability of the RCP for eviction on the basis of the terms of the Trust Deed pertaining to the landlord/Trust; and all other issues which arises on the pleadings raised by the parties. The respondent/tenant shall pay rent with effect from 01/05/2000 at Rs. 6,600/- subject to the observations herein above contained.

Since the RCP is of the year, 2000, the Rent Control Court is directed to give top priority to the RCP and try to dispose of the same at the earliest. If the landlord wants to apply for amendment of pleadings, the application in that regard will be filed within one week of parties entering appearance pursuant to this judgment. The parties will enter appearance pursuant to this judgment before the Rent Control Court on 25/05/10.

The RCR is thus, allowed by way of remand.