

IN THE COURT OF RENT CONTROL/ MUNSIFF PERAMBRA

Present : Smt. Varada Surendran

Tuesday, the 24th day of March, 2026.

R C P No. 23/2025

Between :

<p>Prabhakaran, S/o Kunhiraman Nair, aged 70 years, residing at Kaliyath, Karayad amsom, Thiruvangayoor desom, Karayad P.O, Meppayyur Via, Koyilandy Taluk, Kozhikkode District, Kerala State, 673524.</p>	}	Petitioner
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And :-

<p>Janaki, W/o Kelappan, aged 67 years, Swastham, residing at Cheriyaadathil Meethal, Karayad amsom, Thiruvangayoor desom, Karayad P.O, Meppayyur Via, Koyilandy Taluk, Kozhikkode District, Kerala State, 673524.</p>	}	Respondent
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This petition coming on this day for hearing before me in the presence of Sri. P.P. Sasidharan, Advocate for petitioner and no vakalath filed for respondent, the court passed the following:

ORDER

This petition is filed U/Section 11(3) of the Kerala Building Lease and Rent Control Act, 1965.

Petitioner represented. Counsel appearing for petitioner endorsed that the RCP is not pressed. Hence, RCP dismissed as not pressed.

(Pronounced by me in open court on this the 24th day of March 2026)

Sd/-

Rent Control Court/Munsiff-Magistrate

No oral or documentary evidence on either side

Sd/-

Rent Control Court/Munsiff-Magistrate

//True copy//

Rent Control Court/Munsiff-Magistrate

mkg

Fair/Copy of order in RCP 23/25
dated 24.3.26

and of Sri. P.M.Thomas and Smt. Anagha.T.P, advocates for respondent and having stood over to this day for consideration and the court passed the following:

ORDER

The petition is filed under sections 11(3), 11(4)(v) and 11(4)(III) of Kerala Building Lease and Rent Control Act 1965.

2. The petition averments are as follows:- The building in which the petition schedule property situates originally belonged to Ammad, Ibrayi and Moidhu Haji, by virtue of sale deed No.516/1994 of Koorachundu SRO. The petition schedule shop room were let out to the respondent herein. While the petition schedule property including the shop room was purchased by the petitioner by sale deed No.1796/2008 of SRO Koorachundu. Since then the respondent is occupying shop room as a tenant under the ownership of petitioner.

3. The respondent is neither occupying nor doing any trade or business in the petition schedule shop room since 15/12/2020. They are ruined due to continuous closure for more than one year without any reason. The respondent does not require the shop room for trade. He is in possession and occupation of another shop room situated in Koorachund Town which is very near to the petition schedule property. He is deriving income from other shop room which is reasonably sufficient for his need. On 10/01/2021 the petitioner requested the respondent to vacate the petition schedule shop rooms for bonafide need of occupation of her son Mr. Muhammed Rashid, to

start a Mobile & Computer Sales and Service Centre for his livelihood. The petitioner's son is physically challenged by birth. He is having no job or other source of income as his own. He is dependant on the petitioner.

4. The petition schedule shop rooms are situated on the main road side of Koorachund - Balusery Road, facing it. Two among the petition schedule shop rooms are with stair case hive and is situated on the ground floor and one is situates in the first floor. The ground floor rooms are highly necessary for exhibition, customer's dealings and sale. As the son of petitioner is physically challenged, such a business is not preferable on first floor. The room situates in the first floor is proposed to be used as store room and service centre. This petitioner has no other vacant shop room in her possession on ground floor. The petition schedule shop rooms are sufficient and apt to conduct the said business. Though other vacant shop rooms are available on the first floor of the same building, they are not at all convenient. The need of petition schedule shop rooms for and on behalf of her son, is bonafide and inevitable. The petitioner's son is capable and interested to start a business of his own. As the respondent is not conducting business in the petition schedule shop room, he is not depending on the income derived from the business running in it.

5. The respondent is immensely rich and having income from several other sources including the earning from the other shop where as he is working. There are other suitable vacant shop rooms available for the respondent to start his business in the same locality. The petitioner informed the respondent about the bonafide and he agreed to vacate the petition schedule shop room. But on 05/03/2022 for the utter dismay to the petitioner

the respondent refused to give vacant possession of the shop room. Hence, this petition.

6. The respondent entered in appearance and filed counter statement contending as follows: The petition is not maintainable either in law or in facts. It is true that the respondent is tenant occupying in the petition schedule shop rooms. The respondent is regularly paying Rs.5,000/- each month as rent. There is no mention in the petition as to execution of rent agreement. It is false to state that the petition schedule shop rooms are not used by the respondent since 15/12/2020. The respondent is regularly conducting business in it. The petitioner failed to take emergent commissioner only because of the reason that if commissioner inspection is conducted then the fact of running regular business would be reported. The respondent is not in possession of any other shop room as alleged. It is false to state that the respondent is deriving income from an another shop room situated in the same locality. Such a shop room does not exist. It is false to state that the petitioner requires the petition schedule shop room for the bona fide need of her son. There is no base to the statement that the son of the petitioner is having experience in conducting Mobile and Computer Sales and Service. It is clear from the petition itself that the petitioner's son is not capable of running such a business. Hence, the respondent is not liable to give vacant possession of the petition schedule shop room. It is false to state that the respondent is rich and having other sources of income. The respondent is solely dependent on the income derived from the petition schedule shoprooms for his daily needs. All other contrary statements in the petition are false and hence denied. Thus, prays for dismissal of petition.

7. As per order dated 20/12/2022 in IA No.5/2022, the petitioner amended the petition and incorporated following pleadings as part of paragraph No.2 of the petition. "Thereafter, the petition schedule shop rooms bearing No. KP 12/581 was let out to the respondent as per agreements dated 04/04/2019 and shop room No KP 12/568, 569 let out to the respondent as per agreements 01/02/2020. For shop room bearing No.12/568 rent is Rs.7,700/- and for shop room No.KP/581 the rent is Rs.5,500/- per month. The agreement is styled as licence agreement but the entrustment was on rent basis."

8. Subsequently, the respondent filed additional counter statement challenging the maintainability of the petition. The respondent denied landlord - tenant relationship hence prays for dismissal of petition after preliminary hearing on maintainability. The respondent denied that there exists no lease agreement between the petitioner and respondent which comes under the purview of KBLRC Act. The agreement executed by the petitioner and respondent was only a licence agreement. In the agreement it is specifically stated that the agreement does not come under the purview of rent control act. Hence the matter can be decided only by the Munsiff Court.

As the agreement that exists between the petitioner and respondent is a licence agreement, the petitioner has to seek relief as per the terms of that agreement. The petitioner ought to have filed suit after paying appropriate court fees. The petition is filed without any bona fides. Hence prays for dismissal of the petition.

9. The points arise for consideration are
- i) Whether the RCP is maintainable ?
 - ii) Relief and costs?

10. Heard both sides and perused records. Exts A1 and A2 were marked from the side of the petitioner.

11. **The points No.1 and 2:-** The case of the petitioner is that the respondent is his tenant and is occupying shop rooms No.KP12/581, KP12/568 and KP12/569 owned by him. The petitioner requires vacant possession of petition schedule shoprooms for the bonafide need of occupation of his own son. The question to be considered at this juncture is whether the RCP is maintainable at all. The existence of landlord tenant relationship is inevitable for Rent Control Court to exercise its jurisdiction. In order to order maintainability of the petition, the landlord has to prove that there exists landlord tenant relationship between them. The learned counsel appearing for the petitioner submitted that in the counter statement the respondent had admitted that he is a tenant in the petition schedule property. Per contra the learned counsel arguing for the respondent that there is no whisper about the execution of rent agreement in the petition. Upon perusal of records, it is seen that nowhere in petition it is stated that a rent agreement was executed between the parties on any date.

12. In order to prove his case the petitioner relies upon Ext A1 and A2 deeds. It is pertinent to note that Ext A1 and A2 deeds were not produced by the petitioner along with the petition. It was subsequently introduced by way of amendment. No whisper about execution of such a deed was made in the main petition. The case of the petitioner is that even if Ext.A1 and A2

agreements are styled as licence deed they are infact lease agreements. It is also argued that the parties intended to treat it as a lease deed and the ultimate aim of the parties were to create landlord tenant relationship. Upon perusal of Ext.A1 and A2 agreement it is seen that the agreement is specifically stated as a licence agreement. Ext.A1 was executed for a period of 01/02/2020 to 01/01/2021 in respect of shop room Nos. KP 12/568 and 12/569. Hence, the respondent is liable to be vacated from the room and to pay arrears of rent amount.

13. **Honourable Supreme Court of India in Delta International Ltd. vs Shyam Sunder Ganeriwalla And Anr : 1999 (2) SCR 541** held that *"the intention of the parties to an instrument must be gathered from the terms of the agreement examined in the light of the surrounding circumstances. The description given by the parties may be evidence of the intention but is not decisive. Mere use of the words appropriate to the creation of a lease will not preclude the agreement operates as a licence. A recital that the agreement does not create a tenancy is also not decisive. The crucial test in each case is whether the instrument is intended to create or not to create an interest in the property the subject-matter of the agreement. If it is in fact intended to create an interest in the property it is a lease, if it does not, it is a licence. In determining whether the agreement creates a lease or a licence the test of exclusive possession, though not decisive, is of significance,"* (Emphasis added) From the aforesaid discussion what emerges is :- (1) To find Out whether the document creates lease or license real test is to find out `the intention of the parties'; keeping in mind that in cases where exclusive possession is given, the line between lease and licence is very thin. (2) The

intention of the parties is to be gathered from the document itself; Mainly, intention is to be gathered from the meaning and the words used in the document except where it is alleged and proved that document is a camouflage. If the terms of the document evidencing the agreement between the parties are not clear, the surrounding circumstances and the conduct of the parties have also to be borne in mind for ascertaining the real relationship between the parties.(3) In the absence of a written document and when somebody is in exclusive possession with no special evidence how he got in, the intention is to be gathered from the other evidence which may be available on record, and in such cases exclusive possession of the property would be most relevant circumstance to arrive at the conclusion that the intention of the parties was to create a lease. (4) If the dispute arises between the very parties to the written instrument, the intention is to be gathered from the document read as a whole. But in cases where the landlord alleges that the tenant has sublet the premises and where the tenant in support of his own defence sets up the plea of a mere licensee and relies upon a deed entered into inter se, between himself and the alleged licensee, the landlord who is not a party to the deed is not bound by what emanates from the construction of the deed; the tenant and the sub-tenant may jointly set up the plea of a license against the landlord which is a camouflage. In such cases, the mask is to be removed or veil is to be lifted and the true intention behind a facade of a self-serving conveniently drafted instrument is to be gathered from all the relevant circumstances. Same would be the position where the owner of the premises and the person in need of the premises executes a deed labelling it as a licence deed to avoid the operation of rent legislation. (6) Further lease or

licence is a matter of contract between the parties. Section 107 of the Transfer of Property Act inter alia provides that leases of immovable property may be made either by registered instrument or by oral agreement accompanied by delivery of possession; if it is a registered instrument, it shall be executed by both the lessee and the lessor. This contract between the parties is to be interpreted or construed on the well laid principles for construction of contractual terms, viz, for the purpose of construction of contracts, the intention of the parties is the meaning of the words they have used and there can be no intention independent of that meaning; when the terms of the contract are vague or having double intendment one which is lawful should be preferred; and the construction may be put on the instrument perfectly consistent with his doing only what he had a right to do."

14. It is true that in order to construe whether an agreement is lease or licence the intention of the parties has to be considered. The intention of the parties has to be ascertained from the terms of the agreement and conduct of parties. Whether the parties intended to create a lease, or a license is the fundamental litmus test. A lease is created when the agreement generates an interest in property; however, a license is created when the agreement just permits another using the asset while the land owner retains legal possession. It is specifically stated in Ext A1 that permission was granted to use the shoprooms as licensee not as a lessee. It is pertinent to note that in no where it is stated in the agreement that the possession of the shoproom was handed over. It is specifically stated that only a permission to occupy the shoprooms were given for the purpose of starting welding industrial shop. The second clause of Ext A1 specifically stated that the possession of the shoprooms are

never transferred to the respondent. The petitioner is conferred with liberty to enter into and to act upon her own interest in the shoprooms at any time. It is also pertinent to note that it is specifically stated in the agreement that it is neither a lease or mortgage but only a simple licence. One of the main characteristics of licence is the power of licensor to revoke licence at any time. It is specifically identified by Ext A1. There is also a condition not to make any alteration on the shoproom and restriction to use the shoproom for any other purpose. Ext.A2 is also executed in the same manner. Exclusive possession is one of the most important factors for determining whether a particular agreement is a lease or a license. But at the same time, when the terms of the document are clear leaving no doubt that the parties never intended to execute a lease deed, in that set of circumstances exclusive possession would lose its importance. The test of exclusive possession is not decisive, though it is a very important indication in favour of tenancy. In this case exclusive possession is not transferred. No evidence is produced before me to prove transfer of possession.

15. No other materials are produced before this court to ascertain the conduct of parties. From the terms of agreement and from the fact that the parties had intended to bring in force the terms of agreement is decisive. The petitioner nor the respondent has no case that the terms of document was never intended to be performed. Thus it as be concluded that the act of parties was in compliance with the terms of agreement. Moreover as per the provisions of the deed it is not able to say that exclusive possession of the premises is handed over so as to constitute the transaction a valid lease. Thus Ext.A1 and A2 can be considered only as a licence deed.

16. Based on the above discussion, in my opinion there is no landlord tenant relationship existing between the parties. Thus the rent control court lacks jurisdiction to consider the matter. Considering the same, the petition is dismissed.

In the result, petition dismissed.

(Pronounced by me in open court on this the 5th day of September, 2023.)

Rent Control Court/Munsiff-Magistrate

Petitioner's Witness:- Nil

Petitioner's Exhibits:-

A1	1.1.2020 to 1-11-2021	Licence Agreement in respect of shop room No. KP12/568 and 12/569
A2	4.4.2019 to 3.3.2020	Licence Agreement

Respondent's Witnesses:- Nil

Respondent's Exhibits:- Nil

Rent Control Court/Munsiff-Magistrate

Fair/copy of order on RCP 2/22
dated 5.9.23

