

IN THE COURT OF THE PRINCIPAL RENT CONTROL COURT, KOLLAM

Present: Sri. Rakesh.M.G. Principal Rent Control Court

Thursday the 15th day of March, 2018
24th day of Phalguna, 1939

R.C. (O.P.) No: 10/2017

Between

Petitioner:-

Mr. Binu John, aged 42 years,
S/o. Sri. M.C. Yohannan, residing at Vadakkethil
Johns Bhavan,
Mukkoodu P.O., Karippuram,
Mulavana Village, Kollam District

By Advs.:

K.Y. Johnson & R. Vimalnath

And

Counter Petitioner :-

P. Raju @ Raju Vaidyan, aged about 50 years, S/o.
Pushkaran, residing at Uthradam, Perumpuzha
P.O, Keralapuram, Kollam District

By Advs.: R. Aboobacker Kutty & J. Seenathu Beegum

This Petition filed by the Petitioners under sections 11(2)(b), 11(3) and 11(4)(iii) of the Kerala Buildings (Lease and rent control) Act 1965 and the petition coming on for final hearing before me on 16.02.2018 and the court on 15-03-2018 passed the following.

ORDER

This is a petition filed under sections 11(2)(b), 11(3) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act').

2. The case of the Petitioner is that the Counter Petitioner took the Petition

Schedule Building on rent from him in the month of March/April 2014 for housing his ayurveda practice. Initially, the occupation of the Counter Petitioner as a tenant was on the basis of an oral agreement and the monthly rent agreed by the parties was Rs. 3, 000/-. After the expiry of the initially agreed period of eleven months, on 16.07.2015, the Counter Petitioner executed a lease deed to continue the tenancy arrangement. However, the Counter Petitioner committed default in payment of rent since October, 2015. On 15.09.2016, the Petitioner got information that the Counter Petitioner was about to stealthy remove his movables from the Petition Schedule Building without clearing the rent arrears. Hence the Petitioner gave a complaint to the local police. Then the Counter Petitioner showed a copy of a document purporting to be an agreement for sale executed by the Petitioner in favour of the Counter Petitioner, to convey the property wherein the Petition Schedule Building situated. The said document is a forged one and the Petitioner had never executed such a document. The said forged document led to a series of litigations and eventually the Counter Petitioner instituted a suit for perpetual injunction against the Petitioner herein, as O. S. No. 880/2016. Counter Petitioner had forged the said document to stick on to the Petition Schedule Building. Now the Petitioner wanted the said building for his own occupation and the Counter Petitioner had refused to clear the arrears of rent, despite due demand. Hence this Original Petition was necessitated.

3. Counter Petitioner, in the Objection to the Original Petition, denied the landlord-tenant relationship between the parties. The case canvassed by the Counter Petitioner was that he had not taken the Petition Schedule Building from the Petitioner either on lease or on license. He obtained the possession of the Plaintiff Schedule Building on 18.10.2010, in pursuance to an agreement for sale executed by the Petitioner in favour of the Counter Petitioner, pertaining to the said property. The sale consideration agreed by the parties was Rs. 31,00,00,000/- and on 10.10.2010 the Petitioner had received Rs. 17, 00, 00, 000/- from the Counter Petitioner as advance money. It was thus the Counter Petitioner occupied the Petition Schedule Building and started his residence and practice therein. Rent deed relied upon by the Petitioner is a fabricated document and no document of that kind was executed by the Counter

Petitioner. Hence this Original Petition is only to be dismissed.

3. Since the Counter Petitioner vehemently denied the landlord-tenant relationship between the parties, the Original Petition was posted for hearing on the *bona fides* of the said denial. I have taken up this point prior to taking of evidence for the reason that if the denial so impelled by the Counter Petitioner is found to be *bona fide* then this Court would not have competency to adjudicate the intricate issues of rights of the parties over the Petition Schedule Building.

4. Heard both sides.

5. The points now arise for consideration are that:

(1) Is the denial of title of the Petitioner, impelled by the Respondent, *bona fide*?

(2) Reliefs and costs.

6. Point No. 1

The challenge against the claim of the Petitioner was spearheaded by the denial of the landlord-tenant relationship between the parties. It was contended that the Counter Petitioner got possession of the Petition Schedule Building, pursuant to the part performance of an agreement for sale of the property and not by virtue of any tenancy arrangement. On these premises, the Counter Petitioner asserted that the Petitioner was not his landlord; but only the prospective vendor. Learned Counsel for the Counter Petitioner alleged that the rent deed pressed into service by the Petitioner was a forged document.

7. *Au contraire*, the learned Counsel for the Petitioner argued that Petitioner had not executed any agreement for sale, as claimed by the Counter Petitioner and relationship between the parties was that of a landlord-tenant. He accused that the Counter Petitioner cooked up the agreement for sale, which was relied upon by him. Highlighting the decision of the Hon'ble High Court in *Safeena Salim v. Subair*, 2014

(4) KLT 752, the learned Counsel mooted that even if the case of the Counter Petitioner was accepted as such, that would not amount to the denial of title of the Petitioner, as contemplated under S. 11(1) of the Act. Hence there was no point in the denial voiced by the Counter Petitioners, it was concluded.

8. The mooted point is that was this denial, *bona fide* or not. Before advertent to the factual facets of this case, I may refer to the decision of the Full Bench of the Hon'ble High Court in *P. M. Parthakumar v. Ajith Viswanathan and Others*, ILR 2006 (2) Ker. 149. In the said verdict, penned by His Lordships R Basant, J in his inimitable style, the ambit of the jurisdiction of Rent Control Courts to deal with the denial of title made by the tenants was depicted in detail. Though it may lengthen this Order, I find it apposite to extract the discussions made therein, so as to set the forensic tone of the subject. After making an exhaustive survey through the jurisprudence of the Kerala Buildings (Lease and Rent Control) Act, 1965, the Hon'ble Court held that:

“15. The statute declares that notwithstanding anything to the contrary contained in any other law, or contract, no tenant shall be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this Act. If a person is a tenant he is entitled to the protection of Section 11(1) of the Act. He cannot be thrown out of possession of a building except in accordance with the provisions of the Act. The vital and crucial protection to a tenant is thus declared in Section 11(1). The body of Sections 11(1) does not specifically say that the landlord is not entitled to sue for eviction of the tenant in a Civil Court. It is declared that the decree obtained in such suit cannot be executed and it was hence not necessary to say that the suit will not be maintainable. But the second proviso makes it clear that notwithstanding Section 11 (1) the landlord will be entitled to sue for eviction before a Civil Court and get such decree executed. That can be done only if the second proviso comes into play and not otherwise. Thus, for a Civil Court to pass an executable decree for eviction of a tenant from any building in his possession within the area to which the Act applies, a finding has to be recorded by the Rent Control Court that the denial of title of the landlord or the claim of the right of permanent tenancy is bona fide. Only such a decree can be executed against the tenant.

16. The statute protects the tenant of a building within the notified area from eviction except under an order passed by the Rent Control Court in accordance with the provisions of the Act. The pristine law relating to the landlord and

tenant is superseded by the provisions of the Act. A tenant can be evicted only on the specified grounds enumerated under Sections 11(2) to 11(8) of the Act. Unless these grounds are satisfied, a landlord cannot claim eviction. Notwithstanding the provisions of the T.P. Act or the terms of the contract between the parties or any decree passed by any Civil Court, the tenant is entitled to continue as a tenant until and unless an order of eviction is passed under Section 11 of the Act.

17. While this is the crucial benefit relating to liability for eviction conferred on the tenant, the statute does confer certain benefits on the landlords also. A landlord can claim eviction before the Rent Control Court by filing a petition. It is not necessary for him to go before a Civil Court and sue for eviction. Statutory Tribunals-Rent Control Court and Appellate authorities, are constituted so that the claims for eviction on specified ground shall be considered summarily and expeditiously. The most important right, which a landlord gets under the Act is his right to claim expeditious and inexpensive eviction on specified ground before the Special Tribunal constituted under the Act. The Act itself specifies the limits of time within which claim for eviction must be disposed of. The Act takes within its fold only certain classes of cases relating to eviction. The Special Tribunals are constituted only to resolve the limited disputes relating to eviction falling under Section 11 of the Act. Existence of landlord-tenant relationship between the contestants is sine qua non for Sections 11(2) to 11(8) to operate and for the Special Tribunals to have jurisdiction. Only when the landlord-tenant relationship in respect of the building exists, does and can the Special Tribunal have jurisdiction to consider a claim for eviction. Summary and expeditious procedure is prescribed for eviction only in cases where the landlord-tenant relationship exists and the dispute regarding eviction in between the landlord and the tenant. Existence of landlord-tenant relationship between the claimant/ landlord and respondent/tenant is thus essential, to confer jurisdiction on the Rent Control Authorities.

18. The philosophy underlying the Act is thus very evident. The existence of the landlord tenant relationship is inevitable for the Special Tribunal to exercise its jurisdiction. The Special Tribunals are thus constituted to resolve the disputes falling within the special, narrow and circumscribed zone i.e. the disputes between the landlords and tenants regarding liability for eviction under Section 11 of the Act. Of course, they have the obligation to fix fair rent also and it is not necessary for us for the purpose of these revisions to consider such jurisdiction. If the landlord-tenant relationship in respect of a building within the notified area exists and the claim for eviction is under Section 11, then and then alone the statutory Special tribunals shall have jurisdiction. The

relevant date to decide jurisdiction is of course the date of the claim ordinarily and the date of the order if any significant and relevant event takes place after the lodging of the claim before the order.

19. The legislature was conscious of the fact that there could be disputes as to whether there exists landlord-tenant relationship. A person who is proceeded against as tenant may have to raise a contention that there is no landlord tenant relationship and that he is not a tenant. The landlord claiming eviction must have-title to evict. If he has no title to evict and such a contention is raised, the jurisdiction to decide; that dispute rightly vests in Civil Courts following exhaustive procedure and not in the Special Tribunals constituted to decide a limited category of disputes following summary procedure. Therefore where existence of landlord-tenant relationship, i.e., title of the landlord to claim eviction against the person proceeded against, is itself seriously disputed, certainly the Special Tribunals must take their hands off the dispute and leave the parties to resolve their disputes before the regular Civil Courts constituted. The Tribunals following summary procedures cannot usurp : the powers and jurisdiction of the Civil Courts to decide such disputes regarding title. Such substantial disputes regarding title are uplands and out of bounds for the statutory Special Tribunals. That is the zone or area where the Civil Court must entertain jurisdiction. Therefore, when certain categories of disputes arise between the contestants-about the very title of the landlord to claim eviction against the persons proceeded against under Section 11, such disputes must certainly be decided by the regular Civil Courts.” (emphasis supplied)

9. Then the Hon’ble Court proceeded to hold that the paramount title of the landlord was absolutely irrelevant for the purpose of a claim under Section 11 and the title as the landlord alone was relevant in a dispute under Section 11 of the Act. So wherever there is a denial of the right of the landlord to claim eviction on the ground that he is not the landlord of the person proceeded against, such denial must certainly be reckoned as denial of title of the landlord as contemplated under Section 11(1) the Act. The Hon’ble Court had also explained the duty of the Rent Control Courts, while confronted with such situations, as follows:

“29. The legislature therefore felt that only bona fide denial of title or a bona fide claim for permanent tenancy should alone divest the Special Tribunals of their jurisdiction under Section 11 of the Act. It is hence stipulated that the denial of title/ claim for permanent tenancy must be bona fide. The Tribunal's

jurisdiction is only to decide whether the denial of title or claim for permanent tenancy is bona fide. It is not expected to and does not have the jurisdictional competence to enter a finding whether the denial of title is valid or not. It has only jurisdiction to decide whether the denial of title is bona fide or not. If it is bona fide, the landlord can sue for eviction before the Civil Court. If it is not bona fide, the Special Tribunal can proceed to exercise its jurisdiction after recording a finding that the denial is not bona fide. Whether the denial of title is bona fide or not has to be decided by the Rent Control Court considering the nature of the contentions raised and the materials placed before it. Thus is a jurisdictional question and if raised must normally be decided by the Tribunal before assuming jurisdiction.”

10. Coming to the facts of the present case, it can be seen that the Counter Petitioner had categorically contended that he had obtained the possession of the Petition Schedule Building in part performance of an agreement for sale and not as a tenant. As noted above, the learned Counsel for the Petitioner relying upon the decision of the Hon’ble High Court in *Safeena Salim’s* case (supra) contended that no such agreement for sale or even a decree for specific performance of such agreement would constitute a ground to deny the title of the Petitioner, as the landlord of the Petition Schedule Building. However, I am of the view that the said decision of the Hon’ble High Court will not lend any hand to shore up the contention of the Petitioner. The essential dictum laid down in the said edict, with necessary facts can be gauged from paragraph no. 3 of the said judgment, which reads that:

“3. The trump card plea of the tenants is that they had a contract of sale in their favour and, therefore, the landlord's right does not continue to be what it was as between the landlord and the tenants. It is submitted that, as of now, the suit for specific performance of that contract of sale is pending trial. Suffice it for us to say, that it is trite law that a contract of sale does not create any interest in immovable property. Nor does a decree or order under the Specific Relief Act directing specific performance of a contract of sale by itself amount to create an interest in immovable property either by way of charge or otherwise. It is trite law that even such a decree or order has to undergo the process of execution or enforcement through the competent Court, resulting in

*transfer of property, either voluntarily or by intervention of Court. It is only then that the transferee under the contract of sale can claim that the said contract has got transformed into a real right in the property. This is the law. That being so, we are unable to conceive that merely because a tenant in possession obtains a contract of sale, there could be any transmutation of the rights and the characteristics of parties for a Court to assume that the possession of a building tenant under Act 2 of 1965 should be treated as one who has been put to be in continuing possession in part performance of the contract of sale. We do not see that the Hon'ble Supreme Court of India, in *R. Kanthimathi and Another v. Beatrice Xavier*, AIR 2003 SC 4149, has stated to the contrary because, on facts of that case, the entire consideration was paid, and, that decision cannot be applied as a precedent in law on the facts of this case as that decision was rendered on the peculiar facts of that case. The plea of the revision petitioners, therefore, fails.” (emphasis supplied)*

11. The above quoted operative portion of the said decision would show that it was a case in which a person who was put in possession of a building as a tenant, subsequently entered into an agreement for sale with his landlord. Thus it is clear that his possession of the subject matter building, started in his capacity as a tenant and not as a prospective vendee. It was on those factual premises, the Hon'ble Court had held that the denial impelled by the tenant therein could not be treated as one contemplated by S. 11(1) of the Act.

12. The factual matrix of the present case is altogether a different one. Here the Counter Petitioner had put up a definite contention that he obtained possession of the subject matter building, not as a tenant, but as an intended purchaser. It was not his case that originally he was put in possession of the building as a tenant and while so, he had entered into an agreement for sale. This glaring distinction in the facts of both these cases makes it apparent that the principles elaborated in the above quoted decision can have no application in the present case.

13. Now, what we have to look for is that, is the said denial of title of the Petitioner as the landlord, *bona fide*? Here it is pertinent to note that the Counter Petitioner had railed at the rent deed relied upon by the Petitioner as a fraudulent one. True, the Petitioner had also alleged that the agreement for sale pressed into service by the Counter Petitioner was also a forged one. As a matter of fact, these allegations and counter allegations itself speaks in volumes about the heat of denial of the title of the Petitioner, as the landlord of the subject matter building. Significantly in paragraph no. 7 of the Original Petition itself, the Petitioner had stated that, way back on 16.09.2016 the Counter Petitioner had raised his claim based on the purported agreement for sale. It was also avowed therein that even prior to the institution of this *lis*, there were a series of legal tussles between the parties, with respect to the said agreement for sale. These averments of the Petitioner itself makes it obvious that the contention of the Counter Petitioner anchored in the agreement for sale, was being aired even prior to the institution of this case. So the said contention can never be termed to be an invention of the Counter Petitioner to somehow resist this Original Petition. Moreover, both parties are raising serious allegations against the deeds relied upon by the other side, as fake. Obvious, as it may sound, adjudication of such questions are essentially out of bounds of a Rent Control Court.

14. On a conspectus of all these aspects, I am satisfied that the denial of the title of the Petitioner mooted by the Counter Petitioner in this case is *bona fide*. Hence Counter Petitioner cannot be held to be a recalcitrant tenant, raising a frivolous and non-serious contention of denial of title. Forensic principles enunciated by the decision in *P M Parthakumar's* case, mandate that sequel to this finding is a direction to the Petitioner to approach the civil court to contest his cause.

Point No. 1 is found in favour of the Counter Petitioner.

15. Point No. 2

In the result, the Petitioner is directed to approach the competent civil court to seek the eviction of the Counter Petitioner from the Petition Schedule Building. Accordingly this Original Petition is dismissed. However, considering the facts and circumstances of the case, there is no order as to costs.

Directly typewritten into my personal laptop and pronounced by me in the open court on this the 15th day of March, 2018.

Sd/-
Rakesh.M.G.
Principal Rent Control Court.

Appendix :- Nil

Id/-
Principal Rent Control Court.

(True Copy)

Rakesh.M.G.,
Principal Rent Control Court

Typed by : Ramsa Beevi E.
Compared by : Asha S.

Copy of Order in
RCP No. 10/2017
Dated: 15-03-2018