



2024:KER:12546

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR. JUSTICE G.GIRISH

MONDAY, THE 19<sup>TH</sup> DAY OF FEBRUARY 2024 / 30TH MAGHA, 1945

RCREV. NO. 1 OF 2024

ORDER DATED 24.08.2023 IN RCP 99/2022 OF RENT CONTROL COURT,

THIRUVANANTHAPURAM

JUDGMENT DATED 13.11.2023 IN RCA 20/2023 OF DISTRICT COURT &

SESSIONS COURT, THIRUVANANTHAPURAM

REVISION PETITIONER/APPELLANT/RESPONDENT:

SHEELA,  
AGED 56 YEARS  
D/O SARASWATHI, INDRANEELAM, SREENAGAR RESIDENT,  
SRA-10, TOWN WARD, KATTUKULAM ROAD, KAZHAKKUTTAM,  
THIRUVANANTHAPURAM, PIN - 695582

BY ADVS.  
K.P.SUJESH KUMAR  
KEERTHI K.NARAYANAN

RESPONDENT/RESPONDENT/PETITIONER:

ABDUL GAFOOR  
S/O MEERAN PILLAI, AGED 60 YEARS, VARUVILAKATH  
VEEDU, KAZHAKKUTTAM, THIRUVANANTHAPURAM,  
PIN - 695582  
BY ADV NAVANEETH.N.NATH(K/1002/2016) (caveator)

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION  
ON 12.02.2024, THE COURT ON 19.02.2024 DELIVERED THE FOLLOWING:

**ORDER**

G. Girish, J.

Aggrieved by the refusal of Rent Control Court and Rent Control Appellate Authority, Thiruvananthapuram to accept the challenge of denial of title raised by the petitioner-tenant as against the respondent-landlord, the petitioner is here before this Court with this revision.

2. The respondent-landlord instituted R.C.P.No.99 of 2022 before the Rent Control Court, Thiruvananthapuram seeking eviction of the petitioner-tenant from the petition schedule shop room on the ground of arrears of rent and bona fide need envisaged under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1956 (for short 'the Act'). In the above proceedings, the petitioner-tenant came forward with a preliminary objection denying the title of the respondent-landlord over the petition schedule building. The Rent Control Court rightly proceeded with an enquiry on that matter and held as per order dated 24.08.2023 that the denial of title and challenge against landlord-tenant relationship raised by the petitioner-tenant, are not bona fide. Though the petitioner preferred appeal against the above finding by filing R.C.A.No.20 of 2023 before the Rent Control Appellate Authority, Thiruvananthapuram, he could not succeed. The Rent Control Appellate Authority, as per the judgment dated 13.11.2023, upheld



the finding of the Rent Control Court that the denial of title was not bona fide. Now, in this revision filed by the petitioner-tenant, he would contend that the Rent Control Court and Rent Control Appellate Authority went wrong in refusing to accept his challenge in the above regard.

3. The point to be decided is whether the findings of the Rent Control Court and the Rent Control Appellate Authority in the matter of denial of title raised by the petitioner-tenant, are liable to be interfered with.

4. The rental arrangement between the petitioner and the respondent is said to have been renewed on 05.01.2022 for a period of 11 months on the basis of a lease deed executed on that day. The above lease deed is seen to have been marked before the Rent Control Court as Ext.A1. The execution of Ext.A1 is not disputed by the petitioner-tenant. On the other hand, she would contend that the said document was not executed with an intention to create a lease. Ironically, it is seen that the petitioner-tenant had taken a diametrically opposite version in a suit instituted by her as O.S.No.1870 of 2022 before the Munsiff Court, Thiruvananthapuram for permanent prohibitory injunction restraining the respondent-landlord from disturbing her possession in the plaint schedule property therein, which is the very same petition schedule building



in the rent control proceedings. The respondent-landlord had produced the copy of the plaint before the Rent Control Court and got it marked as Ext.A7. The schedule of property in the said suit is seen marked as Ext.A8 from the part of the respondent-landlord. Adverting to Exts.A7 and A8, the Rent Control Court as well as the Rent Control Appellate Authority have observed in the respective order and judgment, that the petitioner-tenant, in the aforesaid suit instituted by her against the respondent-landlord, had clearly admitted the execution of Ext.A1 rent deed as well as her capacity as the tenant of the petition schedule building. So also, the plea set forth by the petitioner-tenant in that suit, claiming protection of the Act and the option of the respondent-landlord to evict her by resorting to the said Act, has been dealt with in the impugned order and judgment of the Rent Control Court and the Appellate Authority. There is absolutely no illegality or impropriety in the observations of the Rent Control Court and the Appellate Authority in the above regard. It is apparent from the conduct of the petitioner-tenant that what she has been doing is blowing hot and cold to somehow or other cling on to the petition schedule building and to prevent the respondent-landlord from getting possession of the said building through the process of law.



5. In a case with similar facts, a Division Bench of this Court had observed in **Retheesh Chandran A.R. v. Sarojini Amma : [ILR 2011 (1) Ker 193 : 2011 (1) KLJ 165]** that no person should be allowed to approbate and reprobate in legal proceedings to suit their convenience and to defeat the opposite party, by resorting to hook or crook. The relevant portion of paragraph No.15 of the said decision reads as follows:

“..... It is clear from the conduct of the respondent that her only object in disputing the title of the landlord is to see that she somehow continues in possession of the premises indefinitely. It is trite that no person should be allowed to approbate and reprobate. After having got the appeal AS 68 of 2001 dismissed, contending that only a Rent Control Petition was maintainable to evict her, she cannot be permitted to question the maintainability of the Rent Control proceedings. Her contention that she could be evicted only by taking resort to the provisions of the Rent Control Act presupposes an admission regarding her status as a tenant. Therefore, she cannot be permitted to turn round and contend that she was not a tenant but the owner of the building.”

6. It is also pertinent to note that the petitioner-tenant did not adduce any evidence before the Rent Control Court to substantiate her contention that Ext.A1 lease deed was not intended to be acted upon and that there was no landlord-tenant relationship between the respondent and the petitioner. Nor had the petitioner-tenant brought out anything to show that her contention regarding the payment of Rs.4,00,000/- to the respondent-landlord



by her father, upon the promise of executing sale deed in respect of the petition schedule building, and the receipt of another sum of Rs.1,65,000/- by the respondent from the petitioner, upon the same promise, are true. This aspect is also referred in the order and judgment of the Rent Control Court and Appellate Authority, while rightly repelling the challenge of denial of title.

7. As a final attempt, the learned counsel for the petitioner-tenant made a futile attempt to establish that Ext.A1 lease deed is liable to be eschewed for want of registration. There is absolutely no basis for the above argument, since a mere reading of Section 107 of the Transfer of Property Act, will make it clear that the requirement of compulsory registration of lease deed is applicable only in respect of a lease from year to year or for any term exceeding one year, or reserving an yearly rent. It has been held by the Apex Court in **Satish Kumar v. Zarif Ahmed [(1997) 3 SCC 679]**, that lease of immovable property from month to month for 11 months need not be registered though reduced to writing, and that such a lease deed is admissible in evidence even though it was not registered. Therefore, the argument advanced by the learned counsel for the petitioner in the above regard, would also fall to ground.



8. As a conclusion to the aforesaid discussion, we are of the considered view that there is absolutely no scope for interference with the order and judgment of the Rent Control Court and Appellate Authority, which are under challenge in this revision.

In the result, the petition is hereby dismissed.

(sd/-)

**ANIL K. NARENDRAN, JUDGE**

(sd/-)

**G. GIRISH, JUDGE**

jst/vgd