Rent Controller Can 'Direct' Landlord To Sue For Eviction Of Tenant After Prima Facie Satisfaction On Permanent Tenancy Claim: Kerala High Court

2023 LiveLaw (Ker) 53

IN THE HIGH COURT OF KERALA AT ERNAKULAM
A. MUHAMED MUSTAQUE; J., SHOBA ANNAMMA EAPEN; J.
R.C. Rev. No. 82 of 2022; 12 January, 2023
P.K. SAJEEV *versus* ELDHO P. MATHEW

Revision Petitioners / Appellants / Respondents 2 TO 4, 15, 5, 6 , 8, 9, 18 & 14 in RCP by advs. K. Paul Kuriakose, Eldo Kuriakose, K.A. Anish, T.A. Rafeek (Cherthala)

Respondents / Petitioners & Respondents 7, 10 TO 13, 16 & 17 in RCP by adv M.P. Ramnath (Caveator)

O R D E R

A.Muhamed Mustaque,J..

The Rent Control Revision highlights the question regarding the denial of the title of the landlord. Denial of title is based on the right of permanent tenancy claimed by the tenants. This dispute can be narrowed down to the nature of the relationship between the parties in regard to the building in question. The revision petitioners have no claim over the land where the building exists. They raised a plea of commercial lease. According to them, their predecessor-in-interest was given land on ground rent to construct a building for commercial purposes. Both Rent Controller and the Appellate Authority overruled the objection and ordered eviction under Section 11(4)(iv) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short, the 'Act') on the ground of reconstruction.

2. We are not reproducing narration of facts as the same is borne out from the impugned orders. In this revision, we need to decide on the point of law urged, the scope of enquiry and qua competency of the Rent Controller to decide on such dispute before deciding on the challenge raised against the impugned order.

3. The Rent Controller is having only a limited jurisdiction. When a dispute is raised as to the title of the landlord whether the Rent Controller is competent to decide on the dispute by holding the title of the landlord or otherwise is the prime point to be decided in this matter. It is appropriate to refer to Section 11 (1) of the Act, which reads thus:

"Eviction of tenants: Notwithstanding anything to the contrary contained in any other law or contract a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of this Act.

Provided that nothing contained in this section shall apply to a tenant whose landlord is the State Government or the Central Government or other public authority notified under this Act.

Provided further that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Rent Control Court shall decide whether the denial or claim is bona fide and if it records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and such Court may pass a decree for eviction on any of the grounds mentioned in this section, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded."

4. The second proviso to Section 11(1) of the Act denotes the competency and the jurisdiction of the Rent Control Court to consider the question at the first level. As seen from the second proviso, the Rent Controller has to *prima facie* satisfy that the

denial of title or the claim of permanent tenancy is *bona fide*. It is after recording *prima facie* satisfaction on *bona fides* of the dispute, the Rent Controller can direct the landlord to sue for eviction of the tenant in a Civil Court. It is then for the Civil Court to decide on a title and pass a decree for eviction on enumerated grounds under the Act, if the Civil Court is satisfied with the title of the landlord.

5. The landlord is defined under Section 2 (3) of the Act as follows:

"*'Landlord' includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant."*

6. The tenant is defined under Section 2(6) of the Act as follows:

"'Tenant' means any person by whom or on whose account rent is payable for a building and includes:

(i) the heir or heirs of a deceased tenant, and

(ii) a person continuing in possession after the termination of the tenancy in his favour, but does not include a Kudikidappukaran as defied in the Kerala Land Reforms Act, 1963 (Kerala Act 1 of 1964), or a person placed in occupation of a building by its tenant, or a person to whom the collection of rents or fees in a public market, cart-stand or slaughter house or of rents for shops has been farmed out or leased by a Municipal Council, Municipal Corporation, Township Committee or Panchayat."

7. The heir or heirs of the deceased tenant also would come within the ambit of tenant through a statutory recognition as referable under Section 2(6)(i) of the Act. The dispute on title has to be contextually relevant in the light of the definition of 'landlord' and 'tenant' as above. That means, if there are no materials to hold the relationship as defined as above under the Act, further enquiry is warranted on title. If the enquiry conducted by the Rent Controller satisfies the existence of jural relationship of the landlord and the tenant, the tenant would be estopped from raising the further claim of the permanent tenancy or to raise a dispute on the title of the landlord.

8. The revision petitioners, in this case, admittedly, are in possession of the building through their predecessor-in-interest. Their case is that the great grandfather of the respondents herein who were the petitioners before the Rent Controller, namely, Kunjikuru, put their father late P.P.Kuriakose, in possession of the land having an extent of 36 cents on a ground rent for commercial lease. Accordingly, late P.P.Kuriakose constructed a building therein for running a partnership business in stage carriage. The respondents proceeded with the petition for eviction as though the land was owned by their father Mathew P. Mathai and that, Mathew P. Mathai gave the building to late P.P.Kuriakose, the predecessor-in-interest of the revision petitioners herein. It is apparent that a dispute of the present nature arose as there were no documents to evidence the jural relationship between the parties to prove the landlord-tenant relationship produced along with the petition for eviction. No rent receipts were also produced by the respondents. But at the time of trial, the respondents produced Ext.A37. Ext.A37 was executed on 15.11.1963. Ext.A37 is a rent deed executed between Mathew P. Mathai and P.P.Kuriakose. This would show that P.P.Kuriakose is the building tenant on an obligation to pay rent of Rs.265/- per month. If Ext.A37 is found genuine, no claim of dispute on the title or the claim of permanent tenancy can be entertained by the Rent Control Court. Both authorities

placed reliance on Ext.A37 as a genuine document in the light of the presumption available under Section 90 of the Indian Evidence Act, 1872. Section 90 of the Evidence Act gives rise to the presumption as to the signature and its genuineness if the document is produced from proper custody. The respondents specifically pleaded reason for non-production of the document earlier. According to them, this was found out only on a frantic search made by them at home. The document is also produced from proper custody. The presumption as to the genuineness of ancient document is to obviate the difficulty of the holder of such document to prove the same by examining the witnesses, executor etc. In a treatise on *The Law of Evidence* authored by Taylor, 11th Edition, Volumn -1 in Chapter X, the author observed about the credence to be given to the ancient document as follows:

'*By the term "ancient documents," meant documents more than thirty years old; and as these often furnish the only attainable evidence of ancient possession, the law, on the principle of necessity, allows them to be read in courts of justice on behalf of persons claiming under them, and against persons in no way privy to them, provided that they are not mere narratives of past events, but that they purport to have formed a part of the act of ownership, exercise of right, or other transaction to which they relate (a). No doubt this species of proof deserves to be scrutinized with care; for, first, its effect is to benefit those who are connected in interest with the original parties to the documents, and from whose custody they have been produced; and next, the documents are not proved, but are only presumed to have constituted part of the res gestæ. Still, as forgery and fraud are, comparatively speaking, of rare occurrence, and as a fabricated deed will, generally, from some anachronism or other inconsistency, afford internal evidence of its real character, the danger of admitting these documents is less than might be supposed; and, at any rate, it is deemed more expedient to run some risk of occasional deception, than to permit injustice to be done by strict exclusion of what, in many cases, would turn out to be highly material evidence.*'

9. Ext.A37 is an original document. We need not doubt the genuineness of Ext.A37 in the light of the fact that it was produced from proper custody. It is to be remembered that the revision petitioners have no claim over the land where the building is situated. In normal course, where the land and building exist, it has to be assumed that the ownership of the building is with the landowner unless the party, claiming exclusive right over the building, is able to prove that the ownership of the building is vested with him. The tenants were having documents to evidence signature of late P.P.Kuriakose, their predecessor-in-interest. Their cross examination in this regard clearly spell that the tenants are withholding original signature of late P.P.Kuriakose for perusal by the Court. If Ext.37 concludes the landlord-tenant relationship, the tenants are estopped from disputing the title of the landlords. In a treatise on *The Relationship Of Landlord And Tenant* by Edgar FOA, sixth edition, published by Sweet & Maxwell Limited in Chapter VI, the author refers to 'estoppel' in the context of 'landlord and tenant relationship', as follows:

The relation of landlord and tenant may arise by what is termed estoppel.

It is a principle of general application arising out of that relation that the tenant is estopped from disputing the title of his landlords. It is proposed to treat first of the estoppel as against the tenant, and subsequently to explain how the operation of the principle gives rise to estates or tenancies by estoppel. As against the tenant, there are to the estoppel. two branches to the estoppel.

(A) With regard to the title of the person from whom the possession was actually obtained.

So long as he retains possession, a tenant cannot dispute the title of the person who gave him that possession. (a). "A tenant shall not contest his landlord's title; on the contrary, it is

his duty to defend it; if he objects to such title, let him go out of possession" (b). This principle--which prevents a landlord from being called upon by his tenant to prove his title--applies generally (c), e.g. in actions for rent (d), or upon other covenants of the lease (e), or for use and occupation (f), actions of trespass (g), of replevin (h), and of ejectment (i); it will prevent a tenant from obtaining any equitable relief if the effect of granting it would be to bring the landlord's title into dispute (k); nor will even an allegation that such title is tainted by fraud prevent its operation (l). But it applies only to cases of disputing title, and will not preclude a tenant from denying the right of his landlord to levy a distress for rent on the ground that he has no reversion left in him (m).

In that view of the matter, we hold that the tenancy relationship is concluded by Ext.A37 and both the authorities were justified in holding that the disputes raised by the revision petitioners were not *bona fide*.

10. The landlords claim rent at the rate of Rs.1,000/- per month. There was no material to hold that the tenants were paying rent at the rate of Rs.1,000/- per month. This is how the Appellate Authority reversed the order and fixed the rent as stipulated in Ext.A37. We also hold the same view of the Appellate Authority. The rent arrears, therefore, will have to be paid in accordance with the directions of the Appellate Authority.

11. In regard to reconstruction, the Appellate Authority accommodated the request of the tenants to facilitate the parking of the bus for repairs. In such circumstances, we find no reason to interfere with the impugned order. Therefore, the revision fails and, it is, accordingly, dismissed.

It is submitted at the bar that the respondents / landlords obtained delivery of the building. No order as to costs.