

(2000) 03 KL CK 0069

High Court Of Kerala

Case No: O.P. No. 2587 of 2000

Raju alias Subramanian

APPELLANT

Vs

Principal Munsiff Court and
Others

RESPONDENT

Date of Decision: March 1, 2000

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 100, Order 21 Rule 101, Order 21 Rule 97, Order 21 Rule 98, Order 21 Rule 99
- Kerala Buildings (Lease and Rent Control) Act, 1965 - Section 11, 12, 13, 14, 18
- Kerala Compensation for Tenants Improvements Act, 1958 - Section 17, 17(2), 2, 4

Citation: (2000) 2 KLJ 782

Hon'ble Judges: G. Sivarajan, J

Bench: Single Bench

Advocate: V. Philip Mathew, for the Appellant; K.G. Balasubramanian and R. Venugopal for Respondents 3 to 5, for the Respondent

Final Decision: Dismissed

Judgement

G. Sivarajan, J.

The short question arising for consideration in this case is as to whether the tenant of a building, who is ordered to be evicted under the, provisions of the Kerala Buildings (Lease and Rent Control) Act, 1965, can claim value of improvements, if any, effected to the building in question under the provisions of Section 4 of the Kerala Compensation for Tenants Improvements Act, 1958.

2. The Petitioner is a tenant of a building owned by Respondents 3 to 5. In proceedings under the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as the "Rent Control Act") the Petitioner was ordered to be evicted and the eviction order has become final. The landlords-Respondents 3 to 5 filed E.P. No. 396/98 in R.C.P. No. 96/92 before the Principal Munsiff's Court, Thrissur for

execution of the said decree. The Petitioner herein filed objections. Subsequently, the Petitioner filed E.A. No. 1304/99 to receive an additional counter statement. In the said additional counter he wanted to claim value of improvements. This was rejected by the Munsiff stating that there is no bona fides in the claim put forward by the Petitioner. It was also stated that the claim is not sustainable in the E.P. The Petitioner filed revision against the said order before the District Court as R.C.R.P. No. 2/99. The same was dismissed by Ext. P-1 order. Since, according to the District Judge, in view of the various decisions of this Court, a building tenant to whom the provisions of the Rent Control Act are applicable is not entitled to claim value of improvements, the Petitioner was requested to explain the maintainability of such a petition at the stage of execution. The contention of the Petitioner was that though the Rent Control Court does not have the powers to direct payment of value of improvements by the landlord, an execution court being civil court can direct payment of value of improvements under the provisions of the Kerala Compensation for Tenants Improvements Act, 1958 (for short "the Tenants Improvements Act"). The said revision was rejected holding that the application to receive additional counter is belated and that the contention sought to be raised is illegal and unsustainable. The Petitioner has filed this Original Petition seeking to quash Ext. P-1 order. He has also sought for directions to Respondents 1 and 2 keep all proceedings to dispossess the Petitioner till the decision on the question of improvements u/s 4 of the Kerala Compensation for Tenants Improvements Act, 1958. He also sought for a direction to the first Respondent to accept the additional counter affidavit.

3. Learned Counsel appearing for the Petitioner submits that u/s 14 of the Rent Control Act, an order of eviction passed under the said Act shall be executed by the Munsiff having original jurisdiction over the area in which the building is situated as if it were a decree passed by him. He further submitted that in view of the provisions of Section 14, the provisions of the CPC in so far as it relates to the execution of decrees are applicable. He submitted that u/s 47 of the CPC all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. He also took me to the provisions of Order XXI Rules 97 to 101 in that regard. The provisions of Rule 101 was stressed in that regard. The Counsel, on that basis, submitted that the question regarding the entitlement to value of improvements effected by the tenant is a matter which comes within the purview of Section 47 read with Order XXI Rules 97 to 101, which, if taken in the objection to the execution, is a matter which has to be determined by the executing Court. He also submitted that the Petitioner squarely fell within the ambit of the definition of "tenant" in Section 2(d) of the Tenants Improvements Act and therefore, he is entitled to value of improvements as provided in Section 4 thereof. The counsel further submitted that when the Petitioner by way of additional objection has raised

the question regarding value of improvements the learned Munsiff ought to have allowed the Petitioner to raise the said objection and determined the question as directed in. Section 47 and Rule 101 of Order XXI of the Code of Civil Procedure. He submitted that both the Munsiff and the District judge seriously erred in not allowing the petitioner to raise the question of value of improvements by way of additional counter affidavit and in holding that the said claim is unsustainable.

4. Learned Counsel appearing for the landlords, on the other hand, submitted that the tenant of a building to which the provisions of the Rent Control Act are applicable, is not a tenant falling under the definition of "tenant" in the Tenants Improvements Act and therefore, Section 4 of the said Act has no application. He also submitted that the benefit of entitlement of value of improvements is available under the said Act only to the tenant of a land and not of buildings. He took me to the definition of "tenant," and the provisions of Section 4 of the Act in that regard. He also submitted that the Rent Control enactment is a self-contained code in regard to all matters arising between the landlord and the tenant and that in the absence of any specific provision in the said Act, a tenant cannot make a claim for value of improvements. He, in support of the above contentions, relied on the various decisions of this Court. He also submitted that Section 17(2) of the Act is a clear indication in that regard. He accordingly submitted that there is no merit in the contentions taken by the Petitioner and that the attempt of the Petitioner is only to protract the proceedings and to delay the delivery of possession of the building.

5. In order to appreciate the respective contentions, it is necessary to refer to the relevant provisions of the Rent Control Act, CPC and the provisions of the Tenants Improvements Act. Section 14 of the Rent Control Act reads as follows:

14. Execution of orders.-Every order made u/s 11 or Section 12 or Section 13 or Section 19 or Section 33 and every order passed on appeal u/s 18 or on revision u/s 20 shall, after the expiry of the time allowed therein, be executed by the Munsiff or if there are more than one Munsiff, by the Principal Munsiff Having original jurisdiction over the area in which the building is situated as if it were a decree passed by him:

Provided that an order passed in execution under this section shall not be subject to an appeal but shall be subject to revision by the Court to which appeals ordinarily lie against the decisions of the said Munsiff.

Section 47(1) of the CPC reads as follows:

47. Questions to be determined by the Court executing decree.-(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

Order XXI Rule 101 of the Code of Civil Procedure. reads as follows:

101. Question to be determined.-All questions (including question relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

Section 2(a) of the Tenants Improvements Act defines "eviction" as follows:

(a) Eviction.-"eviction" means the recovery of possession of land from a tenant.

Section 2(d) defining "tenant" reads as follows:

"(d) "Tenant"-"tenant" with its grammatical variations and cognate expressions includes-

(i) a person who, as lessee, Sub-lessee, mortgagee or Sub-mortgagee or in good faith believing himself to be lessee, Sub-lessee, mortgagee, or Sub-mortgagee of land, is in possession thereof;

(ii) a person who with the bona fide intention of attorning and paying a reasonable rent to the person entitled to cultivate or let waste-land, but without the permission of such person, brings such land, under cultivation and is in occupation thereof as cultivator; and

(iii) a person who comes into possession of land belonging to another person and makes improvements thereon in the bona fide belief that he is entitled to make such improvements.

Section 4 of the said Act reads as follows:

4. Tenant entitled to compensation for

Improvements.-(1) Every tenant shall, on eviction, be entitled to compensation for improvements which were made by him, his predecessor-in-interest or by any person not in occupation at the time of the eviction who derived title from either of them and for which compensation had not been paid; and every tenant to whom compensation is so due shall, notwithstanding the determination of the tenancy of the payment of the mortgage money or premium, if any, be entitled to remain in possession until eviction in execution of a decree or order of court:

Provided that nothing herein contained shall be construed as affecting the provisions of the Kerala Land Conservancy Act, 1957;

Provided further that this section shall not apply to tenants holding lands under the Government.

(2) A tenant so continuing in possession shall, during such continuance, hold as a tenant subject to the terms of his lease or mortgage, if any.

6. Now I will deal with the contentions taken by the Petitioner. The first contention is that since u/s 14 of the Rent Control Act an order of eviction has to be executed by the Munsiff as if it were a decree passed by him, all the provisions of the CPC regarding execution will apply and that Section 47 read with Order XXI Rules 97 to 101 of the CPC enables the judgment debtor to raise objection to the execution and therefore, he is entitled to claim value of improvements under the provisions of the Tenants Improvements Act. Now there is no dispute that the order of eviction passed by the Rent Control Court has become final and what remained was to get vacant possession of the tenanted premises. Since the tenant did not give vacant possession the remedy available to the landlord is to file E.P. for getting vacant possession. An order of eviction passed under the Act is to be executed as provided in Section 14 of the Act. Since such an order is executable as if it were a decree, admittedly the provisions regarding execution of decrees provided under the CPC will apply. Order XXI deals with execution of decrees. Section 47 of the CPC also provides that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit. Order XXI Rules 97 to 101 also provide the procedure. It is by virtue of this provision the Petitioner claims the benefit of Section 4 of the Tenants Improvements Act. The question to be considered is whether a tenant of a building-against whom an order of eviction is passed can claim value of improvements effected by him in the building. Admittedly there is no provision in the Rent-Control Act enabling a tenant to make improvements in the tenanted premises or to claim any compensation for improvements, if any, effected. Section 17 of the said Act provides that no residential building shall be converted into a non-residential building or vice versa and no such building shall be divided into separate portions for letting on rent or for other purposes except with the permission in writing of the Accommodation Controller. It further provides that where such conversion involves structural alteration of the building, the consent of the landlord shall also be necessary. Sub-section (2) of Section 17 states that the landlord of a building is bound to attend to the periodical maintenance and necessary repairs of the building and if landlord fails to attend to such maintenance or repairs to the buildings and amenities thereto within a reasonable time after notice is given by the tenant, it shall be competent for the Accommodation Controller to direct on application by the tenant that such maintenance and repairs may be attended to by the tenant and that the charges and cost thereof may be deducted with interest at six per cent per annum from the rent which is payable by him. The question as to whether the tenant of a building to which the provisions of Rent Control Act is applicable can claim value of improvements, came up for consideration before this Court in Appukkuttan Pillai v. Thiruvadinatha Pillai 1958

KLT 440 where it has been held that a tenant of a building is not entitled to claim any value of improvements. The question again came up for consideration before this Court in  Sivarama Menon v. Raghavan 1972 KLT 188 it was observed in that case as follows:

The Rent Control Court is not expected to go into the question of value of improvements. It is not a matter falling Within the jurisdiction of the Rent Control Court. The Act is a complete Code on the rights and liabilities of the landlord and tenant in respect of matters falling within the purview of landlord and tenant in respect of building and it is not permissible for a landlord or tenant in cases governed by the Act to fall upon the provisions of the Transfer of Property Act or the contract of tenancy or other extraneous circumstances.

The very same question arose in Dr. P.V. Thomas v. M.V. Rajan and Ors. 1984 KLT 147. The learned Judge, Kader J. agreed with the dictum laid down in 1972 KLT 188 and observed as follows:

On a careful consideration of the various provisions in the Act and in the light of the above decision, I do not think a tenant coming under the Act is entitled to claim benefits u/s 4 of Act 29 of 1958.

The learned Judge also observed that the Rent Control Act is a special Act which deals with the rights and liabilities of the landlord and tenant and that there is no provision in the Act which permits a tenant to effect improvements in the sense that expression is used in Act 29/1958.

7. In this context, it must also be noted that going by the provisions of the definition of "tenant" in Section 2(d) and Section 4 of the Tenants improvements Act which provides for payment of compensation for value of improvements, it can be seen that the benefit of the said provisions is applicable only in respect of the improvements effected by a tenant of a land alone. The definition of the word "eviction" in Section 2(a) extracted above makes the said position very clear. In this case, admittedly the Petitioner is a tenant of the building alone and not of the land. In such circumstances, a tenant of a building is not entitled to claim the benefit of the provisions of the Tenants Improvements Act. So, going by the decisions of this Court rendered in the context of the provisions of the Rent Control Act and the provisions of the Tenants Improvements Act, it is clear that a mere tenant of a building to which the provisions of the Rent Control Act are applicable, is not entitled to get the benefit of the Tenants Improvements Act. The Courts below also have held that the claim for value of improvements is unsustainable. In such circumstances, the Courts below were perfectly justified in finding that the additional counter-affidavit raising the aforesaid claim at a belated stage is not maintainable and cannot be allowed.

There is no merit In this Original Petition. It is accordingly dismissed.