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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

WEDNESDAY, THE 11TH DAY OF DECEMBER 2024 / 20TH AGRAHAYANA,

1946

RCREV. NO. 65 OF 2023

AGAINST THE JUDGMENT DATED 22.09.2022 IN RCA NO.19 OF
2021 OF ADDITIONAL DISTRICT & SESSIONS COURT, VADAKARA
ARISING OUT OF THE ORDER DATED 04/03/2021 IN RCP NO.124 OF
2017 OF MUNSIF COURT, VADAKARA

REVISION PETITIONERS/RESPONDENTS/PETITIONERS:

- 1 MARIYA P.P
 AGED 59 YEARS
 W/O. ALI, RESIDING AT ARSHAD MANZIL,
 CUSTOMS ROAD, VATAKARA AMSOM AND TALUK,
 KOZHIKODE, PIN - 673103
- 2 AKBAR
 AGED 41 YEARS
 S/O. ALI, RESIDING AT ARSHAD MANZIL,
 CUSTOMS ROAD, VATAKARA AMSOM AND TALUK,
 KOZHIKODE, PIN - 673103
- 3 SAFEERA
 AGED 38 YEARS
 D/O. ALI, RESIDING AT ARSHAD MANZIL,
 CUSTOMS ROAD, VATAKARA AMSOM AND TALUK,
 KOZHIKODE, PIN - 673103
- 4 HAIRUNISSA
 AGED 36 YEARS



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D/O. ALI, RESIDING AT ARSHAD MANZIL,
CUSTOMS ROAD, VATAKARA AMSOM AND TALUK,
KOZHIKODE., PIN - 673103

- 5 MUNEERUL HAQ
 AGED 34 YEARS
 S/O. ALI, RESIDING AT ARSHAD MANZIL,
 CUSTOMS ROAD, VATAKARA AMSOM AND TALUK,
 KOZHIKODE., PIN - 673103
- 6 SABANA
 AGED 32 YEARS
 D/O. ALI, RESIDING AT ARSHAD MANZIL,
 CUSTOMS ROAD, VATAKARA AMSOM AND TALUK,
 KOZHIKODE., PIN - 673103
- 7 SHAHEER MUHAMMAD
 AGED 31 YEARS
 S/O. ALI, RESIDING AT ARSHAD MANZIL,
 CUSTOMS ROAD, VATAKARA AMSOM AND TALUK,
 KOZHIKODE., PIN - 673103
- 8 SHAMSEER MUHAMMAD
 AGED 30 YEARS
 S/O. ALI, RESIDING AT ARSHAD MANZIL,
 CUSTOMS ROAD, VATAKARA AMSOM AND TALUK,
 KOZHIKODE., PIN - 673103
- 9 ARSHAD
 AGED 31 YEARS
 S/O. ALI, RESIDING AT ARSHAD MANZIL,
 CUSTOMS ROAD, VATAKARA AMSOM AND TALUK,
 KOZHIKODE, PIN - 673103
- 0 FATHIMA
 AGED 26 YEARS
 D/O. ALI, RESIDING AT ARSHAD MANZIL,
 CUSTOMS ROAD, VATAKARA AMSOM AND TALUK,
 KOZHIKODE., PIN - 673103
- 11 ARFAN
 AGED 24 YEARS
 S/O. ALI, RESIDING AT ARSHAD MANZIL,
 CUSTOMS ROAD, VATAKARA AMSOM AND TALUK,



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KOZHIKODE., PIN - 673103

- 12 SHADIYA
AGED 22 YEARS
D/O ALI RESIDING AT ARSHAD MANZIL,
CUSTOMS ROAD, VATAKARA AMSOM AND TALUK,
KOZHIKODE, PIN - 673103
- 13 ARSHINA
AGED 21 YEARS
D/O. ALI, RESIDING AT ARSHAD MANZIL,
CUSTOMS ROAD, VATAKARA AMSOM AND TALUK,
KOZHIKODE., PIN - 673103
- 14 KUNHAMI
AGED 69 YEARS
W/O. USMAN, RESIDING AT KALLINKAL,
NADAKKUTHAZHA AMSOM AND DESOM,
VATAKARA TALUK, KOZHIKODE.,
PIN - 673101
- 15 SAMSUDHEEN
AGED 42 YEARS
S/O. USMAN, KALLINKAL,
NADAKKUTHAZHA AMSOM AND DESOM,
VATAKARA TALUK, KOZHIKODE., PIN - 673101
- 16 KOODATHIL AMMAD
S/O. IBRAHIM, AGED 62,
RESIDING AT PUTHUKKUDI,
THIRUVALLOOR AMSOM DESOM, VATAKARA TALUK,
KOZHIKODE, PIN - 673541
- 17 KAVUNTHAZHE KUNIYIL M.R. ABDUL AZEEZ
AGED 65 YEARS
S/O. AMMAD HAJI,
THIRUVALLOOR AMSOM DESOM, VATAKARA TALUK,
KOZHIKODE., PIN - 673541
- 18 KAVUNTHAZHE KUNIYIL KUNHIPATHU
AGED 55 YEARS
D/O. AMMAD HAJI,
RESIDING AT CHERIYA KOROL,
AYANCHERI AMSOM DESOM, VATAKARA TALUK,



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KOZHIKODE., PIN - 673541

- 19 KAVUNTHAZHE KUNIYIL SULEKHA
AGED 47 YEARS
D/O. AMMAD HAJI, KALLUAVAYALLIL,
AYANCHERI AMSOM DESOM, VATAKARA TALUK,
KOZHIKODE, PIN - 673541
- 20 KAVUNTHAZHE KUNIYIL SABIRA
AGED 42 YEARS
D/O. AMMAD HAJI, AYANCHERI AMSOM DESOM,
VATAKARA TALUK, KOZHIKODE, PIN - 673541

BY ADVS.
P.B.SUBRAMANYAN
P.B.KRISHNAN
SABU GEORGE
MANU VYASAN PETER
MEERA P.

RESPONDENT/APPELLANT/RESPONDENT:

NALUPURAYIL KADEEJA
AGED 69 YEARS
D/O. KUTTIALI HAJI, RESIDING AT RASIYA MANZIL,
CUSTOMS ROAD, NEAR SHAADI MAHAL AUDITORIUM,
VATAKARA AMSOM DESOM AND TALUK, BEACH POST OFFICE,
KOZHIKODE DISTRICT, PIN - 673103

BY ADVS.
K.K.ANILRAJ
U.K.DEVIDAS

THIS RENT CONTROL REVISION HAVING COME UP FOR HEARING ON
11/12/2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



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ORDER**P. Krishna Kumar, J.**

The petitioners are the landlords of a shop room. They filed an eviction petition against the respondent under Section 11(3) of the Buildings (Lease and Rent Control) Act, 1965 (the Act, for short) claiming that they bonafide need the vacant possession of the tenanted building to start a business in home appliances and household utensils by petitioners No.11 and 16. The Rent Control Court allowed the petition. As the finding is reversed in appeal the petitioners preferred this revision petition by invoking section 20 of the Act.

2. The petitioners rented out the petition schedule shop room to the respondent through a registered document in the year 1999 for a monthly rent of Rs.1,500/-. The building belonged to



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petitioners No. 1 to 20 and two other persons.

Later, the respondent/tenant purchased an undivided right of those two co-owners. The eviction petition was filed claiming that petitioners No.11 and 16 require the building for starting the above-said business. The tenant/respondent objected to the eviction petition by contending that it is not maintainable since the petitioners have only 86.67% of the share over the said building and the remaining share vests with the respondent herself. She also disputed the genuineness of the need projected by the petitioners and further contended that she is wholly dependent on the income derived from the business for her livelihood and there are no suitable vacant buildings to shift her business.

3. Heard the learned counsel appearing for the petitioners and the respondent.

4. The Appellate Authority interfered with the findings of the Rent Control Court on three counts. Firstly, the consent of the respondent, being one of



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the co-owners, was not obtained, which is necessary for maintaining an action for eviction by co-owners. Secondly, the 5th petitioner had executed a Power of Attorney for the sale of his fractional right over the said building and there was a recital in the Power of Attorney that he objected to the eviction proceedings and thus the eviction of the tenant is not permissible as all the co-owners are not in agreement with the proposal for eviction. Thirdly, the Appellate Authority found that the petitioners have no bonafide in seeking vacant possession of the building.

5. The permissibility of seeking eviction against a tenant who purchased a fractional interest over the tenanted premises is well settled. In **Pramod Kumar Jaiswal and Others v. Bibi Husn Bano** (2005 (5) SCC 492) the larger Bench of the Apex Court reaffirmed this position, overruling the contrary views. This legal proposition finds statutory support in Section 111(d) of the Transfer of



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Property Act, which provides that when the interests of the lessor and lessee in the entire property vest in one person in the same right, the lease is terminated. In other words, if the lessee holds only a fractional interest, the lease remains intact, despite the lessee becoming a co-owner. Thus, even if the tenant is one of the co-owners, he can be evicted or other leasehold rights can be enforced against him at the instance of the remaining co-owners.

6. However, the appellate authority held that since the tenant is a co-owner and when he objected to the rent control proceeding, it could not be said that all the co-owners consented to eviction. The said finding is flawed. There is no dispute as to the general legal proposition that while not all co-owners need to be parties to an eviction petition, their consent is required for the co-owner initiating the action and such consent may be presumed in the absence of evidence to the contrary.



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But this proposition cannot be resorted to nullify a proceeding initiated by all the co-owners against the tenant who purchased only a fractional right of the tenanted property. As mentioned above, the law is well settled that even when the tenant acquires a share of the leasehold property, the other co-owners can maintain an action for eviction against him, as the lease continues to exist.

7. The Appellate Authority seriously erred in importing the general principle for holding that the petitioners required the permission of the tenant to maintain such an action against him as he became one of the co-owners. The consent of the tenant is immaterial when the co-owners initiate eviction proceedings against such a tenant who has acquired only a fractional interest in the property. If the lessor purchases the lessee's full interest, the lease is absorbed and extinguished by merger, as the same person cannot at the same time be both a landlord and a tenant. Except when the lease is



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extinguished by merger as provided in Section 111(d) of the Transfer of Property Act, the tenant continues to hold his right under the lease, and thus the reversion of the other co-owners also continues. Consent to sue, either implied or express, is required from a co-owner who shares reversion against the tenant, and not from the tenant/co-owner, as he does not hold any right of reversion against himself.

8. The Appellate Authority reached to another erroneous conclusion that the 5th petitioner had objected to the eviction proceedings, as Ext.X1 Power of Attorney recites so. The petitioners preferred this revision petition specifically contending that the Power of Attorney holder of the 5th petitioner had filed an application as I.A.No.1134/2019 to transpose the 5th petitioner as a respondent, but later, the 5th petitioner himself filed an affidavit dated 14/08/2019 before the Rent Control Court pointing out that he had revoked the



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Power of Attorney executed in favour of one Majeed and that he was misled to execute the Power of Attorney. The Appellate Authority omitted to note this fact. When the Power of Attorney holder continues in the party array and actively prosecutes the matter, there is no reason for any doubt as to his consent. Despite executing a document that may suggest otherwise, the actions and conduct of the 5th petitioner demonstrate his intention to pursue the eviction petition. The relationship between the executant and the Power of Attorney holder is that of principal and agent, and thus the declarations and actions of the executant supersede any contradictory recitals in the deed, in respect of his interest to continue the proceedings. Therefore, the said finding of the Appellate Authority is grossly incorrect.

9. After analysing the evidence, the Appellate Authority further proceeded to return a finding that since the pleadings and the evidence of PW1 are at



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variance as regards the validity of his visa as well as the location at which the petitioners intend to store the home appliances and the utensils, they have no bonafide in seeking vacant possession. As per the pleadings in the eviction petition, petitioner No.16 was conducting some business in Muscat, but he wants to settle in his native place with the proposed business as his visa has expired. Noting that petitioner No.16 did not adduce any evidence and that petitioner No.11, when examined before the court as PW1, deposed that the family of petitioner No.16 is still abroad, the Appellate Authority reached to the conclusion that the petitioners failed to prove that the visa of petitioner No.16 had expired and it affects the bonafide need projected by them.

10. The above findings of the Appellate Authority are erroneous and exceed the scope of enquiry relevant for determining the bonafide of the landlord. It is not the law that the landlord should



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prove each and every aspect he pleaded in the petition. The fact in issue in such a proceeding is the need projected by the petitioners for getting vacant possession. The burden of proof of the petitioners is limited to the said issue, and it does not extend to all the incidental matters narrated by them. Whether the visa of one of the petitioners had expired or not is an irrelevant material to assess the genuineness of the claim made by the landlord, in view of the facts and circumstances of the case.

11. It is also necessary to deal with another finding made by the Appellate Authority. When the respondent contended that the petition scheduled shop room is very small and it is not possible to start a large-scale business in such a building, the petitioners argued before the Appellate Authority that they could store the home appliances or utensils in the hall remaining vacant on the 3rd floor of the same building. The Appellate Authority



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found that the said fact was not specifically pleaded in the eviction petition. We are unable to uphold the said finding as well. The petitioners have specifically pleaded the purpose for which they want the petition schedule building and one of the petitioners who stated to have the need to start the business has deposed before the court as PW1. It may be true that the area of the petition schedule shop room excluding its veranda is only 40 sq.mts. That does not mean that the petitioners cannot conduct a large-scale business using the said building. They may utilize that limited space for displaying the samples of the articles and may keep the remaining articles in their backyard or at any other nearby place.

12. The requirement as per the statute is only that the landlord can seek eviction under Section 11(3) "if he bonafide needs the building for his own occupation or for the occupation of any member of his family dependent on him". Put it differently,



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what is relevant for the enquiry contemplated under Section 11(3) of the Act is whether the landlord *bonafide needs the building for his occupation*; the purpose for which he requires the building is not a primary consideration under the statute, which of course, may have bearing on the question of genuineness of the need. When a landlord requires vacant possession of the building for his own occupation, he may need to explain the purpose of the requirement in the petition. However, he is not expected to provide explicit details about the proposed business, such as the feasibility of storing materials, etc. If such matters are raised during cross-examination and the landlord fails to provide a plausible explanation, it may affect his credibility and suggest that he has failed to establish a bona fide need. But it cannot be said that he is bound to plead such remote aspects in anticipation that such questions may arise later. Unfortunately, the Appellate Authority took a



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misguided approach, focusing on irrelevant matters and incorrectly placing the burden on the landlord to prove remote aspects in the eviction petition.

13. The learned counsel appearing for the respondent before us strenuously argued to justify the findings of the Appellate Authority by relying on the decision in **Deena Nath v. Pooran Lal (AIR 2001 SC 2655)** wherein it was held that the proposed need should not be a mere desire or that it is whimsical or fanciful, but it should be the outcome of a sincere and honest desire in contradistinction with a mere pretence or pretext to evict a tenant. We have no difficulty to follow the observations of the Honourable Apex Court. But the way in which the evidence of PW1 was appreciated by the Appellate Authority to reach to the conclusion that the proposed need was not bonafide is completely erroneous for the reasons stated above.

14. In the above circumstances, we find it necessary to set aside the impugned order. As the



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Appellate Authority as well as the Rent Control Court found that the respondent is not entitled to get the protection of the second proviso to Section 11(3) of the Act, there is no need to re-evaluate the said factual findings.

Therefore, the revision petition is allowed, and the impugned order is set aside. The order passed by the Rent Control Court is restored. However, the respondent is permitted to vacate the premises within three months.

Sd/-

A.MUHAMED MUSTAQUE**JUDGE**

Sd/-

P. KRISHNA KUMAR**JUDGE**

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