

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 1170 OF 2002

K.M. JACOB

Appellant (s)

VERSUS

K.M. MOHAMMED ISMAIL

Respondent(s)

(With office report)

Date: 01/12/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Appellant(s)

Mr. T.L. Viswanathan Iyer, Sr. Adv.,

Mr. Subramonium Prasad, Adv.

Mr. Abhay Kumar, Adv.

Mr. Jay Kishor Singh, Adv.

For Respondent(s)

Mr. M.P. Vinod, Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard learned counsel for the parties.

The appeal is allowed, impugned order rendered by the High Court is set aside and the orders of eviction passed by the Rent Controller and upheld in appeal by the appellate authority are restored. The respondent is granted time till 30th June, 2006 to vacate the premises in question upon filing usual undertaking within four weeks from today.

No costs.

[Charanjeet Kaur]

[Om Prakash

Court Master

Court Maste

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1170 OF 2002

K.M. Jacob

.. Appellant

(s)

Versus

K.M. Mohammed Ismail

.. Responden

t(s)

O R D E R

Heard learned counsel for the parties.

The appellant filed a petition for eviction under Section 11(3) of the Kerala

Buildings (Lease and Rent Control) Act, 1965 (for short, "the Act") on the ground of bona fide

need which was dismissed by the Rent Controller. Thereafter, when the matter was taken in

appeal, the appellate authority remanded the matter to the Rent Controller. On remand, the

Rent Controller passed the order of eviction which was confirmed in appeal. Thereafter, the

matter was taken to the High Court in a Revision Petition filed under Section 20 of the Act

and the same has been allowed and orders passed by the Rent Controller as well as appellate

authority have been set aside. Hence, this appeal by special leave.

The main ground which weighed with the High Court in reversing the order of eviction was that the landlord had another house which he sold under sale deed (Ex. B1)

during

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pendency of the litigation along with other co-owner. The landlord in his evidence has stated

categorically that the building which was sold under sale deed (Ex.B1) was occupied by the

tenant. The defendant in his evidence also admitted that said building was in occupation of the

tenant. The aforesaid admission by the tenant could not have been thrown out merely because

in the sale deed (Ex. B1) it was not mentioned by the transferor that there was any tenant in

the building. This being the position, we are of the view that the High Court was not justified

in disallowing the claim for eviction.

Accordingly, the appeal is allowed, impugned order rendered by the High Court is

set aside and the orders of eviction passed by the Rent Controller and upheld in appeal by the

appellate authority are restored. The respondent is granted time till 30th June, 2006 to vacate

the premises in question upon filing usual undertaking within four weeks from today.

No costs.

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.....J[B.N. AGRAWAL

.....J [TARUN
CHATTERJEE]

NEW DELHI ,

DECEMBER 01,2005.