

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL  
&  
THE HONOURABLE MR. JUSTICE P.SOMARAJAN

FRIDAY, THE 30TH DAY OF JUNE 2017/9TH ASHADHA, 1939

RCRev..No. 191 of 2017 ()

-----

AGAINST THE JUDGMENT IN RCA 51/2016 OF THE RENT CONTROL  
APPELLATE AUTHORITY[ADDITIONAL DISTRICT COURT, VADAKARA,  
DATED 30-11-2016.

AGAINST THE ORDER IN RCP 30/2015 OF THE RENT  
CONTROLLER/MUNSIFF COURT, NADAPURAM DATED 123-12-2015.

REVISION PETITIONERS/APPELLANTS 1 TO 9/RESPONDENTS 1 TO 9:

-----

1. MAMMI NANDOTH THAZHAKUNI  
AGED 62 YEARS, D/O MOOSAKUTTY,  
SCOORKUNIYIL HOUSE,  
KUMMANKODE AMSOM, NADAPURAM DESOM,  
VATAKARA TALUK,  
KOZHIKODE DISTRICT.
2. BROTHER MAMMOOTTY,  
AGED 61 YEARS, BUSINESS, SCOORKUNIYIL HOUSE,  
KUMMANKODE AMSOM, NADAPURAM DESOM,  
VATAKARA TALUK,  
KOZHIKODE DISTRICT.
3. BROTHER HAMEED,  
AGED 58 YEARS, BUSINESS, SCOORKUNIYIL HOUSE,  
KUMMANKODE AMSOM, NADAPURAM DESOM,  
VATAKARA TALUK,  
KOZHIKODE DISTRICT.

4. SISTER PATHOOTTY,  
AGED 56 YEARS, SWASTHAM, SCOORKUNIYIL HOUSE,  
KUMMANKODE AMSOM, NADAPURAM DESOM,  
VATAKARA TALUK,  
KOZHIKODE DISTRICT.
5. BROTHER MAJEED,  
AGED 50 YEARS, BUSINESS, SCOORKUNIYIL HOUSE,  
KUMMANKODE AMSOM, NADAPURAM DESOM,  
VATAKARA TALUK,  
KOZHIKODE DISTRICT.
6. BROTHER ASHRAF,  
AGED 45 YEARS, BUSINESS, SCOORKUNIYIL HOUSE,  
KUMMANKODE AMSOM, NADAPURAM DESOM,  
VATAKARA TALUK,  
KOZHIKODE DISTRICT.
7. BROTHER BASHEER,  
AGED 40 YEARS, BUSINESS, SCOORKUNIYIL HOUSE,  
KUMMANKODE AMSOM, NADAPURAM DESOM,  
VATAKARA TALUK,  
KOZHIKODE DISTRICT.
8. BROTHER FAISAL  
AGED 38 YEARS, BUSINESS, SCOORKUNIYIL HOUSE,  
KUMMANKODE AMSOM, NADAPURAM DESOM,  
VATAKARA TALUK,  
KOZHIKODE DISTRICT.
9. OTHAYATH ILLIYAS  
S/O SOOPY, AGED 47 YEARS, KUMMANKODE AMSOM AND  
DESOM, VARIKKOLI (PO), VATAKARA TALUK,  
KOZHIKODE DISTRICT.

BY ADVS.SRI.T.KRISHNANUNNI (SR.)  
SRI.K.C.KIRAN  
SMT.MEENA.A.  
SRI.SAJU.S.A  
SRI.VINOD RAVINDRANATH

RESPONDENTS/RESPONDENTS/PETITIONERS:

-----

1. PATHOOTTY MOOLANTHERI,  
D/O. MAMMAD HAJI, AGED 55 YEARS,  
RESIDING AT KANNOTH, IYYAMKODE AMSOM,  
KAKKATTIL DESOM,  
VARAKARA TALUK, KOZHIKODE DISTRICT,  
PIN:673101.
2. AMMAD KANNOTH,  
S/O KUNHABDULLA HAJI, AGED 61 YEARS,  
IYYAMKODE AMSOM, KAKKATTIL DESOM,  
VATAKARA TALUK, KOZHIKODE DISTRICT,  
PIN:673101.

THIS RENT CONTROL REVISION HAVING COME UP FOR  
ADMISSION ON 30-06-2017, THE COURT ON THE SAME DAY PASSED  
THE FOLLOWING:

**K. HARILAL &  
P. SOMARAJAN., JJ.**

-----  
**R.C.R. No.191 of 2017-D**  
-----

***Dated this the 30<sup>th</sup> day of June, 2017***

**ORDER**

**Harilal, J.**

The revision petitioners and the respondents are the legal heirs of the original landlord and tenant. The landlord - tenant relationship is not disputed. According to the present landlord, after the death of the original tenant, some of the legal heirs continued the business for some time and thereafter, it was wound up. Now, the petition schedule shop room is found in the possession of the 9<sup>th</sup> respondent, who is a stranger. The second petitioner bona fide needs the petition schedule building for conducting a grocery business, as he has no avocation at all for his

livelihood. He further contended that he has no other building of his own in his possession and so many other buildings are available in the locality for shifting the business from the petition schedule shop room.

2. The tenants resisted the bona fides of the need and contended that the 8<sup>th</sup> respondent, who is one of the legal heirs of the deceased original tenant, is conducting a watch repairing shop in the petition schedule shop room and the 9<sup>th</sup> respondent is his helper only and he has not sub-leased the petition schedule shop room to him. According to him, the bona fide need is a ruse for eviction only. It is also contended that the second petitioner is not a jobless person. He was working abroad and now returned with a lot of money.

3. On the above premises, both parties adduced evidence. The trial court, after appreciating the evidence, on record, found the need projected in the petition is a bona fide one and the tenants are not

entitled to get protection under the provisos to Sec.11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short 'the Act'). After re-appreciating the evidence, on record, the Appellate Authority also confirmed the findings of the Rent Control Court.

4. Heard the learned counsel for the revision petitioners.

5. Going by the impugned judgment, it could be seen that the second petitioner was examined as P.W.1 to prove the bona fides of the need. The needy person himself was testified so as to find out the bona fides of the need. After, evaluating the testimony of P.W.1, the courts below concurrently found that the tenant himself failed to bring out anything contrary to the need projected by the petitioners. Thus, the courts below have concurrently found that the need projected is a bona fide one and we do not find any reason to interfere with the concurrent findings of the courts below on the bona

fides of the need.

6. Coming to the protection under the provisos, the tenants have no case that the landlord has another vacant building of his own in his possession. Therefore, the first proviso has no application at all in the instant case. Coming to the second proviso, the courts below concurrently found that the tenants have not discharged burden of proof under the said proviso and therefore, they are not entitled to get the protection under the second proviso also. The revision is not an appeal in disguise. This Court is not inclined to re-appreciate the evidence, unless it is found that the courts below have failed to consider the relevant evidence or placed reliance on irrelevant evidence adduced by the parties. In the instant case, the revision petitioners have no such case that the courts below have placed reliance on any irrelevant evidence or failed to consider the relevant evidence.

7. Therefore, we confirm the concurrent findings of the courts below and this Rent Control Revision is

dismissed.

8. At last, the learned counsel for the revision petitioners sought for some time to surrender the petition schedule shop rooms. The learned counsel for the respondents opposed the said request. But, this Court is of the view that a reasonable time can be given to the revision petitioners to surrender the petition schedule shop room, on terms. The revision petitioners shall surrender the petition schedule shop rooms within six months from today, provided that they could comply the conditions given below within the specified time:

(i) The respondents/tenants in the Rent Control Petition shall file an affidavit within a period of two weeks from the date of receipt of a copy of this order, expressing an unconditional undertaking that the petition schedule building will be vacated within a period of six months from today.

(ii) The respondents/tenants shall deposit the entire arrear of rent, if any,



in the Rent Control Court or Execution Court, as the case may be, within a period of two months from the date of receipt of a copy of this order and shall continue to pay rent without default.

(iii) In the event of failure to comply any of the conditions stated above, the time granted to vacate the premises will stand automatically repealed and the petitioners/landlords will be at liberty to proceed with the execution of the eviction order.

Sd/-

**(K.HARILAL, JUDGE)**

Sd/-

**(P. SOMARAJAN, JUDGE)**

**Nan/ //true copy//**

**P.S. To Judge**