

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

RSA.No. 1295 of 2015 ()

**AS 166/2011 of ADDL.DISTRICT COURT, NORTH PARAVUR
OS 421/2007 of MUNSIFF COURT, NORTH PARAVUR**

APPELLANT/APPELLANT/DEFENDANT :

**BABU, AGED 73 YEARS, S/O. KUMARAN,
KOZHUPPATT HOUSE, MANAKKODAM MURI
CHENNAMANGALAM VILLAGE, PARAVOOR TALUK.**

**BY ADVS.SRI.GEORGE SEBASTIAN
SRI.JOHNSON K.KURIEN**

RESPONDENT/4TH RESPONDENT/ADDITIONAL 4TH PLAINTIFF:

**SHERIN, AGED 45 YEARS, S/O. PAULOSE,
MOOLAN HOUSE, CHERIYAPALLAMTHURUTH MURI,
PARAVOOR VILLAGE - 683513**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 09-12-2015 ALONG WITH RSA 1296/2015, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:**

bp

P.B.SURESH KUMAR, J.

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R.S.A.Nos.1295 & 1296 of 2015.

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Dated this the 9th day of December, 2015.

J U D G M E N T

These appeals are preferred against the common judgment in A.S.Nos.166 and 167 of 2011 on the file of the District Court, North Paravoor. Among the said appeals, A.S.No.166 of 2011 is an appeal preferred against the decision in O.S.No.421 of 2007 and A.S.No.167 of 2011 is an appeal preferred against the decision in O.S.No.420 of 2007. The suits referred to above on the file of the Munsiff Court, North Paravoor were also disposed of by a common judgment.

2. Two shop rooms in a line building are the subject matter of the suits. At the time of institution of the suits, plaintiffs 1 and 2 owned the shop rooms and the defendants were their tenants. Pending suits, the shop rooms were transferred by plaintiffs 1 and 2 to the fourth

plaintiff. According to the plaintiffs, the lease arrangements entered into by them with the defendants were though terminated, the defendants have not surrendered vacant possession of the shop rooms. The plaintiffs, therefore, sought eviction of the defendants. The defendants contested the suits. The trial court accepted the case of the plaintiffs and decreed the suits. Though the defendants took up the matter in appeal, the appellate court confirmed the decision of the trial court. Aggrieved by the concurrent decisions against them, the defendants have thus come up in these second appeals.

3. Heard the learned counsel for the appellants.

4. The learned counsel for the appellants raised two contentions. The first contention is that the notices terminating the tenancy arrangements were issued by the third plaintiff. According to the learned counsel, the third plaintiff who is only the power of attorney holder of plaintiffs 1 and 2 was not competent to terminate the tenancy arrangements with the defendants and therefore, the

termination of the tenancy arrangements with the defendants is invalid. The second contention raised by the learned counsel for the appellants is that the suit property was sold by plaintiffs 1 and 2 to the fourth plaintiff pending suit and therefore plaintiffs 1 and 2 are not entitled to continue the present suits. According to the learned counsel, the remedy, if any, of the fourth plaintiff, in the circumstances, is only to institute a fresh suit.

5. In the plaint, it is categorically stated by the plaintiffs that the third plaintiff has issued the notices for terminating the tenancy arrangements with the defendants on behalf of plaintiffs 1 and 2. The notices issued by the third plaintiff on behalf of plaintiffs 1 and 2 were also produced along with the plaint. In the written statement filed by the defendants, the only contention raised in respect of the said notices is that the same is not in accordance with law. The defendants have not raised any contention as to the competence of the third plaintiff to terminate the tenancy arrangements on behalf of plaintiffs 1

and 2. Further, a perusal of the impugned judgments indicate that the contention now raised before me has not been raised before the courts below. In the said circumstances, I do not find that the defendants are entitled to raise this plea for the first time in the second appeals.

6. Coming to the second contention, there is no legal impediment for a party to the suit in transferring the suit property pending suit. It is now settled that even if the subject matter of the suit is transferred pending suit, the transferor is entitled to continue the suit for the benefit of the transferee. As such, the plaintiffs are entitled to prosecute the present suit till its logical end. The impleading of the fourth plaintiff who is the transferee of the property as the additional fourth plaintiff in the suit, does not affect the right of plaintiffs 1 and 2 to prosecute the suits. There is, therefore, no merit in the said contention also.

7. When the contentions raised by the learned counsel for the appellants were found not acceptable, the

learned counsel pleaded for time to surrender vacant possession of the shop rooms. Having regard to the fact that the defendants are running commercial establishments in the tenanted premises, I deem it appropriate to grant reasonable time to the defendants to surrender vacant possession of the shop rooms to the plaintiffs.

In the result, the second appeals are dismissed in limine. The defendants are granted time till 30.6.2016 to vacate the plaint schedule shop rooms and deliver vacant possession of the same to the fourth plaintiff on the following terms :

- i. The defendants shall pay the arrears of rent, if any, to the fourth plaintiff, within six weeks from today.
- ii. The defendants shall file an affidavit before the trial court/execution court, within six weeks from today, unconditionally undertaking to surrender vacant

possession of the plaint schedule shop rooms, on or before 30.6.2016.

- iii. The defendants shall also pay to the fourth plaintiff, the charges towards use and occupation of the shop rooms equivalent to the current rent from today till they give vacant possession of the shop rooms to the fourth plaintiff.

Execution proceedings, if any, pending shall be kept in abeyance till 30.6.2016. If there is default in performing any of the aforesaid conditions, the benefits given to the defendants as per this judgment will automatically stand recalled and the executing court shall effect delivery forthwith. All the interlocutory applications in the appeals are closed.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Kvs/-

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PA TO JUDGE.