

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

S.A.No.923 of 2007

&

M.P.Nos.3 & 2 of 2007

1.T.Balakrishnan (Deceased)

2.B.Rajeswari

3.B.Manjula

4.B.Gopinath

(Appellants 2 to 4 brought
on record as LRs of the
deceased sole appellant
vide order dated 15.07.2014
in M.P.No.1 to 3 of 2014)

...Appellants/Defendants

-Vs-

Arulmighu Srinivasa Perumal Temple

Rep. By its Executive Officer

Egmore, Madras - 600 008

...Respondent/Plaintiff

Second Appeal filed under section 100 of C.P.C against
the judgment and decree dated 23.11.2005 made in A.S.No.137 of
2004 on the file of VI Additional Sessions Judge, Madras
confirming the judgment and decree dated 24.12.2003 made in
O.S.No.2794 of 1988 on the file of VIII Assistant City Civil
Judge, Madras.

For appellants : Mr.R.Krishnamurthy
Senior Counsel
for M/s.Vedavallikumar

For Respondents : Mr.V.Shanmuganathan
for
M/s.A.S.Kailasam & Associates

JUDGMENT

The defendant, who suffered a decree for ejectment in
the trial Court, which was confirmed by the lower appellate,
is the appellant in the second appeal. The plaintiff, who is

the respondent in the second appeal, is a temple represented by its Executive Officer. After the filing of the second appeal, the sole appellant T.Balakrishnan passed away and his legal representatives have got themselves impleaded as appellants 2 to 4.

2. For the sake of convenience, the parties are referred to in accordance with their rankings in the trial Court. At appropriate places the ranks of the parties in the second appeal shall also be referred to.

3. The second appeal came admitted on 05.11.2007 formulating the following three questions to be the substantial questions of law involved in the second appeal;

1) Have not the Courts below erred in holding that Section 106 of the Transfer Property Act is not necessary when the General Law of Transfer of Property Act would govern the tenancy and the parties to the suit?

2) Is not the suit notice not one under Section 106 of the Transport of Property Act and could not be treated as a notice under Section 106 of the Transfer of Property Act?

3) Whether the Courts below are correct in holding that the rent has not been paid by the appellants when P.W.1 has admitted that the rent has been paid by the appellants?

4. The arguments advanced by Mr.R.Krishnamurthy, learned counsel for the appellants and by Mr.V.Shanmuganathan, learned counsel for the respondent are heard. The judgments of the Courts below and the materials available in the records summoned from the Courts below are perused and they are also taken into consideration.

5. In the second appeal, the appellants have chosen to prefer a miscellaneous petition in M.P.No.3 of 2007 under order XLI Rule 27 CPC for reception of additional documentary evidence. But, the petition does not contain any list of documents, which are sought to be produced as additional documentary evidence. Nor does the affidavit filed in support of the petition contain such a list. However, the learned counsel for the appellants would submit that the documents sought to be produced as additional documentary evidence are Statement of Accounts obtained from the banker of the defendant to show payments made towards rent. The reason for the failure on the part of the deceased first

appellant/defendant to produce those documents either before the trial Court or before the lower appellate Court has not been stated. The dates of the documents have also not been furnished. If the dates have been furnished, there may be a chance of contending that the document could not have been obtained by the appellants when the matter was pending before the trial Court or before the lower appellate Court and that the same necessitated the filing of such a petition before this Court in the second appeal. Even if it is assumed that those documents could have come into existence after the disposal of the first appeal by the lower appellate Court, the appellants have not proved that the documents would be of such a nature that the same will tilt the balance and enable the court to pronounce judgment. As pointed out supra, evidence of payment of amount towards rent alone shall not be enough to show that a fresh tenancy was created or the defendant was recognized as a tenant holding over, especially in the absence of receipts without any indication that the amount was received without prejudice. The appellants have miserably failed to bring their case within the ambit of Order XL1 Ruled 27 CPC and hence, the M.P.No.3 of 2007 deserves to be dismissed.

6. Admittedly, the suit property was leased out by the plaintiff temple for three years under a registered lease deed dated 23.06.1984 marked as Ex.A1 commencing from 01.11.1983 till the end of October 1986. When the lease period was to expire as per the terms of the lease deed, a notice dated 07.10.1986 was sent to the defendant reminding him that the lease was to expire by 31.10.2006 and he had to vacate and handover vacant possession on 01.11.1986. However, the registered cover in which the notice was sent was returned with the postal endorsement "left". Again the notice was also sent by a Certificate of Posting. The copies of the notice, the returned cover with acknowledgment and the certificate of posting are marked respectively as Exs.A1, A2 and A3. After the determination of the lease efflux of time, the plaintiff temple represented by the Executive Officer, filed the suit in February 1988 for eviction of the tenant and recovery of possession.

7. The suit was resisted by the defendant contending that the tenancy was in respect of a vacant land and the tenant was entitled to the protection of the Tamil Nadu City Tenants Protection Act, 1922. In addition, the defendant took a stand that the tenancy was not properly terminated by issuing a notice in compliance with either the provisions of the Tamil Nadu City Tenants Protection Act or Section 106 of

the Transfer of Property Act. During the pendency of the suit, the tenant also filed an application under Section 9 of the Tamil Nadu City Tenants Protection Act in I.A.No.12187 of 1989. The same was dismissed by the trial Court by an order dated 25.08.1992. On appeal in C.M.A.No.133 of 1992, the lower appellate Court chose to allow the appeal and directed appointment of an Advocate Commissioner to visit the property and submit a report to enable the trial Court to pass an order in respect of the claim of the tenant under Section 9 of the Tamil Nadu City Tenants Protection Act. Pending disposal of I.A.No.12187 of 1989, which was remitted back to the trial Court by the appellate Court, Act 2 of 1996 came to be passed exempting the properties owned by Public Religious and Charitable Endowments from the purview of the provisions of the Tamil Nadu City Tenants Protection Act. In fact, the defendant unsuccessfully challenged the said Act also. Thereafter, the above said defence was not available to the defendant. Hence, the defendant took a plea that though the tenancy, as per the written document, was to expire by 31.10.1986, he was allowed to continue as tenant and he was continuing as a tenant holding over. It was the further contention made by the defendant that such a tenancy was not properly terminated by issuing a valid notice of termination under Section 106 of the Transfer of Property Act.

8. The trial Court framed necessary issues and conducted a trial in which one witness was examined as PW1 and four documents were marked as Exs.A1 to A4 on the side of the plaintiff. The defendant figured as sole witness (DW1) on his side and he produced no documents.

9. The learned trial Judge, upon considering the evidence in the light of the arguments advanced on both sides, came to the conclusion that the tenancy stood terminated by efflux of time under clause (a) of Section 111 of the Transfer of Property Act and that hence, a notice under Section 106 was not necessary for filing a suit for recovery of possession from the erstwhile tenant whose tenancy has come to an end by efflux of time. It was also held by the learned trial Judge that though it was not necessary, the plaintiff, without taking chances, chose to issue a notice well in advance informing the defendant that the tenancy was to expire by 31.10.1986 and the defendant had to vacate and hand over possession on 01.11.1986 and that the said notice was not received by the defendant and the registered tapal containing the notice came to be returned with a postal endorsement "left". It was also held that though it was not necessary to serve a notice, the plaintiff issued a notice which was not

received by the defendant and hence the service of notice was effective. Further contention of the defendant that the defendant was paying the rent subsequent to the expiry of the lease period and the same was received by the plaintiff implying recognition of the right of the defendant as a tenant holding over was also negatived by the learned trial Judge. Resultantly, by a judgment and decree dated 24.12.2003, the learned trial Judge granted the decree as prayed for in favour of the plaintiff.

10. Aggrieved by and challenging the decree of the trial Court, the defendant preferred an appeal in A.S.No.137 of 2004. The learned lower appellate Judge (VI Additional Judge, City Civil Court, Chennai), after hearing, concurred with the findings of the trial Court in all respects and dismissed the appeal by a judgment and decree dated 23.11.2005 and thereby confirmed the decree of the trial Court. As against the said decree of the lower appellate Court, the present second appeal has been filed.

11. The first and foremost contention raised on behalf of the appellant is that the finding of the Courts below erred in law in holding that a notice under Section 106 of the Transfer of Property Act was not necessary. The learned counsel for the appellant in the second appeal again reiterated the said stand during his arguments. As rightly pointed out by the learned counsel for the respondent in the second appeal (plaintiff), the reliance sought to be made on Section 106 of the Transfer of Property Act was on a misconception that the said section would apply to all leases irrespective of the fact whether they were created orally or by a written document. A perusal of Section 106 of the Transfer of Property Act will make it clear that Section 106 is attracted only in respect of leases wherein there is no written contract or no legal usage covering the lease. Here is a case in which admittedly the lease was created by a registered lease deed marked as Ex.A4. Therefore, the defendant cannot contend that the lease can be terminated only by issuing a notice under Section 106 of the Transfer of Property Act, unless a defendant takes a stand successfully that after the expiry of the lease period as per the document, he continued as a tenant holding over.

12. Of course, an attempt has been made on behalf of the appellants in the second appeal to contend that after the determination of the lease by efflux of time, the plaintiff as usual received rent and thereby recognized the defendant to be a tenant holding over and that hence a notice for termination

of such a tenancy under Section 106 of the Transfer of Property Act was very much necessary. This Court is not in a position to countenance the above said contention raised on behalf of the appellants in the second appeal. Apart from claiming benefit under Section 9 of the Tamil Nadu City Tenants Protection Act, there is no categorical assertion on the part of the defendant that he was a tenant holding over even after the termination of tenancy by efflux of time under Section 111(a) of the Transfer of Property Act on the expiry of the lease period found in Ex.A4. There is also absence of clear plea that for the subsequent period the defendant paid rent and the same was received by the plaintiff without any protest and without making it known to the defendant that the same was received without prejudice to the right of the plaintiff to pursue the suit for possession. Excepting the oral testimony of DW1, in which also there is no such clear assertion, there is no evidence adduced on the side of the defendant to prove that the defendant was continuing as a tenant holding over after 31.10.1986.

13. The learned counsel for the appellant in the second appeal wanted to rely on some of the alleged admissions made by PW1 in his evidence during cross-examination. The said admissions, according to the learned counsel for the appellants, are that PW1 used to go to the suit property with the collection clerk to collect rent and on other occasions with the officers of the plaintiff temple. They fall short of a clear unambiguous admission that the rent was received after the period of lease was over. The said admission simply refer to the practice of PW1, which was prior to 01.11.1986. No suggestion was made to him to the effect that after 31.10.1986, rent was paid to him and he collected the same without any protest. In the absence of any such suggestion, the contention of the learned counsel for the appellants in the second appeal that the above said answers given by PW1 would amount to an admission of the receipt of rent after the expiry of the period of lease cannot be countenanced. If at all the rent was paid after the expiry of the period of lease, the defendant could have obtained receipts for such payments and produced the same as documents on his side. Not even a scrap of paper came to be produced by the defendant to prove such a contention. Either the contention raised by the defendant could be false or the payments made subsequent to the expiry of the lease period would have been evidenced by receipts containing riders that they were received without prejudice to the right of the plaintiff to proceed with the suit. The same could be the reason for the inability or failure on the part of the defendant to produce at lease a

single receipt to show that rent was received after the expiry of the lease period without expressing a rider that the same was received as damages for use and occupation or without prejudice to the right of the plaintiff to seek eviction. Hence, this Court comes to the conclusion that the findings of the Courts below that the defendant failed to substantiate his contention that he was a tenant holding over, in which event alone Section 106 notice was necessary, cannot be said to be either defective or infirm warranting interference by this Court in this second appeal. The first substantial question of law is thus answered accordingly against the appellants and in favour of the respondent (plaintiff).

14. In view of the answer given to the first substantial question of law, the second substantial question of law cannot be taken as a substantial question of law that has arisen for consideration in this second appeal. The reasons assigned for arriving at the above said answer to the first substantial question of law shall apply to the third substantial question of law and it is not necessary to restate them again loading the judgment with unnecessary repetition. Suffice to point out that the defendant miserably failed to prove that he continued as a tenant holding over after expiry of the lease period mentioned in Ex.A4. As the lease came to be terminated by efflux of time under Section 111 (a) of the Transfer of Property Act, the contention of the appellants that the suit filed without issuing a notice of termination under Section 106 of the Transfer of Property Act is not maintainable has got to be rejected as untenable. Thus, the second and third substantial questions of law are also answered against the appellants and in favour of the respondent (plaintiff). There is no merit in the second appeal and the same deserves to be dismissed.

15. In the result, M.P.No.3 of 2007 is dismissed and S.A.No.923 of 2007 is dismissed with costs. Consequently, M.P.No.2 of 2007 is closed.

Sd/-
Assistant Registrar(CS-III)

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Sub Assistant Registrar

gpa

To

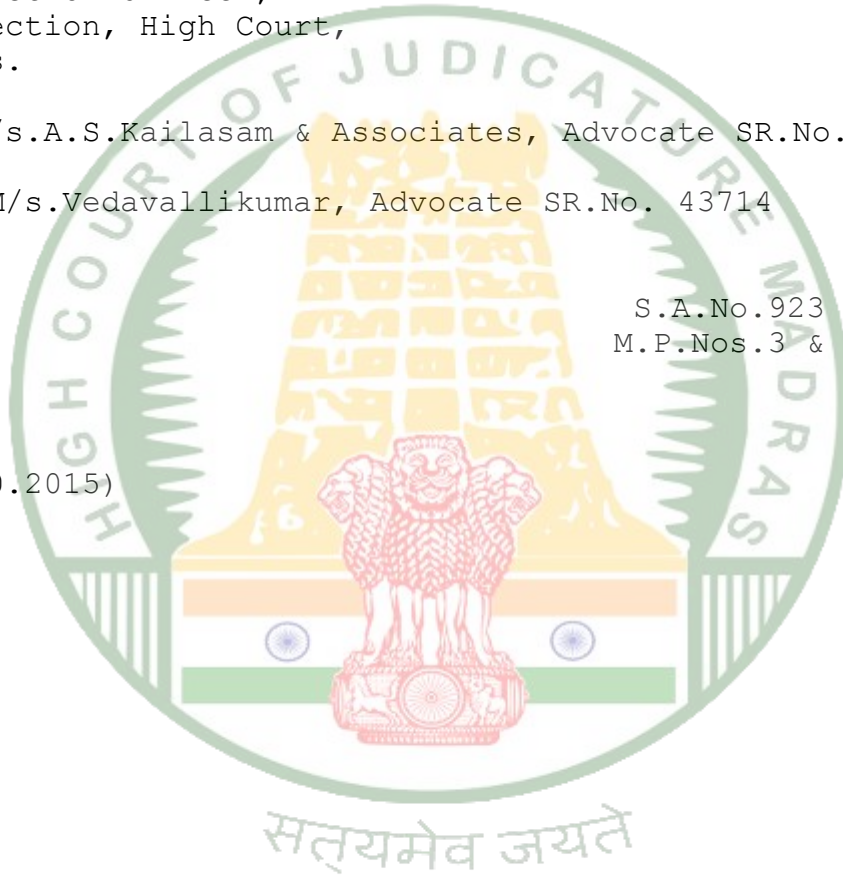
1. VI Additional Sessions Judge,
Madras.
2. VIII Assistant City Civil Judge,
Madras.
3. The Section Officer,
V.R.Section, High Court,
Madras.

1 CC to M/s.A.S.Kailasam & Associates, Advocate SR.No. 43311

2 CCs to M/s.Vedavallikumar, Advocate SR.No. 43714

S.A.No.923 of 2007 &
M.P.Nos.3 & 2 of 2007

TEJ (CO)
PSI (19.10.2015)



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