



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2015

CORAM :

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

Second Appeal (MD) No.574 of 2014

WEB COPY

P.K.A.Nataraja Nadar Sons
through its Proprietor
A.N.Sugumar, No.109, Main Road,
Dindigul Town,
Dindigul District.

... Appellant

Vs.

Dindigul Arya Vysya Sabha (Regd),
through its Secretary,
Door No.111, Main Road,
Dindigul.

... Respondent

Second Appeal is filed under Section 100 r/w under 42 Rules 1 & 2 of C.P.C against the judgment and decree dated 19.12.2013 passed in A.S.No.61 of 2013 on the file of the Principal Sub Court, Dindigul, confirming the judgment and decree dated 20.02.2013 passed in O.S.No.271 of 2008 on the file of the Additional District Munsif Court, Dindigul.

For Appellant : Mr.D.Nallathambi

For Respondent : Mr.D.Rajkumar

JUDGMENT

The defendant in the Original Suit is the appellant in the Second Appeal. He was inducted as a tenant in respect of the suit property namely, a shop bearing Door No.109, Main Road, Dindigul more fully described in the plaint schedule. Originally, the defendant's father became a tenant in respect of the said property in the year 1959 itself for a monthly rent of Rs.75/-. Subsequently, on execution of fresh lease deeds periodically, the tenancy came to be renewed with enhancement of rent. After the demise of the father of the appellant/defendant, he became a tenant and the monthly rent when the dispute arose was Rs.1,810/-. However, dispute arose between the appellant/defendant and the landlord namely, the respondent herein/plaintiff, regarding the renewal of the tenancy arrangement as the revised rent claimed by the respondent herein/plaintiff was not agreeable for the tenant, namely the appellant herein/defendant. When the offer to extend the tenancy, the same was declined by the tenant namely, the appellant herein defendant who insisted upon fixing a rent with an increase of 30% alone. The landlord namely, the respondent herein/plaintiff chose to terminate the tenancy by issuing a statutory notice under Section 106 of the Transfer of Property Act, 1882 and filed a suit for recovery of possession and recovery of damages for use and occupation.

2.The tenant namely, the appellant herein/defendant resisted the suit contending that there was no bona fide in the prayer made by the respondent herein/plaintiff in seeking ejectment and that hence, the prayer made in the plaint should not be granted.



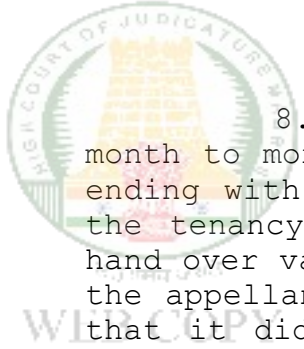
3.The learned trial Judge after trial held that the tenancy was properly terminated by issuing notice to quit in terms of Section 106 of the Transfer of Property Act, 1882 and that hence, the appellant herein/defendant did not have a valid defence. Accordingly, the learned trial Judge decreed the suit for the relief of eviction as prayed for. However, the determination of damages for use and occupation was relegated to a separate proceedings to be initiated on filing an application by the respondent herein/plaintiff. The said decree of the trial Court made in O.S.No.271 of 2008, dated 20.02.2013 was made the subject matter of challenge before the lower Appellate Court namely, the Sub Court, Dindigul made in A.S.No.61 of 2013. The learned Principal Subordinate Judge, Dindigul who heard the appeal by his judgment and decree, dated 19.12.2013 confirmed the decree passed by the trial Court and dismissed the above said appeal. As against the said decree of the lower Appellate Court, dated 19.12.2013 made in A.S.No.61 of 2013, the present Second Appeal has been preferred.

4.Notice before admission was served on the respondent/plaintiff and the respondent/plaintiff is also represented by a learned counsel, Mr.D.Rajkumar.

5.The arguments advanced by Mr.D.Nallathambi, learned counsel appearing for the appellant and by Mr.D.Rajkumar, learned counsel appearing for the respondent are heard. The judgments of the Courts below and the materials available on record sent for from the Courts below are also perused and considered.

6.An appeal from the lower appellate Court against a decree of a Court subordinate to the lower appellate Court shall lie to the High Court under Section 100 C.P.C on a substantial question of law alone. A party filing a Second Appeal shall satisfy the High Court that the appeal involves a substantial question of law is to be decided by the High Court.

7.The narration of facts leading to the filing of the suit will help the Court in arriving at a conclusion whether any substantial question of law is involved in the Second Appeal. The case of the respondent herein/plaintiff is a simple case of ejectment seeking eviction of the appellant herein/defendant on the termination of the tenancy by issuing a valid notice to quit under Section 106 of Transfer of Property Act, 1882. Admittedly, the property situates in Dindigul Town to which the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 has been made applicable. No plea of defence was taken by the appellant herein/defendant that the building has been exempted from the application of the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. On the other hand, conceding that a suit for ejectment will lie, the appellant herein/defendant made an attempt to resist the suit contending that the filing of the suit was nothing but a *mala fide* exercise of the right of the landlord. Admittedly, the tenancy arrangement between the respondent herein/plaintiff and the appellant herein/defendant was a tenancy at will and the same was terminable by issuing a notice of termination in accordance with the requirements of Section 106 of Transfer of Property Act, 1882.

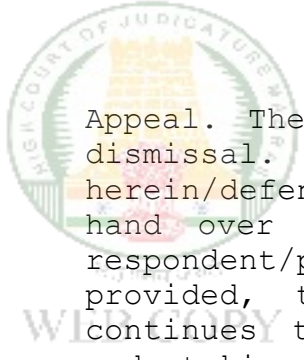


8. There is no dispute regarding the fact that the tenancy was a month to month tenancy and it was terminable by issuing a 15 days notice ending with a calendar month. Ex.A-3 is the notice to quit terminating the tenancy with the end of tenancy month and requiring the tenant to hand over vacant possession. There is no contention raised on the part of the appellant herein/tenant that either the said notice was defective or that it did not answer the requirements of Section 106 of Transfer of Property Act, 1882. Though the appellant herein/defendant received the said notice and acknowledged the receipt by Ex.A4-acknowledgment card, without complying with the demand made therein, he chose to issue a reply notice under Ex.A-5, thereby forcing the respondent/plaintiff to file the suit.

9. The learned trial Judge, proceeding on proper lines held that the tenancy was validly terminated and the respondent/plaintiff was entitled to recovery of possession from the appellant/defendant. However, the learned lower Appellate Judge unnecessarily went on a wrong path by making an effort to show that there was no *mala fide* on the part of the respondent herein/plaintiff and that there were valid grounds for seeking eviction of the appellant herein/defendant on the assumption that the respondent herein/plaintiff could seek recovery of possession only on the grounds on which a statutory tenant protected under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 could seek eviction. The said deviation made by the learned lower Appellate Judge in his approach, has given a long rope to the appellant herein/defendant to approach this Court with the Second Appeal contending that the finding recorded by the lower Appellate Court could not be sustained on the basis of the evidence adduced on the side of the respondent herein/plaintiff.

10. It is unnecessary to go into the question whether such a finding rendered by the lower Appellate Court can be sustained or not, for the simple reason that the said finding is irrelevant and otiose. What is required of a plaintiff filing a suit for recovery of possession on termination of tenancy is that the tenancy has been validly terminated either by issuing a notice to quit in accordance with Section 106 of Transfer of Property Act, 1882 or the tenancy stands terminated in accordance with Section 111 of Transfer of Property Act, 1882. Once the said aspect is established by the respondent/plaintiff, there can be little scope for the erstwhile tenant, who continues in possession, to resist the suit for recovery of possession, unless he can establish that there has been a novation of tenancy and he has been subsequently, recognised to be continuing as a tenant by an act of the respondent/plaintiff. In the case on hand, there is no such plea made on the part of the appellant/defendant. Nor is there any evidence to the said effect.

11. Under the said circumstances, the irregular deviation made by the lower Appellate Court in testing the *bona fide* of the respondent/plaintiff on the wrong assumption that the respondent/plaintiff could succeed only on proof of the existence of the grounds on which a statutory tenant protected under the Tamil Nadu Building (Lease and Rent Control) Act, 1960 can be evicted, will not deter this Court from holding that the decree passed by the trial Court and confirmed by the lower Appellate Court cannot be found fault with as no substantial question of law is shown to be involved in the Second



Appeal. There is no merit in the Second Appeal and the same deserves dismissal. However, learned counsel appearing for the appellant herein/defendant seeks the indulgence of the Court for granting time to hand over the vacant possession. Learned counsel appearing for the respondent/plaintiff submitted that a reasonable time can be granted provided, the appellant herein/defendant pays the arrears of rent, continues to pay damages for use and occupation and also files an undertaking in this Court to the said effect. Accordingly, this Court deems it appropriate to grant six months time from today to vacate and hand over the vacant possession. It is made clear that the undertaking should be filed within a week from today. The appellant/defendant is granted six months time for vacating and handing over vacant possession of the suit property on condition that he shall file an affidavit of undertaking to do so and pays the arrears of rent if any besides continuing to pay the damages for use and occupation every month without default.

12. In the result, the Second Appeal is dismissed. No costs. In case of default in complying with any of the conditions, the decree shall become executable then and there. Consequently, M.P(MD)No.1 of 2014 is closed.

Sd/-

Assistant Registrar (Crl.side)

/True copy/

Sub Assistant Registrar

To

1. The Principal Sub Judge, Dindigul.

2. The Additional District Munsif, Dindigul.

+1cc to MR.D.RAJKUMAR, ADVOCATE IN SR : 19697

+1cc to MR.D.NALLATHAMBI, ADVOCATE IN SR : 19263

Sms

SR/KBM : 22.05.2015 : 4p/5c

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