

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 03.02.2017
PRONOUNCED ON : 20.02.2017
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S. A.No.121 of 2014

V.C.Srinivasan ... Appellant/Respondent
Vs.

Kamaraj Charity,
rep.by its Secretary V.P.Mani ...Plaintiff/Appellant/
Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 18.11.2013 made in A.S.No.37 of 2012 on the file of the Subordinate Court, Vellore, in reversing the Judgment and Decree dated 21.10.2011 made in O.S.No.1550 of 2004 on the file of the II Additional District Munsif Court at Vellore.

For Appellant : Mr.A.Thamizharasan

For Respondent : Mr.A.Gowthaman

JUDGMENT

In this Second Appeal the defendant has impugned the judgment and decree dated 18.11.2013 made in A.S.No.37 of 2012 on the file of the Subordinate Court, Vellore, reversing the Judgment and Decree dated 21.10.2011 made in O.S.No.1550 of 2004 on the file of the II Additional District Munsif Court at Vellore.

2.The second appeal has been admitted and the following substantial questions of law are formulated for consideration in this second appeal:

(i)Whether the lower appellate court erred in reversing the well considered judgment of the trial court without assigning any valid reasons for the findings arrived at by the trial court based upon the pleadings, P.W.1 and Exs.A1 & A6 adduced by the respondent/plaintiff?

(ii)Whether the lower appellate court erred in holding that the suit notice Ex.A3 issued in accordance with the provisions of

Section 106 of the Transfer of Property Act?

(iii) Whether the suit notice Ex.A3 issued in conformity with the provisions of Section 106 of the Transfer of Property Act and the law laid down by the Hon'ble Supreme Court of India as reported in AIR 2004 SC Page No.4430 as the lease agreement Ex.A6 provides three months intimation prior to vacate the premises admittedly which was not available in the notice Ex.A3?

3.The suit has been laid by the plaintiff for possession.

4.Admittedly, the suit property belongs to the plaintiff. Now according to the plaintiff, the defendant entered into a lease agreement with the plaintiff in respect of the suit property on 01.03.2002 for a period of 11 months, wherein, he has agreed to pay a rent of Rs.350/- per month. As regards the above said lease agreement between the plaintiff and the defendant in respect of the suit property, there is no dispute. It could be seen that the above said lease agreement has been marked as Ex.A6. Inasmuch as Ex.A6 has been entered into between the parties for a period of 11 months, it is evident that the same gets expired at the end of January 2003. A perusal of the same, would go to show that the lease agreement could be renewed further. However, it is found that as such the lease agreement had not been renewed after January 2003. However, it is found that the defendant continue to remain in the suit property and according to the plaintiff inasmuch as the defendant had not paid rent from March 2003 to January 2004, despite repeated demands, the plaintiff issued a notice calling upon the defendant to pay the defaulted rent for the above mentioned period and also to vacate the suit property. The said notice is sent on 04.02.2004 and the same has been marked as Ex.A1. It is further seen from the plaint pleadings itself after the said notice marked as Ex.A1, it is found that thereafter, the defendant had paid the rent in arrears in lumpsum of Rs.3850/- and the same had been acknowledged by the plaintiff. It could therefore be seen that even though Ex.A6, lease agreement had not been renewed after January 2003, it is found that the defendant was allowed to occupy the suit property even thereafter. Further, for the subsequent period when with reference to the non payment of rent for the suit property from March 2003 to January 2004, pursuant to Ex.A1 notice, on the defendant paying the rent in lumpsum for the above mentioned period, the same had been acknowledged by the plaintiff. It is therefore clear that the defendant had been allowed to continue as a tenant in respect of the suit property by the plaintiff, even after the lease agreement , Ex.A6, had come to an end with the end of January 2003.

5. According to the plaintiff by a resolution of the Charity dated 08.02.2004, the rent for the suit property was enhanced from Rs.350/- to Rs.450/- per month. According to the plaintiff, the same had been intimated to the defendant and he had also agreed to pay the enhanced rent. However, with reference to the above case of the plaintiff, the defendant has refuted tooth and nail. According to the defendant, the enhancement of the rent by the plaintiff suo motu has not been intimated to him nor agreed to by him. A copy of the resolution of the Charity dated 08.02.2004 has been marked as Ex.A5. In Ex.A5, the defendant had not signed. Further, there is no material placed by the plaintiff to show that the enhancement of rent had been intimated to the defendant and that he had agreed to pay the same. In this connection, PW1 examined on the side of the plaintiff would admit that the defendant had not signed in Ex.A5, resolution and it is correct to state that no notice had been sent to him as regards the resolution of the Charity marked as Ex.A5. It could therefore be seen that the plaintiff had suo motu enhanced the rent under Ex.A5 without intimating the same to the defendant. In such view of the matter, the case of the plaintiff that the defendant had agreed to pay the enhanced rent as such cannot be accepted.

6. Now according to the plaintiff, the defendant had not paid the rent for the months of February and March 2004 and therefore, it is stated that the plaintiff issued a notice dated 23.04.2004 marked as Ex.A3, wherein, it had directed the defendant to pay the enhanced rent for the months of February and March 2004 and also directed him to vacate the suit property. It is thus found that only under Ex.A3, the plaintiff had put the defendant on notice about the enhancement of rent from Rs.350/- to 450/- as per the resolution dated 08.02.2004. It is found that the defendant has sent a reply to the same dated 04.05.2004 marked as Ex.A4.

7. Now according to the plaintiff, under Ex.A3, the plaintiff has determined the tenancy of the defendant inasmuch as he has not paid the rent from February 2004 as demanded by the plaintiff and in such view of the matter, according to the plaintiff, it had been necessitated to lay the suit for eviction. According to the plaintiff, under Ex.A3, it had been terminated the tenancy of the defendant. The defendant has taken a plea in the written statement that the notice dated 23.04.2004 is not issued in accordance with Section 106 of the Transfer of Property Act and therefore it is contended that the suit laid for eviction on the basis of the above said invalid notice is not maintainable. It has to be therefore seen whether the notice marked as Ex.A3 had been issued by the plaintiff in accordance with law.

8.It is found from the pleadings set out in the plaint as well as the evidence of PW1, after the impugned notice marked as Ex.A3, it is found that the defendant had paid the rent for the months of February, March and April 2004 at Rs.350/- per month and the same had also been acknowledged. Further, it is also found that even thereafter, the defendant had been continuing to pay the agreed rent to the plaintiff. It is thus found that even after the issuance of the quit notice marked as Ex.A3, the plaintiff had continue to accept the rent from the defendant and it is stated that the defendant had been paying the rent at Rs.350/- per month thereafter. However, according to the plaintiff, the defendant had not paid the enhanced rent @ Rs.450/- per month as accepted by him pursuant to the notice marked as Ex.A3. As seen above, the enhancement of rent has not been duly intimated to the defendant and no material is also placed to show that the defendant at any point of time agreed to pay the enhanced rent.

9.Be that as it may, it has to be now found whether the plaintiff is entitled to maintain the suit for eviction pursuant to the notice marked as Ex.A3. A perusal of Ex.A3 would go to show that the plaintiff had directed the defendant to vacate the suit premises within 15 days from the date of receipt of the same and also called upon him to pay the arrears of rent for the months of February and March 2004. Ex.A3 notice is dated 23.04.2004. At the time of the issuance of Ex.A3, notice, it is found that only two months rent had been kept pending by the defendant and remained to be paid by him.

10.As adverted to earlier, even though the lease agreement marked as Ex.A6 had expired by the end of January 2003 inasmuch as even thereafter, the defendant had continue to occupy the suit property and also paying the rent which had been admittedly received by the plaintiff, it could be seen that the defendant had been treated as a tenant or lessee of the suit property as per the terms and conditions set out in the lease agreement marked as Ex.A6. It could therefore be seen that the parties would be governed by the terms and conditions stipulated in the above said agreement. Now according to the defendant as per Ex.A6, Agreement, 3 months notice should be given before evicting him from the suit property and inasmuch as Ex.A3 does not comply with the above said condition and as Ex.A6 is an agreement of tenancy entered into between the parties, the tenancy could be terminated only as per the stipulations contained therein and in such view of the matter, according to him, the notice marked as Ex.A3 is invalid in law.

11.As per Section 106 of the Transfer of Property Act, the termination of tenancy could be determined, if it is not a lease for agricultural and manufacturing purposes, by giving 15 days

notice in the absence of a contract to the contrary. Now it is found that there is a contract or agreement between the parties marked as Ex.A6 and therefore, it has to be seen whether Ex.A3 adheres to the said contract. The contention of the defendant is that three months notice should be given as per Ex.A6. However, a reading of Ex.A6 would go to show that three months period is fixed only if the defendant desires to vacate the suit property and only then the defendant is required to intimate the plaintiff by giving three months notice and get back the advance paid by him. Therefore, under Ex.A6, the plaintiff is not required to give three months notice for evicting the defendant from the suit property. Therefore the above contention of the defendant that Ex.A3 should be declared as invalid as it has not granted three months time to evict him from the suit property as such cannot be countenanced.

12. However, a further reading of Ex.A6 would go to show that in case the defendant defaults in paying the rent continuously for three months, the plaintiff is entitled to evict the defendant from the suit property even without the issuance of any notice. Therefore, as per Ex.A6 if the defendant does not pay the rent continuously for a period of three months, no notice of termination of tenancy is required to be issued on the part of the plaintiff. Viewed in that angle it has to be seen whether Ex.A3, notice is in conformity with Ex.A6 lease Agreement. A perusal of Ex.A3 would go to show that on the date of the issuance of the same even as per the said notice the defendant had not paid the rent only for the months of February and March 2004. It is therefore clear that at the time of the issuance of Ex.A3, notice, the defendant had not paid the rent only for 2 months. When according to Ex.A6, Agreement only if the defendant commits default in the payment of rent continuously for a period of 3 months, the plaintiff is entitled to evict the defendant without terminating the tenancy, it is obvious that Ex.A3, notice is not validly issued. It could therefore be seen inasmuch as the parties are governed by the terms of Ex.A6, it is found that as Ex.A3 had been issued on the footing that the defendant had not paid rent for 2 months only, the said notice cannot be construed as a valid notice issued in accordance with the agreement entered into between the parties. If there is an agreement entered into between the parties only the same would govern them, it could therefore be seen that in such view of the matter, Section 106 of the Transfer of Property Act would not come into play. Insofar as this case is concerned, even assuming for the sake of arguments that Ex.A3, notice has been issued by the plaintiff as per Section 106 of the Transfer of Property Act read with Section 111(h) of the Transfer of Property Act, it could be seen that even then, the said notice had been waived by the plaintiff as per Section 113 of the Transfer of Property Act.

13.As mentioned supra, after Ex.A3, notice admittedly, the plaintiff had received the rent from the defendant at the rate of Rs.350 per month and also continue to receive the said rent from the defendant. In such view of the matter, when after the so-called quit notice marked as Ex.A3 inasmuch as the plaintiff had accepted and been receiving the rent given by the defendant, it could be seen that the above said Act of the plaintiff would only show his intention to treat the tenancy or lease as subsisting as contemplated under Section 113 of the Transfer of Property Act and in such view of the matter, it could be seen that the plaintiff has waived the quit notice by his own act.

14.Section 113 of the Transfer of Property Act reads as follows:

'Waiver of notice to quit:-A notice given under section 111, clause(h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

(a)A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b)A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.'

15.As seen above, it is found that even after the expiry of the period mentioned under Ex.A3, the plaintiff had accepted the rent which as become due from the defendant in respect of the suit property and therefore Ex.A3 notice has been waived. Further, as per second illustration above mentioned, it is found that inasmuch as the plaintiff had issued Ex.A3, notice, it could be seen that the earlier quit notice marked as Ex.A1, had also been waived by the act of the plaintiff. In view of the above position, when it is found that the plaintiff had waived the quit notice by his act of receiving the rent from the defendant even after the period stipulated in the notice had expired and by his act exhibited his intention to treat the tenancy/lease as subsisting, it could be seen that the present suit laid by the plaintiff is not sustainable in the eyes of law.

16.However, it is argued by the plaintiff's counsel that the defendant has not paid the enhanced rent as per Ex.A5. However,

when the enhancement of rent had not been duly intimated to the defendant, when no proof is also forthcoming that the defendant had agreed to pay the enhanced rent and when it is also found that the defendant had paid a sum of Rs.20000/- as advance to the plaintiff at the time of Ex.A6, the contention of the plaintiff that the defendant had agreed to the enhanced rent as such cannot be countenanced.

17.For the foregoing reasons, I hold that the impugned notice dated 23.04.2004 is invalid as per the terms of Ex.A6 and also had been waived by the plaintiff as per his conduct above discussed. In such circumstances, it is found that the plaintiff's suit is not maintainable. The substantial questions of law formulated in the above appeal are accordingly answered.

18.The plaintiff's counsel in support of his contention has placed reliance upon the following decisions reported in 2014 (16) SCC 674(Satendra Singh Vs. Vinod Kumar Bhalotia), 2011 (3) CTC 31(Aravindharaj Adhithan Vs. R. Perumal), AIR 1998 SCC 3085 (M/s.Raptakos Brett and Co. Ltd., Vs. Ganesh Property), 2010 (1) MLJ 480 (D.Kalpana Devi Vs. K.Chandra), AIR 2004 SCC 4430(Inder Sain Bedi(dead) by LRs, Vs. M/s. Chopra Electricals), 2015 (5) SCC 539(Shree Ram Urban Infrastructure Ltd Vs. Court Receiver, High court of Bombay), 2013(3) CTC 248(Ram Bharosey Lal Gupta (D) by LRs and Others Vs. Hindustan Petroleum Corporation Ltd and another), 2005 (8) SCC 38 (Jaswant Raj Soni Vs. Prakash Mal), AIR 1978 SCC 1518(Film Sardari Lal Vishwa Nath and others Vs. Pritam Singh).

19.The defendant's counsel in support of his contention has placed reliance upon the following decisions reported in 1989 (1) LW(Shanmugam Vs. Gobichettipalayam Municipality), AIR 1980 SCC 954(1) Mranalini B. Shah and another Vs. Bapalal Mohanlal Shah, 1990 (2) LW 345(Naina Mohamed Vs. Palanikumar Chettiar), Order of this Court in CRP No.1219 of 1961(M.A.Mohabool Bi Bi Vs. Ambrose).

20.The principles of law outlined in the above said authorities are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

21.In conclusion, the Judgment and decree dated 18.11.2013 made in A.S.No.37 of 2012 on the file of the Subordinate Judge, Vellore are set aside and the Judgment and Decree dated 21.10.2011 made in O.S.No.1550 of 2004 on the file of the II Additional District Munsif at Vellore are confirmed.

Accordingly, the second appeal is allowed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Subordinate Judge, Vellore

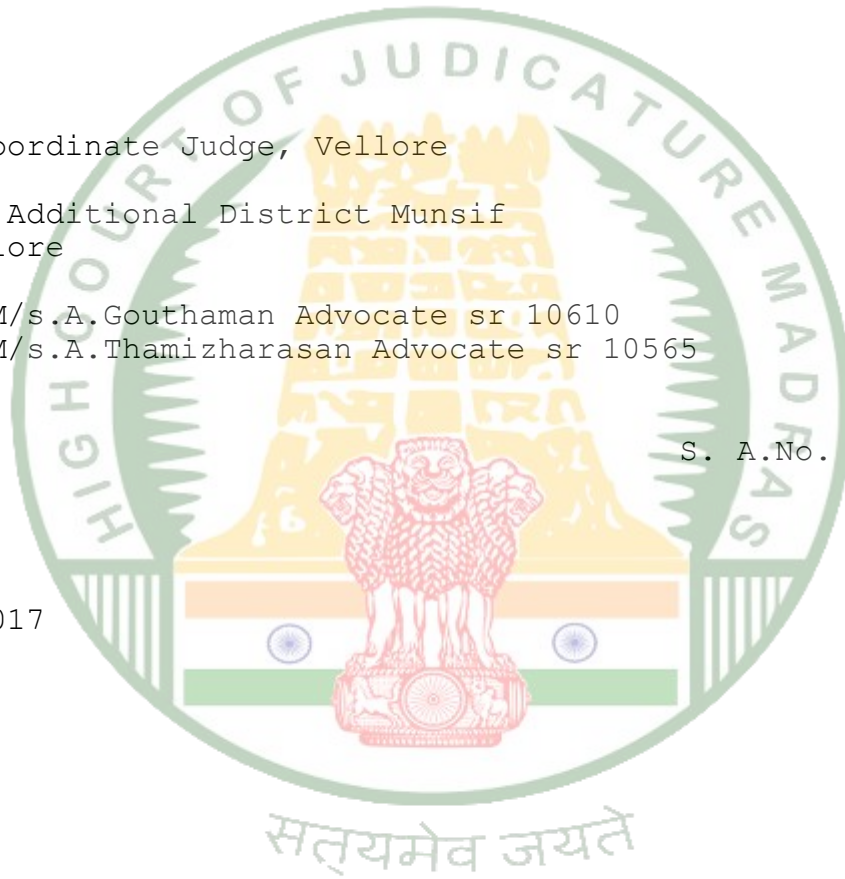
2. The II Additional District Munsif
at Vellore

+1 cc to M/s.A.Gouthaman Advocate sr 10610

+1 cc to M/s.A.Thamizharasan Advocate sr 10565

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