

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.12.2018

Coram

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

Second Appeal No.1120 of 2003

Arulmighu Karivaradharaja Perumal Temple
Rep.by its Executive Officer
PL.Shanmugam

... Appellant/Respondent/
Plaintiff

Vs

1. K.A.Mohammed (Died)
2. K.M.Abdul Hakeem
3. K.M.Abdul Haseem
4. K.M.Jaseema

... Respondents/Appellants/
Defendants

RR2 to 4 brought on record as
legal representatives of the
deceased sole respondent vide
order of court dated 11.09.2018
made in CMP.No.16115 to 16117/2018
in SA.No.1120/2003

Prayer: The Second Appeal is filed under Section 100 of CPC,
against the decree and judgment of the Principal District Judge,
Coimbatore passed in A.S.No.48 of 2002 dated 26.06.2002
reversing the decree and judgment of the II Additional
Subordinate Judge, Coimbatore passed in O.S.No.929 of 1995 dated
18.12.2001.

for Appellant : Mr.R.T.Doraisamy

for Respondents : Mr.P.Siddharth

JUDGMENT

The plaintiff in O.S.No.929 of 1995 on the file of the II
Additional Subordinate Court, Coimbatore is the appellant
herein. The said suit had been filed by the plaintiff, Arulmighu
Karivaradharaja Perumal Temple, represented by its Executive
Officer against the defendant K.A.Mohammed seeking a judgment
and decree directing the defendant to deliver the vacant

possession of the schedule mentioned property and for a declaration that the quantum of rent per month payable by the defendant is Rs. 4735/- and that it should be paid from 01.07.1992 and also for a further direction against the defendant to pay future damages for use and occupation of the suit property till date of delivery of possession.

2. The suit property had been described as building bearing Door.No.40, in T.S.No.1309/2 measuring 3015 sq.ft in Naaz Theatre Road, Coimbatore Town Fort, Coimbatore. This suit had come up for consideration before the II Additional Subordinate Court, Coimbatore and the suit was decreed by judgment and decree dated 18.12.2001. As against the said judgment, the defendant had filed A.S.No.48 of 2002. The said first appeal came up for consideration before the Principal District Court, Coimbatore. By judgment and decree dated 26.06.2002, the appeal was allowed and the judgment and decree of the Trial Court was reversed and the suit was dismissed. Challenging that judgment, the plaintiff had filed the present second appeal. The second appeal had been admitted on the following two Substantial Questions of Law:

"(i) On the facts and circumstances, when the rent was fixed as per Ex.A4 and Government order, was it correct for the lower appellate court to hold that the respondent is not liable to pay rent of Rs.4735/-?

(ii) When the tenancy had come to an end by efflux of time, was it right for the respondent to contend about the legality of the notice issued as per Section 106 of Transfer of Property Act.?"

O.S.No.929 of 1995 (II Additional Subordinate Court, Coimbatore):

3. The plaintiff Arulmighu Karivaradharaja Perumal Temple, represented by its Executive Officer, claimed that the defendant K.A.Mohammed was a tenant of the premises bearing Door.No.40, Naaz Theatre Road, Coimbatore Town Fort, Coimbatore. The land belongs to the temple. The building was leased out to the defendant. There was also vacant space to the west and north side of the building. The defendant was carrying on iron scarp business.

4. It had been stated that the original lease was for non-residential purposes. Thereafter the defendant unauthorizedly and illegally altered the existing structure on the south side and converted the building into a residential portion. It had been claimed that on this one ground alone the defendant is

liable to be evicted. The plaintiff had issued a notice under Section 106 of Transfer of Property Act, 1882. The defendant had received the notice. The plaintiff stated that the defendant was also a chronic default in the payment of monthly rent. He had not paid any rent from 01.11.1992. The accumulated rent as on date of filing the suit was Rs.1,32,580/-. It is under these circumstances, that the suit had been filed seeking the reliefs as stated above.

5. In the written statement, the allegations that the defendant was a tenant and that the rent was Rs.4735/- per month and that tenancy was for non-residential purposes had been denied. It had been stated that the lease was only for the vacant land. The defendant had put up the building. It had been stated that, he had filed an application under Section 9 of the City Tenants Protection Act. The defendant claimed that there was no forfeiture of the lease. The defendant further claimed that the plaintiff cannot unilaterally enhance the rent. The defendant further stated that he and his partner Somasundaram, initially put up a small building and subsequently, further constructions were put up in the vacant site leased out. The defendant was living in a part of the building. The rest of the building was used for his business purposes. It was also stated that the building plan was countersigned by the Executive Officer of the plaintiff temple. In 1978, a further building was put up. The entire building in the said place measures 1440 sq.ft. In 1977, Somasundaram retired from the business and the defendant took over the business. The defendant claimed to be in continuous possession. It had been stated that the plaintiff can claim rent only for the vacant land. The rent was Rs.475/- per month. The defendant also claimed that the notice issued under Section 106 of Transfer of Property Act, 1882 was not proper. The defendant claimed that the suit should be dismissed.

6. On the basis of the above pleadings, the followings issues were framed for trial:

- (i) Whether the defendant was a tenant of vacant land alone?
- (ii) Whether the plaintiff had issued notice in proper form?
- (iii) Whether the plaintiff is entitled for a declaration that the defendant has to pay the monthly rent of Rs.4735/- from 01.07.1992?
- (iv) Whether the plaintiff is entitled for possession of the property?
- (v) To what other relief are the plaintiff entitled to?

7. During trial, the plaintiff examined P.Kanagasabapathi as PW1. The defendant, K.A.Mohammed was examined as DW1. The plaintiff marked Exs.A1 to A7. Ex.A1 was the notice dated 13.08.1994 and Ex.A2 dated 19.08.1994 is the reply. Ex.A3 is the rent receipt given by the defendant dated 16.06.1977. On the side of the defendant. Ex.B1 to B37 were marked. Ex.B1 dated 16.06.1977 is the application given by Somasundaram and Ex.B2 dated 12.05.1977 is the letter sent by the Executive Officer of the plaintiff temple. Exs.B3 to B21 are rental receipts issued by the plaintiff. Exs.B31 to B35 are the property tax receipts and demand notices in the name of the defendant. Ex.B36 was the advocate notice issued by the plaintiff and Ex.B37 is the cover through which the said notice was sent.

8. On the basis of the oral and documentary evidence, the learned II Additional Subordinate Judge, Coimbatore found that the original rental agreement dated 16.06.1977 was for a period of one year alone. The learned Judge also found that under G.O.Ms.No.353 dated 19.02.1999, Ex.A4, the rent had been fixed at Rs.4735/- from 01.07.1992 and also observed that the property was in Coimbatore town. The learned Judge found that the defendant had not paid the rent and had deliberately defaulted in the payment of rent. The learned Judge found that the rent has been fixed at Rs.4735/-. Finally, the learned Judge decreed the suit with costs and directed the defendant to handover the possession within a period of two months.

A.S.No.48 of 2002 (Principal District Court, Coimbatore):

9. The defendant had filed the said first appeal. This first appeal came up for consideration before the Principal District Court, Coimbatore on 26.06.2002. The learned Judge framed points for determination. He reappraised the evidence on record. The learned Judge found that the defendant was in occupation of the property and that he was a tenant. The learned Judge was not convinced with the evidence of PW1, the Executive Officer of the plaintiff temple. It was stated that the house tax receipts stood in the name of the defendant. Under Ex.B1, Somasundaram had requested the authorities to recognize the defendant as exclusive tenant. With respect to the notice, the learned Judge found that the notice dated 13.08.1994 was actually received only on 18.08.1994, and consequently found that 15 days' notice as stipulated under Section 106 of Transfer of Property Act, had not been given. With respect to the quantum of rent at Rs.4735/- per month, it was also stated that the basis of such calculation had not been given. Consequently the learned Judge allowed the appeal primarily on the ground that notice was not issued as contemplated under Section 106 of the Transfer of Property Act, 1882. The appeal was allowed and the suit was dismissed.

S.A.No.1120 of 2003:-

10. Challenging that Judgment, the plaintiff had filed the present Second Appeal. As stated above, the second appeal had been admitted on the following two Substantial Questions of Law:

“(i) On the facts and circumstances, when the rent was fixed as per Ex.A4 and Government order, was it correct for the lower appellate court to hold that the respondent is not liable to pay rent of Rs.4735/-?

(ii) When the tenancy had come to an end by efflux of time, was it right for the respondent to contend about the legality of the notice issued as per Section 106 of Transfer of Property Act.?”

11. Heard arguments advanced by Mr.R.T.Doraisamy, learned counsel for the appellant and Mr.P.Siddharth, learned counsel for the respondents. The plaintiff is the appellant in the second appeal. Pending the second appeal, the respondent who was the defendant died and his legal representatives had been brought on record as respondents 2 to 4. For the sake of convenience the parties will be referred as plaintiff and defendants.

12. The suit in O.S.No.929 of 1995 had been filed by the plaintiff, Arulmighu Karivaradharaja Perumal Temple, represented by its Executive Officer against the defendant K.A.Mohammed seeking a direction to vacate the suit property and for a declaration that the quantum of rent payable was Rs.4735/- per month, payable from 01.07.1992 and also for a direction to pay future damages for use and occupation. The property mentioned in the schedule was building bearing Door.No.40, in T.S.No.1309/2 measuring 3015 sq.ft in Naaz Theatre Road, Coimbatore Town Fort, Coimbatore.

13. It is the claim of the plaintiff that originally, the building was leased out for non-residential purposes for carrying out iron scrap business. The defendant subsequently, unauthorizedly and illegally altered the existing structure and converted it into residential property without the knowledge and consent of the plaintiff. The plaintiff had issued notice under Section 106 of Transfer of Property Act, 1882. This notice had been marked as Ex.A1. Under Ex.A1, the counsel who represented

the plaintiff, under instructions of the plaintiff, had stated that the defendant was the tenant and of the building and appurtenant vacant space to the west and south of the building. It had been stated that the defendant was a chronic default in the payment of rent. He had not paid the rent from 01.07.1992 till 01.07.1994. The total arrears was Rs.1,13,640/-. It had been further stated that the defendant had altered the existing structure on the south and converted it into a residential building. It had been claimed that there has been forfeiture of lease. It had been stated that the tenancy had come to an end by efflux of time. Consequently, it had been stated that since the defendant did not vacate the premises, the lease is being terminated by 31.08.1994.

14. Ex.A1 had been received by the defendant. However, it is the contention of the First Appellate Court that the notice which was issued on 13.08.1994, was received by the defendant only on 18.08.1994 and consequently, 15 days notice which is a pre-requisite under Section 106 of Transfer of Property Act, 1882 was not satisfied. Section 106 of Transfer of Property Act, 1882 is as follows:

"106.Duration of certain leases in absence of written contract or local usage:-(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section(1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceedings is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section(1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such part, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property."

15. However, very unfortunately, the learned First Appellate Judge had not taken into consideration Ex.B37 which is the cover under which Ex.A1 notice had been sent. The original cover had been filed in Court. A perusal of the same shows that it had been posted on 13.08.1994 by Registered Post with Acknowledgment Due. There is an endorsement on the reverse of the cover "Intimation served on 16.08.1994". This has also been signed, evidently by the postman.

16. In (2014) 12 SCC 685, Ajeet Seeds Limited Vs K.Gopala Krishnaih, it had been held as follows:

"10. It is thus clear that Section 114 of the Evidence Act enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. Section 27 of the General Clauses Act gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. It is not necessary to aver in the complaint that in spite of return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business."

Applying the principles laid, I hold that a presumption has to be drawn under section 114 of the Indian Evidence Act, 1872 and under section 27 of the General Clauses Act, 1897, that the notice had been served.

17. I hold that the notice is deemed to have been served on the defendant on 16.08.1994. The postman cannot be expected to search for the defendant and serve the Registered letter. The notice can be issued by the plaintiff only to the address of

the defendant. If the defendant evades to receive the notice, then the plaintiff cannot be found fault with. The postman can deliver the registered letter only when the addressee is available. Otherwise the rules provide that the addressee must collect the letter from the post office. It is for that purpose that the endorsement "intimation served" is noted by the postman.

18. Effectively on 16.08.1994, the defendant had been put on notice that a Registered letter had been issued to him by K.Ravindran, Advocate. If the defendant had failed to collect the letter from the post office even after intimation had been delivered, then the plaintiff cannot be faulted. The defendant, if he actually takes delivery of the letter much later, cannot take advantage of that time gap and plead that he had been served only later. Consequently, the effective date of service is 16.08.1994. From 16.08.1994, 15 days is available in the month of August 1994. Consequently, I hold that the reasoning of the learned First Appellate Court, that notice had not been served in accordance with the provisions of Section 106 of Transfer of Property Act, 1882 cannot be accepted and accordingly that portion of the judgment is set aside.

19. In (2006) 9 SCC 216, Dharam Pal Vs Harbans Singh, it had been held that

"6. Twin requirements of a valid notice insofar as the case at hand is concerned are (i) it should be a 15-day notice i.e. it must give clear 15 days time for the tenant to vacate; and (ii) the notice must expire with the end of the month of the tenancy."

It was further held as follows:

"7.The plea that the notice was insufficient in the sense that it did not give 15 clear days to the tenant to vacate or that the notice did not terminate the tenancy with the expiry of the month of the tenancy, has not been taken in the written statement.

8.The plea as to insufficiency of notice should be deemed to have been waived by the appellant and cannot be allowed to be urged at this stage."

20. The second aspect on which the First Appellate Court interfered with the judgment of the Trial Court was with respect to the demand for the increased quantum of rent. G.O.Ms.No.353 dated 04.06.1999 had been issued by the Hindu Religious and Charitable Endowments Department. In the said Government order it had been stated as follows:

“திருக்கோயில் சொத்தைப் போன்ற சொத்து அதே பகுதியில் தனியார் ஒருவரால் வாடகைக்கு விடப்படும்போது என்ன வாடகை நிர்ணயிக்கப்பட்டுள்ளதோ அதற்கு சமமாக அல்லது குறையாமல் திருக்கோயில் சொத்துக்கும் வாடகை நிர்ணயம் செய்யப்படுவதே பொதுமக்களால் ஏற்றுக் கொள்ளக்கூடிய ஒன்றாகும்”

A subsequent Government order had also been issued in G.O.Ms.456 dated 09.11.2007. By this Government order it had been provided:

“அரசாணை (நிலை) எண்.353, தமிழ் வளர்ச்சி-பண்பாடு மற்றும் அறநிலையத்துறை நாள் 04.06.1999, 01.11.2001 நாளிலிருந்து நடைமுறைப்படுத்தப்பட்ட நிலையில், இதனை 01.11.2001 ஆம் நாளிலிருந்து கணக்கிடலாம் என்றும், அதன்பிறகு அவ்வாறு நிர்ணயம் செய்யப்பட்ட வாடகையுடன் 15 விழுக்காடு கூடுதல் செய்து 01.07.2004-லிருந்து கணக்கிடவும், அதன்பின்னர் ஒவ்வொரு 3 ஆண்டுகளுக்கு ஒருமுறை 15 விழுக்காடு கூடுதல் அளவில் வாடகையை உயர்வு செய்து நிர்ணயிக்கலாம் என்றும்”

21. The rent fixed by the plaintiff is based on the guidelines in accordance with the Government order taking into consideration the market value of the land and building. The Court cannot enter into a discussion over the quantum of rent. It is for the authorities to fix the same. When the authorities have fixed the rent at Rs.4735/-, the tenant is under a liability to pay that rent every month. In this connection, it is seen from the records that the defendant had also been very irregular in payment of rent. The rental receipts had been filed as Exs.B3-B21. To examine as sample a few, it is seen that Ex.B3 dated 19.05.1977 is a rent receipt for Rs.1000/-. Ex.B4 dated 16.06.1977 is a rent receipt for Rs.630/-. Ex.B5 dated 16.06.1977 is another rent receipt for Rs.3810/-. Ex.B6 dated 26.11.1977 is a rent receipt for 210/-. Exs.B7-B12 are also rent receipts for Rs.210/- each. It must be pointed out Ex.B11 is dated 08.04.1980 and Ex.B12 is dated 29.09.1986. A perusal of the dates of the rental receipts make it clear that the defendant had been very irregular in the payment of rent. Ex.B15 is dated 12.01.1990 is a rent receipt for Rs.630/-. Ex.B17-B21 are the receipts for rent of Rs.475/- but they are not for successive monthly rents. Ex.B19 is dated 07.01.1992 and Ex.B20 is dated 08.11.1992. It is thus seen that the defendant had always been very irregular in the payment of rent.

22. One other aspect was taken up for consideration namely, whether the defendant was entitled to the protection under the City Tenants Protection Act. The law is settled. In 1998 TNLJ 218, Sri Balachandra vinayagar Temple rep. by its Hereditary

Trustee D.S.Velayudham Vs. S.Deivasigamani, this Court had very clearly stated that the tenant is not entitled to a protection under the City Tenants Protection Act, in view of the amendment Act 2 of 1996. By Section 2 of the amendment Act, religious institutions like temple came under the exemption clause of the main Act. By Section 3 of the Act, pending proceedings were held to be abated. Consequently, the defendant cannot take shelter under the said Act.

23. Section 34-A of the Hindu Religious and Charitable Endowments Act, 1959 relates to fixation of lease rent. The said provision is as follows:

"34-A. Fixation of lease rent:- The lease rent payable for the lease of immovable property belonging to, or given or endowed for the purpose of, any religious institution, shall be fixed by a committee consisting of the Joint Commissioner, the Executive Officer or the Trustee or the Chairman of the Board of Trustees, as the case may be, of the religious institution and the District Registrar of the Registration Department in the district concerned taking into account the prevailing market rental value and the guidelines, as may be prescribed and such lease rent shall be refixed in the like manner once in three years by the said Committee. "

In the present case also, the rent had been fixed only in accordance with the guidelines by the authorities. The rent had been determined on the basis of the guideline value and on the basis of the Government orders mentioned above. Consequently, I find no ground to consider favourably the case of the defendant herein.

24. It is seen that the first substantial question of law related to the rent which was fixed as per Ex.A4 Government order. I hold that the Lower Appellate Court was not correct in holding that the respondent was not liable to pay the rent of Rs.4735/- per month. As stated above not only is the Government order the basis for the fixation of rent, but also Section 34-A of the Hindu Religious and Charitable Endowments Act, 1959.

25. The second substantial question of law framed that was when the tenancy had come to an end by efflux of time, whether the defendant can raise question of legality of notice. It is seen the suit was presented on 09.12.1994. The notice in Ex.A1

had been issued on 13.08.1994. Intimation of the notice was delivered on 16.08.1994. The defendant was called upon to vacate the possession by 13.08.1994. The suit was filed on 09.12.1994. I hold that the necessary requisites under section 106 of the Transfer of Property Act, 1882 had been complied with. I have therefore no hesitation in setting aside the judgment and decree of the First Appellate Court. The judgment and decree of the First Appellate Court in A.S.No.48 of 2002 dated 26.06.2002 is set aside. The judgment and decree of the Trial Court in O.S.No.929 of 1995 dated 18.12.2001 is confirmed. The Second Appeal is allowed, with costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

smv

To

1. The Principal District Judge,
Coimbatore
2. The II Additional Subordinate Judge,
Coimbatore
3. The Section Officer
VR Section,
Madras High Court.

+1 cc to Mr.R.T.Doraisamy, Advocate Sr.No.83135
+1 cc to Mr.P.Veena Suresh, Advocate Sr.No.83793

S.A.No.1120 of 2003

KJ(CO)
CSL/01.03.2019