

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No.487 of 2014
and
CMP.No.6499 of 2018

1. P.Srinivasan (deceased)
2. P.Bhavani
3. S.Tharun Kumar
4. P.Rani

Appellants/Defendants

(Appellants 2 to 4 recorded as Lrs of the deceased sole appellant vide order of Court dated 26.10.2017 made in CMP.No.7908 of 2017 in S.A.No.487 of 2014)

Vs

Sri Sundara Vinayagar

Sri Selva Vinayagar

Sri Anjaneyaswamy Devasthanam

Represented by its Chairman B.Balaji

No.87, Royapettah High Road, Mylapore,
Chennai 600 004.

... Respondent/Plaintiff

Substituted vide order of Court dated 20.12.2017 made in CMP.No.22291 of 2017 in SA.No.487 of 2014

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 13.11.2013 made in A.S.No.266 of 2012 on the file of the XV Additional Judge, City Civil Court, Chennai reversing the Judgment and Decree dated 03.01.2012 made in O.S.No.7329 of 2010 on the file of the XVIII Assistant Judge City Civil Court, Chennai.

For Appellants : Mr.K.S..Gnanasambandam

For Respondent : Mr. Prakash Goklaney
For Y.Rajeevi

JUDGMENT

Challenge in this second appeal is made to the Judgment and Decree dated 13.11.2013 made in A.S.No.266 of 2012 on the

file of the XV Additional Judge, City Civil Court, Chennai reversing the Judgment and Decree dated 03.01.2012 made in O.S.No.7329 of 2010 on the file of the XVIII Assistant Judge City Civil Court, Chennai.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for recovery of possession, damages and costs.

4. The case of the plaintiff/respondent, in brief, is that the plaintiff is the temple and owner of the vast extent of lands in and around Mylapore including the property bearing Door No.77, Mundakanni Amman Koil Street, Chennai 4 measuring about 2000 sq.ft and one Srinivasan since deceased who is the defendant/appellant, is the tenant in respect of the said land on a monthly rent of Rs.60/-. The defendant's grandfather Govindasamy was originally the tenant under the temple for running a Iron Smith Shop and that the superstructure over the said land had been put up by the defendant's grandfather. Subsequent to the death of the said Govindasamy, the defendant being the grand-son of Govindasamy, running the said business and thus, had become the tenant under the plaintiff temple. The defendant had been paying the rent at the rate of Rs.60/- p.m. for the past three decades. On considering the fact that the rate of rent prevailing in the said locality is much more than the present rent being paid by the defendant, the plaintiff has called upon the defendant to pay the rent at the prevailing rate of the rent in the locality. However, the defendant has been paying only the meager rent of Rs.60/- p.m. for an extent of about 2000 sq.ft. Now in consonance with the prevailing rates of rent in the said locality and also market value of the land, the defendant is liable to pay the rent at Rs.7,000/- p.m. In view of this, a legal notice has been issued on 20.05.2010 terminating the tenancy of the defendant and also calling upon the defendant to quit and deliver vacant possession of the property otherwise, proceedings will be initiated for ejectment and to pay damages at the rate of Rs.7,000/- p.m. for use and occupation of the property. The said notice has been belatedly replied by the defendant through his counsel on 22.06.2010, putting forth unsustainable and untenable allegations and however, he has offered to pay the rent at Rs.120/- p.m. On 30.05.2010 the plaintiff's counsel has sent a rejoinder to the defendant's counsel repudiating the allegations made by the defendant and also did not accept the offer of the defendant to pay Rs.120/- p.m. as rent. Since the plaintiff temple is a public religious temple exempted from the provisions of Rent Control Act, and it is entitled to file a suit for ejectment before the Court, the present suit for possession and also for damages for use and occupation at the rate of Rs.7,000/- p.m. was filed.

5. The case of the defendant, in brief, is that the defendant was alone targetted by the plaintiff by launching vexatious litigation singling him out, while the other tenants are left untouched and undisturbed for obvious reasons. The very filing of this suit is a product of malafides and the allegations are devoid of merits and diametrically opposed the statutory provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959 (in short "HR&CE Act") and the rules issued thereunder. The plaintiff owns vast extent of lands is suffice to show that they deal with a large number of tenants and in order to demonstrate that the trustees of the plaintiff Devasthanam follow the same yardstick for all tenants, the plaintiffs are hereby called up to render the detailed statement showing the names of the tenants; length of the tenancy; advance received from the tenants; the exact area of occupation with the tenants; the material particulars of the rent initially paid and presently collected from various tenants. The entire superstructure was constructed by the defendant's grandfather which has been periodically renovated, repaired and maintained at the cost and expenses of the defendant's grandfather, father Padmanaban @ Rajendran and the defendant respectively. After having failed in the litigation in O.S.No.2209 of 2001 which was dismissed on 09.03.2005, the trustees of the plaintiff Devasthanam maliciously issued a lawyer notice dated 20.05.2010 demanding fabulous, fanciful, exorbitant, huge and rack rent of Rs.7,000/- p.m. without adhering to the procedure established by law under the statute. The notice was issued only to wreck vengeance on the defendant by all means and ways. The notice and the present suit is a produce of frustration and spite. The defendant caused the lawyer's reply dated 22.06.2010 stating the true and correct facts and real position. An untenable and unsustainable rejoinder dated 30.06.2010 was sent, immediately followed by the present vexatious suit. As per his undertaking to pay double the monthly rent a sum of Rs.120/- p.m., from the month of September 2010, was promptly and regularly paid by the defendant, which is received by the plaintiff. The plaintiff is not entitled to demand huge and exorbitant rent at the whims and fancies of the trustees and they are bound to follow the statutory provision under section 34-A of the HRCE Act and the amendment in Tamil Nadu Act 10 of 2003 before initiating the demand for fair rent. The defendant has got the right of appeal to the authority and revision to the Hon'ble High Court. The present business carried on by the defendant is the only source of income for the existence, survival and sustenance of himself and his big family. Almost century old business established by the grandfather and now continued by the defendant cannot be crushed, ruined and thrown into winds by the trustees of the plaintiff Devasthanam and they have no vested legal right to

indulge in arbitrary and highly discriminatory activity to destroy the defendant. It is also equally inhuman to target only one tenant and harass the tenant. The notice dated 20.05.2010 purporting to terminate the tenancy ending with June 2010 is illegal, unlawful and opposed to law laid down by the Hon'ble Court and invalid in the eye of law. The plaintiff is the public religious temple is suffice to prove that it is governed by Tamil Nadu Act 22 of 1999.

6. In support of the plaintiff's case, PW1 was examined and Ex.A1 to Ex.A6 were marked. On the side of the defendant, DW1 was examined and Exs.B1 to B4 were marked.

7. The trial Court, on appreciation of the materials placed and the submissions made on both side, came to the conclusion that since the defendant has been in the suit property for nearly 70 years and superstructure was constructed by the defendant and the plaintiff is not an individual person, but only a religious institution, at this situation the plaintiff has to state proper reason for eviction. It was also held that Ex.A1 and Ex.A3 are not proper notices and there is no evidence to say that fixing of rent at Rs.7,000/- per month is a fair one and there was no demand for payment of fair rent, which PW1 himself has admitted stating that they intended only to vacate the defendant. Further, Ex.A5 also proves the same. For the above stated reasons, the trial Court dismissed the suit as the plaintiff is not entitled for recovery of possession and damages.

8. Against the said judgment passed by the trial Court, the respondent/plaintiff preferred an appeal in A.S.No.266 of 2012. On appeal, the first appellate Court, after perusing the records, evidences and submissions made by both the counsels, came to the conclusion that it is not necessary to state any reason for eviction of the tenant and therefore held that the notice for eviction issued under Section 106 of the Transfer of Property Act by the plaintiff is proper. Accordingly, the First Appellate Court interfered with the judgment of the lower Court and decreed the suit. While decreeing the suit, the First Appellate Court issued a direction to pay a sum of Rs.120/- as damages till the date of handing over the possession by the defendant to the plaintiff, and the finding of the lower Court that the notice issued under Section 106 of Transfer of Property Act should specify the reason was set aside. Thus the First Appellate Court decreed the first prayer by passing a judgment and decree for eviction. As far as the second prayer is concerned, compensation is awarded as Rs.120/-,

9. The appellant/defendant, who is the tenant in the present suit, aggrieved by the judgment and decree passed in A.S.No.266

of 2012 by the First Appellate Court, preferred the present second appeal.

10. The second appeal has been admitted and at the time of admission, the following substantial questions of law were formulated for consideration in this second appeal:

1) Whether the respondent's suit for eviction is maintainable on the ground of low rent?

2) Whether the notice u/s. 106 of T.P. Act holds good, even after the respondent is receiving the rent?

3) Would not waiver and resjudicata apply in this case?

4) Is it not the HR & CE Board, the Competent Authority to seek evicting a tenant?

5) Is not the damages claimed is exorbitant and no question of damages would arise in this case?

11. The appellants have filed separate Application No.6499 of 2018 for framing the additional question of law, however after hearing the parties, this Court is inclined to allow the said application and the following additional substantial questions of law were also formulated as question of law No.6, 7 and 8.

6. Whether the trial Court judgment is correct or the first appellate Court?

7. Whether Section 34-A of the HRCE Act applicable to this case or not?

8. Is there no waiver of termination as the rent is accepted?

12. The learned counsel appearing for the appellants advanced his argument that the appellants have been occupying the property of 2000 sq.ft for the past 70 years and paying the rent of Rs.60/- to the plaintiff for three decades and the same was revised to Rs.120/-. The trial Court rightly dismissed the suit on the ground that the notice for eviction under Section 106 of Transfer of Property Act by the plaintiff did not contain the reason for eviction. However, the First Appellate Court considered the aspect that there is no necessity to state any specific reason for eviction under Section 106 of Transfer of Property Act. However, they have been directed to pay a sum of Rs.120/- as compensation for occupying the property until the time of eviction as already agreed by the defendant who is paying a sum of Rs.120/- at the time of filing the suit till the date of appeal. Therefore, the appellants preferred the appeal against the judgment and decree passed by the First Appellate Court by reversing the judgment and decree passed by the trial Court.

13. The learned counsel for the appellants contended that in terms of Section 34-A of HR&CE Act that the HR&CE committee consisting of Joint Commissioner and others has to decide the rent and therefore it is not the authority of the plaintiff/respondent to fix any rent as alleged and they cannot fix any rent as claimed in the suit. The plaintiff claimed Rs.7,000/- for damages for occupying the property from the date of filing the suit till the date of eviction. Though the learned counsel submitted that the appellants have agreed to pay a sum of Rs.7,000/- as rent p.m. the appellants questioned the determination of the said sum of Rs.7,000/- as rent fixed by the plaintiff. Further he contended that the notice issued under Section 106 of the Transfer of Property Act will not apply to the defendant, since only the vacant land was leased out to them therefore in that vacant land the defendants have constructed a building, so Section 106 of Transfer of Property Act will not be applicable. However, he states that the Madras City Tenants' Protection Act, 1921 (in short "CTP Act") will apply. Under the CTP Act as the defendants are tenants and he is entitled to purchase the property, since they are occupying the property for nearly 70 years. However, though the learned counsel made a submission that only the CTP Act is applicable, the appellants/defendants have not made any application under the CTP Act to purchase the property, which fact the learned counsel has admitted.

14. Further the learned counsel invited attention of this Court that under Section 20 of the HRCE Act, the suit property, being the temple property, permission should have been obtained for the purpose of leasing out the property to the tenants. According to him, no such permission was obtained and therefore no damages can be claimed as demanded by the plaintiff though the defendants came forward to pay a sum of Rs.7,000/- as damages along with all arrears as on today. The learned counsel also stated that notice cannot be issued under Section 106 of the TP Act. Therefore, the learned counsel also referred Section 6 (18) of the HR&CE Act. Therefore according to the appellants, notice issued under Section 106 of T.P.Act is invalid and the present appeal has to be allowed and the judgment and decree passed by the First Appellate Court is liable to be set aside.

15. The learned counsel also advanced his arguments throughout his submission that the suit is not maintainable since notice was issued under Section 106 of the T.P.Act and even assuming that if the suit is maintainable, the rent should have been fixed only by the committee, as stated in Section 34-A of HR&CE and since the same was not fixed, the plaintiff do not have any right to file the suit for eviction and claim damages. When this plea was made by the learned counsel for the appellants/defendants, this Court put a question stating that whether for the purpose of paying a sum of Rs.120/- either as

rent or as damages, whether any permission was granted under Section 34-A of HR&CE. The learned counsel said no such permission was granted. However, still he insisted for any revision that necessary permission should be obtained under Section 34-A of HRCE alone. The learned counsel appearing for the appellants/defendants placed reliance upon the following judgments:-

1. Reported in 2011 (3) MWN (Civil) 598 in the case of M.Sam and another Vs. Sanjeevi Chettiar, Hereditary Trustee of Sri.Vedavinayagar Temple, Manjakuppam, Cuddalore.

2. Reported in CDJ 1982 MC 355 in the case of N.Balasubramania Iyer Vs Sri Ponneswari and Muthu Kumaraswamy Devasthanam

3. Reported in CDJ 1965 MHC 303 in the case of Mohamed Hussain Rowther Vs T.M.Tirupathi Chettiar (died) & others.

16. Per contra Mr. Prakash Goklaney, the learned counsel for the plaintiff/respondent advanced his arguments stating that the CTP Act will not be applicable in the present case because proviso (f) to Section 1(3) of the CTP Act relates to certain religious institution exempts them from the applicability of CTP Act. The plaintiff has issued notice under Section 106 of the Transfer of Property Act specifically for the purpose of eviction and further he contended that there is no need to specify any reason for eviction in the notice issued under Section 106 of T.P.Act. The T.P.Act also specifically state that for the purpose of demand for eviction only the party has to issue notice and there is no need for mentioning specific reason for eviction. With regard to the receiving of Rs.120/- as rent consequent to the filing of the suit, the learned counsel argued that since for filing of the suit the plea specifically raised by the plaintiff was only to pay damages for occupying the property till the date of eviction. Therefore the same cannot be construed as a rent and for allowing the defendant to plea of waiver. Therefore, the learned counsel for the plaintiff/respondent has made it clear that they have not received any rent but they have received as damages for occupying the property by the tenant.

17. With regard to the applicability of the Section 34-A of HRCE Act the learned counsel advanced his argument that it is not the business of the tenant to fix the rent or how to fix the rent for him and it is the duty of the plaintiff. Whatever amount fixed by the plaintiff, they are bound to pay. The rent also paid by the defendant. Under such circumstances, the plea that the HRCE should have fixed the rent is not proper. Furthermore, the plaintiff filed a suit for eviction of claiming damages from the date of filing the suit till the date of eviction alone. Therefore, the question of applicability and questioning the non obtaining of the permission under Section

34-A before claiming any damages is not proper and not correct. He also insisted that in such a case, the defendant should have obtained for similar permission from the HRCE Department for paying the rent of Rs.60/- or for Rs.120/-, which he has not obtained. Therefore, the contentions made by the learned counsel for the appellants is unacceptable and the plaintiff is entitled to evict the defendant from the property on this issue alone.

18. This Court perused all the materials on record and the submissions made by the learned counsels on both side.

19. Proviso (f) to Section 1 (3) of the CTP Act relates to certain religious institution exempts them from the application of CTP Act. The said provision reads as follows:-

"1. Short title and application - (1) This Act may be called the Madras City Tenants' Protection Act, 1921,

(a).....

(b).....

(3) This Act shall apply-

Provided that nothing contained in this Act shall apply to tenancies of land owned.

(f) by any religious institution or religious charity belonging to Hindu, Muslim, Christian or other religion.

Explanation - For the purpose of this clause -

(A) "religious institution" means any -

(i) temple, (ii) math, (iii) mosque, (iv) church; or (v) other place by whatever name known,

which is dedicated to, or for the benefit of, or used as of right by, any community or section thereof as a place of public religious worship;

Note: The definition is a restrictive definition excluding any other category".

20. Therefore, the present plaintiff being the religious temple, the proviso (f) to 1(3) is clearly applicable. Hence, the provisions of CTP Act for the present case will not apply and therefore the contention of the appellants that CTP applicable is not tenable. Accordingly this Court has no hesitation to hold that CTP is not applicable for the present case.

21. The plaintiff issued the notice under Section 106 of the TP Act for the purpose of eviction and for damages. Since the property is a temple property and suit property of the plaintiff, the question of application of both Rent Control Proceedings and the application of the City Tenants' Protection Act does not arise. In the present case, the plaintiff issued notice duly under Section 106 of TP Act. The relevant provisions

under Section 106 of T.P.Act is extracted 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".

22. As per the provisions of 106 of T.P.Act, the plaintiff issued proper notice and the said notice is valid and there is no necessity to specify any specific reason for eviction of the property. Therefore the learned counsel for the appellants contention cannot be accepted and not tenable and the same is rejected and in this regard this Court upholds the view of the First Appellate Court.

23. In the present case, the suit was filed for the purpose of eviction and for damages of Rs.7,000/- per month from the date of filing the suit and until the date of eviction. Therefore, it is clear that from the date of filing the suit the stand of the plaintiff is only to claim damages for the occupation of the property by the defendant and it is not the intention of the plaintiff to receive the rent so that to waive its right to eviction of the tenant from the premises. Therefore the question of waiving the right by the plaintiff by receiving a sum of Rs.120/- even after filing of the suit does not arise, since it is categorically pleaded in the plaint for decree for payment of damages for occupying the property from the date of filing the suit till the date of handing over the possession hence the plea of waiver does not arise. Therefore, the suit for eviction is maintainable under T.P.Act and the question of receiving the rent after filing of the suit does not arise. Hence, the plaintiff has received only for damages for occupying the property by the defendant.

24. It is the contention of the defendant that the eviction was made in the present suit on the basis of low rent. But, on the other hand, the plaintiff stated that it is not that the suit was filed on the basis of the payment of low rent, but after issuing proper notice under Section 106 of T.P. Act, they filed the suit for eviction since the defendant failed to vacate the premises after the receipt of notice under Section 106 of TP

Act. The judgments relied upon by the learned counsel for the appellant are not applicable for the case in hand.

25. The plaintiff has already filed a suit in O.S.No. 2209 of 2001 for the purpose of evicting the tenant and the said suit was dismissed.

26. In the said previous suit O.S.No.2209 of 200, it was held that after issuing notice under Section 106 of TP Act the plaintiff received the rent and therefore the suit was dismissed on the basis that the plaintiff waived its right for eviction since it has received the rent subsequent to the filing of the suit. But in the present case a fresh notice was issued under Section 106 of TP Act, hence fresh cause of action arose. Therefore the plaintiff is entitled to file fresh suit on the new notice for eviction issued under Section 106. Therefore this Court is of the view that there is no res judicata of filing the present suit, and therefore no interference is called for in the judgment passed by the First Appellate Court and this Court upholds the views of the First Appellate Court in this regard.

27. With regard to the fixation of the damages, as claimed by the plaintiff, the trial Court totally rejected payment of any compensation by the defendant to the plaintiff. On the other hand, the First Appellate Court held that the defendant to pay Rs.120/- as damages from the date of filing the suit till the date of vacating the premises. However, the learned counsel for the defendants categorically made it clear that the defendants are willing and ready to pay a sum of Rs.7,000/- as rent. When the learned counsel came forward and made submission that the defendants are ready to pay the marketable value of rent for Rs.7,000/- as claimed as damages by the plaintiff, this Court is of the view that ordering to pay damages for Rs.120/- is not proper. Further he has also filed the application for accepting Rs.7,000/- as rent p.m. Though this Court is not agreed to permit the defendants to continue as a tenant in the suit property for a sum of Rs.7,000/- or any other amount as agreed by the defendant, this court is of the view that since the tenant himself ascertained market value and fixed the rent as Rs.7,000/- it would be proper to fix Rs.7,000/- as damages for occupying the property from the date of filing the suit till the date of evicting the property.

28. Though the plaintiff has not preferred any appeal seeking to enhance the damages awarded in the judgment and decree of the First Appellate Court on the basis of the aforesaid discussion, this Court in the interest of justice and considering the fact that the respondent is a public religious temple by invoking suo mottu power conferred on the appellate Court under order 41 rule 33 of CPC, this Court is inclined to award the damages at Rs.7,000/- per month from the date of filing the suit till the date of vacating the premises.

29. Therefore while confirming the judgment and decree passed by the First Appellate Court the damages ordered by the First Appellate Court alone is enhanced from Rs.120/- p.m. to Rs.7,000/- p.m. and accordingly, the appellants/defendants are directed to pay damages of Rs.7,000/- p.m. to plaintiff from the date of filing the suit till the date of delivering vacant possession of the property and the appellants/defendants shall vacate the premises within a period of three months from the date of the judgment and decree made ready. Accordingly the substantial questions of law No.1 to 8 are answered as against the appellants.

30. In the result, the Second appeal is dismissed. No costs. Connected miscellaneous petition is also closed.

dpq

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The XV Additional Judge,
City Civil Court,
Chennai
2. The XVIII Assistant Judge,
City Civil Court,
Chennai.
3. The Section Officer,
V.R.Section,
High Court, Madras - 104.

+3CCs Mr.K.S.Gnanasambandam, Advocate, SR.NO.863 & 868.

+6CCs M/s.Y.Rajeevi, Advocate, SR.NO.914

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