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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.02.2019

PRONOUNCED ON : 27.03.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1560 of 2005

Sri Padaleeswarar Devasthanam
Thiruppapuliyur
represented by its Executive Officer
Sannathi street
Thiruppapuliyur

...Appellant/Plaintiff

Vs.

G.Ramesh

...Respondent/Defendant

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.No.38 of 2005 dated 28.07.2005 on the file of I Additional Subordinate Court, Cuddalore confirming the judgment and decree made in O.S.No.234/2004 dated 28.04.2004 on the file of Additional District Munsif Court, Cuddalore.

For Appellant : Mr.K.Chandrasekaran

For Respondents : Mr.Kinston Gerold
for M/s.S.K.Rakhunathan

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 28.07.2005 passed in A.S.No.38 of 2005 on the file of the I Additional Subordinate Court, Cuddalore confirming the judgment and decree dated 28.04.2004 passed in O.S.No.234 of 2004 on the file of the Additional District Munsif Court, Cuddalore.

2. For the sake of convenience, the Parties are referred to as per their rankings in the trial Court.



3. Suit for arrears of rent, recovery of possession and for permanent injunction.

4. The case of the plaintiff, in brief, is that the suit property belongs to the plaintiff's devasthanam and the same was rented to the defendant's father A.Govindarajulu Chettiar on a monthly rent of Rs.100/- by way of a registered lease deed dated 12.02.1975 for the period commencing from 01.12.1974 and ending with 30.06.1997. The rent is payable on the 5th of every month. After the expiry of the abovesaid lease period, the abovesaid A.Govindarajulu Chettiar had been occupying the suit property as the tenant holding over and he died about 10 years ago and thereafter, his son, namely, the defendant continued to be in the possession of the suit property and the defendant has not paid the rent for the period from 01.05.1996 to 30.06.1996, 01.07.1996 to 30.06.1997 and 1.07.1997 to 30.06.1998 and the rent payable from 01.07.1997 has been increased to Rs.1,500/- per month from Rs.350/ per month, the previous rent, and accordingly it is stated that for the abovesaid period, the defendant is liable to pay the rent, in toto, amounting to Rs.22,900/- and the defendant has paid Rs.1,050/- on 08.01.1998, Rs.5,000/- on 23.04.1998 and Rs.2,000/- on 30.04.1998, totally Rs.8,050/- and still has arrears of Rs.14,850/- as on 30.06.1998. That apart, in the rent deed, it has been specifically stipulated that the tenant should not effect any alteration in the suit property and contradicting the same, the defendant had started dismantling the construction in the suit property about three days back and trying to alter the same into a reinforced concrete, which he is not entitled to do so and hence, according to the plaintiff, it has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant is that, after admitting the plaintiff's title to the suit property, would put forth the contention that the suit property was leased to his grandfather Arunachala Chettiar and since then the suit property has been in the possession and enjoyment of Arunachala Chettiar, his father and thereafter he has been continuing as the tenant under the plaintiff, accordingly, his case is that, for the past three generations, the suit property has been in his possession and disputed the claim of rent to the suit property made by the plaintiff at the enhanced rate and according to the defendant the monthly rent has been fixed lastly at Rs.350/-, and beyond that, the plaintiff is not entitled to seek the enhanced rent as claimed in the plaint and in particular, the plaintiff cannot unilaterally enhance the rent and contend that the same has not been paid by the defendant. As regards the claim of enhanced rent, it is stated that the defendant has not been served with any notice by the plaintiff and therefore, the defendant is not liable to pay the enhanced rent as put forth in the plaint.



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According to the defendant, he is liable to pay the rent at the rate of Rs.350/- per month and therefore, there is no cause of action for the plaintiff to institute the suit on the footing that the defendant had not paid the rent as demanded by the plaintiff and is in arrears of rent. Further according to the defendant, inasmuch as the construction put up in the suit property got dismantled on account of its old age and on account of the leakage in the building, he had been necessitated to effect the repairs in the building after duly intimating the executive officer of the plaintiff's devasthanam and accordingly he had endeavoured only to put up renovation work in the suit property and according to him, the reconstruction was orally permitted by the plaintiff and therefore, the plaintiff cannot complain that he has put up the reconstruction work in the suit property on his own without intimation to the plaintiff. It is also put forth by the defendant that the plaintiff is not entitled to recover the possession of the suit property as there has been no proper termination of tenancy and accordingly, prayed for the dismissal of the plaintiff's suit.

6. In support of the plaintiff's case P.Ws.1 and 2 were examined and Exs.A1 to A8 were marked. On the side of the defendants D.W.1 was examined and Ex.B1 to B4 were marked. Exs.C1 and C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the courts below were pleased to dismiss the plaintiff's suit. Impugning the same, the present second appeal has been laid by the plaintiff.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

"1. Whether the lower court is right in dismissing the suit on the ground that there is no proof of arrears of rent especially when the suit is for ejection under Transfer of Property Act and not one arising under Rent Control Act?

b. Has the court below erred in not applying Section 111 of the Transfer of property Act where no notice is required when the lease determined by efflux of time is proved by Ex.A2?

c. Is the lower court is right in dismissing the suit especially on non issuance of notice as



there is a contract under Ex.A2 whereby the respondent has waived the protection under Section 106 of the Transfer of Property Act.?"

9. It is not in dispute that the suit property belongs to the plaintiff's devasthanam. It is also not in dispute that the defendant is in the occupation of the suit property as a tenant holding over under the plaintiff's devasthanam. Materials placed on record go to show that defendant's father A.Govindarajulu Chettiar has been in the occupation of the suit property as the tenant under the plaintiff's devasthanam. With reference to the abovesaid facts, the rent deeds entered into between the plaintiff and defendant's father dated 12.02.1975 has been marked as Ex.A1. The rent deed entered into between the plaintiff and the defendant dated 05.02.1986 has been marked as Ex.A2. On a perusal of Ex.A1 rent deed, it is evident that the abovesaid deed had been entered into only for a specific period from 01.12.1974 to 30.06.1997. Similarly the rent deed marked as Ex.A2 also stipulates only for a particular period ranging from 01.10.1985 to 31.12.1988. Apart from the abovesaid two rent deeds, no other rent arrangement had been projected by the plaintiff as such. However, the defendant had come forward with two rent deeds dated 25.02.1932 and 07.07.1937 marked as Exs.B4 and B4. However, in my considered opinion, the abovesaid rent deeds, would not, in any manner, be useful to determine the controversy involved between the parties as such. Furthermore, when the defendant feigns complete ignorance about the rent deeds projected by him and marked Exs.B3 and B4, in such view of the matter, the abovesaid documents would not be useful to settle the controversy involved between the parties in the present matter as such.

10. On a perusal of the terms of Exs.A1 and A2 rent deeds, it is evident, as abovenoted, they had been entered into between the parties concerned only for a specific period. Further on a perusal of the terms contained in the abovesaid rent deeds, it is evident that the defendant's father as well as the defendant had agreed to pay the rent to the plaintiff's devasthanam regularly on or before 5th of every succeeding month and also undertaken that if they fail to pay the rent as promised, they are liable to be evicted from the suit property. That apart, there are clear recitals contained in both the documents that after the period of lease specified in the document, both the defendant's father as well as the defendant under Exs.A1 and A2 respectively, had accepted that the plaintiff is entitled to evict them from the suit property without issuing any termination notice and thus it is seen that both the parties are fully conscious and aware that inasmuch as the abovesaid rent deeds had been entered into between them for a specific period, accordingly, it has been accepted by the defendant's father as



well as the defendant under Exs.A1 and A2 respectively that the plaintiff is entitled to secure the possession of the suit property from them after the expiry of the lease period without issuing any notice determining their tenancy as required by law. Therefore, as rightly put forth by the plaintiff counsel, in the light of the abovesaid recitals put in specifically in the abovesaid rent deeds, there is a contract to the contrary between the parties and accordingly, it is evident that on that basis, the plaintiff would be entitled to secure the possession of the suit property from the defendant without determining the tenancy as required by law. In addition to that when the abovesaid rent deeds had been entered into between the parties for a specific period, in such view of the matter, as per section Section 111(a) of the Transfer of Property Act, when the lease of immovable property determines by efflux of time limited thereby, there is no need on the part of the plaintiff to determine the lease of the defendant by giving a quit notice as provided under Sections 106 or Section 116 of the Transfer of Property Act. Section 106 of Transfer of Property Act reads as follows:

106. Duration of certain leases in absense 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 moth, terminable, on the part of either lessor or lessee, y 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 proceeding 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 party, 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.

On a perusal of the provisions contained in the abovesaid Section, it is evident that the lease of immovable property is required to be terminated by issuing a notice only in the absence of a contract or local law or usage to the contrary. In the light of the abovesaid legal position, when both under Exs.A1 and A2, the parties thereto had agreed for the abovesaid rent deeds being entered only for a specific period as recited therein and accordingly both the defendant's father as well as the defendant, under the abovesaid rent deeds, had agreed that the plaintiff is entitled to recover the possession of the suit property on the expiry of the lease period without determining the tenancy as such, in such view of the matter, when there is a contract to the contrary with reference to the issuance of quit notice between the parties and when the parties had agreed to waive the quit notice and thereby enabled or entitled the plaintiff to seek the recovery of the possession of the suit property from the lessee on the expiry of the lease period without issuance of any quit notice, in such view of the matter, the defendant cannot be allowed to content that the plaintiff is not entitled to recover the possession of the suit property without validly terminating his tenancy as provided under law.

11. The plaintiff has complained that the defendant is not regular in the payment of rent accordingly keeping in arrears of rent over a period of time without payment and accordingly is liable to be evicted from the suit property. Furthermore, according to the plaintiff, contrary to the terms of the tenancy, the defendant, without obtaining the permission of the plaintiff, had started putting up the new construction in the suit property, which he is not entitled to under the tenancy arrangement and thereby violated the terms of the tenancy.

12. The rent for the property at Rs.350/- is not in dispute. Now according to the plaintiff, it has enhanced the rent from 01.07.1997 to Rs.1,500/- from Rs.350/-. According to the defendant, the plaintiff is not entitled to unilaterally enhance the rent without notice to him as provided under law and furthermore, according to him, he has not agreed to pay the enhanced rent as put forth by the plaintiff. Be that as it may, it has to be seen whether the defendant has paid the admitted rent as per the terms of the lease arrangement entered into between the parties. As abovenoted, as per the terms of the lease arrangement, the defendant is liable to pay the rent to the plaintiff on or before 5th of every succeeding month. The defendant examined as D.W1, in the course of evidence during the course of cross examination, has admitted that the plaintiff has



laid the suit against him on 16.06.1998 and from the period commencing from 01.05.1996 to 30.06.1997, it is true that the rent due is Rs.4,550/- and according to him, he has paid the said rent and though he would claim that he had paid said rent before the institution of the suit, to evidence the same, there is no material placed on the part of the defendant. In this connection, according to the plaintiff, the defendant had paid a rent of Rs.1,050/- on 08.01.1998, Rs.5,000/- on 23.04.1998 and Rs.2,000/- on 30.04.1998, totalling Rs.8,050/-. Even assuming for the sake of arguments that the plaintiff is entitled to claim only the admitted rent of Rs.350/- per month, when as averred by the plaintiff, the defendant is found to have not paid the rent in time but at intermittent levels and irregularly paying the rent in lumpsum for several months together and the abovesaid facts would go to disclose that the defendant has not paid the rent as agreed to by the parties under the lease arrangement and accordingly, it is seen that the defendant is unable to place any acceptable material to show that he had continued to pay even the admitted rent to the plaintiff within the stipulated time as agreed to between the parties under the lease arrangement and the defendant being the tenant holding over after the expiry of the lease period under the lease arrangement, even then, when he is incumbent to pay the rent as agreed to within the time stipulated and agreed to between the parties, considering the abovesaid factual position, it is found that the defendant is not in the habit of paying the admitted rent also in time as stipulated and on the abovesaid ground alone, it is found that the defendant is liable to be evicted from the suit property as per the terms of the lease arrangement. As rightly put forth by the plaintiff's counsel, this is not an eviction proceeding instituted under the Rent Control Act for determining whether the default committed by the defendant in the payment of rent is wilful or not. On the other hand, when the suit has been laid for ejection under the Transfer of Property Act, when as per the materials available on record, the defendant is not found to have even paid the admitted rent within the time stipulated under the lease arrangement, on that ground alone he is liable to be evicted.

13. It is seen that even after the expiry of the lease period under Ex.A1 rent arrangement, the defendant's father and thereafter, the defendant is occupying the suit property and even after the lease period fixed under Ex.A2 rent deed had expired, it is found that the defendant continues to occupy the suit property. Therefore, as at present, the defendant is found to be the tenant holding over. As to what is the effect of the tenant holding over, has been outlined in Section 116 of the Transfer of the Property Act, which reads as follows:



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Section 116. - Effect of holding over. - If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in Section 106.

On a reading of the abovesaid position of law provided under Section 116 of the Transfer of Property Act, it is found that even if a tenant holding over occupies the demised property and the lessor accepts the rent from him and thereby assents to his continuing in the possession, the said lease arrangement, in the absence of an agreement to the contrary, is renewed from year to year or from month to month, according to the purpose for which the property is leased as specified in Section 106. Therefore, on a combined reading of the Sections 116 and 106 of the Transfer of Property Act, it is found that when the defendant is found to be the tenant holding over after the expiry of the lease period mentioned in Ex.A2 lease arrangement and Ex.A2 lease arrangement itself provides for the entitlement of the Plaintiff to recover the possession of the suit property from the defendant without issuing any quit notice or determining the tenancy, furthermore, as provided under Section 116 of the Transfer of Property Act, when there is no further agreement between the parties to the contrary, the original lease deed would revert back and accordingly looked at any angle, as could be seen from the recitals contained in Ex.A1 rent deed or the recitals contained in Ex.A2 rent deed, it is found that the parties would be governed only by the provisions contained in the abovesaid documents and in such view of the matter, as rightly put forth by the plaintiff's counsel, there is no need on the part of the plaintiff to determine the tenancy of the defendant for seeking the recovery of the possession of the suit property, particularly, when as per the lease arrangements between the parties projected in the matter marked as Exs.A1 and A2, there is a contract to the contrary between the parties dispensing with the issuance of notice of termination and furthermore, when the lease arrangement between the parties marked as Exs.A1 and A2 gets terminated by efflux of time as provided under Section 111(a) of the Transfer of Property Act, in all, it is seen that the courts below without properly appreciating the abovesaid position of law as provided under the Transfer of Property Act, erred in holding that the suit laid by the plaintiff, without issuing the termination notice, is bad in law and on the other hand, as above discussed, when as per law



or as per the lease arrangements entered into between the parties, the same being the contract to the contrary, there is no need on the part of the plaintiff to determine the tenancy of the defendant even after he is continuing to be the tenant holding over, it is thus found that the courts below had totally erred in non suiting the plaintiff on the ground of the failure of the plaintiff to determine the tenancy arrangement by issuing a quit notice, when the same is not expected to be done on the part of the plaintiff as above discussed. It is thus found that the suit laid by the plaintiff is maintainable and the plaintiff is not required to determine the tenancy of the defendant as per the terms of the contract entered into between the parties, which is a contract to the contrary and whereunder the defendant has waived the protection under Section 106 of the Transfer of Property Act. As above noted, even by the efflux of time prescribed, the tenancy gets determined as the lease arrangement is only for a specific period.

14. The case of the plaintiff is that the defendant without any authority had put up the new construction in the suit property sans any sanction on the part of the plaintiff. On a reading of Ex.A2 rent deed, it is evident that the defendant is not entitled to put up any construction in the suit property without obtaining the permission of the plaintiff. The document reads that without the prior permission, the defendant is not entitled either to carry out repairs or do renovation work in the super structure put up on the property. Now, according to the plaintiff, the defendant, without any permission, has engaged in putting up a new construction in the suit property, which he is not entitled to and thereby acted contrary to the lease arrangement and on that ground also, liable to be evicted and also accordingly it is stated that the plaintiff has been necessitated to levy the suit claiming the relief of permanent injunction.

15. Per contra, it is put forth on the part of the defendant that only after obtaining the oral permission of the plaintiff, he had engaged in putting up the construction in the suit property as the existing structure has become dilapidated due to old age and on account of water leakage in the suit property. It is thus seen that the onus is upon the defendant to establish that he had obtained the prior permission of the plaintiff to put up the new construction in the suit property or the renovated structure in the suit property. For the same, the defendant relies only upon Ex.B1. Ex.B1 is a communication addressed by the defendant to the plaintiff intimating that inasmuch as the building has become dilapidated and found to be leaking, he had been necessitated to carry out the repair works and renovation works in connection with the same and



accordingly, sought for the permission of the plaintiff. Apart from establishing that the abovesaid communication had been received by the plaintiff's devasthanam, there is no other material placed on the part of the defendant that following the same, the plaintiff had granted him the permission to do renovation work in the suit property as done by him. The defendant, on his part, would only plead that he has been orally permitted to do the renovation work/repair work. However, as to when the oral permission was granted, by whom it was granted and on what terms it had been granted, absolutely there is no plea projected by the defendant in the written statement nor any material placed on his part to sustain the same. In this connection, the defendant examined as D.W.1, during the course of cross examination, has stated that Ex.B1 is the letter given by him for obtaining the permission of the plaintiff to effect the repair / renovation work in the suit property and admitted that there is nothing contained in Ex.B1 that the plaintiff had granted the permission to carry out the works or engage in the renovation work and in such view of the matter, when other than Ex.B1, there is no proof worth acceptance placed on the part of the defendant to hold that the plaintiff had granted him the permission to carry out the repairs or renovation work in the suit property, it does not stand to reason as to how the courts below had accepted the abovesaid defence of oral permission said to have been granted to the defendant by the plaintiff based on Ex.B1 communication alone. Merely because the defendant has forwarded the communication seeking the permission of the plaintiff to effect the repair / renovation work in the suit property, that by itself, would not tantamount the plaintiff granting the permission to the defendant to carry out such works. Unless and until the plaintiff putforth its accord / permission enabling the defendant to carry out the repair work / renovation work, the defendant is not entitled to engage in the same as per the terms of the lease arrangement. When in Ex.B1, there is nothing contained therein to point out that such permission had been granted by the plaintiff to the defendant and when the same has also been admitted by the defendant during the course of evidence and the defendant would only plead that he had been orally permitted by the plaintiff and when with reference to the abovesaid case of the defendant, there is no material, whatsoever, placed on the part of the defendant other than his Ipse dixit testimony and when the abovesaid version of the defendant is being stoutly challenged by the plaintiff in toto, particularly, when the defendant is only occupying the suit property as the tenant holding over after the lease period and as such he should have been more careful in obtaining the express permission of the plaintiff to engage in the renovation work done in the suit property. In all, it is found that the defendant has proceeded to carry out the repair works / renovation work in the suit property without obtaining the prior



permission of the plaintiff in any manner and thereby acted contrary to the terms of the lease arrangement and on that score also, he is found to be liable to be evicted from the suit property. In my considered opinion, the courts below had accepted the abovesaid defence version put forth on the part of the plaintiff merely on Ex.B1 communication addressed by the defendant to the plaintiff however, when there is nothing available in Ex.B1 to uphold the defence version or in the absence of any other material projected by the defendant for sustaining his version that he had obtained the permission of the plaintiff orally without giving any particulars with reference to the same, in such view of the matter, the courts below are found to have totally committed an error in accepting the defence version that he had engaged in the renovation work in only after obtaining the oral permission of the plaintiff. It is thus found that, as rightly argued, the plaintiff is entitled to the relief of permanent injunction as prayed for.

16. Counsel for the appeallant, in respect of his contentions, placed reliance upon the decisions reported in AIR 1984 All 89 (Burma Shell Oil Storage And ... Vs. State of Uttar Pradesh) and 2002 (64) DRJ 574 (Prithvi Raj Bhalla vs. Industrial Cables (India) Ltd). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

17. In the light of the abovesaid discussions, the substantial questions of law formulated in this second appeal are accordingly answered against the defendant and in favour of the plaintiff.

18. In conclusion, the judgment and decree dated 28.07.2005 passed in A.S.No.38 of 2005 on the file of the I Additional Subordinate Court, Cuddalore confirming the judgment and decree dated 28.04.2004 passed in O.S.No.234 of 2004 on the file of the Additional District Munsif Court, Cuddalore are set aside. Resultantly, the suit laid by the plaintiff in O.S.No.234 of 2004 is decreed as prayed for with costs. Consequently, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bga



To

1. Additional Subordinate Court, Cuddalore
2. Additional District Munsif Court, Cuddalore

Copy to

The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.K.Chandrasekaran, Advocate, S.R.No. 29962

+1cc to M/s.S.K.Rakhunathan, Advocate, S.R.No. 29263

S.A.No.1560 of 2005

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CS/26/11/2019