



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :26.03.2019

PRONOUNCED ON:15.04.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.679 of 2005

1. Ariya Vaisiya Chettiar  
Podu Mel Bhuvanagiri,  
Rep. By its Trustee and  
Nattamai Venkatachala Chettiar,  
S/o Muthukumarasamy Chettiar,  
Pannappattu Village,  
Chidambaram Taluk,  
Cuddalore District.

2. Nataraja Chettiar

[The second plaintiff Thangam  
Chettiar is not shown as appellant  
since he had died] ..Appellants/Plaintiff 1,3 in  
Trial Court.

Vs.

Kaliaperumal Naidu ..Respondent/Defendant in  
Trial Court.

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 26.12.2002 made in A.S.No.33 of 2001 passed by the Subordinate Judge , Chidamabaram, Cuddalore District confirming the judgment and decree of the District Munsif, Chidamabaram, Cuddalore District dated 29.06.2000 made in O.S.No.360 of 1991.

For Appellant : Mr.S.Senthilnathan

For Respondent : Reported no instructions  
No appearance  
Set exparte  
Order dated 26.03.2019

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## J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 26.12.2002 passed in A.S.No.33 of 2001 on the file of the Subordinate court, Chidambaram confirming the judgment and decree dated 29.06.2000 passed in O.S.No.360 of 1991 on the file of the District Munsif Court, Chidambaram.

2. The second appeal has been admitted on the following substantial questions of law.

i. Whether the Courts below erred in law in holding that Section 106 of Transfer of Property Act has not been complied with on hypertechnical grounds ?

ii. Whether the Courts below have erred in law in not relying upon the admission of the defendant in cross examination relating to tenancy ? And

iii. Whether the Courts below erred in law in rejecting Ex.A3?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

5. Suffice to state that the plaintiff has laid the suit against the defendant for recovery of possession, past rental arrears and future mense profits.

6. The defendant had admitted the tenancy under the plaintiff. As could be seen from the materials placed record, it is found that the other proceedings had been pending between the parties one way or the other. The present suit has been laid by the plaintiff for the reliefs prayed for after determining the tenancy of the defendant. The notice of termination of tenancy dated 17.12.1985 has been marked as Ex.A1. To the said notice, the defendant has sent a reply dated 01.12.1986 marked as Ex.A2. Subsequent thereto, it is found that the plaintiff has also sent another notice to the defendant determining his tenancy on 22.12.1986 marked as Ex.A3 and the acknowledgment card received from the defendant with reference to the same has been marked as Ex.A4. No doubt, the plaintiff has not averred the issuance of Ex.A3 notice in the plaint. On that footing, it is seen that the defendant has repudiated the issuance of Ex.A3 notice on the part of the plaintiff. However

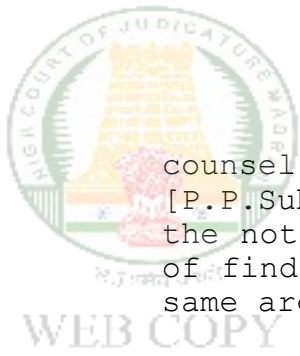


as could be seen from the available materials on record, the defendant has not disputed his signature in the acknowledgment card marked as Ex.A4. Therefore, the determination of the Courts below that Ex.A3 had not been established to have been sent by the plaintiff to the defendant on the footing that the plaintiff has not marked the postal receipt pertaining to the same as such cannot be accepted, particularly, when the plaintiff has filed the acknowledgment card received from the defendant acknowledging the receipt of Ex.A3 notice. As above noted, the defendant has not controverted the signature found in Ex.A4 acknowledgment card as not containing his signature. In the light of the abovesaid factual matrix, it is found that the plaintiff has taken appropriate steps determining the tenancy of the defendant both by sending Ex.A1 notice as well as Ex.A3 notice.

7. The defendant has taken the plea that the notice of termination marked as Ex.A1 is invalid. The Courts below had accepted the abovesaid defence version, on the reasonings that though 15 days time had been granted by the plaintiff under the said notice, however as the plaintiff had not determining the tenancy with the end of the tenancy month, on that footing that the Courts below had held that the notice of termination marked as Ex.A1 is invalid. That the tenancy of the defendant is monthly is not in dispute. The tenancy is taken to have commenced on 03.05.1962 based on the documents projected by the parties in the rent control proceedings. On that footing, the Courts below had proceeded to hold that Ex.A1 notice having not been sent determining the tenancy with the end of tenancy month held that the notice of termination is invalid.

8. However as could be seen from the notice sent by way of Ex.A3, the plaintiff has determined the tenancy correctly and as above pointed out, the plaintiff has also established the issuance of Ex.A3 notice to the defendant by marking the acknowledgment card Ex.A4. Therefore, Exs.A1, A3 and A4, read together would go to show that the tenancy had been properly determined by the plaintiff.

9. As rightly argued by the plaintiff's counsel, the Courts below had taken a hyper technical approach in finding fault with the notice of termination sent by the plaintiff particularly, Ex.A1 notice. As could be seen from the evidence of the defendant, he has understood the purport of Ex.A1 notice and admitted that the said notice has been issued to him only to vacate the suit property. Therefore, when the defendant has not been misled by the issuance of notice marked as Ex.A1, as rightly argued by the plaintiff's counsel, the Courts below should not have taken a hyper technical view for rejecting the said notice as invalid. In this connection, the plaintiff's



counsel relied upon the decision reported in CDJ 1988 MHC 071 [P.P.Subba Raja Vs. E.S.Gurusamy] wherein, it has been held that the notice to quit must not be viewed or construed with the idea of finding fault with it and the principles of law governing the same are detailed in the abovesaid decisions are as follows:

It is settled law that a notice to quit must be construed not with the idea of finding fault with it, which would render it defective, but it must be construed at *res magis valeat quam pereat*. It would be useful to recall the observations of Lord Justice Lindley, L.J. in *Sidebotham Vs. Holland*, (1895) 1 QB 378, that the validity of a notice to quit ought not to turn on the splitting of a straw. In *Bhagabandas Vs. Bhagwandas*, 1977 AIR (SC) 1120, 1977 (1) RCJ 572, 1977 (1) RCR 754, 1977 (1) Rent LR 770, 1977 (2) SCC 646, 1977 (3) SCR 75, 1977 UJ 194, the Supreme Court pointed out that a notice to quit must not be read in a hyper-critical manner, nor must its interpretation be affected by pedagogic pedantism or over refined subtlety, but it must be construed in a common sense way. What is material is, what it would mean to a tenant, presumably conversant with all facts and circumstances, though it may not mean anything at all to an utter stranger. Viewed in this manner and giving the contents of Ex.B1, a plain as well as a natural construction, it is obvious that the respondent had terminated the tenancy in favour of the tenant by employing the expression that he is so determining the lease and further making the intention to determine the lease clear by a demand for delivery of vacant possession of the suit property from the tenant. There is no dispute that there is clear 15 days' notice and consequently, the lease in favour of the tenant had been, on the facts and circumstances of this case, properly determined and only thereafter, the suit in ejectment had been laid on 12-12-1973, long after the tenant had declined to surrender possession pursuant to the notice to quit. Thus, on a consideration of the nature of the lease in the light of Ss.106, 107 and 111(g) and (h) of the T.P.Act, the conclusion is irresistible that the lease in favour of the tenant was only a monthly tenancy and had also been properly terminated by the respondent by the issue of the notice to quit under Ex.B1 and therefore, the suit in ejectment had also been properly laid. The first contention



of the learned counsel for the tenant has therefore to be rejected.

10. In the light of the principles of law laid down in the above decision as to how the notice to quit should be considered, particularly, the same should not be read in a hyper technical manner, but it should be read as to what the same would have meant to the recipient/tenant in question and when as above noted, the defendant/tenant had not claimed that he has not understood the purport of Ex.A1 notice, but has clearly tendered evidence that the abovesaid notice has been sent to him only for vacating him from the suit property, in such view of the matter, furthermore, coupled with Ex.A3 notice whereunder also, the tenancy had been properly determined by the plaintiff and still further, the plaintiff having laid the suit against the defendant only on 05.04.1989, in all, it is found that the plaintiff has properly terminated the tenancy of the defendant in accordance with law and therefore the judgment and decree of the Courts below dismissing the plaintiff's suit on the sole ground that the notice of termination is invalid cannot be countenanced in any manner, as they had approached the said issue on hyper technical grounds without appreciating the principles of law governing the same as outlined in the decision above referred to. Furthermore, the Courts below had also failed to consider the purport of Ex.A3 notice whereunder the plaintiff has clearly terminated the tenancy with the end of the tenancy month as claimed by the defendant and in such view of the matter, the notice of termination having been issued as per law and when no other valid ground has been projected by the defendant to resist the plaintiff's suit, as such, it is found that the plaintiff is entitled to recover the possession of the suit property from the defendant.

11. The trial court has rightly held that the plaintiff is entitled to recover the arrears of rent three years prior to the institution of the suit and the arrears of rent claimed by the plaintiff beyond the period of three years from the date of the suit is barred by limitation. The first appellate court has erred in dislodging the abovesaid findings of the trial court without assigning proper reasons as to how the plaintiff is dis-entitled to claim the arrears of rent for the period of three years prior to the institution of the suit, when the rent is due to be paid by the defendant for the said period.

12. Though the defendant has also taken the defence that the plaintiff's suit is not maintainable as the plaintiff is not represented by all the trustees, however the same has been rightly declined by the first appellate court and no ground is warrant to interfere with the abovesaid determination of the first appellate court.



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

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14. In conclusion, the judgment and decree dated 26.12.2002 passed in A.S.No.33 of 2001 on the file of the Subordinate court, Chidambaram confirming the judgment and decree dated 29.06.2000 passed in O.S.No.360 of 1991 on the file of the District Munsif Court, Chidambaram are set aside and resultantly, the suit laid by the plaintiff in O.S.No.360 of 1991 is decreed granting the relief of recovery of possession and the entitlement of the plaintiff to obtain the arrears of rent for the period of three years preceding to the institution of the suit and also the plaintiff is held to be entitled to claim future mense profits and with reference to the same the plaintiff is directed to take separate proceedings in accordance with law under Order 20 Rule 12 of CPC.

15. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,  
Subordinate Court,  
Chidambaram, Cuddalore District.
2. The District Munsif,  
District Munsif Court,  
Chidambaram, Cuddalore District .

Copy to

The Section Officer,  
VR Section, High Court, Chennai.

Judgment made in  
S.A.No.679 of 2005

MR (CO)  
SSM(30/09/2019) .