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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.Nos.1133, 1136 and 1137 of 2019

and

CMP.No.24706 of 2019

S.A.No.1133 of 2019:

A.H.J.Mahavishnu

..Appellant/Defendant

Vs.

G.Nagarajan

..Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the decree and judgment passed in A.S.No.87 of 2015 by the learned III Additional District and Sessions Judge, Coimbatore on 30.04.2019 confirming the decree and judgment passed in O.S.No.379 of 2010 by the learned II Additional Subordinate Judge, Coimbatore on 11.03.2014.

S.A.No.1136 of 2019:

A.H.J.Mahavishnu

..Appellant/Defendant

Vs.

G.Nagarajan

..Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the decree and judgment passed Cross Appeal in A.S.No.87 of 2015 by the learned III Additional District and Sessions Judge, Coimbatore on 30.04.2019 confirming the decree and judgment passed in O.S.No.379 of 2010 by the learned II Additional Subordinate Judge, Coimbatore on 11.03.2014.

S.A.No.1137 of 2019:

M/s.Prabhatham Nursery and Primary School,  
Rep. by its Correspondent A.H.J.Mahavishnu,  
S/o. Jayabalan,  
D.No.A/81, 100 Ft. Road,  
Kovaipudur,  
Coimbatore.

..Appellant/Plaintiff

Vs.

G.Nagarajan

..Respondent/Defendant



PRAYER: Second Appeal filed under Section 100 of C.P.C., against the decree and judgment passed in A.S.No.88 of 2015 by the learned III Additional District and Sessions Judge, Coimbatore on 30.04.2019 confirming the decree and judgment passed in O.S.No.263 of 2012 by the learned II Additional Subordinate Judge, Coimbatore on 11.03.2014.

For Appellant : Mr.P.Sankaranarayanan  
in all the 3 Appeals.

For Respondent : Mr.S.Vija in all CMAS

#### J U D G M E N T

These three appeals arise out of two cross suits between the landlord and tenant.

2. The suit in O.S.No.263 of 2012 [O.S.No.2429 of 2007] was filed by the tenant seeking permanent injunction restraining the landlord from interfering with his possession except under due process of law, claiming that he is a tenant inducted legally in the year 2004 and the lease period is for 15 years. Since the landlord attempted to interfere with his possession by force, the tenant has come forward with the above suit.

3. The said suit was resisted by the landlord contending that the lease was only for a period of 3 years, the tenant has been irregular in payment of rent and the cheques issued by him towards rent were dishonoured. The landlord also denied the claim of the tenant that he is attempting to interfere with the possession of the tenant except under due process of law. On the above contentions, the defendant/ landlord sought for dismissal of the suit.

4. During the pendency of the said suit, the landlord issued a notice of termination on 21.04.2010 and filed a suit in O.S.No.379 of 2010 seeking ejectment. The landlord also sought for damages for use and occupation in the suit filed by him.

5. The suit was resisted by the tenant contending that the lease is for a period of 15 years and the notice of termination dated 21.04.2010 was not valid. It was the further contention of the tenant that he has been regular in payment of rent and therefore, he is not liable to pay damages.



6. The trial court upon consideration of the evidence on record concluded that the landlord is entitled to possession as well as damages. On the said finding, the trial court decreed the suit by the landlord in O.S.No.379 of 2010 granting the relief of recovery of possession and the quantum of damages was fixed at Rs.2,000/- per month.

7. A limited relief was granted in the suit filed by the tenant, restraining the landlord from evicting the tenant till the expiry of time granted by the court to vacate and deliver vacant possession. Aggrieved the defendant filed two appeals in AS.No.87 and 88 of 2015 challenging the decree for possession, damages as well as dismissal of the suit for permanent injunction. The landlord filed a cross appeal in the appeal in AS.No.87 of 2015 seeking enhancement of damages.

8. The lower appellate court on a consideration of the evidence agreed with the trial court on its conclusion that the landlord is entitled to a decree for ejectment and damages. The quantum of damages is however enhanced by the trial court to Rs.20,000/- per month which was split into two viz., Rs.15,000/- per month for damages and Rs.5,000/- per month towards rent. The appeal filed against the suit for injunction viz., AS.No.88 of 2015 stood dismissed. Aggrieved the defendant is on appeal.

9. I have heard Mr.P.Sankaranarayanan, learned counsel appearing for the appellant.

10. Mr.P.Sankaranarayanan, learned counsel appearing for the appellant would vehemently contend that the courts below erred in granting the relief of possession, more so, when it is the specific case of the appellant that the lease was for a period of 15 years and the notice of termination was invalid.

11. Both the courts below have recorded a categorical finding that the lease was only for a period of 5 years. It is also conceded that there is no written instrument of lease. Therefore, the tenant cannot set up lease for more than a year or month to month lease. If month to month lease is assumed the notice of termination is perfectly valid. Therefore, I do not find any substance in the contention of the appellant that the notice of termination is invalid.

12. Admittedly, the tenant is running a school in the suit property. The lower appellate court has taken note of the fact that the school is being run in the suburb of Coimbatore had fixed the damages at Rs.15,000/- per month and the rent at



Rs.5,000/- per month. I do not see any illegality in the said fixation by the lower appellate court, inasmuch as the same is based on the evidence and it cannot be termed as perverse.

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13. I do not find any question of law much less a substantial question of law in order to enable me to entertain these Second Appeals. The Second Appeals therefore fail and they are accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

14. Mr.P.Sankaranarayanan, learned counsel appearing for the appellant would seek time to vacate. Considering the fact that the tenant is running a school, taking into account the interest of students, time is granted till 31.07.2020 for the tenant to vacate and handover possession of the property to the landlord, without driving him to execution proceedings.

15. The defendant shall file an affidavit undertaking in this court agreeing to vacate and handover possession by 06.12.2019. If no affidavit is filed within the time granted, the landlord will be free to execute a decree as if no time has been granted.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The learned III Additional District Judge, Coimbatore.
2. The learned II Additional Subordinate Judge, Coimbatore.
3. The Section Officer, V.R. Section,  
High Court of Madras, Chennai 600 104.

+1cc to Mr.P.Sankaranarayan, Advocate sr.97514

+1cc to M/s.S.Viji, Advocate sr.97524

S.A.Nos.1133, 1136 and 1137 of 2019

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