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BEFORE THE MADRUAI BENCH OF MADRAS HIGH COURT

DATE OF RESERVING THE JUDGMENT:28.02.2019

DATE OF PRONOUNCING THE JUDGMENT:30.04.2019

CORAM:

The HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A. (MD) .No.379 of 2013

N.P.Narayana Nadar

... Appellant/Defendant

Vs.

1.Kottar Senguntha Mudaliar Samudhya
Oor Vakai Sri Sentra Thisai Vendra
Vinayagar Trust
rep. by its Trustees
P.Pazhaniyandi Mudaliar
No.4, Mudaliar West Street,
Kottar,
Vadiveeswaram Village,
Agastheeswaram Taluk,
Kanyakumari District.

2.Valliyanantham Mudaliar

3.Rajavel Mudaliar

4.Lexmanan Mudaliar

5.Sivakumaran Mudaliar

6.Retnaswamy Mudaliar

7.Azhagesan Mudaliar

... Respondents/Plaintiffs

Prayer: This second appeal has been filed under Section 100 of CPC, against the judgment and decree dated 26.03.2013 rendered in A.S.No.57 of 2011 on the file of the Second Additional Subordinate Judge, Nagercoil, confirming the judgment and decree, dated 25.04.2011 passed in O.S.No.267 of 2007 by the learned Second Additional District Munsif, Nagercoil.



For Appellant : Mr.S.Subbiah, Senior Counsel
for Mr.G.Aravindhan
For Respondents : Mr.M.P.Senthil

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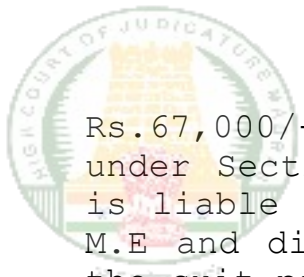
JUDGMENT

This second appeal is directed against the concurrent finding of the courts below passed in O.S.No.267 of 2007 by the Second Additional District Munsif, Nagercoil, which was confirmed in A.S.No.57 of 2011 by the Second Additional Sub Judge, Nagercoil.

2.The appellant is the defendant in O.S.No.267 of 2007. The suit was instituted for recovery of possession of the suit property; Rs.52,800/- being arrears of rent along with interest at 12% and for future mesne profits at the rate of Rs.1,200/- per month. According to the plaintiffs, the suit property belongs to the plaintiff Trust. The defendant was inducted as a tenant on monthly rent of Rs.750/-. Since the defendant did not pay the rent regularly, the Trust filed a suit in O.S.No.888 of 1995 before the First Additional District Munsif Court, Nagercoil. However, in a compromise decree dated 11.02.2003, the defendant agreed to pay Rs.1,17,000 towards arrears of rent and future rent at the rate of Rs.1,200/- per month from Pankuni 1178 M.E. But the defendant did not pay the balance amount of Rs.67,000/- on or before 29.07.2003 and the future rent. Hence, a notice dated 29.05.2004 was issued, for which, he gave a reply with false allegations. Another notice dated 11.11.2006 was issued terminating the lease by the end of Aypasi 1182 M.E. The defendant received the said notice on 14.11.2006 and issued a reply with frivolous allegations on 30.11.2006. Hence, the suit.

3.The suit was opposed by the defendant by filing a written statement, denying the allegations made in the plaint. It is the case of the defendant that in the year 1970, rent was only Rs.140/- per month and the same was increased up to Rs.750/- per month. The defendant could not pay the rent, because of the internal disputes in the administration of the trustees. O.S.No.888 of 1995 was compromised and as per the compromise, the future rent was fixed at Rs.1,200/-. The defendant paid Rs.50,000/- on 25.03.2003 and the balance of Rs.67,000/- to the trustee viz., S.Subbiah on 28.07.2003. As such, he has paid the entire arrears upto 1178 Masi, which can be seen from the police complaint filed by Subbiah Mudaliar and 6 others on 18.07.2004. The termination notice is not maintainable and 6 months notice is necessary to terminate the lease and the suit was not instituted, as per the scheme decree.

<https://hcservices.ecourts.gov.in/hcservices/> Trial court, based on the pleadings, framed necessary issues and after analysing oral and documentary evidence, adduced by the parties, found that the defendant was not in arrears of



Rs.67,000/-, as claimed by the plaintiffs; Ex.A.2- notice is valid under Section 106 of the Transfer of Property Act; the defendant is liable to pay Rs.52,800/- as arrears of rent from Panguni 1178 M.E and directed the defendant to hand over vacant possession of the suit property to the plaintiffs.

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5. Aggrieved over the judgment and decree, the defendant had taken up the matter to the Second Additional Sub-Court, Nagercoil in A.S.No.57 of 2011. The appellate court dismissed the appeal. Challenging the same, he has come up before this Court.

6. The second appeal was admitted on the following substantial questions of law:

1) Whether the notice of quit under Section 106 of the Transfer of Property Act, was taken specifically by the defendant in his written statement, challenging its validity on the ground that there was no termination of lease, whether the failure on the part of the lower Appellate Court to determine the validity of the notice is legal?

2) When the tenancy was not terminated with specific expression by terminating the tenancy on the expiry of the lease period, whether such a notice is valid notice to quit under Section 106 read with Section 111(h) of the Transfer of Property Act?"

7. Mr. S. Subbiah, the learned senior counsel for the appellant would submit that in a suit for ejectment, a crucial question arises for consideration is as to Whether the landlord Trust is exempted under Section 29 of the Tamil Nadu Buildings (Lease and Rent) Control Act (Hereinafter, referred as Act), but that issue was not properly considered by the Courts below. It is the submission of the learned senior counsel that the exemption under Section 29 of the Act would apply only to a building owned by the Hindu, Christian and Muslim religious Public Trust and Public Charitable Trust alone, but the Courts below have not adverted to the question as to whether the respondent is a religious Public Trust and Public Charitable Trust and that the termination of tenancy under Ex.A.2, dated 11.11.2006 is not a valid notice in terms of Section 106 of the Transfer of Property Act. In support of the contentions, the following decisions have been relied upon:

I) **1995 (1) MLJ 160 (S.Ranganathan Vs S.Venkatesan)**. In this case, the Landlord filed a suit for recovery of possession, claiming exemption under Section 30(1) of the Rent Control Act.



The learned Single Judge has observed that the exemption will be applicable only if after completion of the construction of the building five years has not elapsed and that the fact of completion and date of completion should be notified by the landlord to the local authority concerned, are specified. The onus lies on the landlord to prove that the construction is a new construction and it is not for the tenants to prove that the building has been constructed beyond the period of 5 years.

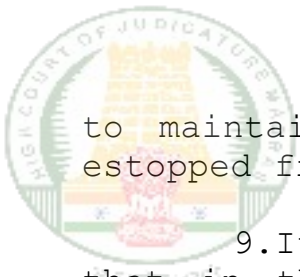
II) In **AIR 2004 SC 3929 (Kaveripatnam Subbaraya Setty Annaiah Setty Charities Trust, Vs S.K.Viswanatha Setty)**, the Honourable Apex Court has held that the appellant seeks exemption. The exemption needs to be alleged and proved. Opportunity is required to be given to the respondent to meet the plea of exemption.

III) In **(2006) 9 Supreme Court Cases 216, (Dharam Pal Vs Harbans Singh)** a notice issued under Section 106 of Transfer of Property Act was questioned at the appellate stage. The Honourable Apex Court has observed that validity and sufficiency of the notice should be specifically raised in the written statement, failing which, it will be deemed to have been waived. In my view, this decision supports the case of the plaintiffs.

IV) The learned Single Judge of this Court in **2009 4 CTC 377 (Muthamil Selvam and 3 others Vs. A.Manickam and 8 Others)**, held that pleadings means plaint or written statement and every pleading should contain a statement in a concise form of the material facts on which the party pleading relies for his claim or defence and further the evidence by which the material facts have to be proved need to be mentioned in the pleading. In the nutshell, every pleading must contain all material facts.

V) **AIR 1973 Supreme Court 2391 (Chandrika Misir and another Vs Bhaiyalal)**, in that case, a suit was filed before the Civil Court for recovery of possession. Taking note of the fact that the land is bhumidhari land and the plaintiffs are bhumidars and in view of Section 331 of Uttar Pradesh Zamindari Abolition and Land Reforms Act (Act No.1 of 1951), a suit would lie only before the Special Court i.e the Court of the Assistant Collector (First Class) and could not be filed in a Civil Court and the Civil Court was therefore inherently lacking jurisdiction to entertain the suit, held the plea as to jurisdiction can be raised at any stage.

8. Per contra, the learned counsel for the respondents contended that in the plaint, it has been specifically stated that the suit property belongs to the plaintiff Trust. But, nowhere in the written statement nor in the evidence, the defendant disputed the exemption claimed by the plaintiff under Section 29 of the Act. It is further submitted that it is not the first suit, but in the earlier suit in O.S.No.888 of 1995, the issue with regard



to maintainability was not raised and hence, the defendant is estopped from raising the issue at the appellate stage.

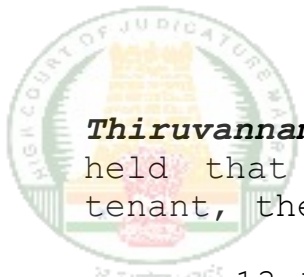
9. It was argued by the learned counsel for the respondents that in the event of specific objection by the defendant, the plaintiffs would have had an opportunity to prove that the plaintiff is entitled for exemption as per the Act and unless a specific objection or denial raised in the written statement, the said plea would be deemed to have been waived by the appellant. It is further contended that the exemption under Section 29 of the Act is applicable to all the properties of the Hindu Religious and Christian communities and the suit is maintainable. In this regard, the learned counsel has cited the following decisions:

I) Two different Division Benches of this Court in the decisions reported in 1995 (1) CTC 547 (*S. Sadagopa Ramanujam Vs S.R. Rengasamy Iyengar & 2 Others*) and 2017 (3) Madras Weekly Notes (Civil) 785 (*B.M. Kotteswaran and another Vs. R. Devasena and others*) have consistently held that as per Order 8 Rule 13 of CPC, denial is to be specific and a mere denial is not valid.

II) The learned Single Judge of this Court in 2009 (2) CTC 728 (*R. Swarnavalli Vs. H.H. The Prince of Arcot Endowments, rep. by its Agent Mr. U. Mohammed Khelilullah, Amir Mahal, Royapetta, Chennai-14*), has held that in view of the fact that in the written statement itself, there is no specific plea challenging the validity of the notice issued under Section 106 of the Transfer of Property Act, it amounts to waiver and in the second appeal, he cannot raise such a plea also.

10. In the instant case, the relationship of the parties and the quantum of rent are not disputed. It is an admitted fact that the plaintiffs had filed O.S.No.888 of 1995 against the defendant for recovery of possession and the suit ended in compromise on 11.02.2003. A perusal of the first paragraph of the plaint would show that the plaintiffs have stated that the plaintiff Trust is a Hindu Religious Trust belongs to the Senguntha Mudaliyar community people of Kottar. As rightly pointed out by the learned counsel for the respondents, there is absolutely no denial either in the written statement or during the course of trial. When the suit was instituted before the Civil Court for recovery of possession, claiming exemption under Section 29 of the Act, as per the decisions cited by the learned counsel for the respondents, referred supra, the defendant ought to have raised a specific plea that the suit is not maintainable, as exemption under Section 29 of the Act is not applicable to the plaintiffs.

11. Perusal of the materials shows that no such specific plea not even a mere plea was taken in the written statement.



Thiruvannamalai, rep. by its Executive Officer and six others) has held that in a suit filed by the temple for eviction of the tenant, the Civil Court's jurisdiction is not barred.

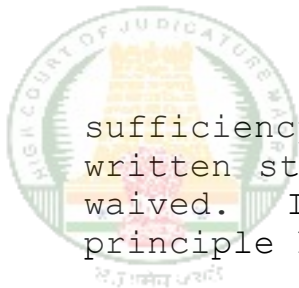
13. It is true that a plea with regard to the jurisdiction can be raised at any stage. In the case on hand, the only issue is with regard to applicability of exemption to the plaintiff and not with regard to inherent lacking of jurisdiction of the Civil court. In other words, if the plaintiffs are entitled for exemption, there is no infirmity in filing the suit before the Civil Court. The decision reported in **AIR 1973 Supreme Court 2391 (Chandrika Misir and Another Vs. Bhaiyalal)** does not support the case of the appellant, for the reason that in that case, as per Section 331 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act (Act No.1 of 1951) the suit ought to have been filed before the Assistant Collector (First Class) and not before the Civil Court.

14. In this case on hand, as observed supra, plaint contains necessary pleading and therefore, the other decisions cited by the learned senior counsel for the appellant have no application to the facts of the present case. In my considered view, since there is no specific denial by the appellant in the written statement, it would amount to waiving of the plea.

15. From the perusal of the records, it is evident lease agreement of the defendant was terminated by the end of Aypasi 1182 i.e on 16.11.2006 under Ex.A.2, dated 11.11.2006 and the suit came to be filed on 04.01.2007. Section 106 of Transfer of Property Act mandates termination of lease of immovable property for agriculture or manufacturing purpose by six months notice and a lease of immovable property for any other purpose by giving 15 days notice. In the instant case, the demised property is neither used for agriculture nor for manufacturing activity, hence indisputably giving 15 days time to terminate the lease would satisfy the requirement.

16. This Court in **2010 (1) MLJ 480** in the case of **Kalpanadevi Vs. Chandra** has held that even though the period mentioned in the notice, by which lease was terminated through falls short of the period specified under Section 106(1) of the Act, in as much as suit has been filed after expiry of the period, specified in the section, the statutory notice is valid. Since the present suit was filed after expiry of 15 days, I find no illegality in issuing the notice Ex.A.2.

17. In the instant case, a vague plea was taken in the written statement that there is no termination of lease. Six months time is necessary. The Honourable Supreme Court in the decision relied on by the appellant in **(2006) 9 Supreme Court Cases 216, (Dharam Pal Vs Harbans Singh)** held that validity and



sufficiency of the notice should be raised specifically in the written statement, failing which, it would be deemed to have been waived. In the decisions relied on by the respondents, the same principle has been reiterated.

18. The Courts below, on proper appreciation of the material evidence, have decreed the suit. Taking note of the facts referred above, I find no valid ground to set aside the concurrent findings of the courts below. The substantial questions of law raised in this second appeal are answered against the appellant.

19. In the result, this second appeal is dismissed, by confirming the judgment and decree passed by the trial court, confirmed by the first appellate court. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Second Additional Subordinate Court,
Nagercoil

2. The Second Additional District Munsif Court,
Nagercoil.

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+1 CC to M/s.M.P.SENTHIL, Advocate (SR-64305[F] dated
30/04/2019)

vs

Judgment made in
S.A. (MD) .No.379 of 2013
30.04.2019