

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.01.2020

Date of Verdict : 03.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1805 of 1997

1. S.K.Ramachandra Mudaliar (Died)
2. R.Shyamala
3. R.Vaidyanathan
4. T.Rajalakshmi
5. B.Padmavathi
6. Meenakshi Sai
7. R.Muthian
8. R.Natrajan

(Appellants 2 to 8 are brought on record as legal heirs of the deceased first appellant vide order of the Court dated 01.03.1999 made in C.M.P.Nos. 8989 & 8990 of 1998 in S.A.No. 1805 of 1997)

...Appellants/Appellants/
plaintiffs

Vs.

1. J.Anjamma
2. J.Arul Azhagan
3. J.Anbalagan (Died)
4. Arulmozhi
5. S.Anbarasi
6. J.Amutha
7. Arulmozhi Aided Middle School,
rep. by its Correspondent,
Thandavan Kulam Village,
Achalpuram Post,
Sirkali Taluk, Nagapattinam District.

8. A.Kayalvizhi
9. A.Anu
10. A.Aravid

(Respondents 8 to 10 brought on record as legal heirs of the deceased third respondent vide order of the Court dated 02.12.2019)

made in C.M.P.Nos. 9216
to 9218 of 2017 in S.A.No.
1805 of 1997)

...Respondents/Respondents/
Defendants

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 24.07.1997 made in A.S.No.14 of 1996 on the file of the Principal Subordinate Court, Mayiladuthurai, confirming the judgment and decree dated 14.12.1995 made in O.S.No.79 of 1994 on the file of the District Munsif Court, Sirkali.

For Appellants : Mr.P.M.Subramaniam
For Mr.P.Anbarasan
For Respondents
For R1, R4 to R7 : No Appearance
For R2 : Mr.S.Sounthar
R3 : Died
For R9 to R10 : Not ready in notice

JUDGMENT

This second appeal is directed as against the judgment and decree dated 24.07.1997 passed in A.S.No.14 of 1996 on the file of the Principal Subordinate Court, Mayiladuthurai, confirming the judgment and decree dated 14.12.1995 made in O.S.No.79 of 1994 on the file of the District Munsif Court, Sirkali.

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

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for recovery of possession in respect of A schedule property and for the recovery of money and future profits and for the relief of permanent injunction in respect of B schedule property. The suit properties belonged to the plaintiff comprised in Survey No.462 and sub divided as 462/2 situated at No.38, thandavankulam Vattam, Sirkali Taluk, Mayiladuthurai District, measuring 41 cents and 2.34 acres respectively. Originally, the husband of the first defendant and the father of the defendants 2 to 5 one K.Jayaraman had taken the A schedule property for lease from the plaintiff for the period from 01.01.1964 to 31.12.1966 i.e., for three years, for running middle school in the name and style of Arulmozhi Aided Middle School, by putting up a thached super structure and the yearly paguthi was fixed as Rs.31/- and the lessee agreed to vacate the suit A schedule property after the period of three years. On the above terms and conditions, the paguthi deed was also executed by the said K.Jayaraman in favour of the plaintiff on 13.03.1964 and registered the same. In fact, he had been running the school over the period of paguthi deed (lease deed) and holding over on the same terms and conditions.

3.2. After demise of the said K.Jayaraman, the school has been running by his legal heirs viz., the defendants 1 and 2 to 6 herein. They did not pay the rent for the past five years as such, they have committed willful default on payment. The plaintiff is in possession of the B schedule property and he had been raising crops. While being so, the second defendant attempted to interfere with the peaceful possession of the suit B schedule property and the plaintiff also lodged complaint. Therefore the plaintiff terminated the lease in respect of A schedule property by notice dated 01.02.1994 and the same was duly served on the defendants. The defendants also replied by reply notice dated 10.02.1994 containing false and frivolous allegations. They contended in the reply notice that the suit A and B schedule properties were the subject matter of paguthi arrangement ad measuring 2.75 and they were paid a sum of Rs.100/- per year for the total extent of the property and the entire extent of the property is in possession and enjoyment of the defendants.

3.3. The plaintiffs further averred that the defendants never in possession and enjoyment of the suit B schedule property at any point of time. In fact, they also failed to pay paguthi for the past five years at the rate of Rs.31/- per year. Hence the suit is filed for recovery of possession in respect of A schedule property and recovery of money as rental arrears at the rate of Rs.31/- per annum along with future interest and also for permanent injunction in respect of B schedule property.

4. Resisting same, the defendants filed written statement stating that the defendants predecessors ie., K.Jayaraman was the paguthitharar under the plaintiff for the entire suit A and B schedule properties and they are in possession and enjoyment of the suit property. After the death of the said Jayaraman, the defendants raised crops in the B Schedule property and the paguthi arrangement covered the entire suit A & B schedule properties. In fact, the trees are situated in the B schedule property and completely enjoyed by the defendants. Thereafter, due to scarcity of water, no cultivation in the B schedule property. The defendants are in possession and enjoyment of the B schedule property and trees thereon as paguthidar as such, they are entitled to the benefits under the Tenant's Protection Act. Therefore the suit for injunction is not at all maintainable and the plaintiff is never in possession of the B schedule property.

4.1. More over, the plaintiff is also not entitled for any relief of recovery of possession in respect of suit A schedule property, since the suit itself is not maintainable. Notice to quit the tenancy is not proper and 15 days notice is not at all valid since, the tenancy is year to year basis. The plaintiff

ought to have been issued six months notice to terminate the tenancy. Therefore, the notice is not in accordance with law and also with the terms under Section 106 of Transfer of Property Act. Therefore, the tenancy still in force and the plaintiff is not entitled for any relief of possession of A schedule property. Hence, prayed for dismissal of Suit.

5. On the side of the plaintiff, examined P.W.1 & P.W.2 and were marked Ex.A.1 to Ex.A.9. On the side of the defendants, they examined D.W.1 to D.W.3 and they did not mark any documents. The Advocate Commissioner's report and rough sketch were marked as Ex.C.1 and Ex.C.2. On perusal of the material produced on record and considering both the oral and documentary evidence adduced by the respective parties and also the submissions made, the trial Court dismissed the suit filed by the plaintiff with cost. Aggrieved by the same, the plaintiff preferred an appeal suit in A.S.No.14 of 1996 and the first appellate Court also dismissed the appeal and confirmed the judgment and decree passed by the trial Court. Aggrieved by the same, the plaintiff preferred this present second appeal.

6. At the time of admission of this second appeal on 03.03.1998, the following substantial question of law were formulated for consideration:-

"1. Whether the Courts below are correct in deciding that the 15 days of termination of lease was invalid?

2. Whether the Courts below are correct in holding that the lease deed Ex.A.1 executed only in for 3 years is still valid by wrong interpretation of written agreement which is the foundation of the rights of parties?

3. Whether the lease deed Ex.A.1 is imperative in law and consequential Section 106 of Transfer of Property Act is applicable to this case?

4. Whether the Courts below are incorrect in rejecting the adangals Ex.A.3 to A.7 filed by the appellant, basing the oral evidence?

5. Is it correct that the finding of the courts below Ex.A.1 registered lease deed which expired long back is operative and valid without complying with the provisions of Section 107 of Transfer of Properties Act?"

7. Mr.P.M.Subramaniam, learned counsel appearing for the appellant/plaintiff submitted that the suit A and B schedule

properties belonged to the plaintiff and under Ex.A.1, in respect of the suit A schedule property, it was leased out in favour of one Jayaraman, who is none other than the husband of the first defendant and father of the defendants 2 to 6 and the lease deed is a registered one. The lease period specifically mentioned for three years from 01.01.1964 to 31.12.1966. Therefore, the lease hold right only in respect of A schedule property and no where mentioned about the B schedule property. There are trees situated in the suit A schedule property as such, specifically mentioned in the lease deed i.e., Ex.A.1 that, the property has to be handed over to the plaintiff after the lease period with trees.

7.1. He further submitted that there is absolutely no denial in respect of non payment of rent for the past five years and no where stated about the payment of rent in the written statement as agreed in the Ex.A.1. Therefore, admittedly the defendants are not paying rent even till today for the suit properties. The defendants are running the aided school and the entire salary for the teachers are paid by the Government and they gained lot of money from running of school. Even then, they did not pay a single penny for five years before the filing of the suit and even till today.

7.2. Further, he vehemently contended that Section 106 of Transfer of Property Act is not at all applicable to the present case, since there is a specific clause that the lease agreement is only for the period of three years and after completion of three years, the defendants shall hand over the possession of the suit property without any damages to the trees to the plaintiff. Therefore, six months notice as contemplated under Section 106 of Transfer of Property Act is not required. But unfortunately both the Courts below erred in holding that notice issued by the plaintiff does not fulfill the requirements as contemplated under Section 106 of Transfer of Property Act.

7.3. He further contended that in respect of the suit B schedule property, it was not at all leased out to the defendants and it is very clear from Ex.A.1. It does not speak about the suit B schedule property and in fact categorically mentioned about the trees situated in the suit A schedule property and never mentioned about the suit B schedule property. But unfortunately both the Courts held on the basis of the evidence of P.W.1 who is the son of the plaintiff that the trees are situated in the suit B schedule property and concluded that the suit B schedule property is also leased out.

7.4. The learned counsel appearing for the appellant/plaintiff to substantiate his arguments cited the following reported judgment :-

i. (1982) 1 MLJ 79 - S.Rajan Vs. Devi cine Proprietor.

- ii. AIR 1976 Mad 120 - K.Nasir Basha and anr Vs.
Turukkan Chatram Charities
- iii. AIR 1951 SC 285 - Karnani Industrial Bank Ltd., Vs.
The Province of Bengal and ors.
- iv. AIR 1981 SC 1550 - Shanti Devi Vs.
Amal Kumar Banerjee
- v. 1952 SCC 269 - Ram Kumar Das Vs. Jagadish
Chandra Deb Dhabal Deb and anr.
- vi. 1991-1-LW 371 - Palaniammal Vs. Pechimuthu & 3
others.

8. Per contra, Mr.S.Sounthar, learned counsel appearing for the second respondent/second defendant submitted that in the lease agreement categorically mentioned that the premises was let out for the purpose of running school and the rent has to be paid year to year at the rate of Rs.31/- per annum. Therefore, the termination notice required six months as contemplate under Section 106 of Transfer of Property Act. In fact, in the written statement, the defendants categorically denied that notice issued by the plaintiff, which is marked as Ex.A.8 dated 01.02.1994, is not proper, since in the said notice 15 days time was given to vacate the premises. Therefore both the Courts below rightly held that notice is not proper and Section 106 of Transfer of Property Act is not complied with.

8.1. Further though the lease was for the period of three years and thereafter the lease is continued even till today and it is categorically admitted by the plaintiff that the defendants were holding over the lease on the same terms. After demise of Jayaraman, original lessee, his legal heirs are running the school even till today. Therefore, 15 days notice for termination of the lease is not proper and Section 106 of Transfer of Property Act is very much applicable. As such, the judgment cited by the learned counsel appearing for the appellant/plaintiff do not applicable to the case on hand.

8.2. Further he contended that Ex.A.8 issued by the plaintiff thereby terminate the lease granted to the defendants and call upon them to vacate and hand over the possession of the property within the period 15 days from the date of receipt of the said notice. Further stated in the notice that the lessee said Jayaraman was holding over the lease on the same terms for running middle school in the mentioned property till his death. He further contended that the learned counsel appearing for the appellant/plaintiff argued that after the expiry of three years, there is no arrangement of lease as such Section 106 of Transfer of Property Act is not at all necessary, since the contract itself is contrary to law and the lease is for year to year and till the death of the said Jayaraman. Therefore, the provision under Section 106 of Transfer of Property Act is very much

applicable and the plaintiff ought to have issued notice under Section 106 of Transfer of Property Act by giving six months time to terminate the lease deed.

8.3. He further submitted that on the ground of willful default the defendants cannot be vacated, since the suit is filed under common law and not under the provision of Rent Control Act. If at all, the defendants did not pay the rent, the plaintiff definitely would have taken appropriate steps to vacate the defendants on the willful default on the payment of rent. Therefore, it shows that the defendants regularly paying the rent and running the school only for the charitable purpose and not for any profit.

8.4. He also contended that in respect of the suit B schedule property, P.W.1 categorically admitted that the trees are only situated in the B schedule property. One of the condition in the lease agreement is that the lessee had no right over the trees and he would safeguard the trees there on from others cutting the same. Further hand over the property after the lease period along with trees there on. Therefore, B schedule property also inclusive of the lease agreement, as such the defendants are entitled to benefits of Tenant's Production Act and the Courts below rightly held and dismissed the suit filed by the plaintiff and prayed for dismissal of the second Appeal.

9. Heard Mr.P.M.Subramaniam, learned counsel appearing for the appellant/plaintiff and Mr.S.Sounthar, learned counsel appearing for the second respondent/second defendant.

10. Admittedly, the suit properties belonged to the plaintiff. The suit A schedule property ad measuring 41 cents comprised in R.S.No.462/2 situated at No.38, thandavankulam Vattam, Sirkali Taluk, Mayiladuthurai District. One Jayaraman had taken the said property for lease under Ex.A.1, from 01.01.1964 to 31.12.1966, for the period of three years for running middle school in the name and style of Arulmozhi Aided Middle School, thereby putting up thatched super structure over the vacant land. Ex.A.1 is a registered one and as per the terms of lease agreement, the yearly paguthi was fixed as Rs.31/- and the lessee had no right over the trees situated in the A schedule property and he would be safeguard them from others cutting the same and hand over the premises after expiry of three years with trees there on. However, the lessee had been running the school and was holding over the lease on the same terms till his death.

11. Even after death of the lessee, his legal heirs viz., the defendants are running the school till today. Thereafter, the plaintiff issued notice on 01.02.1994, thereby terminated

the tenancy by giving 15 days time and called upon the defendants to vacate and hand over the possession of the suit A schedule property. Both the Courts below concluded that the procedure contemplate under Section 106 of Transfer of Property Act is not properly complied with and according to the said provision, six months period should be given to terminate the lease.

12. Now the main substantial question of law is whether Section 106 of Transfer of Property Act is applicable to the case or not and whether the rejection of adangal, which were marked as Ex.A.2 to Ex.A.7 in respect of B schedule property are correct or not?

13. It is relevant to extract the provision under Section 106 of Transfer of Property Act 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.

(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."

Accordingly in the absence of any contract for the lease of

immovable property for agriculture or manufacture purpose, it shall be deemed to be a lease from year to year and the lease of movable property shall be deemed to be a lease from month to month. For the lease from year to year, the six months notice is required to terminate the tenancy and for the lease from month to month 15 days notice period is required to terminate the lease.

14. In the case on hand, in the plaint averment and Ex.A.8, the notice for termination of lease are very clear that after expire of three years, the tenancy was holding over on the same terms of Ex.A.1. In this regard, the learned counsel appearing for the appellant/plaintiff cited the judgment reported in (1982) 1 MLJ 79 in the case of S.Rajan Vs. Devicine Proprietor, in which this Court has held as follows:-

4. The learned trial Judge came to the conclusion that the suit was maintainable and the notice Exhibit A-5, dated 17th August, 1974, was a valid one and complied with the requirements of Section 106 of the Transfer of Property Act. On appeal, the findings of the trial Judge were confirmed. Hence, this second appeal.

.....
8. This is replied by the appellant/defendant under Exhibit A-4 as follows:

Received your letter, dated 27th December, 1973. We are aware that the lease period expires on 31st May, 1974. Therefore, it is very clear from the above that the appellant was fully aware that the lease period expired by 31st of May, 1974. Under these circumstances, the question of giving a further notice to vacate, as contemplated under Section 106, Transfer of Property Act, does not arise. The decision reported in Smt. Shanti Devi v. Amal Kumar A.I.R. 1981 S.C. 1550, is a clear authority for this proposition. It has been held:

The lease was a lease for a definite term and, therefore, expired by efflux of time by reason of Section 111(a) of the Transfer of Property Act. That being so, the service of a notice under Section 106 of the Transfer of Property Act, was not necessary.

Even assuming for the purpose of the case that a notice under Section 106, Transfer of Property Act, is necessary, the question is whether it conforms to the requirement of Section 106, Transfer of Property Act. What is stated in Exhibit A-5, dated 17th August, 1974, is as follows:

We hereby notify you that your tenancy is terminated and require you to vacate and deliver possession of our premises by 1st October, 1974.

According to the learned Counsel for the appellant because of the word 'by' which would mean 'on or before 1st October, 1974' and not 'by the mid-night of 30th September, 1974; hence the notice is bad in law. I am unable to agree. It is by the end of the month, namely, the end of September, 1974, the appellant was required to vacate. Therefore, it does conform. In any event, I am of the view that in matters of the kind, one cannot revel in technicalities, so as to defeat the very purpose and-the object of a notice, which is given only for the convenience of the parties and to put the parties on guard."

15. He further relied upon the judgment of this Court reported in AIR 1976 Mad 120 in the case of K.Nasir Basha and anr Vs. Turukkan Chatram Charities, which reads as follows:-

"22. In Moosa Kutty v. Thekke 100 I.C. 398 : A.I.R. 1928 Mad. 687, also, a Bench of this Court held that if according to the terms of the lease the tenant is not entitled to notice, it cannot be said that the cause of action does not arise till the period given in the notice to quit expires. Notice to quit is only one of the modes in which a tenancy could be determined. Section 106 only recognizes two kinds of tenancies, one yearly tenancy and the other monthly tenancy. There are cases which do not come within the ambit of section 106 and they are governed by the terms of the contract of tenancy. It is only in cases where there is no contract as to notice that the provisions of section 106 would be applicable; but where there is a contract as to giving notice or waiving

notice the parties are governed by the terms of the contract and the law enacted in section 106, Transfer of Property Act, cannot apply. Where the contract was that the tenant should surrender the property whenever required, the provisions as to notice in section 106 cannot apply to it.

.....

24. From the above discussion it is clear that, as has been held in *Arunachala Naicker v. Ghulam Mahmood Saheb*, that if there is a contract, the intention of the parties has to be ascertained in applying section 106, Transfer of Property Act. As far as the present case is concerned, Exhibit A-1 is a "contract to the contrary" in relation to the provisions of section 106, From the said contract, it is clear that the parties intended that the period of notice should be one month and that a month's notice should be given at any time irrespective of the expiration of a month of the tenancy. In my view also, the second provision requiring the notice to expire with the end of a tenancy month is concomitant part of the requirement and forms an indivisible condition."

16. The learned counsel appearing for the appellant/plaintiff also relied upon the judgment of the Hon'ble Supreme Court of India reported in AIR 1951 SC 285 in the case of *Karnani Industrial Bank Ltd., Vs. The Province of Bengal and ors.*, as follows :-

17. This section was construed by the Federal Court in *K. B. Capadia v. Bai Jerbai Warden and Another* [[1959] F.C.R. 262], and it was held that where rent was accepted by the landlord after the expiration of the tenancy by efflux of time, section 116 applied even though the landlord accepted the amount remitted to him as "part deposit towards his claim for compensation for illegal use and occupation, and without prejudice to his rights". It is to be noted that in that case rent had been accepted after the expiry of the tenancy. In our judgment, the present case cannot be governed by that decision, because of the fact, which in our opinion is important; that here the payment of rent up to the 31st March, 1938,

was made not after the date of expiry of the lease, but on the 5th April, 1937, nearly a year before the expiry of the lease. A reference to section 116 of the Transfer of Property Act will show that for the application of that section, two things are necessary :- (1) the lessee should be in possession after the termination of the lease; and (2) the lessor or his representative should accept rent or otherwise assent to his continuing in possession. The use of the word 'otherwise' suggests that acceptance of rent by the landlords has been treated as a form of his giving assent to the tenant's continuance of possession. There can be no question of the lessee "continuing in possession" until the lease has expired, and the context in which the provision for acceptance of rent finds a place clearly shows that what is contemplated is that the payment of rent and its acceptance should be made at such a time and in such a manner as to be equivalent to the landlord assenting to the lessee continuing in possession. Both the courts below, after dealing with the matter elaborately, have concurrently held that in the circumstances of the case the consent of respondent No. 1 to the appellants' continuing in possession cannot be inferred, and we agree with this finding."

17. He also relied upon the judgment reported in AIR 1981 SC 1550 in the case of Shanti Devi Vs. Amal Kumar Banerjee, in which our Hon'ble Supreme Court of India held as follows :-

"4. The courts below have apparently been misled by the averments in paragraph 3 of the plaint that because the defendant could not fulfil the condition regarding obtaining of a licence, the grant made by the indenture of lease did not and could not take effect as also that in paragraph 7 that the tenancy of lease was from month to month. The parties could not by their pleadings alter the intrinsic character of the lease or bring about a change of the rights and obligations flowing therefrom. The lease was a lease for a definite term and, therefore, expired by efflux of time by reason of Section 111(a) of the Transfer of Property Act. That being so,

the service of a notice under Section 106 of the Transfer of Property Act was not necessary.

5. Undoubtedly, Section 111(a) of the Transfer of Property Act, which deals with determination of a lease by efflux of time, has to be read with Section 116 of the Act. But in the present case there is no allegation by the defendant that he was a tenant holding over within the meaning at Section 116 of the Act. Now, in order that a lease should be deemed to have been continued in favour of the defendant it was necessary to show that he remained in possession of the premises demised after the determination of the lease granted to him and the plaintiff had expressly or by necessary implication assented to his continued possession. There being no such plea of holding over, the matter falls to be governed by Section 111(a) of the Transfer of Property Act. If the period of lease had expired on January 10, 1970, the relationship of landlord and tenant ceased and the defendant became a trespasser. In the present case, the respondent who was the defendant, in Ground No. 6 of his memorandum of appeal before the High Court urged that the courts below should have held on the basis of the plaintiff's case read with the lease deed that the lease would expire on January 10, 1970. There was, therefore, no question of service of any notice under Section 106 of the Transfer of Property Act."

18. In the above judgments, our Hon'ble Supreme Court of India and this Court had held that when the lease agreement itself expired by efflux of time by reason of Section 111(a) of the Transfer of Property Act, the service of a notice under Section 106 of the Transfer of Property Act is not necessary. When the lease agreement itself for particular period, the question of giving further time to vacate the premises as contemplate under Section 106 of Transfer of Property Act does not arise. Section 106 only recognized two kinds of tenancies one yearly tenancy and the other monthly tenancy. There are cases which do not come within the ambit of Section 106 of Transfer of Property Act, they are governed by the terms of the contract of tenancy. It is only in cases where there is no contract as to notice that the provisions of Section 106 of the Transfer of Property Act, would be applicable. But where there

is a contract as to giving notice or wiving notice the parties are governed by the terms of the contract and the law enacted in Section 106 of the Transfer of Property Act, cannot apply. When the lease for a definite period and therefore expired by efflux of time by reasons of Section 111(a) of the Transfer of Property Act, that being so, the service of notice under Section 106 of TP Act is not necessary.

19. In the case on hand, the Ex.A.1 lease agreement executed for the period of three years. Thereafter it was holding over on the same conditions and terms till the death of the said Jayaraman, who entered into the lease agreement with the plaintiff. After his demise, his legal heirs are running the school in the suit A schedule property. Further one of the term is that the rent was fixed as Rs.31/- per annum. Therefore, the agreement has to be construed as year to year. As rightly pointed out by the learned counsel appearing for the defendants that the notice under Section 106 of TP Act is very much required. Whereas Ex.A.8 the notice issued by the plaintiff thereby terminating the tenancy by 15 days and called upon the defendants to vacate and hand over the vacant possession. Therefore the period of six months is required to terminate the tenancy. As such, the above judgments are not helpful to the case of the plaintiff. However, the plaintiff is always at liberty to initiate fresh proceedings to vacate the defendants in the manner known to law.

20. The next point for consideration is that whether the defendants are paying rent for the suit A schedule property to the plaintiff or not. Though specifically averred in the plaint that the defendants were in arrears of rent for the past five years and also claimed rental arrears with future profit, the defendants did not even whisper about the payment of rent to the plaintiff. Further they did not even mark any single piece of evidence for the payment of rent to the plaintiff. According to the lease agreement Ex.A.1, the rent payable by the said Jayaraman is a sum of Rs.31/- per annum for the suit A schedule property. Further for the said notice issued by the plaintiff, the defendants issued reply notice, which was marked as Ex.A.9. In the reply notice, the defendants categorically stated that in respect of the sum of Rs.31/-, the said Jayaraman used to pay a sum of Rs.100/- per annum apart from Rs.31/- and there was no arrear till the death of the said Jayaraman in April, 1993. They have to pay rent only after the death of Jayaraman. Therefore, it is very clear that the defendants are in arrears of rent from April, 1993 onwards till today.

21. It is unfortunate to state that the Courts below did not even frame any issue for the second and third relief prayed by the plaintiff and no where discussed about the payment of

rent. The prayer in the plaint in (b) and (c) reads as follows :-
"b) for Rs.93/- being the income
c) for future profits."

Though the defendants categorically admitted about non payment of rent from 1993 in the reply notice Ex.A.9, the Courts below did not notice the said fact and no findings on the arrears of rent and also future income. Therefore, the prayer in (b) and (c) in the plaint are allowed and the appellants/legal heirs of the deceased plaintiff are entitled for the arrears of rent and also future income in respect of the suit A schedule property.

22. It is also seen that the Courts below on the evidence of P.W.1 viz., the son of the plaintiff, held that B schedule property also part of the lease agreement in Ex.A.1 and they have received 1/3rd share from the profit of Tamarind tree situated in the suit B schedule property. Further held that as per the evidence of P.W.1, there is no tree in the A schedule property and the trees are only available in the B schedule property. Ex.A.1 also mentioned that the trees situated in the property, have to be handed over while handing over the vacant possession of the property. The Advocate Commissioner was also appointed to note down the trees situated in the suit A and B schedule properties. After inspection the Advocate Commissioner filed report stating that there is no division in the A and B schedule property by fencing or any other means.

23. On the basis of the evidence of D.W.1 to D.W.3, the Courts below concluded that in the year 1955 itself, the school was started by the defendants and only for the purpose of school ground, the suit B schedule property had been shown to the authority concerned for getting approval and other things and hence it has to be construed that the suit B schedule property also handed over for the lease along with the suit A schedule property. Though P.W.1 stated that at the time of filing suit there was no trees in the suit A schedule property, it is seen from the Advocate Commissioner's report, he categorically indicated that in the suit B schedule property he found 48 Tamarind trees and also found Palm trees. In the plan annexed to the report shows that there are trees found near the school premises. Further there is a fencing near the school on the northern side. On the western side of the school there is a temple and other houses along with Tamarind tree and Palm tree. Though to divide the suit A and B schedule properties there is no fencing, the rough sketch annexed to the report clearly shows that the suit A schedule property viz., near to the school there are trees. Therefore, Ex.A.1 indicated only the trees available near the school premises.

24. Even at the time of visiting premises by the Advocate Commissioner, he found one fallen tree and the said tree was cut down by four pieces. Further the suit B schedule property is full of 48 Tamarind trees. Ex.A.3 to Ex.A.7 clearly indicated that the suit B schedule property has no classification by any

crops except the Tamarind trees and the adangal extract also issued by the revenue department to prove the nature of cultivation. The adangal is meant for possession and whether the land cultivatable or not, name of the crop cultivated, period of harvesting, extent of cultivated part etc., in respect of the crop cultivation. Therefore, there is no possibility for usage as school play ground in the suit B schedule property. It is nothing to do with the school premises and no way helpful to the school. Further Ex.A.3 to Ex.A.7 issued in the name of the plaintiff. Those cannot be simply ignored only for the reason that it were issued only in the name of the owner of the property.

25. The Courts below simply rejected the Ex.A.3 to Ex.A.7, which were marked by the plaintiff to show that the plaintiff is in possession and enjoyment of the suit B schedule property, for the reasons that the said Ramachandra Mudaliar was being the owner of the property, his name was mentioned and there is no evidence to show that who is in possession of the suit B schedule property. It is unfortunate to state that both the Courts below erred in holding that suit B schedule property was, even before the execution of the lease deed Ex.A.1, handed over to the defendants for the purpose of running school. Except the oral evidence of D.W.1 to D.W.3, there is no piece of evidence produced by the defendants to prove the same. Further after 1993, the plaintiff was in possession of the suit B schedule property and the defendants are not in possession and enjoyment of the same.

26. The Ex.A.1 clearly shows about the extent of property which was leased out to the defendants. Admittedly, the land measuring 41 cent was leased out and permitted to put up thatched shed for running school. The Courts below concluded that in the year 1955, the school was started by the defendants. By oral agreement the suit B schedule property was also handed over to the defendants for running the school. But, there is no evidence to show that from the year 1955 onwards, the school was running by the defendants. As stated above no piece of document was produced by the defendants to show that they are in possession of the suit B schedule property and also for payment of rent to the plaintiff.

27. The Courts below repeatedly narrated that P.W.1 deposed that no trees available in the A schedule property and he is not in possession of the suit B schedule property and on the basis of the evidence of D.W.1 to D.W.3, suit B schedule property was handed over to run the school along with A schedule property. These findings are without any piece of evidence and completely perverse against the evidence on record. This Court is of the considered opinion that on marking Ex.A.3 to Ex.A.7 and also on the basis of Commissioner's report and plan, the plaintiff proved his possession and enjoyment of the suit B schedule property. Therefore, the Courts below erred in holding

that the plaintiff was not in possession and enjoyment of the suit property at the time of filing of the suit.

28. In fine, this Court finds valid reasons to interfere with the reasonings and findings rendered by the Courts below upholding the case of the defendants. Accordingly, the fourth substantial question of law formulated by this Court in this second appeal is answered in favour of the plaintiff and as against the defendants. Insofar as the other substantial questions of law i.e., 1 to 3 and 5 are answered in favour of the defendants and against the plaintiff. However, the appellants/legal heirs of the deceased plaintiff are at liberty to take appropriate steps to vacate the defendants in the manner known to law. Further, the prayer (b) and (c) in the plaint are allowed and the appellants/legal heirs of the deceased plaintiff are entitled for the arrears of rent and also future income in respect of the suit A schedule property.

29. With the above observations, this second appeal is partly allowed and the judgments and decrees passed by the Courts below are set aside insofar as the prayer (b), (c) and (d) are concerned and insofar as the prayer (a) is concerned, the judgments and decrees of the Courts below are confirmed. There shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts

To

1. The Principal Subordinate Judge, Mayiladuthurai.
2. The District Munsif, Sirkali.

Copy to :

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

+1 cc to M/s.S.Sounthar, Advocate Sr.No. 8483

+1 cc to M/s.P.Anbarasan, Advocate Sr.No. 8063

S.A.No.1805 of 1997

SSI (CO)
GN(11/02/2021)