

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.02.2020

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

S.A.NO.1747 OF 2001
C.M.P.NOS.1963 & 1964 OF 2007

K.C.T.Ponnambalaswamy Mutt
rep by its Madathipathi
Meyappa Swamigal
No.49 & 50, Mannargudi Road,
Chidambaram.

(Meyappa Swamigal impleaded as Party
appellant in the place of Nachiappa
Swamigal vide Order of Court
dated 13.02.2013 made in C.M.P.No.
1145 of 2011 in S.A.No.1747 of 2001)

...Appellant/Respondent/Plaintiff

Vs.

1. Gopanna (Deceased)
2. G.Rajalakshmi (Deceased)
3. Balachandran
4. G.Shanthi
5. Baskar
6. Venkatagiri
7. Gajalakshmi
8. Srinivasan

(Respondents 2 to 8 are
brought on record as
legal heirs of the deceased
sole respondent vide order
of the Court dated 31.07.2007
made in C.M.P.Nos.9400 & 9401
of 2006 in S.A.No.1747 of 2001)
(Respondents 3 to 8 are recorded
as legal heirs of the deceased
second respondent vide order
of the Court dated 10.11.2011
made in S.A.No.1747 of 2001)

...Respondents/Appellants/Defendants

Prayer :-

This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 15.06.2001 made in A.S.No.30 of 1999 on the file of the Subordinate Court, Chidambaram, reversing the judgment and decree dated 30.09.1999 made in O.S.No.816 of 1989 on the file of the District Munsif Court, Chidambaram.

For Appellants : Mr.V.Srikanth

For Respondents

R1 & R2 : Died

For R3 to R7 : Mr.P.Gopalan

For R8 : Not ready in notice

JUDGMENT

This second appeal is directed as against the judgment and decree dated 15.06.2001 made in A.S.No.30 of 1999 on the file of the Subordinate Court, Chidambaram, reversing the judgment and decree dated 30.09.1999 made in O.S.No.816 of 1989 on the file of the District Munsif Court, Chidambaram.

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 and damages. The defendant is the tenant of the suit property under the plaintiff. The monthly rent was fixed as Rs.50/-. The property was leased out to him for residential purpose on 05.06.1974. The defendant also paid Rs.100/- as advance and executed the rental agreement for the period of one year. Thereafter, he has been holding over the property on the same terms of tenancy and at present, the monthly rent is Rs.100/-. The defendant paid the rent up to December, 1987. From January 1988 onwards, he defaulted in payment of monthly rent. A sum of Rs.1,100/- was due from the defendant till the month of November, 1988. Therefore, the plaintiff caused notice to the defendant to quit the tenancy and calling upon the defendant to vacate and surrender the property, by the notice dated 25.10.1988. Hence the suit.

4. Resisting the same, the defendant filed written statement and stating that the entire averments made in the

plaint are false and frivolous. There is no cause of action to file the suit. The monthly rent is only Rs.50/- and the defendant has been paying the rent regularly without any default. The power agent of the plaintiff did not give proper accounts on receipt for the rent received by the plaintiff and as such there is absolutely no balance of rent. As such, the defendant is not liable to vacate the property on the ground of willful default. The arrears as stated in the plaint is baseless and prayed for dismissal of the suit.

5. On the side of the plaintiff, they examined as P.W.1 & P.W.2 and were marked Ex.A.1 to Ex.A.7. On the side of the defendant, he examined D.W.1 and marked Ex.B.1. 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 allowed the suit and directed the defendant to vacate and hand over the possession of the suit property within a period of two months. In respect of the damages, the plaintiff is at liberty to take appropriate steps to recover the same. Aggrieved by the same, the defendant preferred an appeal suit in A.S.No.30 of 1999 and the same was partly allowed and set aside 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 13.12.2001, the following substantial question of law was formulated for consideration:-

"i) When it is admitted that the tenancy agreement is dated 05.06.1974, the lower Court was right in holding that the tenancy started on 06.06.1975?"

7. The learned counsel appearing for the plaintiff submitted that the first appellate Court dismissed the suit, only for the reason that no proper notice was issued as contemplated under Section 106 of Transfer of Properties Act. Now the law has been amended by way of inserting sub Section 3 of Section 106 of Transfer of Properties Act. Accordingly to vacate the tenant, notice is sufficient. In this regard, he relied upon the judgment reported in 2008(4) LW 486 in the case of S.Samy Vs. Valliammal and 2012(11) SCC 405 in the case of Payal Vision Ltd. Vs. Radhika Choudhary.

8. Heard Mr.V.Srikanth, learned counsel appearing for the appellant/plaintiff and Mr.P.Gopalan, learned counsel appearing for the respondents 3 to 7. The only point for consideration is that whether Ex.A.1 notice is valid as contemplated under Section 106 of T.P. Act?

9. The learned counsel appearing for the plaintiff relied upon the judgment reported in 2008(4) LW 486 in the case of S.Samy Vs. Valliammal, which reads as follows :-

"9. Of course, it was the legal position prior to coming into force of the Transfer of Property Amendment Act, 2002 (3 of 2003). Section 106(3) of the Transfer of Property Act after the Amendment reads thus:-

"106(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."

10. The said amendment came into force on 01.01.2003. The next question is, whether in respect of pending suits and appeals or any other proceeding, the newly introduced section 106 (3) of the Act in the place of old Section 106 (3) would be applicable or not. Answer to this question is readily available in Section 3 of the Amendment Act, which reads as follows:-

"3. Transitory provisions:- The provision of Sec.106 of the Principal Act, as amended by Sec.2, shall apply to-

(a) all notices in pursuance of which any suit or proceeding is pending at the commencement of this Act; and

(b) all notices which have been issued before the commencement of this Act but where no suit or proceeding has been filed before such commencement."

11. A glance through the above provision would obviate any doubt regarding the applicability of amended provision in Section 106(3) of the Transfer of Property Act to the pending suits and other proceedings.

12. In view of the said clear position, though it is alleged in this case that the

notice issued by the plaintiff under Ex.A.2 is defective, in the sense the period specified fell short of the period specified under Section 106, the same would not invalidate the notice. So, there are no grounds to non suit the plaintiff. Thus, the only substantial question of law raised in the appeal is answered against the appellant/defendant. Thus, there is no merit in the appeal, appeal fails and accordingly the same is dismissed. No costs."

In the above judgment, this Court held that before amendment, if the notice under Section 106 of Transfer of Property Act is defaulted, in the sense, if the required time is not granted in the notice, then the lease will not stand terminated. After the amendment, Section 106(3) of Transfer of Property Act clarifies as follows:-

"106(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."

The above amended came into force on 01.01.2003 and it is applicable to the tenant proceedings, on the commencement of this Act. In the case on hand, the first appellate Court reversed the findings of the trial Court only on the ground that the notice issued by the plaintiff, which was marked as Ex.A.1 is not valid one as per the provisions contemplated under Section 106 of Transfer of Properties Act, by relying upon the judgment reported in AIR 1975 SC 1111 in the case of Sri Siddhi Vinayaka Coconut and Co. and Ors. vs. State of Andhra Pradesh and Ors. and 1997 (1) CTC 490 in the case of Rajangam (Died) And 5 Ors. vs Clara Ammal And 3 Ors. Now after the amendment, the decision has been changed and mere the notice is enough to terminate the tenancy.

10. In the suit for recovery of possession from a tenant, whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the plaintiff is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by the notice served by the landlord under Section 106 of Transfer of Property Act. Accordingly, the plaintiff issued notice, which was marked as Ex.A.1, thereby terminated the tenancy and call upon the

defendant to vacate and hand over the possession of the suit property. Now after amendment of the Act, the notice is valid one

11. In view of the above discussion, the findings of the first appellate Court are erroneous and against the evidence on record. Therefore, this Court is constrained to interfere with the findings of the first appellate Court. Accordingly the substantial question of law formulated by this Court in the present appeal is answered in favour of the plaintiff and as against the defendant.

12. In fine, the second appeal is allowed and the judgment and decree dated 15.06.2001 made in A.S.No.30 of 1999 on the file of the Subordinate Court, Chidambaram, is hereby set aside and resultantly, the judgment and decree dated 30.09.1999 made in O.S.No.816 of 1989 on the file of the District Munsif Court, Chidambaram, is restored. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.

Sd/-

Assistant Registrar(MDU)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Subordinate Judge,
Chidambaram.
2. The District Munsif,
Chidambaram.
3. The Section Officer,
V.R.Section, Madras High Court,
Chennai.

+1cc to Mr.V.Srikanth, Advocate, S.R.No.11993
+1cc to Mr.P.Gopalan, Advocate, S.R.No.10721

S.A.No.1747 of 2001 and
C.M.P.Nos.1963 & 1964 of 2007

VSNII(CO)
CS/18/09/2020