

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 17.12.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

S.A.No.630 of 2010
and
M.P.No.1 of 2010

Unnamalai Ramasamy ...Appellant/Defendant

vs

Arulmigu Srinivasa Perumal Temple,
Rep. By its Executive Officer,
Egmore, Chennai 600 008.Respondent/Plaintiff

Prayer:Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 14.11.2007 made in A.S.No.301 of 2007 on the file of the learned III Additional City Civil Court, Chennai, confirming the judgment and decree dated 16.06.2006 made in O.S.No.1314 of 1992 on the file of the learned V Assistant City Civil Court, Chennai.

For Appellant : Mr.T.K.S.Gandhi
For Respondents : Mr.V.Thillaisamy

J U D G M E N T

(This case has been heard through Video Conferencing)

Heard the learned counsel for the appellant and the respondent.

2. The suit filed by the temple for recovery of vacant possession was allowed by the trial Court and the appeal filed by the defendant was dismissed confirming the trial court judgment and decree. Against the concurrent findings, the present second appeal is filed.

3. The brief facts of the case is that the suit property was let out to the appellant herein under the proceedings of the Deputy Commissioner, HR & CE, Ex.A4 dated 08.03.1990. The extent of the property is 400 sq.ft. Along with the appellant, two others were also granted lease of portion of the land. They are M.Elumalai, Office Assistant HR & CE Department, for whom,

280 sq.ft. was leased for the rent of Rs.70/-, the other person Ramakrishnan, Watchman of the temple, for whom, 160 sq.ft. of land for rent of Rs.60 was allotted. The third person, the appellant herein, 400 sq.ft. at the rate of Rs.100/- per month was allotted. Subsequently, when the temple Executive Officer found that the appellant herein is trying to make repair work in the building leased out to her, within two weeks after leasing out of the premises to the appellant, issued a notice to the appellant on 20.03.1990. In the said notice, they instructed her to stop further repair work in the suit premises or else rental agreement will be cancelled. The said fact is reflected in the notice marked as Ex.A8. Thereafter, on 23.05.1990, the Deputy Commissioner, HR&CE, has instructed the Executive Officer of the temple to take necessary action to terminate the lease since the building is in dilapidated condition and therefore, the occupant of the building should be evicted following due process of law. As a consequence, the Executive Officer of the respondent temple has issued a termination notice as per Section 106 of the Transfer of Property Act on 13.11.1990, informing the appellant herein to quit and deliver the vacant possession of the land in her occupation on or before 01 January 1991. On receipt of the quit notice, the appellant through her counsel has issued a reply dated 24.12.1990, stating that after the temple recognised her as a tenant under the proceedings dated 08.03.1990, she has invested around Rs.15,000/- to renovate the dilapidated portion of the building rented out and she has invested the money with anticipation of erecting pakka building, for which, the Executive Officer has given consent. While so, the termination notice is invalid in law and also the appellant is entitled to the City Tenants' Protection Act.

4. Based on the pleadings found in the plaint and written statement, the trial Court framed the following issues:

- i) Whether the plaintiff is entitled for recovery of possession?
- ii) Whether the defendant is tenant only in the ground?
- iii) Whether the suit has cause of action?
- iv) Whether the plaintiff has filed appropriate court fee?
- v) To what other reliefs?

5. As far as the plea of the defendant in his written statement that the superstructure was constructed by him was disbelieved and rejected by the trial Court. Based on the reply, where the appellant admits investment of Rs.15,000/- to renovate the building let out to her and she intends to put up pakka construction with the consent of the Executive Officer. Since the suit has been filed after due notice under Section 106 of the Transfer of Property Act, the Court held that the plaintiff had adequate cause of action to lay the suit.

6. Aggrieved by the decree passed against her, the appellant has filed statutory appeal before the III Additional City Civil Court.

7. The Lower Appellate Court, after framing the relevant point for determination held that the termination notice issued by the plaintiff is valid and the plaintiff is entitled for recovery of possession from the defendant.

8. Aggrieved by the concurrent findings of the courts below, the second appeal filed. The appellant/defendant submitted that the termination notice does not furnish any reason for termination. The courts below failed to appreciate the fact that the property leased to the appellant was only a vacant ground with wall on one side. The superstructure in the land was constructed by the appellant. The courts below had heavily relied upon Ex.A4, which document does not indicate the existence of the superstructure in the 400 sq.ft. of land rented to the appellant/defendant.

9. The learned counsel appearing for the appellant as a new plea, raised a point of law that under HR & CE Act, Section 34 (b), termination of lease can be done by the temple authority only in case of default in rent. Nowhere in the plaint or evidence, there is a whisper about the default of rent by the defendant. In such case, Notice Ex.A2, which claims to be the termination notice, is non est in the eye of law for bereft of details and reason for termination.

10. This Court gave its anxious consideration to the rival submissions made by the learned counsels and perused the records.

11. From the arguments submitted by the learned counsel for the appellant, this Court understand that apart from the subject suit property, the other piece of land adjacent to the suit property was in possession of the appellant herein and she had purchased the same from the temple by exercising her right under Section 9 of the City Tenants' Protection Act.

12. As far as the present suit property is concerned, she has come into possession of the property admittedly by virtue of Ex.A4 proceedings dated 08.03.1990. Soon after renting out 400 sq.ft. of land to the appellant, which is not a formal rental agreement but only the proceedings of the Deputy Commissioner of HR & CE Department, the rented premises has been handed over to the three persons mentioned in Ex.A4. Soon after handing over possession, certain facts have come to the notice to the Commissioner of HR & CE and therefore, he has cancelled the proceedings dated 08.03.1990 issued by the Deputy Commissioner. Based on the order of the Commissioner on 23.05.1990, vide

Ex.A5, the Executive Commissioner has been instructed to take necessary action. In the said proceedings, the dilapidated condition of the building let out to the appellant and others also find reference.

13.This Court also finds that pursuant to this communication leading to the recall of the proceedings issued by the Deputy Commissioner on 08.03.1990, the other two tenants viz., Ramakrishnan and Elumalai, have handed over the premises to the Executive Officer of the respondent temple. This fact is reflected in the handing over letters of those two tenants, which is marked as Ex.A6 and A7.

14.From Ex.A8, it is also seen that the appellant herein, without permission of the landlord, had started renovating the building. Therefore, notice has been issued to her on 20.03.1990 by the Executive Officer to stop the renovation work. In the said factual scenario, the quit notice, Ex.A2 has been issued to the appellant fixing 01st January 1991, as the last date for vacating the premises. In this quit notice marked as Ex.A2, the determination of tenancy with the end of December 1990 is mentioned and also the earlier proceedings letting out the premises for Rs.100/- as monthly rent and further instruction of the Commissioner of HR & CE to cancel the tenancy are also referred to. It is mentioned in the notice about the proceedings of the Commissioner intimating the Joint Commissioner to cancel the tenancy, since the building is not in usable condition and found to be in dilapidated state. This fact is also candidly admitted by the appellant herein in her reply notice dated 24.12.1990.

15. The reply notice of the appellant marked as Ex.A3 is the sheet anchor to decide the case. In this reply notice, the appellant has admitted that the premises was let out to her for the monthly rent of Rs.100/- and the portion of the building let out to her was in dilapidated condition and therefore, she has invested more than Rs.15,000/- for reclaiming the portion. Thirdly, she has also admitted that she has done the renovating work with anticipation of erecting a pakka building. As a caveat, in the reply notice, she has stated that the temple authorities have given consent to put up construction and she intends to take recourse of the City Tenants' Protection Act. From the submission of the learned counsel for the appellant, this Court has ascertained that no proceedings under the City Tenants' Protection Act was initiated by the appellant and after the amendment to Section 9 of the City Tenants' Protection Act, the appellant cannot have recourse to the provisions of the City Tenants' Protection Act. Furthermore, on fact, the superstructure was found to be constructed by the landlord and not by the respondent. In the said circumstances, Section 9 of

the City Tenants' Protection Act have no application. The contention of the learned counsel for the appellant that the courts below have erred in relying upon Ex.A4, which does not refer about any superstructure but only the extent of land rented out to the appellant pales to insignificant in view of the reply notice Ex.A3, which is the admission on the part of the appellant regarding the ownership of the superstructure, the physical condition of the superstructure and her intention to put up pakka construction on renovation.

16. The other point raised by the learned counsel for the appellant regarding the validity of termination notice issued by the respondent temple marked as Ex.A2 in the light of Section 34(b) of HR & CE Act also not sustainable. The reason follows:- The content of termination notice, Ex.A2 dated 13.11.1990 reads under:

"To 13.11.1990
Thirumathi Unnamalai Ramaswamy,
No.15, Chinna Reddy Street,
Egmore, Madras 600 008.

Madam,

Under instructions from my client A/M.Sreenivasa Perumal Temple Egmore, represented by its Executive Officer to give you the following termination notice. That you are a tenant under my client in respect of portion of premises No.15, Chinna Reddy Street, Egmore, Madras-600 008 on a monthly rent of Rs.100/- payable on the first week of every succeeding month. My client further instructs that as per order of Commissioner HR & CE Madras your tenancy has been cancelled. You are still holding over the premises without any authority. Hence my client is hereby de-terminate and terminate your tenancy with the end of December 1990 and you are called upon to quit and deliver the vacant possession of the premises in your occupation on 1st day of January 1991 in the hands of my client failing which my client will be constrained to take ejectment proceedings holding you liable for all the consequences thereof including the cost of this notice Rs.50/-.

Yours faithfully,

(R.SHANMUGAM)

17. Section 106 of the Transfer of Property Act reads 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.]

18. Learned counsel for the respondent temple would submit that the notice Ex.A2 was issued in reverence to the statutory provision of the Transfer of Property Act as stated under Section 106. Being a tenancy on monthly basis, notice for termination by the end of December is valid and in consonance with the requirement of Section 106 of T.P. Act.

19. The new question of law raised by the learned counsel for the appellant is that under HR & CE Act, termination notice can be issued only in case of default of rent as contemplated under Section 34(b).

20. Section 34(b) was inserted to the HR & CE Act, 1959 vide Tamilnadu Act 25 of 2003. The suit for eviction was instituted on 26.02.1992, a decade earlier to the insertion of this provision. Therefore, the submission of the learned counsel for the appellant to take umbrage under Section 34(b) of the HR & CE Act

is of no avail.

21.For the said reasons, this Court finds no reason to interfere with the well considered judgments of the courts below and therefore, the second appeal is dismissed.

22. Three months time is granted to evict and hand over the premises to the temple authority failing which, the respondent temple shall proceed and take over the possession in accordance with law. S.A.No.630 of 2010 is dismissed. No costs. The connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1. III Additional City Civil Court,

Chennai.

2. The Assistant City Civil Court, Chennai.

+1 cc to Mr.K.Govi Ganesan Advocate sr41628

+1 cc to M/s.V.Thillaisamy Advocate sr42059

S.A.NO.630 OF 2010

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