

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.10.2020	Pronounced on: 22.10.2020
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CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.349 of 2020
and
C.M.P.No.7029 of 2020

R.Viswanathan,
S/o.Raju,
No.200, Bazaar Street,
Namakkal.

... Appellant /Defendant

/versus/

Thiru Alangadu Immudi Aghora Dharma

Shivachariyar Ayira Vysya Mutt, Nerinjipettai

Represented by its Chairman, Committee of Trustees,

T.S.Muthusamy Chittiyar,

S/o.Sadhasiva Chettiyar,

1/87 Main Road, Chatthirapatti Post,

Palani Taluk, Dindigul District.

... Respondent/Plaintiff

Prayer: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the learned Principal Subordinate Judge, Namakkal, dated 27.09.2019 made in A.S.No.47 of 2017 reversing that of the learned Additional District Munsif, Namakkal dated 23.12.2016 made in O.S.No.438 of 2012.

For Appellant :Mr.I.Abrar Mohamed Abdullah

For Respondent : No appearance

J U D G M E N T

(The case has been heard through Video Conference)

The Appellant is the tenant under the respondent. The suit for recovery of possession and for damages for the use and occupation in respect of the rented premises was dismissed by the trial Court. On appeal, the said judgment was reversed by the First Appellate Court. The relief of recovery of possession was granted. Hence, aggrieved by the judgment and decree of the Lower Appellate Court, the present appeal is filed.

2. The suit property belongs to Thiru.Alangadu Immudi Aghora Dharma Shivachariyer Ayira Vysya Mutt. The affairs of the mutt is governed by the Scheme framed by the Sub-Court, Erode in O.S.No.155 of 1956 dated 24.12.1958. The appellant is a tenant under the Mutt since 1983. In December 2009, the tenancy came to end. The request of the appellant to renew the tenancy was declined by the Mutt. The notice dated 10.12.2009 under Section 106 of Transfer of Property Act, for termination of tenancy was issued. The appellant received the termination notice on 12.12.2009. The appellant did not handover the possession on termination of tenancy, instead, he filed a suit for injunction in O.S.No.4 of 2010. The said suit was decreed on 30.09.2011, granting injunction without prejudice to the right of the Mutt, to evict the tenant following due process of law. Meanwhile, the Appellant also filed H.R.C.O.P.No.5 of 2010, petition under Rent Control Act, for deposit of rent. Thereafter, in the year 2012, suit for recovery of possession filed by the landlord Mutt as a Public Trust claiming exemption from the Tamil Nadu Buildings (Lease and Rent Control) Act under G.O.Ms.No.2000 Home dated 16.08.1976, issued by the Government in exercise of power under Section 29 of the said Act.

3. The appellant defended the suit on the ground that, the landlord Mutt is not a public Trust. The exemption under G.O.Ms.No.2000, not applicable to the plaintiff Mutt. The Mutt ought to have filed petition for eviction before the Rent Control Tribunal under the Rent Control Act. Since, the rent for the premises is regularly deposited in the Rent Control Tribunal, the relief of damages for use and occupation is strange. The averment that, the notice for termination of tenancy under section 106 of the Transfer of Property Act, sent by the Mutt is not correct. The suit for recovery of possession and damages for use and occupation is not maintainable.

4. The trial Court framed the following issues for consideration:-

- 1). Whether the Plaintiff is entitled to file suit instead of invoking the rent control Act ?
- 2). Whether the plaintiff has issued notice u/s 106 of TP Act to the defendant ?
- 3). Whether the plaintiff is entitled for the relief of recovery of possession ?
- 4). Whether the plaintiff is entitled for damages as prayed for ?
- 5). Whether the suit is maintainable ?
- 6). What other relief ?

5. Mr.Venkatachalam, Manager of the plaintiff Mutt was examined as PW-1. Through him 6 documents were marked as Ex.A-1 to Ex.A-6. The defendant examined as DW-1. No documents marked on behalf of the defendant.

6. The Trial Court, held that, in the scheme decree, the Mutt is not specifically described as Public Trust, hence, the exemption under G.O.Ms.No.2000 is not applicable. The landlord should have resorted to the Rent Control Tribunal for eviction and not the Civil Court for recovery of possession. Even after issuing notice for termination of tenancy, the Mutt had accepted the order of the Rent Control Tribunal in H.R.C.O.P.No.5 of 2010 and withdrawing the rent deposited without further appeal. Thus, the Mutt has waived the notice to quit. The Mutt had submitted to the jurisdiction of Rent Control Tribunal. Hence, it cannot take recourse to file suit under Civil Procedure Code. For these reasons, the suit was dismissed.

7. Against the dismissal of the suit, the plaintiff/Mutt filed Appeal Suit in A.S.No.47 of 2017 before the Subordinate Court, Namakkal. The Lower Appellate Court, on re-appreciating the evidence, particularly the scheme decree Ex.A-6 held that, the Mutt is a Public Trust. Hence, the suit for recovery of possession is maintainable. In the notice for termination Ex.A-2, dated 11.12.2009 the mutt had terminated the lease by 31.12.2009 and given 6 months time from the date of expiry of the lease and asked the appellant tenant to hand over the possession by 30.06.2010. Therefore, the termination notice is in order. The withdrawal of rent deposited in the rent control proceedings initiated by the tenant cannot be termed as waiver of the termination notice, particularly when the parties have failed to file statement of accounts regarding the date of deposit of rent by the tenant and date of withdrawal by the landlord. However, the landlord had not denied the averments that the rent deposited in the Tribunal was withdrawn by the Mutt, therefore, the plaintiff/Mutt cannot claim damages for those period. Granting three months time to vacate, appeal was allowed.

8. The learned counsel appearing for the appellant strenuously and emphatically submitted that the finding and reasoning of the trial Court is correct. The Lower Appellate Court has not properly considered the terms of the scheme decree which clearly indicates its private character. Pointing out certain portions of the scheme, the learned counsel emphasised that, the purpose of the Mutt is to cater its disciples and family benefit. Nowhere in the scheme the Mutt is characterised as Public Trust. The G.O.Ms.No.2000, specifically spelt that exemption is only for religious public trusts and public charitable trusts. This Government Order was issued in supersession of the earlier G.O.Ms.No.1998 dated 12.08.1974, which exempted Religious Trust and Charitable Institutions.

Therefore, the intention of the Government to exempt only religious Public Trusts and public charitable trusts is made very clear by the subsequent G.O. In the light of this fact, the judgement of the Trial Court has to be upheld.

9. Regarding the notice of termination, the learned counsel submitted that, the notice of termination Ex.A-2 dated 11.12.2009 is impliedly waived by the act on the part of the Mutt, which has received the rent subsequently and did not act upon the termination notice for more than two years. In Ex.A-4 decree passed in O.S.No.4 of 2010, the Court has granted injunction restraining the Mutt from evicting except under the due process of law. The suit filed without proper notice under Section 106 of Transfer of Property Act, cannot be termed as due process of law.

10. The sum and substance of the appellant argument is two folds. First the character of the Mutt is only a private charitable institution. Therefore, suit is not maintainable. Second, the termination notice Ex A-2 is not a valid notice.

11. To buttress his arguments, the learned counsel had circulated the following citations listed chronologically:-

(i). Deoki Nandan Vs. Murlidhar and others reported in 1956 SCR 756.

"The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory, if has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers."

(ii). S.Govindasamy and others Vs. Gowthiya Sangam, Nagore reported in 2007 (5) CTC 136

"The Lower Appellate Court while considering the point as to whether the plaintiff society is a 'public trust' or a 'private trust', after considering the various provisions contained in Ex.A-3 by-

laws of the society and particularly the objects of the society and the provisions contained at page 25 of the bye-laws, has recorded a categorical finding that the society has not been formed by a particular member for the benefit of a particular section of the society and it is not functioning for the benefit of the particular section of society, whereas it has been formed for the benefit of the entire Muslim public. The Lower Appellate Court has also observed that simply because the plaintiff society has been incorporated under the Act 21 of 1960 it cannot be described as a private society. The real character of the plaintiff society has to be determined only with reference to the objects of the society.

(iii). Rani Thaiyal Nayagi Ammal Choultry, Rep by its Trustees vs. S.Venkatesan and others reported in 2012 SCC OnLine Mad 1807.

"As rightly submitted by the learned counsel for the respondent that the plaintiffs are not barred from taking any further action regarding the framing of a scheme to the trust if really it is a public trust. Whether it is a public trust or private trust, it is to be decided at the time of presentation of such plaint. Therefore, it is not feasible for this Court to give any finding regarding the nature of the trust. However, I could see that the trust has been created under the Will dated 28.01.1908 in which the founder of the trust had created one Chatram near Madras Central Railway Station and also a charitable choultry at Thirukazhukundram and he has dedicated for that purpose. The said choultries even though dedicated to be a private trust, the object of the trust has to be gone into. In the said object, it has been stated that it should be used for the stay of the devotees who want to have dharsan at the aforesaid temples at Thirukazhukundram. Whether such an object is continued or not has to be decided for the decision as to whether it is a public trust or private trust."

(iv). M.Babu vs. The Chennapuri Annadana Samajam reported in 2016 (4) LW 81.

"The main objection raised by the appellant is that the plaintiff Trust is not a public Trust and therefore, the suit is not maintainable and the Rent Control Proceedings alone should have been resorted to. No doubt such contention of the appellant can be considered as having some force provided the status of the plaintiff trust is admitted by the plaintiff as the private Trust. It is not so in this case. On the other hand, it is the specific case of the plaintiff that it is a public trust having so many objects to serve the poor. In support of such claim, the plaintiff marked Ex.A1 viz., the memorandum of Articles of Association. Both the courts below, considering all the facts and circumstances found that the plaintiff trust is the public trust and thus rejected the claim of the first defendant. It is to be noted at this juncture that a question as to whether a Trust is a public Trust or private Trust is undoubtedly not a pure question of law alone, since answering such issue depends upon the appreciation of the facts and circumstances of the case and the materials available before the court in support of the pleadings of the parties and the findings rendered by the courts below."

(v). M.J.Thulasiraman and another vs. Commissioner, HR & CE and another reported in 2019 (8) SCC 689.

12. A "religious charity" has been defined to mean a public charity associated with Hindu festival or observance of a religious character. The second part of Section 6(16) of the Act clarifies that there is no requirement for the public charity to be connected with a temple or a math.

13. While the phrase "public charity" has not been specifically defined under the Act, some guidance as to its interpretation can be derived from a Constitution Bench decision of this Court in Mahant Ram Saroop Dasji v. S.P. Sahi, AIR 1959 SC 951, wherein the Court, while determining whether the

Bihar Hindu Religious Trusts Act (1 of 1951) applied to both public trusts as well as private trusts, observed as follows:

"6. ... It is necessary to state first the distinction in Hindu law between religious endowments which are public and those which are private. To put it briefly, the essential distinction is that in a public trust the beneficial interest is vested in an uncertain and fluctuating body of persons, either the public at large or some considerable portion of it answering a particular description; in a private trust the beneficiaries are definite and ascertained individuals or who within a definite time can be definitely ascertained. The fact that the uncertain and fluctuating body of persons is a section of the public following a particular religious faith or is only a sect of persons of a certain religious persuasion would not make any difference in the matter and would not make the trust a private trust..." (emphasis supplied)

19. The same conclusion was reached by this Court in the *The Commissioner, Madras Hindu Religious and Charitable Endowments v. Narayana Ayyangar and Ors* reported in AIR1965 SC1916, wherein a Fund, instituted for the purposes of feeding Brahmin pilgrims attending the Sri Venkatachalapathiswami shrine at Village Gunaseelam on the occasion of the Rathotsavam festival, was stated to be a religious charity. In that case, the Court held that:

"7. On the facts found, it is clear that on the occasion of the Rathotsavam festival of Sri Prasanna Venkatachalapathiswami shrine, pilgrims from many places attend the festival and the object of the charity is to feed Brahmins attending the shrine on the occasion of this

festival. It is not disputed that setting up a Fund for feeding Brahmins is a public charity. The primary purpose of the charity is to feed Brahmin pilgrims attending the Rathotsavam. This public charity has therefore a real connection with the Rathotsavam which is a Hindu festival of a religious character, and therefore it is a religious charity within the meaning of Section 6(13) of Madras Act 19 of 1951..."

20 . Similarly, in the case of K.S. Soundararajan and Ors. v. Commissioner of Hindu Religious and Charitable Endowments and Ors., (2016) 15 SCC 597, this Court again dealt with a similar issue. In this case, the Court was required to determine the nature of certain charities mentioned in a Will, wherein it was stated that persons of the same caste as the testator would be fed on the occasion of Panguni festival every year. The Will also provided for the supply of food to persons during the day of Chitra Pournami. In this context, the Court held that the abovementioned two charities constitute religious charities, and that it was within the ambit of the High Court under the Act to pass orders regarding the framing of a scheme for administering the same."

12. From the line of judgments rendered by various Hon'ble High Courts and Hon'ble Supreme Court and from writings of erudite scholars like Max Muller, H.Maine, Mukherjea, and Paras Diwan on Hindu Law, one will understand that it was vedic Hindus way of life to make gifts for religious and charitable purposes. This was expressed as Isthā and Purthā mentioned conjointly as isthā-purthā. In short, gifts made for vedic sacrifices, rites and offerings made in that connection were called isthā purposes and gifts made for other pious and charitable purposes unconnected with any vedic sacrifices were called purthā purposes. In Hindu system, there is no demarcation between religion and charity. In vedic Hindus life, clear cut distinction between religious and charitable purposes was hardly found.

13. According to Mukherjea, (Hindu Law of Religious and Charitable Trusts (1983) page 14), In India, Mutts (Monastic institution) owe its establishment to Sankaracharya of 8th century

AD who established four mutts at four extremities of India: the Jyotir mutt, Sarda Mutt, Sringeri Mutt and Gobardhan Mutt. Next to Sankaracharya the other name to be mentioned is Ramanuja who founded the vaishnav sect of Hindus and established nearly 700 mutts. Few other mutts worth mentioning are by the followers of Ramananda, Madhava, Nimbarka, Ballavacharya, Srichaitanya, Kabir Panthis, Jangamas and Lingayats.

14. Though there are private mutts but they are few. Whether or not a particular mutt is private will depend on the construction of the grant or on the usage and custom of the Mutt. (1938 Mad 810). If the property of the Mutt is for the personal use of the Madadthipathi/Mahant or his family members then it is private mutt otherwise, it is to be construed as public mutt. (Reference: Law of Endowments, Wakfs and Trusts by Paras Diwan, Wadhwa & Co publication).

15. Thus, the status and character of the plaintiff Mutt is to be determined by its purpose and functioning. In the instant case, the landlord is a Mutt and its management is governed by the scheme framed by the Court is an admitted fact. The copy of the scheme decree is Ex.A-6. The said scheme came to be framed pursuant to the suit O.S.No.155 of 1956 filed by the persons of visit and disciples of the Mutt for cancellation of the earlier scheme framed by the 1st defendant (Commissioner, HR & CE, Madras) or to modify the same.

16. On the death of the Madathipathy (Head of the Mutt) on 03.05.1951, the Commissioner of HR & CE had framed a scheme invoking his power under Section 58 of the Tamil Nadu Hindu Religious & Charitable Endowment Act, 1951. At the instance of an intervenor, the scheme was modified on 31.08.1955. Aggrieved by the said modification, Scheme suit was filed before the Principal sub court, Erode under section 58(1) and (3) of the Tamil Nadu HR & CE Act. Accordingly, the Court has passed the scheme decree on 24.12.1958, which is still in force even after the new HR & CE Act, 1959 came into force.

17. As per the scheme, the Madathipathi, who is the religious and secular head of the Mutt has to be selected in accordance with the provisions of the scheme. The disciples are the adult male members of the Ayira Vysya Community above the age of 21 years among the sub sects of Nagarathu Chettiars, Beri Chettiars, Kasukkara Chettiars, Soliar Chettiars and Manjaputhurars, residing in the various districts of the Madras State and who follow the tenets and doctrines of the Dharma Sivachariar Mutt of Nerinjipet.

18. Clause 3, under part II of the scheme, we understand that the scheme has been framed to administer and manage the Mutt and the Branch Mutts, the minor temples, shrines etc., attached thereto and all the properties movable and

immovable which belong to or have been or may hereafter be given, dedicated or endowed thereto or acquired for the Mutt in general or to any one or more of the temple, shrines or deities attached thereto do by a committee of trustees hereafter provided for subject to and conformity with the provisions of this scheme.

19. Clause 13, empowers the Madadhipathi to appoint an Executive Officer if necessary to assist in the administration of the Mutt on the advice of the committee of the trustees. The Executive Officer so appointed, or in case no Executive Officer, the Chairman of the Committee of the Trustees, shall be in charge of the day to day administration of the secular affairs of the Mutt and the endowment connected with the Mutt. The Mutt shall be represented by the Executive Officer or the Chairman as the case may be, in all Civil, Criminal and revenue proceedings. (Clause 15).

20. The learned counsel for the appellant referring clause 23 of the scheme to impress the Court that the Mutt is a Private Mutt.

Clause 23:- "from out of the income of the Mutt, the 'obligatory' and 'established' charges shall be first met and out of the surplus fund, 25% shall be treated as reserve. Out of the remaining surplus fund, the Madadhipathi with the consent of the committee of the trustees shall spend for starting education institutions for general and religious teachings for the benefit of the disciples and their families, and grant scholarships for poor and deserving students of the family of the disciples, in such places and to such extent as the case may be as the Madadthipathi and the committee of the trustees think fit."

21. He submitted that the endowment whatsoever is only meant for the benefit of the disciples and their families, therefore the Mutt is only a private charitable institution and not a religious public trust or public charitable trusts to gain exemption under G.O.Ms.No.2000 dated 16.12.1976 which reads as under:-

" In exercise of the powers conferred by section 29 of the Tamil Nadu Buildings (lease and Rent Control) Act, 1960 (Tamil Nadu Act 18/1960) and in supersession of the Home Department Notification No II (2)/HO/3811/74, dated the 12th August 1974, published at page 444, of Part II - Section 2

of the Tamil Nadu Government Gazette, dated the 21st August 1974, the Governor of Tamil Nadu hereby exempts all the buildings owned by the Hindu, Christian and Muslim religious public trusts and public charitable trusts from all the provisions of the said Act." (emphasis added).

22. The learned counsel while relying the later part of clause 23, had omitted to note the first part of the said clause which indicates how the Mutt funds to be spend. The line of priority starts from obligatory charges and the establishment charges, from the balance 25% to be kept reserved and the remaining surplus to be spent for benefit of disciples and their family members for religious and general education.

23. The establishment charges is defined under clause 2(f) of the scheme as, means and includes the Dhittam or scales of expenditure necessary for the performance of pooja in the temples of the mutt, expenses for the maintenance of the institution and of the Madadhipathi from the time being and his establishment, if any and other religious expenses in connection with the mutt or the temple to be incurred according to the custom and usage by the Madadthipathi and for the trustees according to the provisions of the scheme.

24. Thus, from the scrutiny of the scheme it is clear as crystal that the respondent Mutt is a religious public trust. Though it is not expressly mentioned in the scheme or elsewhere, by its objects, by the conduct of its administration all along and the scheme framed by the Commissioner of HR&CE, who had jurisdiction under Section 58 of the Tamil Nadu HR & CE Act, 1951 to frame scheme for proper administration of a religious institution all will go to show that the Mutt had been considered as a Hindu Religious and Charitable Endowment falling within the definition of Mutt under Section 6(13) of the Tamil Nadu HR & CE Act.

25. The plaintiff/Mutt had always been a public religious and charitable institution. By earmarking a portion of the surplus fund for the benefit of the disciples of Thiru.Alangadu Immidi Aghora Dharma Sivachariar will not erase the public character of the mutt. The beneficiaries are members of a sect in Hinduism and they form part of general public by themselves. Therefore, the view of the Lower Appellate Court regarding the status of the Mutt and exemption under Tamil Nadu Buildings (Lease and Rent Control) Act is upheld.

26. As far the validity of the termination notice, the date of notice is 11.12.2009 and the same has been received by the appellant on the next date. The lease period expired on 31.12.2009. On receipt of the notice of termination, the

appellant had again sought for extension of lease vide his letter dated 19.12.2009 marked as Ex.A-3. Meanwhile, the Appellate had filed suit for injunction and a petition to receive the rent. This has caused delay in filing the suit for recovery of possession. The appellant initially had sought for extension of lease from 01.01.2010 through his letter dated 12.11.2009 (Ex.A-1) which is prior to termination and another letter dated 19.12.2009 after termination. This proves that the lease which was likely to be determined by efflux of time under clause (a) of Section 111 of the Transfer of Property Act, was explicitly terminated by causing notice under section 106. The withdrawal of rent from the rent control tribunal is pitted against the Mutt to canvas that it amounts to waiver of forfeiture under clause (g) of Section 111 and also waiver of notice to quit under Section 113 of the Transfer of Property Act.

27. Before adverting to the said submissions and the relevant sections, it is pertinent to note that the suit premises is more than 100 years old. The landlord had sought back the premises to demolish and reconstruct. The appellant is running a Jewellery shop by name "Shri Vishnu Jewellery". The suit premises is either agricultural land nor let out for manufacturing purpose.

"Section 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.

Section 111: Determination of Lease:-

(a) by efflux of the time limited thereby;

(b).....

(c).....

(d).....

(e).....

(f).....

(g)by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease;

Section 112: Waiver of forfeiture.-

A forfeiture under section 111, clause (g) is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

Provided that the lessor is aware that the forfeiture has been incurred:

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

Section 113: Waiver of notice to quit.-

A notice given under section 111, clause (h), is waived, with the express or

implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

28. In a case when almost a similar defence taken by the tenant, this Court in S.A.(MD).No.379 of 2013 in N.P.Narayana Nadar vs Kottar Senguntha Mudaliar Samudhya Oor Vakai Sri Sentra Thisai Vendra Vinayagar Trust rep. by its Trustees P.Pazhaniyandi Mudaliar (judgment dated 30 April, 2019) after referring catena of judgments has held that,

"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."

29. The appellant, on his own, had chosen to file a suit for permanent injunction and got a decree (Ex.A-4), not to be evicted without due process of law. He had filed a petition for deposit of rent to avoid forfeiture clause likely to occur due to breach. The rent deposited in the Tribunal and the withdrawal by the landlord is neither express nor implicit consent. It is the consequence of the Court interim order and subject to the outcome of its final decision. The deposit of rent in Court will not convert the status of the appellant as tenant at sufferance into a tenant holding over. The Lower

Appellate Court had rightly applying the law and taking note of the judicial orders in O.S.No.4 of 2010 and R.C.O.P.No.5 of 2010 both filed at the instance of the appellant, had specifically recorded the reason and declined to pass decree in respect of damages for use and occupation. The deposit of rent in the tribunal had saved the appellant from paying damages. More than that protection and benefit, no other protection the Court can give to the appellant who has been in the premises for 10 years as tenant at sufferance.

30. In the result, the Second Appeal is dismissed. The judgment and decree passed by the Lower Appellate Court is confirmed. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

rpl/bsm

To:-

- 1.The Principal Subordinate Judge,
Namakkal.
- 2.The Additional District Munsif,
Namakkal.

S.A.No.349 of 2020
and C.M.P.No.7029 of 2020

CNR (CO)
GN (04/05/2021)

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