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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.2021
PRONOUNCED ON : 29.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1759 of 1999

1.K.Sornambal (Deceased)

2.K.Venkataramanasamy

3.K.Narayanasamy

4.K.Sundarasamy

5.K.Thiruvenkatasamy

6.K.Duraisamy

7.Dhanabaghyam

...Appellants/Plaintiffs/Landlord

(Fifth appellant recorded as LR of the deceased first Appellant
vide Order of Court dated 11.12.2014 made in CMP.No. 291 of 2014)

.. Vs ..

1.S.K.Subramani

2.V.K.Venkatachalam

3.Pappayammal

4.Rajamani

5.Saraswathi

6.Minor Nallasamy
(Minor Rep by Mother/Guardian
Saraswathi, the 5th Respondent)

7.Shanmuga Sundaram

8.Gomathi



9.Kausalya

10.Lakshmi

...Respondents/Defendants 1, 3, 6 to 13/Tenants

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 01.03.1999 made in A.S.No.118 of 1998 on the file of the Court of II Additional District Judge, Erode, confirming the judgment and decree dated 10.12.1997, made in O.S.No. 173 of 1987 on the file of the Court of First Additional District Munsif, Erode and submit the same is erroneous, illegal and liable to be set aside.

For Appellants : Mrs.Hema Sampath, Senior Counsel
for Mr.P.Valliappan

For RR1, 5 & 6 : Mr.S.Parthasarathy
Senior Counsel
for Mr.K.A.Vimal Kumar

For R2-R4,
R7 to R10 : No appearance

JUDGMENT

(The case has been heard through video conference)

The plaintiffs in the suit in O.S.No.173 of 1987 are the appellants herein.

2.For the sake of convenience, the parties are referred to as per the ranking before the Trial Court.

3.The plaintiffs have filed a suit in O.S.No.173 of 1987, before the District Munsif Court, Erode, seeking ejectment of the tenants/defendants from the suit property and for recovery of the vacant site leased out under Ex.A1/rental agreement. The suit was filed based upon Ex.A2/quit notice, dated 22.12.1986, whereby, the defendants were called upon to surrender the vacant possession on or before 07.01.1987 and failing which, they have to pay a sum of Rs.1,000/- per month for usage and occupation of the building along with damages from 01.11.1986 till the date of vacating the vacant site and the said suit was dismissed. Aggrieved against the same, the plaintiffs have preferred an appeal in A.S.No.118 of 1998 and the same was dismissed by the learned Second Additional District Judge's Court, Erode and hence, Second Appeal.



4.The Second Appeal was admitted on the following substantial questions of law:

1.Whether the courts below were right in their findings that the provisions of the City Tenant Protection Act are applicable to this case and that the suit is not maintainable for want of notice under Section 11 of the said Act?

2.Whether the Courts below were right in ignoring the specific pleadings and the evidence adduced by the first respondent that the superstructures on the vacant land were constructed only by his father and arrive at the conclusion that they were constructed by the partnership firm, further ignoring the specific pleadings of defendants 3 and 4 that the partnership firm did not make any constructions on the vacant land taken on lease by the firm?

3.Whether the courts below were right in ignoring specific admissions of defendants 3 and 4 that the partnership firm did not make any constructions on the vacant land taken on lease by the firm?

5.The plaintiffs/appellants have instituted the above said suit for ejectment based upon Ex.A1/registered lease deed, dated 18.08.1982 between K.V.Krishnasamy Chettiar and K.Subramani and based upon Ex.A2/quit notice purported to be issued under Section 106 of the Transfer of property Act, dated 22.12.1996.

6.The respondents/defendants have resisted the above said suit by denying various averments, interalia contended that there was an original lease deed for the vacant site, which was marked as Ex.B3/registered rental agreement, dated 17.04.1970, based upon which, the said lessee K.V.Krishnasamy Chettiar and K.Subramani have applied for permission to put up some super structure to the Erode Municipality under Exs.A1 and A2. In the year 1971, the said K.Subramani has entered into partnership deed with Kumarasamy Gounder and three others as per Ex.B4 and the original rental agreement document was again extended under Ex.B5, dated 24.11.1972. Thereafter, another rental agreement was entered between K.V.Krishnasamy Chettiar and Kumarasamy Gounder, which was marked as Ex.B6, dated 15.11.1977 and further construction was put up by the lessee after obtaining the necessary permission from the Erode Municipality, which was marked as Ex.B9 and further extension of the partnership deed was marked under Ex.B14, dated 27.06.1980. Ex.B1 is the original and Ex.B15 is the xerox copy of the subject matter of the lease between the parties.



7(a).The Crux of the defence case is that Ex.A2/quit notice issued by the landlord is defective and not in accordance with under Section 106 of the Transfer of Property Act and for want of prior notice under Section 11 of the Tamil Nadu City Tenants Protection Act, the suit is not maintainable.

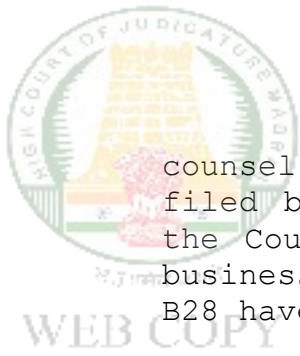
7(b).The Trial Court has accepted the case of the defendants and dismissed the suit, against which, the plaintiffs had preferred the appeal and the Appellate Court has also dismissed. Hence, the Second Appeal. This Second Appeal was admitted on the substantial questions of law as stated above.

8.Mrs.Hema Sampath, learned Senior Advocate appearing for the appellants would draw my attention to Ex.A1/lease agreement between the plaintiffs and the original lessee namely K.Subramani, which is a registered document, dated 18.08.1982 and Ex.A2/quit notice, dated 22.12.1986 and relied upon the following judgments reported in:

- 1) (81 LW 325) - V.Natesa Naicker Vs.P.Arumugha Naicker
- 2) (1977)2 SCC 646 - (Bhagabandas Agarwalla Vs. Bhagwandas Kanu)
- 3) (1995) 5 SCC 698 - (R.V.Bhupal Prasad Vs.State of A.P.,)
- 4) AIR 2001 AP 20 - (B.Chitra Ramacharandas Vs.National Remote Sensing Agency)
- 5) (1981) 2 SCC 199 - (Shanti Devi Vs. Amal Kumar Banerjee)
- 6) 95 LW 105 - (S.Rajan Vs.Devi Cine Projector Mfg. Co.,)
- 7) AIR 1989 Mad 321 - (P.P.Subba Raja Vs.E.S.Guruswamy)
- 8) 1998 SCC OnLine AP 469 - (Bhagyanagar Khadi Samithi Vs. S.B.Chitnis)
- 9) 1988 SCC Online Mad 141 - (P.P.Subba Raja Vs. E.S.Gurusamy)

9(a).Per contra, Mr.Parthasarathy, learned senior counsel appearing for R1, R5 & R6 would contend that the partnership firm is tenant under Ex.A1/lease agreement, without making partnership firm as a party, the suit is not maintainable and also fairly admitted that no such plea was taken either in the written statement or during the trial by way of cross-examination of the plaintiffs side witnesses or before the Lower Appellate Court and he further contended that suit - notice is defective as stated supra.

9(b).He would contend that the plaint proceeds on the basis that the lease is in favour of the partnership firm, however, without the partnership firm being added as party, the suit is bad for non-joinder of the necessary party. Learned senior



counsel would also draw my attention to the written statement filed by the 9th defendant and to the finding rendered by both the Courts below that the partnership firm is in existence and business is carried on in the name of the partners and Exs.B22 & B28 have been taken note of by the Courts below.

9(c).The specific plea raised in the Second Appeal is that since no notice has been issued in the name of the partnership firm, however all the partners are before the Court and under the partnership Act the partnership firm could not be separately added as part, but sufficiently represented by all the parties and hence, the suit is maintainable. Further contended that, no issues have been framed before the trial Court and no points for consideration has raised before the lower Appellate Court and hence, the same cannot be raised under Section 100 of C.P.C.

10.On a perusal of Ex.A1, which is the lease agreement entered between landlord and K.Subramani, goes to show that though in the individual capacity, said K.Subramani has entered into rental agreement, however, when he signed the document by affixing the seal of the partnership firm, assumes significance.

11(a).The core issue that are to be decide, on evidence is that, whether the respondents/defendants are entitle to the benefit of Tamil Nadu City Tenants Protection Act, 1981 and as such, the suit filed by the appellants is not maintainable for want of pre-suit notice as contemplated under Section 11 of the said Act.

11(b).Whether Ex.A2 quit notice is valid in law, as contemplated under Section 106 of Transfer of Property Act.

12(a).Both the Courts below have concurrently held that the suit is not maintainable, for non issuance of pre-suit notice under Section 11 of the Tamil Nadu City Tenants Protection Act. The Tamil Nadu City Tenants Protection Act, 1921, as amended by Act 2 of 1980 came into force on 03.03.1980. As per clause 3(a), the Amendment Act came into force on the date of the notification and made applicable to the tenancies of land created before that date in respect of the areas notified thereunder. As per the earlier Act, Tamil Nadu City Tenants Protection Act, 1921, was extended to Erode District on 31.01.1973 under G.O.M.S.No. 49, dated 08.01.1973, whereby, the date of commencement of the Act for bringing the Erode District under the Parent Act is 31.01.1973. After the Amendment Act, the amendment is made applicable in the areas mentioned therein,



in respect of the tenancy of land created before that date. Hence, tenancy created before 03.03.1980 alone falls under the provisions of the said Act.

12(b).For the reasons discussed in the preceding paragraphs and also taking note of the registered rental agreement for the land entered between the parties, wherein, the registration lease came into force in the year 1982-1983 and hence I find that as the subject matter of the lease deed is falls after 1980 (cut of date), the provisions of the Tamil Nadu City Tenants Protection Act [as amended by Act 2 of 1980] is not applicable. Consequently, issuance of notice under Section 11 of the said Act does not arise and hence this Court finds that both the Courts below have concurrently committed an error in assuming that the Act is applicable and accordingly committed an error to hold that the suit instituted by the landlord for recovery of suit land under Section 11 of the notice is mandatory, is erroneous, liable to be vacated. Furthermore as the Act itself is not applicable, thus, the necessity of issuance of pre-suit notice under Section 11 of the Act does not arise and hence, the contra finding rendered by the Courts below, as a concurrent finding, is hereby stands vacated.

13.The lease agreement under Ex.A1 was dated 18.08.1982 and hence, the Tamil Nadu City Tenants Protection Act has extended to the situs of the case viz., Erode District is from 03.10.1980 with cut of date 15.03.1980. In other words, if the rental agreements that were entered was before the cut off date then the respondents are entitled to the protection and benefits under the said Act.

14(a).As per Ex.A1, the registered lease agreement was dated 18.08.1982 and hence, in my considered opinion, the Tamil Nadu City Tenants Protection Act is not applicable to the fact in issue.

14(b).In this regard, the question of proposition of law as discussed in the various citations assumes significance and that are extracted below:

(i)In the judgment reported in (81 LW 325) - V.Natesa Naicker Vs.P.Arumugha Naicker, wherein, this Court has held as follows:

"To claim the benefits of the Act, the occupant when he makes the claim must be a tenant continuing in occupation under a tenancy created before the Act or holding over after the expiration of a tenancy



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created before the Act. The tenant had entered into a new agreement under a registered instrument. It was a tenancy for a period of three years, and the tenant was prohibited from sub-letting or assigning his tenancy. There was a restriction even in the user of the land and keeping cattle was prohibited. In effect, the tenant here had asked to be released from a tenancy of indefinite duration and wanted tenancy for a period of three years on certain terms. The landlord consented to that and a fresh tenancy was created with all formalities. Hence, there has been a fresh tenancy in the case."

(ii) in the judgment reported in (1995) 5 SCC 698 - (R.V.Bhupal Prasad Vs.State of A.P.), wherein, Hon'ble Judge has held as follows:

"Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser.

The act of holding over after the expiration of the term does not necessarily create a tenancy of any kind. If the lessee remain in possession after the determination of the term, the common law rule is that he is a tenant on sufferance. The expression "holding over" is used in the sense of retaining possession."

(iii) in the judgment reported in (1981) 2 SCC 199 - (Shanti Devi Vs. Amal Kumar Banerjee), hon'ble Supreme Court has held as follows:(dealing with notice under Section 111(a) and 106 of Transfer of Property Act)

"Where the lease was in fact for a definite period and had expired by efflux of time, held, the requirement of notice does not apply - Tenant who did not in the circumstances acquire the status of statutory tenant must vacate on the expiry of the contractual tenancy"

15. In the instant case Ex.A1/registered rental agreement between the parties, was of the year 18.08.1982. Though there was some reference with regard to the earlier agreement, by efflux of time, those rental agreement had become terminated and



after two months only a fresh rental agreement was entered under Ex.A1 and hence, the plea raised in written statement that the defendants are tenants even after the determination of the contractual lease, as held by the Hon'ble Supreme Court in the judgment reported in (1981) 2 SCC 199 - (Shanti Devi Vs. Amal Kumar Banerjee) as cited supra, the defendants are not the tenants till Ex.A1 came into force. Hence, I have no doubt in my mind to hold that Ex.A1 is a fresh rental agreement between the parties.

16.Now, the point that needs to be considered is whether Ex.A2/quit notice is valid in law and whether the same is in accordance with under Section 106 of the Transfer of property Act.

17(a).In the decision reported in (1977) 2 SCC 646 - (Bhagabandas Agarwalla Vs. Bhagwandas Kanu), wherein, Hon'ble Supreme Court has held as under:

"It is settled law that a notice to quit must be construed not with a desire to find faults in it, which would render it defective, but it must be construed ut res magis valeat quam pereat. It must not be read in a hyper-critical mannner, nor must its interpretation be affected by pedagogic pendatism or over refined subtlety, but it must be construed in a common sense way. "The validity of a notice to quit", as pointed out by Lord Justice Lindley, L.J. in Sidebotham Vs. Holland, "ought not to turn on the splitting of a straw"."

17(b).In the decision reported in 95 LW 105 - (S.Rajan Vs.Devi Cine Projector Mfg. Co.),, the Hon'bel Supreme Court of India has held as follows:

"Whether notice must conform to requirements of S.106 - Notice issued on 17th August, 1974 calling on tenant to deliver vacant possession "by 1st October, 1974" - Notice held valid.

Rejecting the contention, the tenant appellant was fully aware that the lease period expired on 31st May, 1974. Under these circumstances, the question of giving a further notice to vacate, as contemplated under S.106 of the Transfer of Property Act, does not arise"

17(c).In the unreported decision passed in S.A.No.1327 of 1997, dated 21.09.2011, this Court has held as follows"

"(1).Section 106(3) has been amended by the Amendment Act, 2002. Considering the said amendment,



this Court has held that the said amendment is retrospective and applicable to the pending proceedings as well.

(2).In S.Samy, v.Valliammal, (2009) 4 MLJ 264, considering the applicability of Section 106(3) of Transfer of Property Act to a pending Second Appeal, has been upheld by this Court.

17(d).Further, in the decision reported in 2011 (3) MWN (Civil) 465 - (Moorthy Vs.Govindaraj), this Court has held as follows:

"applying Mischief Rule and Heydon's Rule, it would be very clear that object of amended Section 106 is that Landlord should not be deprived of recovery of Possession on technical grounds - At same time, legislators have also been zealous to protect rights of Tenants in occupation by stating that Landlord should give 15 days Notice to Tenant to vacate premises - In present case, very fact that Landlord called upon Tenant to vacate premises and handover possession of tenement, would clear spotlight fact that he intended to terminate tenancy".

18.On a perusal of the above citations, scanning and scrutiny of Ex.A1/rental agreement, Ex.A2/quit notice issued by the plaintiff & Ex.B1/building plan approval by the Erode Municipality, this Court finds that in the legal notice dated 22.12.1986 under Ex.A2, it is clearly mentioned that "the lease agreement with our client has ceased to exist and further the period of the lease has also expired on 31.10.1986. Therefore your hereby required to vacate the property and handover vacant possession to out client on or before 07.01.1987 and pay compensation for your use and occupation of the property from 1.11.1986 to till the time your vacating at the rate of Rs1,000/- per month".

19.Ex.A2/legal notice, if read as a whole, on liberal construction, as indicated, by the various decisions of the Hon'ble Apex Court and is clearly valid and same is in accordance with the provisions of Section 106 of the Transfer of Property Act and accordingly, I have no hesitation to come to the conclusion that the quit notice issued under Ex.A2 dated 22.12.1986, is perfectly legal, valid and binding upon parties.

20.During the Course of the arguments, Mr.Partha Sarathy learned counsel for the respondents 1, 5 & 6 would draw my



attention to the legal notice issued under Ex.A2 and stated that the partnership firm was in existence and that was created by the said K.Subramani and he signed as a partner of the partnership firm and partnership firm was not added as a party and hence, non impleading partnership firm is fatal to the institution of the case. Consequently, the suit itself is not maintainable and this court has given its anxious consideration for the said contention of the learned Senior Advocate for the respondents/defendants, however, unable to uphold the same for multiple reasons, as discussed infra.

21.On a bare perusal of the Ex.A1/registered lease agreement, it appears that, it was entered between two individuals and not on behalf of the partnership firm as contended by learned counsel for the defendants. Even as per the pleadings, it is only after the formation of the lease agreement between the parties, the said K.Subramani has entered into partnership firm as per Ex.B4/original partnership firm and it was agreed after entered into new partnership. Furthermore, there is no pleadings to that effect in the written statement before the Trial Court, also assumes significance.

22.In the unreported judgment passed in SA.No.1327 of 1997, dated 21.09.2011, this Court has held as follows:

"Section 24 of the Indian Partnership Act speaks about the effect of notice to the acting partner. The said provision is extracted hereunder for better appreciation:

"24.Effect of notice to acting partner. - Notice to a partner, who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner."

A perusal of the Section 24 of the Partnership Act would leave no doubt in the mind of this Court that the service of notice on an acting partner would be deemed as service of notice on the other partners as well as the firm.

The whole purpose of a Notice for ejectment is to communicate the mind of the landlord to the real tenant with regard to the ejectment. In the instant case, such object of the notice-in-question appears to have been sufficiently complied with by due communication of the fact of ejectment to the real tenant, who has actually responded to it. It was simply an objection hyper-technical in nature.



Appeal as plaintiff was not given opportunity to contest said issue during trial.

Question of law can be raised for first time in appeal provided facts and materials necessary for determination of said issue are available on record - Plea that suit was not maintainable as defendants were neither natural nor Juridical persons could not be raised for first time in Second Appeal as necessary facts and materials are not available on record.

It is settled law that the question of law can be raised for the first time in the appeal if all the facts necessary for determination are on the record. It is not the case of the appellant before this Court that the facts and materials for determination of the said question are available on the record."

23(c).In the case of Hero Vinoth (Minor) v. Seshammal, reported in 2006(4) CTC 79 (SC) : 2006 (5) SCC 545, the Hon'ble Apex Court has held as follows:

"24. (iii) The general rule is that the High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the Courts below have ignored material evidence or acted on no evidence: (ii) the Courts have drawn wrong inference from proved facts by applying the law erroneously; or (iii) the Courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, it not reasonably capable of supporting the finding."

23(d).Further, in the judgment reported in 2015 (4) CTC 77 - (Tamil Nadu Electricity Board and another Vs. The Executive Officer, Kaveripakkam Town Panchayat, Kaveripakkam, Vellore District), wherein, this Court has held as follows:

"Issue of maintainability of Suit raised for first time in Second Appeal - Defendant having participated in trial and also Appeal proceedings without raising any objection is estopped from seeking to raise issue of maintainability of Suit as a Substantial Question of Law."



24. In view of the settled principles of law as extracted supra, notice to the partner is sufficient and as per the notice, the partnership firm is unregistered and from the contents of the notice, it is clear to the effect that the tenants have to vacate and handover the vacant possession of the landlord and as per section 24 of the Indian Partnership Act, service of notice to acting partner would be valid and in respect of the service of notice on other partners as well as on the firm, no plea has been raised in the written statement or during the Trial regarding non impleading of the partnership firm which is admittedly unregistered, cannot be permitted to raise in the first time in the second appeal.

25. In view of the limited scope under Section 100 of CPC and since, all the plea raised by the learned Senior Advocate on behalf of the respondents are already covered under the above judicial pronouncement, thus no other point but to reject the contention that non impleading of the partnership firm is not fatal to case and accordingly all the substantial questions of law are answered in affirmative in favour of the appellants/plaintiffs and held against the respondents/defendants.

26. In view of the above discussion this Court finds that all the findings rendered by both the courts below are hereby set aside and it is held that under Ex.A1 there is a valid rental agreement entered between the above said two individuals viz., K.V.Krishnasamy Chettiar and K.Subramani and it is not with the partnership firm and further held that Ex.A2/quit notice, dated 22.12.1986 is legally valid as contended under Section 106 of the Transfer of Property Act. In view of the date of commencement of the notification for the commencement of the Tamil Nadu City Tenants Protection Act as amended to the Erode District and the Registration of Ex.A1 goes to implies that the subject matter of the suit does not fall under the Tamil Nadu City Tenants Protection Act and hence, the provisions of the said Act is not applicable to the facts and circumstances of the case, consequently non issuance of pre suit notice under Section 11 of the Tamil Nadu City Tenants Protection Act, does not arise since Act itself is not applicable and in view of Ex.A2/quit notice, dated 22.12.1986 and the notification dated 03.10.1980, i.e., extending the benefits of the Tami Nadu City Tenants Protection Act for the Erode District. Consequently, all the points are answered in affirmative in favour of the appellants/Plaintiffs.



27. With the above observations, this Second Appeal stands allowed and the judgment and decree made in A.S.No.118 of 1998 on the file of the Court of II Additional District Judge, Erode, dated 01.03.1999 and the judgment and decree, made in O.S.No. 173 of 1987 on the file of the Court of First Additional District Munsif, Erode, dated 10.12.1997, are hereby set aside and the tenants are hereby directed to vacate premises of vacant suit schedule property and hand over vacant site to the appellants/landlord within a period of two months from the date of the judgment, for means property initiated as required under the order 20 rule 4 of CPC. No costs.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

dua

To

1. The II Additional District Judge, Erode.

2. The First Additional District Munsif, Erode.

3. The Section Officer

VR Section

High Court, Madras 104.

+2 Ccs to Mr.K.A.Vimal Kumar, Advocate sr 36510.

+1 CC to Mr.P.Valliappan, Advocate sr 36628.

S.A.No.1759 of 1999

BR(CO)

SP(26/11/2021)