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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.No.1085 of 2021
and
C.M.P.No.20543 of 2021

A.C.S.Jayapaul,
Nagai Christ Church,
CSI Church Compound,
Nethaji Road,
Nagapattinam Taluk & Munsif,
Nagapattinam

... Appellant/Appellant/Defendant

.Vs.

The Church of South India Trust Association,
Tiruchirappali-Thanjavur Diocese,
Rep. by its power agents,
(i)Lt.Col.S.S.Immanuel,
S/o.Mr.J.M.Schewarts,
Diocesan Treasures,

(ii)Rev.A.John Durai,
S/o.M.Asirvatham,
Clerical Secretary,
CSI Diocesan Office,
Puthur,

Thiruchirapalli - 620 017. ... Respondent/Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code against the Decree and Judgment dated 23.02.2021 passed in A.S.No.34 of 2016 on the file of Subordinate Court, Nagapattinam, confirming the Decree and Judgment dated 30.01.2014 passed in O.S.No.192 of 2010 on the file of District Munsif Court at Nagapattinam.

For Appellant : Mr.A.Prabhakaran

J U D G M E N T

The Second Appeal is directed against the Judgment dated 23.02.2021 passed in A.S.No.34 of 2016 on the file of Subordinate



Court, Nagapattinam, confirming the Decree and Judgment dated 30.01.2014 passed in O.S.No.192 of 2010 on the file of District Munsif Court at Nagapattinam.

2.The Respondent/Plaintiff filed a suit against the Appellant/Defendant for vacating and delivering the vacant possession of the suit property, to pay the past damages for wrong use and occupation from 01.07.2009, till the date of the suit and for future damages.

3.The case of Respondent is that Appellant became tenant under Respondent in the suit property, for the monthly rent of Rs.600/- payable on or before the 5th of every succeeding English calendar month. The tenancy is oral and is according to the English calendar month. Respondent is a Public Religious Trust and Public Charitable Institution and the buildings owned by it, are exempted from the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 60 as amended by Act 23 of 73. Respondent sent a notice to the Appellant on 09.06.2009, terminating the tenancy with the expiry of the tenancy month June 2009 and requested the Appellant to vacate and deliver the vacant possession of the suit property. Appellant received the notice and sent reply dated 26.06.2009, with false and frivolous allegations. Appellant has not chosen to vacate the premises and handover the possession to the Respondent, forcing to file Suit.

4.Appellant filed written statement admitting that Respondent is the owner of the suit property. However, suit filed for vacating the Appellant from the suit property on the grounds on which the Suit was filed have to be proved only by the Respondent. It is the case of the Appellant that, he is a tenant in respect of suit property from the year 1973. Initially, he paid monthly rent of Rs.50/- and it has been enhanced from time to time and lastly he was paying the monthly rent of Rs.600/- per month. Appellant was taking care of the maintenance of the suit property. Though it was agreed to adjust the maintenance amount from the rent, the Respondent has not honoured its commitment. Whenever respondent demanded the suit property for the use of church, Appellant handed over the possession of the suit property. The motive for filing the Suit is that Appellant has established a Christian Assembly viz., Nagai Christ Assembly. Irritated against the establishment of Nagai Christ Assembly, this suit was filed, only with a view to vacate the Appellant from the suit property. Therefore, suit is liable to be dismissed.

5.On the basis of the aforesaid pleadings, the trial



Court framed the following issues:

- "(i) Whether the Plaintiff is entitled to get the relief of delivery of vacant possession as prayed for?
- (ii) Whether the Plaintiff is entitled to get to relief past and future damages as prayed for?
- (iii) To what other reliefs and order as to costs?"

6. During the trial before the trial Court, no oral and documentary evidences produced on either side.

7. On considering the case of the parties, the trial Court found that there is jural relationship of landlord and tenant between the Respondent and the Appellant and a valid notice of terminating the tenancy has been given to the Appellant by the Respondent, terminating the tenancy from the end of tenancy month of June 2009. Therefore, learned trial Judge decreed the suit as prayed for.

8. Aggrieved against the judgment of the trial Court, the Appellant preferred an Appeal in A.S.No.34 of 2016. The learned first Appellate Judge also found that, there was valid termination of tenancy by the Respondent and therefore, there is no reason to interfere with the judgment of the trial Court and confirmed the judgment of the trial Court and dismissed the Appeal.

9. Learned counsel for the Appellant canvassed this Second Appeal, only on a short point, that is, Respondent has not chosen to examine himself as witness or produced any documents, including notice, terminating the tenancy and reply sent by the Appellant to substantiate the Respondent's case. It is the responsibility of the Respondent to prove his case by producing appropriate evidence. The fact that, no evidence adduced in this case, shows that Respondent has failed to establish its case. Therefore, the judgment of the Courts below have to be set aside and this Appeal has to be allowed.

10. From the pleadings set out by the parties in the Plaint and in the written statement, it is evident that jural relationship of landlord and tenant between Respondent and Appellant is admitted. Appellant also admitted that he was paying monthly rent of Rs.600/- (Rupees six hundred) per month, at the time of issuing termination notice. Appellant has also not denied the issuance of notice dated 09.06.2009, terminating the tenancy. Then it has to be assumed that appellant admitted the issuance of lease termination notice. It is relevant to



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extract Order VIII Rule 5 of CPC in support of this point:

"5. Specific denial- (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability :

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced."

This Rule makes it clear that if the allegation of fact in the plea is not denied specifically, it shall be taken to be admitted. Section 58 of Indian Evidence Act deals with deemed admission as per rules and pleadings.

"58. Facts admitted need not be proved. No fact need to be proved in any proceeding which the parties thereto their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions"

We found that under Order VIII Rule 5 CPC, if the allegation in the Plaint is not specifically denied, it shall be deemed to have been admitted.

11. Order XII Rule 6 of CPC is usefully extracted as follows:

"6. Judgment on admissions.

(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the



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application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."

It is clear from Order XII Rule 6 of CPC that when a party admits either in the pleading or otherwise, the Court may at any stage of the Suit, give such judgment as it may think fit, having regard to such admissions.

12. In the case before hand, there is no dispute regarding the jural relationship of landlord and tenant between Respondent and Appellant and that valid notice, terminating the tenancy was given by the Respondent to the Appellant, terminating the tenancy at the end of month June 2009. What we have to consider is, whether a valid notice terminating the tenancy was given under Section 106 of The Transfer of Property Act, 1882. Admittedly, tenancy in this case is monthly tenancy. Notice dated 09.06.2009, terminating the tenancy with expiry of tenancy month of June 2009, giving 15 days time as required under Section 106 of the Transfer of Property Act, 1882 was given. Appellant has not denied the issuance of notice nor challenged the validity or legality of notice, terminating the tenancy. Thus, it has to be taken that valid notice, terminating tenancy was given by the Respondent to the Appellant. When that be the case, Appellant has no option, except to vacate the premises. Both the Courts have found that valid notice, terminating the tenancy was given to the Appellant by the Respondent and therefore, Respondent is entitled for vacating the Appellant and for other reliefs. Therefore, this Court finds no reason to differ from the views taken by the Courts below. There is no substantial question(s) of law involved in the Second Appeal.

13. In fine, this Court confirms the Judgment dated 23.02.2021 passed in A.S.No.34 of 2016 by the learned Subordinate Judge, Nagapattinam, confirming the Decree and Judgment dated 30.01.2014 passed in O.S.No.192 of 2010 by the learned District Munsif at Nagapattinam and this appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

14. At the end of pronouncement of this judgment, learned counsel for the Appellant prayed for reasonable time, for



vacating the suit property. Considering the request, Appellant is granted four months' time, from today, for vacating and handing over possession of the suit property to the Respondent.

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Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Sai

To

1. The learned Subordinate Judge,
Subordinate Court,
Nagapattinam.

2. The learned District Munsif
Nagapattinam.

+lcc to Mr.A.Prabhakaran, Advocate SR.No.68837

S.A.No.1085 of 2021
and
C.M.P.No.20543 of 2021

CP(CO)
GN(08/02/2022)