



S.A.No.461 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.11.2022

CORAM

THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

Second Appeal No. 461 of 2005

Arulmighu Ellaiamman Thirukoil,
Rep.by its Executive Officer,
No.18, Veerasamy Pillai Street,
Periamet,
Chennai – 600 003.

... Appellant

Versus

V.K.Krishnakumari

... Respondent

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 07.02.2002 passed in A.S.No.102 of 2000 on the file of the VI Additional City Civil Court, Chennai, confirming the judgment and decree dated 29.11.1995 passed in O.S.No.2573 of 1991 on the file of the I Assistant City Civil Court, Chennai.

For Appellant	:	Mr.A.K.Sriram
For Respondent	:	No Appearance

JUDGMENT

The Second Appeal has been filed by the plaintiff against the judgment and decree passed by the VI Additional City Civil Court, Chennai, in A.S.No.102 of 2000 dated 07.02.2002 confirming the judgment and decree passed by the I Assistant City Civil Court, Chennai in O.S.No.2573 of 1991 dated 29.11.1995.



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2. The parties are hereinafter referred as per their litigative status

before the trial Court as plaintiff and defendant.

3. The brief case of the plaintiff are as follows:-

The plaintiff is a temple under the administrative control and management of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The suit property is a flat, owned by the plaintiff temple was leased out to the father of the defendant. After the demise of the father of the defendant, the same was leased out to the defendant. The defendant has been paying rent at the rate of Rs.120/- per month for the total land area measuring 335 sq.ft. While so, the plaintiff issued a notice under Section 106 of the Transfer of Property Act, 1882 on 23.11.1990 and the same was received by the respondent. A reply dated 13.12.1990 was issued by the respondent denying the claim of the plaintiff. As per the notice dated 23.11.1990, the lease was determined by the plaintiff and requested the defendant to vacate the premises on or before 13.12.1990. Since the defendant failed to vacate the premises, the present suit has been filed to direct the defendant to surrender the vacant possession of the suit property and for damages.

4. The case of the defendant are as follows:-



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The defendant's contention was that they have used the premises for more than three decades. Initially the property was leased out to her father and thereafter it was leased out to the defendant. The defendant has been paying the lease rent of Rs.120/- per month without any default. Under these circumstances, without assigning any reasons, the notice dated 23.11.1990 was issued calling upon the defendant to vacate the premises in question. Further, he would contend that no facility has been provided in the premises including bathroom, toilet etc. Under these circumstances, fixing a sum of Rs.1,000/- as rent is exorbitant and no one will pay rent for a flat of this nature without even an attached bathroom and toilet. The defendant therefore prayed for dismissal of the suit.

5. Before the trial Court, on behalf of the plaintiff, Mr.Narabathiraman was examined as P.W.1 and marked Exs.A1 to A5. On behalf of the defendant, the defendant examined herself as D.W.1 and marked Exs.B1 and B2.

6. The trial Court after hearing both side came to the conclusion that the plaintiff has not provided any reason for calling upon the defendant to vacate the premises. The Trial Court also attributed different motives against



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the plaintiff for issuing the notice for eviction against the defendant.

Accordingly, the trial Court dismissed the suit filed by the plaintiff.

7. Aggrieved over the said judgment and decree, the appellant herein preferred A.S.No.102 of 2000 and the appellate Court found that for the purpose of re-determination of the rent, the plaintiff has not filed any separate application for fair rent. That apart, no explanation has been provided for the purpose of eviction. When the defendant had been paying the rent without any default and has been in enjoyment of the property for over three decades, the claim of the plaintiff cannot be countenanced. Accordingly, the appellate Court confirmed the judgment and decree passed by the trial Court and dismissed the appeal on 07.02.2002.

8. Aggrieved over the said judgment and decree passed by the first appellate Court in A.S.No.102 of 2000, the appellant has been preferred the Second Appeal. When the appeal came up for admission on 01.07.2005 this Court admitted the Second Appeal and framed the following substantial questions of law:

*"(a) Whether the appellant has substantiated
his cause of action or not?*

(b) Whether the Transfer of Property Act or



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any other statute in force requires the appellant to explicit the reason for termination of tenancy?

(c) Does the length of occupancy of a property by a tenant clothe him with title or render the lease perpetual?

(d) Is the appellant/landlord barred by law from evicting the respondent/tenant fastidiously?"

9. After admission, notice has been served against the respondent/defendant and her name is printed in the cause list. However, there is no representation for her either in person or through counsel for quite some hearings. Even today, when the appeal is taken up for hearing, there is no representation on behalf of the respondent/defendant.

10. The learned counsel for the appellant/plaintiff submitted that from the beginning onwards the defendant had not shown any interest to contest the appeal, on the other hand, she has been enjoying the property without payment of rent from the date of filing the suit i.e., from the year 1991. Therefore, he insist this Court to take up the matter for a decision on merits. Having regard to such submission of the learned counsel for the appellant and considering the fact that this appeal is pending for more than three decades this Court is inclined to take up this appeal for disposal on merits.



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11. Mr.A.K.Sriram, learned counsel for the appellant/plaintiff would submit that the appellant is the owner of the suit property. Initially, the suit property was leased out in favour of the defendant's father. After the death of the defendant's father, the property was leased out in favour of the defendant by fixing a rent of Rs.120/- per month and she has been paying the rent. However, even at the relevant time, the property would fetch for more rental value than Rs.120/-. The temple is under the administrative control of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The Department determines the lease rents for a period of five years. Taking note of several factors, the plaintiff issued the notice by virtue of Ex.A1 dated 23.11.1990 and the same was acknowledged by the respondent vide Ex.A2-acknowledgment card. The plaintiff requested the respondent to vacate the premises on or before 31.12.1990. However, the respondent sent a reply notice dated 13.11.1990. Further, he would submit that notice was served under Section 106 of the Transfer of Property Act for the purpose of eviction of the respondent, while so, there is no need to give any explanation for evicting the lessee/tenant as per Section 106 of the Transfer of Property Act.

12. Further, he would submit that under Section 34 (1) of the Tamil Nadu Hindu Religious & Charitable Endowments Act, the temple property can



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be leased out only for a period of five years and thereafter if at all they wanted to lease out more than five years, the Commissioner has to approve it and before the approval of the Commissioner, the Commissioner has to get the sanction from the Government. In the present case, no such procedure was followed. Hence, there is no illegality in issuing the notice by virtue of the Ex.A1 by the plaintiff. Further, both the Courts below have not found any illegality in issuing the notice under Ex.A1. When such being the case without finding any illegalities, both the Courts below dismissed the case of the plaintiff by holding that the plaintiff has not provided sufficient reason but motive was attributed for issuing notice for eviction by virtue of Ex.A1 against the defendant. Hence, he prayed for setting aside the judgment and decree passed by the Courts below.

13. Heard the learned counsel appearing for the appellant/plaintiff and perused the materials available on record.

14. A perusal of the judgment and decree passed by the trial Court would go to show that the judgment in O.S. No. 2573 of 1991 dismissing the suit was passed on the ground that the plaintiff has not provided sufficient reason for termination of the tenancy and the claim made by the plaintiff



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against the defendant for damages is not sustainable. Further, the termination of the contract is not on the basis of good intention. Therefore, the trial Court held that even after the termination of tenancy, the tenant would continue as a tenant and damages cannot be claimed. Accordingly, the trial Court dismissed the suit and the 1st appellate Court also, confirmed the judgment of the trial Court on the same reason.

15. The plaintiff is a temple which is administered under the Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959 and managed by the Special Officer. This Act came into effect from the year 1960. It is worthwhile to extract here under Section 34 (1) of the Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959:-

"34. Alienation of immovable trust property.--

(1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purposes, of any religious institution shall be null and void unless it is sanctioned by [the Commissioner] as being necessary or beneficial to the institution:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be



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prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by [the Commissioner]

[Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government.]

Explanation.--Any lease of the property above mentioned though for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to any condition or not, be deemed to be a lease for a period exceeding five years."

16. A perusal of the above provision, it is very clear that in the case of lease of immovable property of a Temple, it should not exceed five years, in the event of exceeding five years, it should be approved by the Commissioner. The Commissioner after consideration has to obtain the sanction of the Government prior to such approval and without sanction of the Government, no lease can be permitted for more than five years. In the present case, it is apparently admitted that the defendant is in possession of the property for more than three decades even after the commencement of the said Act. Certainly, the property leased out to the defendant is valid only for five years and thereafter it is a null and void. The continuation of the defendant in the



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property on the basis of the lease granted long back cannot be permitted to continue beyond a period of five years and such continuance is void under Section 34(1). Hence, this Court hold that continuation of the lease by the defendant for more than five years become null and void.

17. In the present case, the plaintiff had issued notice under Section 106 of the Transfer of Property Act to evict the respondent. It is worthwhile to extract the provision of Section 106 of Transfer of Property Act is extracted hereunder:-

"106. Duration of certain leases in absence of wirtten 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."

18. A perusal of Section 106 makes it clear that in the event of lease other than for agricultural or manufacturing purposes without any agreement



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of the immovable property it shall be deemed to be leased from month to month terminable and in which case 15 days notice for termination is sufficient. In the present case, there was no agreement for leasing out the property to the defendant. Therefore, it is construed that the lease is for month to month basis and issuing 15 days notice prior to termination is sufficient. As already stated, in terms of Section 34 of the Act the maximum lease is for a period of five years. However, a conjoint reading of Section 34 of the HR&C Act and Section 106 of the Transfer of Property Act would makes it clear that under Section 106, the lease is deemed to be a lease from month to month since there was no contract for leasing out the properties to the defendant while so, the lease is terminable by way of 15 days notice. Further, by virtue of Ex.A1, notice for termination was issued on 23.11.1990 and the defendant sent a reply on 13.11.1990. As per Ex.A1, a time limit was fixed for vacating the premises on or before 31.12.1990. Therefore, more than 15 days time was given under Ex.A1 for vacating the premises and it is in compliance with the provisions of Section 106 of Transfer of Property Act. Except the provision for stipulating time limit to vacate the premises, there is no necessity for the lessor to provide any reasons to terminate the lease. The Act itself is clear that the lease is on a month to month basis. Therefore, by virtue of giving 15 days notice is sufficient to terminate the



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lease on month to month basis. Thus, as per Ex.A1, the notice was issued validly and the lease was terminated with effect from 30.12.1990. The appellant/plaintiff has substantiated that there is sufficient cause of action for the purpose of instituting the suit for evicting the defendant from the suit premises. In such view of the matter, Section 106 of the Transfer of Property Act does not require any reason to be assigned before the issue notice for eviction.

19. Further, the defendant cannot claim any perpetual lease under Section 106 of Transfer of Property Act and there is a bar for the defendant to claim the lease of perpetuity. On the other hand, there is no bar for the appellant/plaintiff to seek for evicting the respondent from the premises. Accordingly, all the substantial questions of law are answered in favour of the appellant and the judgment and decree passed by both the Courts below are liable to be set aside.

20. In the result, the decree and judgment dated 07.02.2002 passed in A.S.No.102 of 2000 on the file of the VI Additional City Civil Court, Chennai, confirming the judgment and decree dated 29.11.1995 passed in O.S.No.2573 of 1991 on the file of the I Assistant City Civil Court, Chennai are set aside



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and the Second Appeal is allowed. The suit in O.S. No. 2573 of 1991 filed by the plaintiff is decreed with regard to the eviction of the defendant alone from the premises. The defendant shall pay the compensation at the rate of Rs.120/- per month as agreed. No costs.

04.11.2022

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To

- 1.The Judge,
VI Additional City Civil Court,
Chennai.
- 2.The Judge,
The I Assistant City Civil Court,
Chennai.



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KRISHNAN RAMASAMY, J.

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