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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.01.2022
PRONOUNCED ON : 04.02.2022

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

S.A.No.130 of 2021 and
C.M.P.Nos.2637, 11117 & 11116 of 2021

P.Gnanasekaran Pandian Nadar (Died)

1.Vasanthakumari

2.Devarajan

3.Ganesamoorthi

4.Santhi ...Appellants/Defendants

Vs.

V.N.D.Devarajan ...Respondent/Plaintiff

Prayer:- Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree in A.S.No.31 of 2017 dated 29.09.2020, on the file of I Additional District and Sessions Judge at Cuddalore in reversing the judgment and decree in O.S.No.91 of 2013 dated 02.03.2017 on the file of the Subordinate Judge, Panruti.

For Appellants : Mrs.R.Sripriya

For Respondent : Mr.K.J.Parthasarathy

JUDGMENT

This Second Appeal is filed challenging the judgment and decree of the learned I Additional District Judge, Cuddalore, in A.S.No.31 of 2017 reversing the judgment and decree of the learned Subordinate Judge, Panruti in O.S.No.91 of 2013.

2. Respondent/plaintiff filed the suit against Gnanasekara pandian for the relief of direction to vacate him from the suit property and surrender possession with the super structure therein and for costs.

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3. The case of the respondent is that a suit property with super structure and oil mill machineries therein absolutely belongs to respondent. It was leased to Gnanasekara pandian. The lease agreement was executed on 01.06.2006 for three years. The lease agreement is an unregistered lease agreement. Gnanasekara pandian agreed to pay monthly rent at Rs.8,750/-. The lease period is for three years. Even after the completion of lease period Gnanasekara pandian has not vacated and he continued to pay monthly rent at Rs.8,750/-. Without the prior permission of the respondent and contrary to the conditions of lease agreement he installed additional machineries and altered super structure. After the expiry of the lease period, respondent repeatedly requested Gnanasekara pandian to vacate the suit property. But he did not vacate the suit property. Therefore, a notice dated 10.5.2013 was issued terminating the tenancy and calling him to vacate and surrender vacant possession of the suit property. It was replied on 13.05.2013. His possession is deemed to be that of a trespasser. In such circumstances, this suit is filed.

4. Gnanasekara pandian filed written statement denying the allegations made in the plaint. It is contended that, he became tenant in 1967 and he is in continuous possession of the premises as a tenant. It is admitted that there was a fresh rent agreement entered into between the parties on 01.05.2006. When the tenancy expired on 31.05.2009, with an approval and consent of the respondent, he continued as a tenant by holding over on the same terms and conditions and depositing monthly rent in account of the respondent. Having accepted the rent, respondent cannot claim that Gnanasekara pandian is in unlawful possession of the suit premises. The respondent demanded exorbitant rent of Rs.15,000/- per month before the issuance of Advocate notice. The claim made in the notice that the suit premises is required for personal use of the respondent and that Gnanasekara pandian made alterations without getting permission from the respondent are all not true. The claim that the suit premises required for demolition and reconstruction is also not true. Therefore, the suit has to be dismissed.

5. The trial Court framed the following issues:

i) Whether the defendant is the statutory tenant under the plaintiff?

ii) Whether the plaintiff is entitled for eviction of tenant in the suit property?

iii) To what relief?

6. During the course of trial PW1 was examined and Exhibits A1 and A2 were marked on the side of the respondent.

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DW1 was examined and no document was marked on the side of the appellants.

7.On considering the oral and documentary evidence, the learned Trial Judge, found that respondent has not proved the claim made in the plaint and therefore, dismissed the suit. It appears that after the dismissal of the suit, the sole defendant Gnanasekara pandian died and therefore, the respondent/plaintiff filed an appeal in A.S.No.31 of 2017 impleading the legalheirs of the deceased Gnanasekara pandian. The learned First Appellate Judge, on reconsideration of oral and documentary evidence found that on the expiration of the fixed period of lease, the tenant becomes a "Tenant at sufferance". No notice is required to evict a "Tenant at sufferance". The respondent initiated legal proceedings by filing the suit for vacating the appellants and that is permissible in law. In this view of the matter, the learned First Appellate Judge reversed the judgment of the Trial Court and decreed the suit by allowing the appeal. Aggrieved against the judgment of the First Appellate Judge, the appellants have filed this Second Appeal.

8. The following substantial questions of law arise for the consideration in this Second Appeal,

i) Whether the Lower Appellate Court is right in ordering ejectment in the absence of a proper notice under Section 106 of the Transfer of Property Act?

ii) Whether the Lower Appellate Court is right in not awarding compensation to the petitioner for the improvements in the property as per Section 108 of the Transfer of Property Act?

9. The learned counsel for the appellant submitted that appellants is carrying on business in industrial operations and the respondent is bound to issue notice terminating the lease by giving six months time. But, such a notice was not given in this case. Appellants spent a considerable amount by raising structure and running the industry. This aspect was not considered by the First Appellate Judge. Unless there is legal termination of tenancy through proper notice, the appellants cannot be asked to vacate and surrender the possession of the suit property. However, the First Appellate Judge without considering the fact that, no proper notice was issued, directed the appellants to vacate the suit property and surrender possession. Therefore, the judgment of the First Appellate Court has to be set aside and this Second Appeal has to be allowed by dismissing the suit.

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10. In response, the learned counsel for the respondent submitted that the appellants admitted that the tenancy is a monthly tenancy. Proper notice under Section 106 of Transfer of Property Act, was given to the appellants to vacate and hand over the possession. That apart, once the lease period is over, the tenancy gets terminated by efflux of time, prescribed in the tenancy agreement. In that case, no notice under Section 106 is required. The appellants had not made any counter claim with regard to the alleged improvements made in the suit property. In the absence of proper pleadings, evidence and prayer, they cannot claim the compensation for the alleged improvements made by them. 11. Therefore, he prayed for confirming the judgment of the First Appellate Court and for the dismissal of this Second Appeal. In support of his submissions, he pressed into service, the judgments reported in (2020) 11 SCC 782 Sevoke Properties Limited Vs. West Bengal State Electricity Distribution Company Limited.

12.Considered the rival submissions and perused the records.

13.From the case set out by the parties, it is made clear that there is agreement between the parties that the suit property belongs to the respondent and it was leased to Gnanasekara pandian, the husband of the First appellant and father of other appellants. After the death of Gnanasekara pandian, appellants continued to possess and enjoy the suit property. It is pleaded in the plaint that respondent and Gnanasekara pandian entered into an unregistered rent deed on 01.06.2006 for three years for a monthly rent of Rs.8,750/-.

14.It is claimed by the respondent that Gnanasekara pandian agreed to vacate the suit property on the expiry of three years. Even after the expiry of three years, Gnanasekara pandian and then appellants continued in possession of the suit property and they are paying the rent through banker's cheque. Inspite of repeated request to vacate the suit property, appellants have not vacated. This is the broad case of the respondent.

15.In the written statement filed by the Gnanasekara pandian, it is admitted that the property with superstructure belongs to the respondent and it was leased out to Gnanasekara pandian under a lease deed dated 01.06.2006 for a monthly rent of Rs.8,750/- for three years. It is clear from the pleadings that the appellants agreed that they are in possession and enjoyment of the suit property as lessees for a monthly rent of

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Rs.8,750/- and the lease period is three years. The lease agreement dated 01.06.2006 is also admitted. The lease agreement was not marked as an exhibit before the Courts below, however, in view of the specific admission of the appellants that there is a lease agreement, the tenancy is monthly tenancy and the period of tenancy is three years, non production of unregistered lease agreement would no way affect the case of the respondent.

16.Section 106 of the Transfer of Property Act, deals with duration of certain leases in absence of written contract or local usage. It 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.

17.The submission of the learned counsel appearing for the appellants is that the suit property was taken on lease for manufacturing purpose and therefore, the lease should be terminable by six months notice. In the case before hand, only a 15 days notice was given through Exhibit A1. Exhibit A1 notice is not given as per the mandate of Section 106 of the Transfer

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of Property Act and therefore, Exhibit A1 is not valid. Section 106 of the Transfer of Property Act makes clear that, only 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. In that case, the lease is terminable by lessor or lessee by six months notice. The lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable by 15 days notice. In the case before hand, it is plainly and clearly admitted by the original lessee Gnanasekara pandian that the lease is for a fixed period of three years and it is a monthly lease. Monthly rent payable is Rs.8,750/-. Therefore, what is required for terminating the lease between the appellants and respondent is that a valid notice under Section 106 of the Transfer of Property Act, which in the considered view of this Court, was rightly given.

18.In Exhibit A1 notice, apart from mentioning the terms of lease agreement, the respondent had mentioned the expiry of lease period, installation of additional machinery and alteration of superstructure by the lessee without prior permission of the respondent in violation of terms of the lease agreement. It is also claimed that respondent requires the suit property to run oil mill on his own and for his personal occupation. This notice was dated 10.05.2013. The lessee was asked to vacate on or before 31.05.2013 and surrender possession on 01.06.2013. The reading of this notice clearly shows that inspite of repeated request by the respondent, the appellants continued to be in possession of the suit property after the expiry of lease period on 31.05.2009. What is the character of possession of such a lessee?

19.The learned counsel for the appellants submitted that even after the expiry of the lease period, the appellants had been regularly paying rents to the respondent. Their possession is that of tenant by holding over. Section 116 of the Transfer of Property Act deals with effect of holding over. Section 116, reads as follows,

> 116. Effect of holding over.—If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for

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which the property is leased, as specified in section 106.

20.This Section makes it clear that if a lessee remains in possession after the termination of lease period, and the lessor accept the rent from lessee or otherwise assents to his continuing in possession, the lessee, in the absence of an agreement to the contrary, renewed from year to year, or from month to month according to the purpose for which the property is leased, as specified in Section 116. What this Section conveys is that even after the determination of the lease, if the rents are accepted by the lessor, in the absence of an agreement to the contrary, the lease is renewed from year to year, or from month to month, according to the purpose for which the property is leased under Section 116 of Transfer of Property Act. In the case before hand, it was already found that the lease is a monthly lease for a total period of three years. Therefore, even after the expiry lease period on 31.05.2009, the lease, in the absence of an agreement to the contrary, can be construed only as a monthly lease. To terminate a monthly lease a clear notice giving 15 days time is necessary. Exhibit A1 confirms to the requirement of termination of lease in case of a monthly tenancy. The reasons for vacating the appellants had been clearly mentioned in Exhibit A1 notice. The Court is not required to enquire into the bonafides of the lessor's claim. Therefore, this Court is of the considered view that respondent is entitled to the relief of vacating the appellants from the suit property with the direction to hand over the possession to the respondent.

21.The reading of the judgment of the learned First Appellate Court shows that the learned First Appellate Court proceeded to dispose the appeal holding the appellants as “Tenant at sufferance” when the lease expires on the efflux of time, under Section 111 (a) of Transfer of Property Act, no notice of termination of lease is necessary. Judgment reported in (1981) 2 SCC 199 Shanthi Devi Vs. Amal Kumar was relied to base this conclusion. It is observed in this judgment that,

> “5. Undoubtedly, Section 111 (a) of the Transfer of Property Act, which deals with determination of a lease by efflux of time, has to be read with Section 116 of the Act But in the present case there is no allegation by the defendant that he was a tenant holding over within the meaning at Section 116 of the Act. Now, in order that a lease should be deemed to have been continued in favour of the defendant it was necessary

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to show that he remained in possession of the premises demised after the determination of the lease granted to him and the plaintiff had expressly or by necessary implication assented to his continued possession. There being no such plea of holding over, the matter falls to be governed by Section 111 (a) of the Transfer of Property Act. If the period of lease had expired on January 10, 1970, the relationship of landlord and tenant ceased and the defendant became a trespasser. In the present case, the respondent who was the defendant, in Ground No. 6 of his memorandum of appeal before the High Court urged that the courts below should have held on the basis of the plaintiff's case read with the lease deed that the lease would expire on January 10, 1970. There was, therefore, no question of service of any notice under Section 106 of the Transfer of Property Act."

22.The learned counsel for the respondent also relied on the judgment reported in (2020) 11 SCC 782 Sevoke Properties Limited Vs. West Bengal State Electricity Distribution Company Limited for the same proposition. It is observed that,

"13.Mr Sundaram has sought to distinguish this decision, since in that case this Court found that the defendant was a tenant holding over within the meaning of Section 116. We find merit in the submission which has been urged by Mr Sundaram. In the case before this Court noted above, the defendants had not admitted that the term of the lease was for a period of nine years. This was noted by the Court, as we have extracted earlier. On the contrary, we find that in the present case, there is an express admission on the part of the defendants that they were in occupation under the lease agreement for a period of fifteen years with effect from 1981 and that the period of lease expired on 24 May 1996. Such a specific admission on the part of the defendants is contained in paragraph 22 of the written statement. Under Section 111(a), a lease of immovable property determines by efflux of time limited thereby. Once this be the position, there can be no manner of doubt that the position of the respondent on the expiration of the lease was of a tenant at sufferance. In the circumstances, there was no necessity of a notice for the termination of the lease under the provisions of Section 106. The respondent having squarely

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admitted in its written statement that it was in occupation for a term of fifteen years, that term having expired, the lease stood determined by efflux of time. Once the lease stood determined by efflux of time, there was no necessity for a notice of termination under Section 106."

23. The reading of this judgments show that, that was a case where there is no tenancy agreement. In the case before hand, there is a tenancy agreement, though it is unregistered. The agreement is admitted by the appellants. The tenancy is a monthly tenancy. It is claimed by the respondent that appellants are regularly paying the monthly rent through banker's cheque, though he claims that without his knowledge. He can claim payment of rent without his knowledge for one or two months and not for four years. Therefore, the claim of the respondent that the appellants had been paying rents without his knowledge cannot be accepted. Respondent has not returned the rent paid by the appellants, but he accepted the rents. Therefore, the appellants can only be construed as tenants by holding over. The tenancy period gets over by efflux of time as per Section 11 (a) of Transfer of Property Act. A valid notice under Section 106 of Transfer of Property Act, was also given to the lessees for vacating and handing over possession of the suit property to the respondent. The appellants either as a tenant by holding over or as a "Tenants at sufferance" are liable to be evicted from the suit property.

24. Respondent claims that appellants had made improvements in the suit property without his previous permission. Appellants have not seriously disputed this claim. There was only a bald denial. It is pleaded in the written statement that after the 'Thane Puyal', the suit premises was destroyed and it was rectified for continuing the occupation by spending a meagre amount of Rs.3000/-. There is no proper pleading with regard to the improvements made by the appellants in the suit property. Without proper pleadings, evidence cannot be looked into. Without proper pleadings, evidence and appropriate prayer, compensation cannot be ordered. Thus, for the reasons aforesaid, this Court finds that a proper notice under Section 106 of the Transfer of Property Act was given for vacating the appellants from the suit property for substantial question of law number one. In the absence of any pleadings, evidence and prayer, compensation cannot be awarded for the alleged improvements made in the suit property for substantial question of law number two.

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25. In the result, this Court confirms the judgment of the First Appellate Court in A.S.No.31 of 2017 in decreeing the suit for vacating and surrendering vacant possession of the suit property with superstructure by the appellants in favour of the respondent within a period of three months is confirmed and this Second Appeal is dismissed with the costs of the respondent throughout. Consequently, connected miscellaneous petitions stand closed. Appellants are granted three months time to vacate and hand over possession of the suit property to the respondent.

Sd/-
Assistant Registrar(I)

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Sub Assistant Registrar

Ep

To

1. The Subordinate Judge,
   Panruti.

2. The I Additional District and Sessions Judge,
   Cuddalore.

3. The Section Officer,
   VR Section,
   High Court of Madras.

+1cc to Mr.Raghavachari, Advocate SR.No.7111
+2cc to Mr.Parthasarathy, Advocate SR.No.7544

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