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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

S.A. No.919 of 2021
and C.M.P. No.17431 of 2021

A.Jayaraman

... Appellant/Defendant

Versus

1. M.R.Rani

2. M.R.Manju Dharshini

... Respondents/LR's of Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, to set aside the judgment and decree dated 27.09.2019 passed in A.S. No.5 of 2019 on the file of the Additional District Judge IV Court, Ponneri, confirming the judgment and decree dated 11.09.2017 in O.S. No.72 of 2010 on the file of the Subordinate Judge's Court - Ponneri and thereby allow this appeal as costs.

For Appellant : Mr. P.Rajendra Kumar

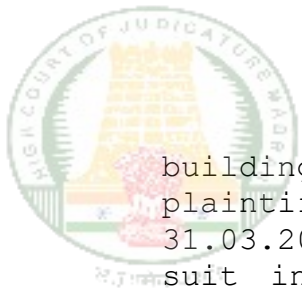
For Respondents: Mr. K.Jaganathan

(Vak.Rtd on 06/01/2022)

JUDGMENT

The defendant in the suit in O.S. No.72 of 2010 before the Sub Court, Ponneri, is the appellant in the appeal. The respondents in the appeal are the legal heirs of the plaintiff who filed the suit in O.S. No.72 of 2020 before the Sub Court, Ponneri, for ejectment of the appellant from the suit property.

2. It is the case of the plaintiff that he purchased the suit property by virtue of a registered sale deed dated 15.09.2003. It is the further case of the plaintiff that he put up a new construction on the suit property and the said property is also assessed to property tax. According to the plaintiff the defendant / appellant approached the plaintiff to let out the



building for lease on a monthly rent of Rs.20,000/- and that the plaintiff had entered into an agreement of lease dated 31.03.2004. It is further stated that the defendant has filed a suit in O.S. No.241 of 2004 on the file of District Munsif Court, Ponneri, restraining the plaintiff from interfering with his possession. It is stated that in the said suit, the defendant had admitted that he is a tenant under the plaintiff. It is stated further that the said suit was later withdrawn. Though the plaintiff admit that another suit was filed by the plaintiff in O.S. No.44 of 2004 on the file of the Sub Court, Ponneri, by treating the defendant as a trespasser, it appears it was later withdrawn. The present suit is to eject the defendant who is the tenant in respect of the suit property and for recovery of a sum of Rs.3,00,000/- towards arrears of rent. The further prayer in the suit is for damages for unlawful use and occupation of the premises after the termination of lease and to direct the defendant to pay a sum of Rs.40,000/- per month. It is stated that by notice dated 26.05.2007, the tenancy was terminated with effect from 31.07.2007. The suit was resisted by defendant denying the averments in the plaint. Though every allegations in the plaint with regard to tenancy is denied by the defendant in the written statement, has sent a reply to the notice issued by the plaintiff earlier admitting tenancy. It is also contended by the defendant that the monthly rent was only Rs.10,000/- and not Rs.20,000/- as demanded by the plaintiff. Apart from stating that the defendant had paid a sum of Rs.1,00,000/- as rental advance, it is contended that notice for termination of tenancy is not valid as the same is not in accordance with law.

3. A reply statement was also filed by the plaintiff inter alia denying the averments made in the written statement. After full fledged trial, the trial Court decreed the suit partly by granting a decree for ejectment apart from giving liberty to initiate separate proceedings under Order 20 Rule 12 C.P.C. for recovery of damages for unlawful use and occupation of the suit property from 01.08.2007, till delivery of possession. In respect of prayer of arrears of rent, the suit was dismissed holding that the plaintiff has not proved his claim that the monthly rent was at Rs.20,000/- and that the rent payable by tenant was only Rs.10,000/- per month.

4. Aggrieved by the judgment of the trial Court, the defendant preferred an appeal in A.S. No.5 of 2019 before the IV Additional District Court, Ponneri. The appeal preferred by the defendant was dismissed by the lower appellate Court by confirming the judgment and decree of trial Court in O.S. No.72



of 2010. Aggrieved by the concurrent judgment and decree of the Courts below, the above Second Appeal is preferred by the defendant in the suit.

5. Learned counsel for the appellant submitted that the judgment of the trial Court and the lower Appellate Court are vitiated as the Courts below have failed to consider that the tenancy as pleaded by the defendant by paying monthly rent of Rs.10,000/- is not terminated. Merely because the rent mentioned in the notice of termination is not true, the appellants cannot contend that notice of termination is improper. Learned counsel further submitted that the contract of tenancy continues as the termination by notice is not properly done. Learned counsel further submitted that unless the contract of tenancy is for a specific period, the tenancy cannot be put to an end by simply issuing notice. None of the points raised by the learned counsel for the appellant can be appreciated in view of the admitted facts, the legal position and the principles established in law.

6. It is not in dispute that the plaintiff is the owner of the property and the defendant has taken the property on lease from the plaintiff. Even though there is a dispute with regard to quantum of rent, that does not disable the plaintiff from ejecting the defendant after termination of lease. The lower Appellate Court has referred to Section 106 of Transfer of Property Act and the admitted facts to hold that notice of termination had been properly issued by the plaintiff and that tenancy had been terminated in the manner known to law. Though the Court below had accepted that the plaintiff has not proved that the actual rent was Rs.20,000/-, held that the tenancy was on monthly basis and the rent payable was Rs.10,000/- per month. Having regard to the adequacy and validity of notice issued by the plaintiff for termination of tenancy, the Courts below has given a categorical finding that the notice is not vitiated for any infirmity and that tenancy has been validly terminated. It is admitted that notice of termination was issued on 26.05.2007, terminating the tenancy of defendant with effect from 31.07.2007. The suit was filed in 13.09.2007. Hence the notice is in accordance with Section 106 of Transfer of Property Act.

7. In a suit for ejectment, this Court is unable to find any defense in the written statement filed by the appellant. It has been repeatedly held that a notice to quit must be construed not with the desire to find fault with it but must be construed by applying common sense. As it has been held by this Court, notice under Section 106 of Transfer of Property Act should be construed broadly and it should not be defeated by inaccuracies



either in the description of the premises or the date of expiry of the notice. Though the expression of Hon'ble Supreme Court in the case of Bhagabandas Agarwalla Vs. Bhagwandas Kanu and others reported in AIR 1977 SC 1120 was not followed subsequently by this Court in a few judgments, the requirements of Section 106 of the Transfer of Property Act after amendment enables the landlord to overcome the defects or the irregularity in the notice. In this case, the suit has been instituted after the expiry of the period mentioned in Section 106(1) of Transfer of Property Act.

8. As it has been found by the Courts below, this Court is unable to find any force in the submissions of the learned counsel for the appellant regarding the valid termination of tenancy. The defendant, having admitted the tenancy, has filed a written statement with several contentions which are neither warranted nor relevant. For the only ground raised by the defendant regarding validity of notice of termination, both Courts have concurrently held that notice for ejectment issued by the plaintiff is complying with the mandatory requirement of Section 106 of the Transfer of Property Act and there is no irregularity in it. After decreeing the suit by the trial Court on the admission of the plaintiff regarding tenancy and the terms of lease the matter had been unnecessarily dragged on up to this Court. The Court below have given findings on the basis of pleadings and appreciation of oral and documentary evidence. The findings of the Court below are well founded. Absolutely, there is no illegality or irregularity in the judgment and decree of the Courts below.

9. This Court is unable to find any substantial question of law warranting interference of this Court. As a result, this Second Appeal is dismissed with costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

bkn
To

1. The IV Additional District Judge,
Ponneri.



2. The Subordinate Judge,
Ponneri.

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+1cc to Mr.P.Rajendrakumar, Advocate Sr.8458
+1cc to Mr.K.Jagannathan, Advocate Sr.8435

S.A. No. 919 of 2021

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srg 25/03/2022