



SA.No.1122 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.1122 of 2009

and

M.P.No.1 of 2009

1.M/s. Tambaparni Paints and Chemicals
represented by its Chairman, K.S.Sundaram,

2. K.S. Sundaram, Chairman of
M/s. Tambaaparni Paints and Chemicals

3. Shankar Sundaram, Partner
M/s. Tambaaparni Paints and Chemicals

4. Laxmi Narayanan, Partner
M/s. Tambaaparni Paints and Chemicals

... Appellants

- Vs -

K. Sangeetha, proprietrix

Kiran Ploy Pack Industry

...

Respondent



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Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and decree dated 16.04.2009 in A.S.No.54 of 2007 on the file of III Additional District Court at Pondicherry partially modifying the Judgment and Decree dated 17.08.2007 in O.S.No.23 of 2006 on the file of the Principal Sub Court, Puducherry.

For Appellants : Mr.Niranjana Rajagopalan
for M/s G.R.Associates

For Respondent : Mr.P. Pranav Jain for
M/s Ramesh Kumar chopra

JUDGMENT

The instant second appeal has been filed at the instance of the defendants. The respondent is the plaintiff before the Trial Court.

2. For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

3. The brief facts which give rise to the instant second appeal are as follows:

The second defendant is the chairman and the third and the fourth



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defendants are partners of the first defendant firm. The suit property belongs to the first defendant firm. There was a registered lease agreement entered into between the plaintiff and the defendants on 11.10.2004 in respect of the suit scheduled property. As per the terms of the said lease agreement, the defendants leased out an extent of 3,600 square feet of building to the plaintiff for the purpose of running an industry. The lease was agreed for a period of four years from 11.10.2004 to 10.10.2008. The monthly rent agreed to be paid by the plaintiff is Rs.20,500/- per month with an increase of 5% every year. When the plaintiff came to know about the lesser extent of the leasehold property, an amendment came into existence on 16.10.2004 signed between the plaintiff and the defendants. By virtue of the subsequent lease agreement, only 3150 square feet was leased out on a monthly rent of Rs.17,955/- for the first 12 months with 5% increase every year.

(ii) Though originally a security deposit of Rs.2,05,000/- was paid, subsequently to the amendment dated 16.10.2004 for a lesser extent, the defendants returned the proportionate security deposit. Thus, the balance security deposit available in the hands of the defendants is Rs.1,79,550/- and the same is liable to be re-paid by the defendants. According to the plaintiff, the defendants are entitled to one month notice for termination of lease.



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Therefore, in the said amount of Rs.1,79,550/- a sum of Rs.17,955/- is to be deducted in lieu of one month notice. As such the defendants are liable to repay a sum of Rs.1,61,595/- together with interest at the rate of 24% per annum. Hence, came forward to file a suit for recovery of the above amount.

4. The said suit was resisted by the defendants by contending that in order to lease out the property to the plaintiff, they made so many improvements in the suit property. Therefore, the plaintiff should continue to be as lessee in the suit property for a period of 4 years. In any case, if the plaintiff terminates the lease agreement before its expiry, then by virtue of the forfeiture clause, the plaintiff is not entitled for refund of the security deposit. Thus, the defendants prayed to dismiss the suit.

5. Before the Trial Court the plaintiff examined herself as P.W.1. The second defendant was examined as D.W.1. On behalf of the plaintiff, 7 documents were marked as Ex.A1 to A7. On behalf of the defendants three documents were marked as Ex.B1 to Ex.B3.



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6. The Trial Court, after considering oral and documentary evidence decreed the suit by directing the defendants to pay a sum of Rs.1,43,640/- with interest at the rate of 12% p.a from 11.12.2005 till filing of the suit, and at 6% per annum from the date of plaint till the date of realization. Aggrieved by the Judgment of the Trial Court, the defendants preferred an appeal before the First Appellate Court. The First Appellate Court concurred with the findings of the Trial Court. However, by invoking Section 106 of the Transfer of Property Act, the First Appellate Court deducted six months rent in lieu of six months notice and directed the defendants to pay a sum of Rs.71,820/- together with interest at the rate of 12% per annum from 11.12.2005 till realization. Aggrieved by the Judgment of the First Appellate Court, the defendant preferred the second appeal.

7. On 22.10.2009, the Second Appeal was admitted on the following substantial questions of law:-

(i) Whether the Appellate court was justified in invoking Section 106 of the Transfer of Property Act and permitting the Appellants to adjust only six months rent from the security deposit paid by the respondent?

(ii) Whether the Appellate Court failed to see that the forfeiture of deposit on breach of lease



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agreement is in the nature of liquidated damages and once inquiry suffered by the Appellants are established, the entire amount determined by the parties as liquidated damages can be claimed by the Appellants.?

(iii) Whether the Appellate Court was justified in decreeing the suit and granting interest at 12% per annum to the respondent?

8. The learned counsel for the appellants would invite the attention of this Court in respect of the lease agreement dated 16.10.2004, which is marked as Ex.B1 namely the amendment to Ex.A1/lease agreement. There was a clause under Section 3(1) wherein it provides for the forfeiture of security deposit for any violation to the terms of the agreement. Therefore, the learned counsel would contend that since the defendants spent huge amount for alteration to lease out the suit property to the plaintiff, if the plaintiff vacates the premises before the completion of 4 years' period, then there would be a huge loss to them, and that is why they introduced the forfeiture clause. It was also the further contention of the learned counsel for the appellants that Ex.A1/ lease agreement does not have any clause for termination. Therefore, it is the submission of the learned counsel that the Judgments rendered by both the Courts below are contrary to the evidence. Hence, he prayed to interfere with the findings of the Courts below.



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9. However, the learned counsel for the respondent would invite the attention of this Court to Paragraph No.9 of the Judgment of the First Appellate Court, wherein it was argued by the appellants for invoking Section 106 of the Transfer of Property Act. Only on that basis, Section 106 of the Transfer of Property Act was invoked and 6 months rent was deducted in lieu of the six months notice period. Therefore, it is the contention of the respondent that the Judgment of the First Appellate Court is based on merits and does not require any interference.

10. This Court has given its anxious consideration to either side submissions.

11. It is an admitted fact that Ex.A1/lease Agreement does not contain any clause in respect of the termination of the lease. Now we must see, in the absence of clause for termination, whether Section 106 of the Transfer of Property Act can be invoked for termination .

12. Section 106 of the Transfer of Property Act is extracted hereunder for ready reference.



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“ In the absence of contract or local law or usage to the contrary, a lease of immovable property for agricultural or 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. ”

13. According to the above section, whenever the lease agreement has no clause in respect of the termination, then such lease must deem to be terminable subject to the provisions under Section 106 of the Transfer of Property Act. In other words, whenever any property is leased out for the purpose of manufacturing, for termination, six months notice period is essential. It is further relevant to refer here that, even the appellants themselves had taken such a defence before the First Appellate Court. Only based upon such a defence, the First Appellate Court invoked Section 106 of the Transfer of Property Act. Therefore, when the appellants contended before the First Appellate Court with regard to the stipulations under Section 106 of the Transfer of Property Act, now at the second appellate stage, the appellants cannot turn around and contend that Section 106 of the Transfer of Property Act is not applicable, when the agreement does not reflect anything about the termination of the lease.



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14. Therefore, this Court is of the indubitable view that the invocation of Section 106 of the Transfer of Property Act by the First Appellate Court is well merited. Thus, deducting six months rent in lieu of the six months notice period is also perfectly in order. Therefore, in view of the above discussion the substantial questions of law are answered in favour of the respondent. However, in the interest of justice, 12% p.a interest ordered by the First Appellate Court is modified to 6% per annum from 11.12.2005 till realization.

15. In the result, this second appeal is partly allowed by modifying the decree of the First Appellate Court directing the defendants to pay the plaintiff the security deposit of Rs.71,820/- together with interest at the rate of 6% per annum from 11.12.2005 till realization. No order as to costs. Consequently the connected miscellaneous petition is dismissed.

07.12.2023

Index : Yes/No
Internet: Yes/No



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Speaking Order : Yes/No

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C.KUMARAPPAN, J.

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To

- 1.The III Additional District Judge
2. The Principal Sub Judge, Puducherry.

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and

M.P.No.1 of 2009