



S.A.No.1056 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.02.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.1056 of 2005
&
C.M.P.No.1884 of 2010

Jayakandammal

...Appellant

Vs.

A.Selvaraju

...Respondent

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the Subordinate Judge, Salem in A.S.No.23 of 2004 dated 15.12.2004 reversing the well considered Judgement of the District Munsif of Salem in O.S.No.817 of 2002 dated 08.04.2004.



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For Appellant : Mr.A.V.Arun
for Mr.V.Srikanth

For Respondent : Mr.V.Sekar

JUDGMENT

The plaintiff is the appellant before this Court. The facts which are necessary to dispose of the above Second Appeal is herein below set out with the parties being referred to in the same rank as before the Trial Court.

2. The plaintiff had filed a suit in O.S.No.817 of 2002 on the file of the Principal District Munsif, Salem, for recovery of possession in respect of the suit schedule property. It is the contention of the plaintiff that she had purchased the suit property as a vacant site and thereafter constructed a residential portion on the rear side and terraced portion on the front, which is used for commercial purpose.



Both the plaintiff and her husband were employed as Police Constables.

3. It is the plaintiff's case that after their retirement, they had been running a mini flour mill under the name and style of "Jayam Mini Flour Mill". The electricity service connection was obtained both for the residential purpose and non-residential purpose in S.C.No.507 and S.C.No.508, respectively.

4. Since the plaintiff and her family had to shift out on account of the medical treatment to her husband, the property was leased out to the defendant, who is none else than the brother of the plaintiff on 01.01.1991 on a monthly rental of a sum of Rs.800/-. The Defendant has taken on lease the flour mill along with the accessories, petty shop and fixtures. The said lease was an oral lease.

5. It is the case of the plaintiff that the defendant committed a



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default in the payment of the rents from 01.05.1994, constraining the plaintiff to file a petition for eviction in R.C.O.P.No.8 of 1997 on the file of the Additional District Munsif, Salem on the ground of willful default and act of waste. This petition was allowed on 24.12.1999. Thereafter, the plaintiff had filed R.C.O.P.No.2 of 1997 for fixation of fair rent. The petition was dismissed against which the plaintiff had filed R.C.A.No.3 of 2000 which was also dismissed.

6. The defendant in the meanwhile had filed an appeal against the order in R.C.O.P.No.8 of 1997 and the said appeal was allowed on 04.09.2001 setting aside the order of eviction on the ground that the lease was a composite lease and therefore, the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, would not be applicable to the case on hand. Thereafter, the plaintiff had filed a suit for recovery of possession without preferring a revision against the order in the Rent Control proceedings. The defendant is residing in the suit property along with his son and daughter. The plaintiff



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therefore sought to recover the possession.

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7. The defendant had filed a written statement inter alia admitting the lease in his favour. It is also his case that the plaintiff had promised that she would sell the suit property to him and as a result the defendant had helped the plaintiff to get patta for the land situate in a different village. When the plaintiff had threatened to evict the defendant, he had filed a suit in O.S.No.1016 of 1994 for permanent injunction which was decreed in his favour. It is the further case of the defendant that the plaintiff had refused to receive the rent and he had filed R.C.O.P.No.63 of 1995 for deposit of rents into the Court and the same was allowed on 23.04.1995. The defendant would submit that he has been very regular in paying the rents into the Court and there is no default.

8. The defendant would further submit that the order passed by the Rent Controller operates as an estoppel against the plaintiff. The



defendant would submit that he has spent huge sums of money to the tune of Rs.40,000/- for improving the property. The defendant would further submit that the suit filed was not maintainable.

9. The learned Principal District Munsif, Salem on considering the pleadings had framed the following issues:

“1.Whether the plaintiff is entitled to recover the possession from the defendant as prayed for?

2.Whether the suit is maintainable?

3.To what other relief the plaintiff is entitled to?”

10. The plaintiff had examined herself as P.W.1 and one Munikumar and Jayaraj as P.W.2 and P.W.3. Ex.A.1 to Ex.A.67 were marked on her side. The defendant had examined himself as D.W.1 and marked Ex.B.1 to Ex.B.22.



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11. The suit was decreed as prayed for. The contention of the defendant was that there was non compliance of Section 106 of the Transfer of Property Act. The learned Judge relying upon Ex.A.62, notice dated 16.11.1996 granting two months time for terminating the tenancy ending with 31.01.1997, held that this notice clearly confirms to the provisions of Section 106 of the Transfer of Property Act.

12. Aggrieved by the said Judgement and Decree, the defendant had filed an appeal in A.S.No.23 of 2004 on the file of the Principal Subordinate Judge, Salem.

13. The learned Principal Subordinate Judge, Salem, reversed the Judgement contending that the plaintiff had failed to comply with the provisions of Section 106 of the Transfer of Property Act. Aggrieved by the same, the plaintiff is before this Court.



14. The above Second Appeal has been admitted on the following Substantial Questions of Law:

“1.Whether the Lower Appellate Court erred in not considering the question that the respondent is estopped in law from putting forward any defence to the suit for eviction when his only plea before the Rent Controller was that the lease was a composite one and therefore, the suit for eviction alone should have been filed?

2.Whether the Lower Appellate Court erred in allowing the appeal only on the ground of notice without taking into account the effect of the earlier proceedings between the parties?

3.Whether the Lower Appellate Court is right in holding that the lease is one for manufacturing purpose when the suit for eviction has been filed on the basis that the lease is a composite lease?

4.Whether the conclusion arrived at by the Lower



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Appellate Court that the notice of termination Ex.A.62 is not valid in law is correct?

15. Heard the learned counsels on the either side.

16. Admittedly, the Rent Control proceedings had ended against the plaintiff on the ground that the lease being a composite lease the Jurisdiction of the Rent Controller was ousted. Thereafter, the plaintiff has come forward with the suit in question. Therefore, the Substantial Question of law no.1 is answered against the defendant.

17. The primary defense that has been put forward by the defendant is that the plaintiff had not issued a proper notice under Section 106 of the Transfer of Property Act, seeking eviction after terminating the lease. Admittedly, the lease in question is a composite lease being one both for residential as well as non residential purposes.



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18. The learned counsel for the respondent / tenant would rely upon the Judgement reported in **2004 (2) CTC 34 – Kazhugumalai Raja (Died) and another Vs. Rajapalayam Palayapalayam Boopalarajpatti Illathar Samuga Pothu Nala Fund, Rajapalayam by its President, Palchamy**, wherein this Court has held that the notice given under the Rent Control proceedings cannot be considered as compliance of Section 106.

19. Per contra Mr.A.V.Arun, learned counsel appearing on behalf of the appellant would submit that where a term of lease had come to an end, there was no necessity for a notice under Section 106 of Transfer of Property Act. In support of this contention, the learned counsel would rely upon the following Judgements:

(i) 1981 (2) SCC 199 – Smt. Shanti Devi Vs. Amal

Kumar Banerjee.



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(ii) **1988 (3) SCC 44 – *Burmah Shell Oil***

Distributing now known as Bharat Petroleum Corporation Ltd., Vs. Khaja Midhat Noor and Others.

(iii) **1998 (II) CTC 572 – *M/s.Sugesan and Co., Pvt***

Ltd., Vs. Pachaiyappa's Trust and Scheduled Public Trust and Endowments Rep. by the Committee of Management.

20. In the case before this Court, the lease was for a period of 1 year and had commenced on 01.01.1991. Therefore, the period of lease had long come to an end. In the Judgement reported in **1981 (2) SCC 199 – *Smt.Shanti Devi Vs. Amal Kumar Banerjee***, the Hon'ble Supreme Court has observed as follows:

“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



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meaning of [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 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.”

21. In the Judgement reported in **1998 (II) CTC 572 – M/s.Sugesan and Co., Pvt., Ltd., Vs. Pachaiyappa's Trust and Scheduled Public Trust and Endowments Rep. by the Committee of Management**, this Court held as follows:



“Even in the case on hand, the lease period expired by efflux of time, and there is no allegation by the defendant that it was tenant holding over. Hence, the matter falls under [Section 111\(a\)](#) of the Transfer of Property Act. So after the expiry of the period mentioned in Ex.P.1 the defendant became a trespasser from 1.12.1992 and onwards. Hence there was no necessity of service of notice under [Section 106](#) of the Transfer of Property Act.”

22. Further, in the Judgement reported in **2008 (3) MLJ 543 (SC) – Nopany Investment (P) Ltd., Vs. Santhosh Singh (HUF)**, the Hon'ble Supreme Court had observed as follows:

“In any view of the matter, it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant. Therefore, we have no hesitation to hold that no notice to quit was necessary



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*under **Section 106** of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant. This view has also been expressed in the decision of this court in V. Dhanapal Chettiar Vs. Yesodai Ammal [AIR (1979) SC 1745].”*

23. Therefore, in the light of the above and considering the fact that the plaintiff had issued a notice dated 19.11.1996 informing the defendant about the termination of the lease to which a reply has been issued by the defendant, there is a sufficient compliance of Section 106 of the Transfer of Property Act. The substantial questions of law are therefore answered against the defendants.

24. In the result, the Second Appeal is allowed. The Judgement of the Lower Appellate Court is set aside and the Judgement and Decree of the Trial Court is confirmed. The defendant is granted two months time from the date of receipt of a copy of this order to vacate



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the premises. Consequently, connected Civil Miscellaneous Petition
is closed. No costs.

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1.The Subordinate Judge, Salem.

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P.T. ASHA, J,



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