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S.A.No.149 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.149 of 2018

A/m.Apparswamy Temple,
Rep.by its Hereditary Trustee,
P.R.Sathishkumar, S/o.Late P.V.Rajkumar,
No.171, Royapettah High Road,
Mylapore, Chennai – 4.

...Appellant

Vs.

K.Kamalakannan

...Respondent

(P.R.Sathishkumar, S/o.Late P.V.Rajkumar [Hereditary Trustee of the Temple] is substituted in the place of deceased P.V.Rajkumar vide Court order dated 09.11.2023 made in CMP.No.2501 of 2022 in S.A.No.149 of 2018 [SSJ]).

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside the judgment and decree in A.S.No.303 of 2015, dated 23.03.2017 passed by the learned II Additional City Civil Judge, Chennai, confirming the judgment and decree in O.S.No.4568 of 2011 dated 08.01.2013 passed by learned XVI Assistant City Civil Judge, Chennai and allow this second appeal.

For Appellant : Mr.G.Sugumaran

For Respondent : Mr.G.Dhamodaran



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JUDGMENT

The unsuccessful plaintiff in the suit is the appellant. The plaintiff temple filed a suit seeking recovery of vacant possession and also recovery of damages for wrongful use and occupation. The said suit was dismissed by the trial Court, which was confirmed by the first appellate court. Aggrieved by the concurrent findings, the plaintiff has come by way of this second appeal.

2. According to the appellant/plaintiff, the respondent/defendant is a tenant under the plaintiff temple in respect of non residential building for monthly rent of Rs.1,500/-. Later on from 01.11.2001 onwards, the rent was enhanced to Rs.2,844/- per month. The respondent failed to pay rent properly and he was in arrears, hence, the appellant issued a notice dated 07.03.2011 terminating the tenancy with the last day of the month and sought for delivery of possession. Since the respondent's occupation of the building was wrongful after termination of tenancy, the appellant claimed Rs.3,000/- per month for damages and occupation. On these pleadings, the appellant sought for recovery of possession and recovery of damages.



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3. The respondent/defendant filed a written statement stating that as per the demand made by the appellant, he had been paying the rent regularly without any protest. He claimed that he paid entire rent on the date of filing of the written statement. It was further averred by the respondent that the area let out to the respondent was only 124 sq.ft, however, the appellant calculated the rent, as if 158 sq.ft was let out to the respondent. The respondent further claimed that he had been paying rent regularly to the appellant and therefore, he was not liable to be evicted.

4. Before the trial Court, one witness was examined as PW.1 and four documents were marked as Exs.A1 to A4. On behalf of the respondent, the respondent examined himself as DW.1 and six documents were marked as Exs.B1 to B6.

5. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that subsequent to issue of notice to quit, the appellant received the rent from the respondent and the same would amount to waiver of notice to quit and consequently it was not entitled to maintain a suit for recovery of possession. Aggrieved by the same,



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the appellant preferred an appeal in A.S.No.303 of 2015 on the file of the II Additional City Civil Court, Chennai. The First Appellate Court also affirmed the findings of the trial Court and dismissed the appeal. Aggrieved by the concurrent findings, the appellant is before this Court.

6. At the time of admission, this Court formulated the following substantial question of law by order dated 21.11.2023:

“Is the conclusion of Courts below right in holding that the plaintiff waived their right of claiming vacant possession in view of payment made towards damage for wrongful use and occupation subsequent to Ex.A2 termination notice?.”

7. The learned counsel appearing for the appellant submitted that after notice to quit was issued by the appellant, the respondent came forward to pay the arrears of rent and also rent for the subsequent period. The same was received by the appellant temple without prejudice to its right in the suit and it was accepted towards damages, for wrongful use and occupation of the property. Therefore, the learned counsel submitted that the conclusion reached by the Courts below, as if, the appellant waived its right of eviction is



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untenable and the same is liable to be set aside. In this connection, the learned counsel relied on the judgment of the Apex Court in ***Sri K.M.Manjunath Vs. Sri Erappa. G Dead through Lrs*** reported in ***2022 Live law (SC) 561***.

8. The learned counsel appearing for the respondent submitted that the respondent paid the entire rent up to the date of filing of the written statement and he was not in arrears of rent. Therefore, he submitted that the respondent cannot be treated as a defaulter in payment of rent and consequently the appellant is not entitled to seek his eviction. The learned counsel further submitted that after issuance of notice to quit, the appellant accepted rent from the respondent and the same would amount to waiver of its right to evict the respondent. The learned counsel also submitted that acceptance of rent after notice to quit would amount to treating the respondent as a tenant and consequently both the Courts below rightly came to the conclusion, the appellant waived its right of eviction.

9. It is not in dispute that the respondent is a tenant of the building belonging to the appellant temple on monthly rent. The Tamil Nadu Building Lease and Rent Control Act, is not applicable to the religious



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institutions as per exemption granted under G.O.M.S.No.2000. In such circumstances, the appellant is entitled to invoke common law remedy and maintain a suit for ejectment before the regular Civil Court. In a suit for ejectment only cause of action for the suit is a proper notice to quit. If the tenancy arrangement is terminated by proper notice to quit under Section 106 of Transfer of Property Act, then the lessor is entitled to file a suit for ejectment.

10. In the case on hand, the appellant temple issued a notice to quit on 07.03.2011, terminating the tenancy, with the last day of March (31.03.2021). The respondent was called upon to quit and deliver vacant possession of tenancy premises on 01.04.2011 to the appellant. Further, the respondent was also called upon to pay the arrears of rent to the tune of Rs.2,11,444/-. It is admitted that the respondent is on monthly tenancy and therefore, 15 days notice is sufficient to validly terminate the tenancy. A perusal of Ex.A2 and the acknowledgment card signed by the respondent marked as Ex.A3 would suggest notice to quit was issued by the appellant on 07.03.2011 and the same was served on the respondent on 10.03.2011. Therefore, the notice to quit issued by the appellant is valid and the tenancy



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stood terminated on 31.03.2011. The Courts below by taking into consideration Ex.B2 to B6, came to the conclusion that even after notice to quit, the appellant received rent, therefore, it waived its rights of eviction. Exs.B2 and B3 dated 27.12.2002 and 26.05.2004, both the documents were prior to the notice to quit. Under Ex.B4, the respondent paid a sum of Rs.88,044/- towards arrears of rent from 01.10.2002 to 31.01.2006. It is not stated on what date he paid the amount. It was clearly mentioned that the amount was paid by the respondent towards arrears of rent from 01.11.2001 to 31.01.2006. Therefore, Ex.B4 is relating to the payment of rental arrears prior to issuance of notice to the rent. Ex.B5 is a rental receipt dated 24.06.2011, whereunder, the respondent paid a sum of Rs.3,000/- towards rent and the same was accepted by the appellant without prejudice to its rights. Ex.B6 is rental receipt series from 11.01.2003 to 20.07.2012. A close reading of above exhibits series would suggest in respect of all the receipts issued subsequent to notice to quit, amount has been received by the respondent temple with an endorsement “damages for use and occupation without prejudice to our rights and claim”. Therefore, it is clear, subsequent to issuance of notice to quit under Ex.A2, the appellant has not received rent as contended by the respondent. Though the payments made by the respondent was received by



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the appellant, it was received with an endorsement that the payment was treated as damages of wrongful use and occupation that too without prejudice to their rights and claims. In such circumstances, the contention made by the respondent as if the appellant by receiving rent, after issue of notice to quit, waived its rights of eviction cannot be accepted. In this regard, both the Courts below committed serious error of law and the conclusion reached by the Courts below is vitiated by misleading of evidence available on record. When there is a clear endorsement in the receipt issued by the appellant stating that amount was received for “damages for use and occupation without prejudice to our rights and claim”, we cannot presume any waiver on the part of the appellant.

11. Even otherwise, mere acceptance of rent by the lessor after notice to quit would not amount to waiver of right of eviction. The acceptance of rent must be accompanied by animus to treat person making the payment as tenant. In the absence of any evidence to show such animus, merely because rent was received by lessor, it cannot be termed as waiver of its right of eviction.

12. I had an occasion to consider this question in ***S.M.Devi and***



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others Vs. the Idol of Sri Jambukeswar Akilandeswari Devasthanam,

reported in **2023 1 LW 825**. The relevant observations in the above said case

law, reads as follows:

13.1. The learned counsel for the appellants also submitted that subsequent to the filing of the suit, the respondent/temple received rent without protest and it would amount to waiver of the notice to quit. The suit was filed on 03.02.1995. As per the admission of the second appellant as D.W.1, even at the time of filing of the suit, there was arrears to the tune of Rs. 5,050/-. Subsequently, after three years on 11.02.1998, the appellants paid a sum of Rs. 20,820/-under Ex.B.1. Perusal of Ex.B.1 would make it clear that the appellants paid the said sum to wipe out the arrears up to December, 1997 only. Therefore, even on the date of Ex.B.1, there was arrears for the month of January, 1998. Subsequently also, the appellants paid amount towards arrears of rent under Ex.B.2 to Ex.B.9 on various dates viz., 02.10.2001, 22.09.1999, 20.10.1999 and 01.09.2003. Though in Ex.B.1, the respondent/temple official received the arrears of rent without protest, in other receipts viz., Ex.B.2 to Ex.B.9, arrears of rent was received without prejudice to their case. Merely because an official of respondent/temple received portion of the arrear of rent paid by the appellants, it cannot be presumed that the appellants waived the notice to quit and there is commencement of new tenancy. In this regard, the



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observations of the Hon'ble Apex Court in Sarup Singh Gupta Vs. S.Jagdish Singh and others reported in MANU/SC/8082/2006 : (2006) 4 SCC 205, would be useful. The relevant observation of the Hon'ble Apex Court reads as follows:

"8. In the instant case, as we have noticed earlier, two notices to quit were given on 10-2-1979 and 17-3-1979. The suit was filed on 2-6-1979. The tenant offered and the landlord accepted the rent for the months of April, May and thereafter. The question is whether this by itself constitutes an act on the part of the landlord showing an intention to treat the lease as subsisting. In our view, mere acceptance of rent did not by itself constitute an act of the nature envisaged by Section 113, Transfer of Property Act showing an intention to treat the lease as subsisting. The fact remains that even after accepting the rent tendered, the landlord did file a suit for eviction, and even while prosecuting the suit accepted the rent which was being paid to him by the tenant. It cannot, therefore, be said that by accepting rent, he intended to waive the notice to quit and to treat the lease as subsisting. We cannot ignore the fact that in any event, even if rent was neither tendered nor accepted, the landlord in the event of success would be entitled to the payment of the arrears of rent. To avoid any controversy, in the event of termination of lease the practice followed



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by the courts is to permit the landlord to receive each month by way of compensation for the use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. It cannot, therefore, be said that mere acceptance of rent amounts to waiver of notice to quit unless there be any other evidence to prove or establish that the landlord so intended. In the instant case, we find no other fact or circumstance to support the plea of waiver. On the contrary, the filing of and prosecution of the eviction proceeding by the landlord suggests otherwise."

"13.2. Therefore, it is clear that mere acceptance of rent by the landlord after notice to quit would not amount to waiver of the notice to quit. The acceptance of rent by the landlord shall be accompanied by his intention to treat the lease as subsisting. Unless, there is an active animus on the part of the landlord to treat the person who pays the rent as his tenant, mere acceptance of portion of arrears of rent would not amount to waiver of notice."

13. The law laid down in the above case law squarely applicable to the facts of the case. Therefore, I have no hesitation in coming to the conclusion, the Courts below committed serious error in finding that the appellant waived its right of eviction. The question of law framed at the time of admission is



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answered accordingly in favour of appellant and against the respondent.

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14. In nutshell,

(i) In view of the discussion made earlier, the second appeal is allowed by setting aside the judgment and decree passed by the Courts below;

(ii) The appellant is entitled to decree for recovery of possession as prayed for;

(iii) The respondent is directed to hand over possession of the property to the appellant within three months from today.

(iv) In the facts and circumstances of the case, there shall be no order as to costs;

30.11.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

1. The II Additional City Civil Judge, Chennai
2. The XVI Assistant City Civil Judge, Chennai



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S.SOUNTHAR, J.

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