

(2014) 01 MAD CK 0186
In the Madras High Court
Case No : S.A. No. 1971 of 2000

Bhargaviammal (Deceased) and Others APPELLANT
Vs
Peria Mariamman and Chinna Mariamman Devasthanam RESPONDENT

Date of Decision : 30-01-2014

Acts Referred:

Transfer of Property Act, 1882 — Section 106 106(3)

Citation : (2014) 2 LW 165

Hon'ble Judges : R. Karuppihah, J

Bench : Single Bench

Advocate : K.S. Jeyaganeshan, for the Appellant; T. Murugamanickam for 1st Respondent, for the Respondent

Final Decision : Dismissed

Judgement

R. Karuppihah, J.—The appellants who are the defendants 4 to 10 in the suit filed this second appeal as against the judgment and decree dated 29.06.2000 made in A.S. No. 4 of 2000 on the file of II Additional District Court, Erode, reversing the judgment and decree dated 30.11.1999 made in O.S. No. 1168 of 1981 on the file of Principal District Munsif Court, Erode. For the sake of convenience, the defendants 4 to 10 in the suit are referred as appellants, the plaintiff in the suit is referred as first respondent and the third defendant in the suit referred as 2nd respondent in this second appeal.

2. The first respondent/plaintiff filed a suit for recovery of possession and for arrears of rent. Briefly, the case of the first respondent is that the suit property is owned by the first respondent Devasthanam. The deceased sole defendant, namely Kesavan Nambiar, was a tenant under the first respondent in respect of suit property. The monthly rent originally fixed as Rs. 70/- and later increased periodically as Rs. 150/-, Rs. 182/- and lastly fixed as Rs. 214/- from 01.01.1997 onwards. Since the vacant site was required for expansion of first respondent's temple madapalli and also the deceased first defendant has not paid the arrears of rent, the first respondent issued notice on 03.06.1978, demanded the arrears

of rent and also seeking for possession. The deceased first defendant received the notice and sent a reply on 29.06.1978 annexed with a cheque for Rs. 1500/- towards arrears of rent. The first respondent sent a rejoinder on 08.07.1978. Since the deceased first defendant has not agreed to give possession and pay the arrears of rent, the first respondent issued termination notice terminating the tenancy from 31.12.1978. The deceased first defendant liable to pay the arrears of rent as on 31.12.1978 and the damages for use and occupation at the rate of Rs. 214/- per month from 31.12.1978 till date of delivery of possession. Hence, the suit filed against the deceased first defendant.

3. During the pendency of the suit, the above said first defendant was died and the legal heirs were impleaded as defendants 2 and 3. Later, the second defendant also died and hence, the appellants who are defendants 4 to 10 and second respondent who is 3rd defendant impleaded as legal heirs.

4. The deceased first defendant filed a written statement in which, it is not denied the tenancy, but it is stated that the rent was originally fixed at Rs. 5/- and it was gradually raised to Rs. 130/- in the year 1975 and later Rs. 150/-. The deceased first defendant also denied that the rent was raised to Rs. 180/- and later fixed at Rs. 214/- per month from 01.11.1977 onwards. Further, Rs. 150/- per month was fixed as fair rent. Further, it is stated in the written statement that the suit property is not required for first respondent and he has never in arrears of rent. The termination notice is neither valid nor proper. Further, the suit property is only a vacant site and the deceased first defendant has put up pucca construction at his own costs with the knowledge of the first respondent and the value of the super-structure is more than Rs. 20,000/- and also stated that he was entitled to purchase the site for a price to be fixed u/s 9 of Madras City Tenancy Protection Act. The damage for use and occupation claimed by the first respondent is highly excessive and also estopped from claiming higher rent since the receipt of Rs. 1500/- without protest. Therefore, prayed for dismissal of the suit.

5. The trial court has framed 14 issues. On the side of the first respondent/plaintiff, examined one witness as PW1 and marked three documents as Exs. A1 to A3 and on the side of the appellants/defendants examined one witness as DW1 and marked 26 documents as Exs. B1 to B26. Considering the above said oral and documentary evidence adduced on either side, the trial court has discussed in detail and finally dismissed the suit. The 1st respondent/plaintiff preferred the first appeal in A.S. No. 4 of 2000. The first appellate court set aside the decree and judgment passed by the trial court and decreed the suit as prayed for by the first respondent/plaintiff. Aggrieved over the above said decree and judgment passed by the first appellate court, the appellants who are defendants 4 to 10 preferred this second appeal.

6. This Court has admitted the second appeal on the following substantial questions of law for consideration:

1. Whether the finding of the lower appellate Court that the tenancy is validly terminated, is vitiated by perversity ?

2. Whether the finding of the lower appellate Court regarding the enhancement of rent is supported by legal evidence ?

7. Heard the learned counsel appearing for the appellants and the first respondent.

8. it is not in dispute that the first respondent herein, who is the plaintiff in the suit is the owner of the suit property and the deceased first defendant was tenant under the first appellant. According to the 1st respondent, since the deceased 1st defendant has not paid the arrears of rent and also the suit property is required for expansion of temple building, issued Ex. A2 legal notice for termination of tenancy on 14.12.1978 to the deceased 1st defendant and the 1st defendant has received the notice and acknowledged as per Ex. A3 but, he has not paid the arrears of rent and also not vacated from the suit property and hence this suit.

9. The main contention of the appellants is that the above said Ex. A2 notice is not valid since it is not issued in accordance with Section 106 of Transfer of Property Act and therefore, the suit is not maintainable.

10. Admittedly, the relationship of landlord and tenant is not in dispute. Before this Court, the appellants have not disputed the arrears of rent also. The learned counsel appearing for the appellants mainly contended that the termination notice Ex. A2 is not valid since there was short fall in the period to vacate the premises and therefore, the first respondent is not estopped from claiming the relief of possession.

11. Per contra, the learned counsel for the first respondent submitted that as per amendment in Section 106(3) of Transfer of Property Act, even if any short fall in the period specified in the notice not in validate the notice and hence the contention of the appellants cannot be accepted. It is relevant to mention the provision (i.e.) Section 106(3) of Transfer of Property Act as follows:-

106. (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.

12. In view of the above said amendment, the contention of the appellants that Ex. A2 termination notice is not valid and on that ground the first appellant is not entitled to the relief of recovery of possession cannot be accepted. Therefore, the first appellate court has correctly discussed the above said legal aspects and properly considered the evidence adduced on either side and finally decreed the suit and set aside the decree and judgment passed by the trial court. Further, as already stated both side counsels admitted the amount of rent to be paid by the appellants. Therefore, the finding of the first appellate court is not perverse

finding or illegal, as contended by the learned counsel for the appellants and answered the two substantial questions of law accordingly. In view of the above said discussion, the decree and judgment of the first appellate court is to be confirmed and the second appeal is to be dismissed. In the result, the second appeal is dismissed and confirmed the decree and judgment passed by the first appellate court. No order as to costs.