
(1983) 12 KAR CK 0004
In the Karnataka High Court
Case No : Second Appeal No. 975 of 1975

Francis Jerone Fernandis

APPELLANT

Vs

Anthony Pedad Cardoza

RESPONDENT

Date of Decision : 07-12-1983

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : AIR 1984 Kar 226

Hon'ble Judges : N.R. Kudoor, J

Bench : Single Bench

Advocate : V.P. Kulkarni, for T.S. Ramachandra, for the Appellant;

Judgement

1. The defendant in O. S. No. 40/1972 on the file of the I Additional Munsiff, Karwar, is the appellant and the plaintiff is the respondent in this appeal.
2. The plaintiff brought the suit O. S. No. 40/1972 against the defendant for recovery of possession of the suit premises and arrears of rent together with future mesne profits. The suit was based on the allegations that the defendant has taken the suit premises on lease from the plaintiff agreeing to pay a monthly rent of Rs. 5/-. The defendant has paid the rents at the rate of Rs. 5/- p.m. for some time. Later he failed to pay the rent as agreed. Hence the plaintiff caused a lawyers' notice dt. 28-3-1972 to be issued to the defendant terminating his tenancy. The said notice was served on the defendant on 29-3-1972. In the said notice, the plaintiff also called upon the defendant to pay all the arrears of rent and also to deliver vacant possession of the premises in question. Since the defendant neither paid the arrears nor handed over possession of the suit premises, the plaintiff brought the suit for the reliefs stated above.
3. The defendant resisted the suit on several grounds. He admitted that he is a tenant under the plaintiff since 1955 and he has been paying the rent as agreed to." He denied having kept the rent in arrears. He says that he is manufacturing copper vessels in his shop and also sells them and he also does smithy work in

the premises. The plaintiff has accepted the rent after he issued the quit notice and thus he waived the quit notice. Besides, the quit notice is illegal and void and not binding upon him. He also pleaded that greater hardship will be caused to him if he is ousted from the suit premises. The plaintiff wants to increase the rent and so he came forward with the present suit. Finally he prayed for the dismissal of the suit on these grounds.

4. The trial Court raised the following issues on the pleadings of the parties :

- 1) Whether the quit notice is legal and valid?
- 2) Whether the defendant proves that the plaintiff has waived the said notice?
- 3) Whether plaintiff proves that defendant is in arrears of rent as claimed by him?
- 4) Is the plaintiff entitled to possession and arrears of rent?
- 5) What decree or order?

5. On appreciating the evidence adduced by the parties the trial Court held that the notice to quit is legal and valid, that the plaintiff has not waived the notice to quit issued to the defendant that there are no arrears of rent payable by the defendant and finally decreed the suit for possession and also future mesne profits at the rate of Rs. 5/- per month from 1-5-1972 till the recovery of possession of the suit premises from the defendant.

6. The defendant challenged the validity and legality of the decree passed by the trial Court in R. A. No. 113/1973 in the Court of the Civil Judge, North Kanara at Karwar. The learned Civil Judge formulated the following points for decision in the appeal.

- 1) Whether the notice to quit issued by the plaintiff is legal and valid?
- 2) Whether the decree for future mesne profits is tenable ?

7. After hearing the counsel appearing for both the parties, the learned Civil Judge recorded a finding in favour of the plaintiff that the suit notice terminating the tenancy of the defendant is legal and valid. However as regards the decree for the payment of future mesne profits from the date of institution of the suit till recovery of possession of the suit premises will have to be determined by a separate enquiry under O. 20, R. 12(I)(c), Civil P. C. Finally he dismissed the appeal with the modification in respect of the decree for future mesne profits as indicated above as per his judgment and decree dt. 18-7-1975. Hence this second appeal by defendant.

8. Sri V. P. Kulkarni learned Advocate appearing for the defendant canvassed before me the sole question for consideration that the suit notice is not valid and legal. Although I do not find much force in the plea taken by the defendant that the suit premises was taken by the defendant on lease for manufacturing purpose and thus the lease in question is an yearly lease and hence requires six months" notice to terminate the tenancy, I find that the defendant has to

succeed in this appeal because even on the basis that the suit tenancy is a monthly tenancy terminable by fifteen days notice expiring with the end of the month of the tenancy, the notice issued by the plaintiff terminating the tenancy of the defendant is not in conformity with the provisions of S: 106, T. P. Act, applicable to a monthly tenancy. The plaintiff has definitely stated in the plaint that the defendant had taken the suit premises on a monthly lease agreeing to pay rent at the rate of Rs. 5/- per month. He has not indicated any definite date of commencement of the monthly tenancy. However, there is sufficient indication in the plaint that the plaintiff has treated the commencement of the monthly tenancy at the beginning of the month and ending with the end of each month. He has stated that the defendant failed to pay the rents for the period from 1-2-1969. Again he has stated that the cause of action for the purpose of recovery of arrears of rent was on 1-5-1969 and on the first day of each subsequent month till 1-5-1972 and for the purpose of possession on 1-5-1972. The defendant in his written statement has not denied the monthly tenancy set up by the plaintiff. Bearing these facts in mind, let me now consider the validity or otherwise of the notice of termination of tenancy issued by the plaintiff to the defendant which is marked as Ex. P. 1.

9. The notice Ex. P. 1 is D/- 28-3-1972. It was served upon the defendant on 29-3-1972. It is stated in the notice Ex. P. I as regards termination of the tenancy of the defendant that the lease in respect of the suit premises has been terminated at the end of the tenancy month which will expire next after the end of the 15th day from the date of service of the notice. In other words, the termination of the tenancy as per this notice though stated at the end of the tenancy month, but the end of the tenancy month would expire next after the end of the 15th day from the date of service of the notice which would mean that the date of expiry of the end of the tenancy month would be a fluctuating one depending upon the date on which the notice is served upon the defendant. In other words, the defendant was not told definitely as to when exactly his tenancy would come to an end which was corresponding to the expiry with the end of the tenancy month because what was stated in Ex. P. 1 is that the end of the tenancy month would expire next after the end of the 15th day from the date of the service of the notice. What S. 106 requires is that a lease from month to month is terminable on the part of either the lessor or the lessee by 15 days notice expiring with the end of a month of the tenancy. A legal termination of the monthly tenancy thus requires two conditions to be fulfilled viz., that there must be a notice terminating the tenancy giving 15 days notice and it must expire with the end of the tenancy month. A notice giving mere 15 days time by itself will not answer the requirement of S. 106 but it must also indicate that the 15 days period must expire with the end of the tenancy month. Judged on these requirements of a valid notice, the suit notice appears to me to be wholly invalid because it fulfils only one of the conditions viz., that the defendant was given 15 days notice but the remaining and the most essential ingredient that period should expire with the end of the tenancy month has not been fulfilled. Thus I

am inclined to hold that the suit notice is not valid in law as contended by the defendant In that view, the suit brought by the plaintiff for recovery of possession of the suit premises and also for the recovery of the future mesne profits should fail.

10. For the reasons stated above, the defendant appellant succeeds in this appeal and his appeal is accordingly allowed. The judgment and decree of both the Courts below are hereby set aside and the suit brought by the plaintiff is dismissed with the cost of the defendant in this Court.

11. Appeal allowed.