

(1989) 12 MAD CK 0051
In the Madras High Court
Case No : S.A. No. 748 of 1984

Jayalakshmi Ammal

APPELLANT

Vs

Sri Prasanna Vinayagar temple by hereditary trustee K. Ayya
Thayalnayaki Ammal by power of attorney agent Ayya
Subramania Mudaliar

RESPONDENT

Date of Decision : 01-12-1989

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 116

Citation : (1989) 12 MAD CK 0051

Hon'ble Judges : Abdul Hadi, J

Bench : Single Bench

Advocate : M. Krishnaswami, for the Appellant; G. Viswanathan, for the Respondent

Judgement

Abdul Hadi, J.—The only questions argued before me in this second appeal are whether the lease given by the respondent in favour of the appellant-temple is for manufacturing purpose and whether 15 days notice for termination of the lease given under Ex.A1 is not valid and whether 6 month's notice is required for valid termination under S. 106 of the Transfer of Property Act. If six months notice is so required, the suit for possession O.S. 2983 of 1976 on the file of the City Civil Court, Madras, filed by the respondent against the appellant after the above said Ex.A1 notice should be dismissed. The trial Court and the lower appellate Court have held concurrently that the said notice under Ex.A1 was valid and have decreed the suit in favour of the respondent and hence this second appeal. Firstly, neither the appellant entered into the witness box to speak about the question whether the lease is for manufacturing purpose, nor at least a suggestion was put in cross-examination of P.W.1, the husband of the trustee of the respondent, that the lease was given for manufacturing purpose. There is also no document of lease showing the purpose of the lease. However, it is submitted by the learned counsel for the appellant that P.W.1, admitted in his evidence that the appellant is running a factory in the suit premises for about 25

to 30 years. From this lease was given for manufacturing purpose. In this regard, the trial Court erred in observing that the above said admission would go to show that the suit premises had been let out for manufacturing purposes.

2. Even assuming that the lease was for manufacturing purpose, according to S. 106 of the Transfer of Property Act, the presumption that the lease was for year to year, terminable by six months" notice will not arise, when there is a contract to the contrary. In the present case both the courts below rightly held that there was such a contract to the contrary in view of the non-denial in the reply to the above said Ex.A1 notice stating that the tenancy was from the commencement of one English calendar month to the end of the same. Likewise, in the written statement also, there was no denial to the relevant allegation in the plaint.

3. It was held in A.M. Abdul Samad v. Ghulam Ahmed AIR 1975 Guj 11 at page 16 as follows-- Thus, in order that a lease of immovable property for agricultural or manufacturing purposes may be deemed to be a lease from year to year, it should be proved that there was absence of a contract to the contrary. Execution of the rent note Ex.72 is proved....In this document it is stated that the land was taken on lease for a period of one year at the rate of Rs. 40 p.m. and that the rent was to be paid according to English calendar every month as and when it became due. It is thus clear that even though the purpose of the lease was manufacture of cotton chords, the parties intended to create a monthly lease, duration of which was one year. In such a case, even if it were held that a fresh contractual tenancy had come into existence by the lessor accepting rent from the lessees, a lease from year to year would not come into existence as contemplated in S. 106 T.P. Act, merely because the purpose of the lease was manufacture of cotton chords. S. 106 is subject to the contract to the contrary. If the parties intended that the lease was for a period of one year and that the rent was to be paid every month they intended for a monthly lease for a period of one year only and not a lease from year to year. In such a case, therefore, only a month"s notice would be necessary and not six months" notice....

I agree with the above view. No doubt, the learned counsel for the appellant cited the decision reported in K. Ramachandran Chettiar Vs. G. Lakshminarayanawami Chettiar, . But, that was a case of lease holding over, coming under S. 116 of the Transfer of Property Act. There too, it was observed as follows--

The presumption that arises by reserving a monthly rent that the tenancy was from month to month has no relevance when S. 116 applies

(emphasis is mine)

So, in the present case, which falls under S. 106 and not under S. 116, the above said presumption does arise and the tenancy can be treated only as a monthly tenancy terminable at 15 days notice.

In the circumstances, notice of termination in the present case is quite valid and

so the decree of the courts below is right and cannot be interfered with. Hence, the second appeal is dismissed with costs.