

(2018) 02 MAD CK 0282
In the Madras High Court
Case No : 1062 of 2003

R.K. Krishnammal

APPELLANT

Vs

T.K.Sundaram & Ors

RESPONDENT

Date of Decision : 19-02-2018

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 41Rule 27](#), [Order 41Rule 29](#), [Order 41Rule 28](#) -
[Transfer of Property Act, 1882](#)

Citation : (2018) 02 MAD CK 0282

Hon'ble Judges : T.Ravindran

Bench : Single Bench

Advocate : V.Manohar, P.Duraisamy, Vanathi Srinivasan

Final Decision : Disposed Off

Judgement

1. This second appeal is directed against the judgment and decree dated 21.10.2002, passed in A.S.No.48 of 2001, on the file of the II

Additional Subordinate Court, Coimbatore, confirming the judgment and decree passed in O.S.No.2197/1990, dated 27.02.2001, on the file of

the Principal District Munsif Court, Coimbatore.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for possession, arrears of rent and damages.

4. The case of the plaintiffs, in brief, is that the plaintiffs are the joint owners of the suit property and the first defendant took the suit property on

lease for residential purpose on a monthly rent of Rs.200/- and accordingly, the payment of the rent by the first defendant was recorded in a

pocket notebook maintained by the first defendant. However, with ulterior

motive, the first defendant failed to pay the rent to the suit property from December 1988 onwards and further, the suit property is a old structure and in a dilapidated condition and the stability of the building is not strong and therefore, the plaintiffs have decided to demolish the structure located in the suit property and put up a new structure thereon and accordingly, called upon the first defendant to pay the arrears of rent and vacate the property as the property is required by the plaintiffs for their own use as above stated. However, the first defendant had been evading to comply with the above said request of the plaintiffs and accordingly, the plaintiffs by way of a legal notice dated 09.07.90, determined the tenancy of the first defendant in respect of the suit property and that ended on 31.7.90 and to the same, the first defendant sent a reply containing false allegations and inasmuch as the first defendant failed to vacate the suit property even after the termination of the notice, as above stated, he is liable to pay the damages at the rate of 400/- per month from the date of termination and accordingly, the suit has come to be laid for appropriate reliefs by the plaintiffs and pending suit, the first defendant died leaving behind his legal representatives, the defendants 2 to 8 and prayed for necessary reliefs.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts and it is false to state that the first defendant became a tenant of the suit property on a monthly rent of Rs.200/- and on the other hand, the first defendant become the tenant on 01.11.1955, on a monthly rent of Rs.5/- and the rent was gradually enhanced and ultimately increased to Rs.70/- for the suit property and the plaintiffs are not in the habit of issuing the receipts for the rent paid by the defendants and it is false to state that the first defendant failed to pay the rent to the suit property from December 1988 onwards with an ulterior motive and on the other hand, the first defendant was very regular in the payment of rent and taking advantage of the non issuance of the receipt of the payment of the rent, the plaintiffs have made false allegations as regards the non payment of rent from December 1988 onwards and for the months of April and May 1990, on the refusal of the plaintiffs to receive the rent, the same was sent by way of a money order and instead of receiving the same, the plaintiffs sent a notice directing the first defendant to vacate the

premises with false allegations and further, the plaintiff attempted to disconnect the water connection and electricity connection to the suit property

illegally and hence, the first defendant was constrained to lay the suit against the plaintiffs and others for permanent injunction in O.S.No.2945/90

and it is false to state that the suit property is an old building and in a dilapidated condition and on the other hand, the suit property is intact and fit

for continuous residential purpose and it is false to state that the plaintiffs are entitled to damages at the rate of Rs.400/- from the date of

determination of the tenancy and the notice issued by the plaintiff does not conform to the legal requirements and on the above ground alone, the

suit deserves to be dismissed and there is no cause of action for the suit and hence, the suit is liable to be dismissed.

6. It appears that the suit laid by the plaintiffs as above stated and the suit laid by the first defendant in O.S. No.2945/90 were jointly tried by the

trial Court and common evidence was recorded in the suit laid by the plaintiffs in O.S.No.2197/1990 and accordingly, in support of the plaintiffs"

case PWs 1 to 3 were examined, Exs.A1 to A2 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to B64 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was

pleased to decree the suit in favour of the plaintiffs, directing the defendants to vacate the suit property and deliver the possession to the plaintiffs

after paying the rent and further directed the defendants to pay the arrears of rent after adjusting the water charges and electricity charges paid by

them in respect of the suit property and accordingly, disposed of the matter. Further, the trial Court dismissed the suit laid by the defendants in

O.S.No.2945/90.

8. On appeal preferred by the defendants, it is found that by way of an interlocutory application in I.A. No.60 of 2001 preferred in the first

appellate Court by the plaintiffs, additional evidence have come to be marked in support of the plaintiffs" case as Exs.A3 and A4. The first

appellate Court, accordingly, on an appreciation of the materials placed on record, was pleased to modify the judgment and decree of the trial

Court by confirming the same in so far as the relief of possession sought for by

the plaintiffs is concerned, however, holding that the rent for the suit property is only at Rs.70/- accordingly, directed the defendants to pay the arrears of rent quantified at a sum of Rs.700/- and further directed them to pay the damages at the rate of Rs.140/- per month from the date of the determination of the tenancy and accordingly, set-aside the determination of the trial Court that the defendants are entitled to adjust the water taxes and electricity charges from the rent and accordingly, disposed of the appeal preferred by the defendants. Impugning the same, the present second appeal has been laid.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

1. Whether or not the act of the lower appellate Court in entertaining the petition under Order 41 Rule 29 C.P.C. long after the arguments of the appellant has faulted the findings of the lower appellate Court?

2. Whether or not the lower appellate Court acted erroneously in suo-motu marking the documents as additional evidence without giving opportunity for the parties to let in evidence with regard to the same as contemplated under Order 41 Rule 28 and 29 C.P.C. ?

10. The parties are not in issue that the plaintiffs are the owners of the suit property and that the defendants are the tenants in respect of the suit

property. It is found that the suit property has been leased out to the defendants for residential purpose. Though the plaintiffs had laid the suit

claiming that the monthly rent for the suit property is Rs.200/-as determined by the first appellate Court, it is found that the rent for the suit property

is only 70/- per month and as against the said determination of the first appellate Court with reference to the quantum of rent, the plaintiffs have not

preferred any cross objections in the second appeal preferred by the appellants nor preferred any independent appeal. It is found that the Courts

below have held that the defendants have defaulted in the payment of the rent in respect of the suit property wilfully, since December 1988 and

accordingly, the first appellate Court quantifying the rent to the property at Rs.70/-, had directed the defendants to pay the arrears of rent fixed at

Rs.700/- in toto and also further directed them to pay damages at the rate of Rs.140/- from the date of termination of the tenancy. The issues

surfacing between the parties with reference to the above factual aspects and

the determination of the Courts below, particularly, the first appellate Court, on an appreciation of the materials placed on record, in the correct perspective, thereby set-aside the determination of the trial Court and disposed of the appeal preferred by the defendants, it is found that accordingly no submission was putforth by the respective counsel with reference to the same in the present second appeal.

11. The core issue that is raised by the counsel for the appellants in the appeals is that the notice to quit issued by the plaintiffs does not satisfy the requirements of law and hence, the suit laid by the plaintiffs pursuant to the said notice is bad in law and on that score alone the suit is liable to be dismissed. As far as the factum of the issuance of the notice by the plaintiffs to quit dated 09.07.90 marked as Ex.A3 and similarly the response sent by the defendant to the same marked as Ex.A4, both Exs.A3 and A4 having been marked at the first appellate Court, there is no dispute between the parties on the above aspects. The only dispute is, according to the defendant, the said notice is bad in law as it does not conform to the requirements of Section 106 of the Transfer of Property Act. The above submission is based on the footing that the plaintiffs had issued a common notice to quit, to all the tenants under them in respect of the properties owned by them and therefore, it is contended by the defendants" counsel that the common notice issued by the plaintiffs dated 09.07.1990 against all the tenants inclusive of the defendants is bad in law and inasmuch as the properties let out for rent to the various tenants differ and the terms of tenancy also differ and the quantum of rent and the period of tenancy etc., also vary, it is contended that the common notice issued by the plaintiffs marked as Ex.A3 to all the tenants inclusive of the defendants is bad in law and accordingly, the said notice has to be held invalid and the suit laid consequent thereto is liable to be dismissed. However, it is contended by the plaintiffs" counsel that though a common notice to quit has been issued to all the tenants inclusive of the defendants, inasmuch as the terms of the tenancy in respect of the various tenants and the property under the occupation of the various tenants and the quantum of rent liable to be paid by the various tenants had been clearly mentioned in the common notice and as section 106 of the Transfer of Property Act does not contemplate that only an independent notice should be

issued to each tenant and as far as the defendants are concerned, the properties concerning their tenancy, quantum of rent, the description of the properties had been clearly spelt out in the said notice and accordingly, the defendants had not been misled on any aspect with reference to the determination of the tenancy by the plaintiffs by way of the said notice and further, the defendants have also responded to the same by way of Ex.A4, it is contended that the defendants cannot be allowed to challenge the said notice as invalid as not satisfying the legal requirements and therefore, it is contented by the plaintiffs' counsel that the suit laid by the plaintiffs pursuant to the said notice is perfectly maintainable.

12. No doubt, the challenge to the validity of Ex.A3 notice has been raised by the defendants in the written statement. It is found that though the plaintiffs have also referred to the above said notice in the plaint as well as the reply sent by the defendant to the same in the plaint and also as seen from the orders passed by the appellate Court in I.A. No.60 of 2001, the said documents had also been presented by the plaintiffs along with the plaint, due to inadvertence, error or mistake, it is found that the said documents had not come to be marked before the trial Court. Despite the same, it is found that the contentions were put forth as regards the validity of the notice sent by the plaintiffs, subsequently marked as Ex.A3 in the first appellate Court, even before the trial Court and accordingly, though no separate issue had been formulated by the trial Court as regards the validity of the notice to quit issued by the plaintiffs, still on a perusal of the judgment and decree of the trial Court, it is found that the trial Court has dealt with the same in extenso, on the said issue as raised by the respective parties and accordingly, had considered the contentions put forth by the respective parties with reference to the same and also after taking into consideration the various authorities relied upon by the plaintiffs' counsel in connection with the same as detailed in its judgment, inasmuch as the notice to quit sent by the plaintiffs describes and clearly elucidate the details of the tenancy, the quantum of rent, the description of the properties without any ambiguity and also that the tenancy is only for residential purpose and accordingly, the plaintiffs determining the tenancy of the defendants ending on 31.07.1990, held that the notice is in conformity with the requirements of Section 106 of the Transfer of Property Act and by way of the

above said common notice to quit issued by the plaintiffs to all the tenants inclusive of the defendants, particularly, the defendants had not been misled in defending the said notice and accordingly, held that the first defendant had also responded to the same by sending a reply and so determining, the trial Court held that the plaintiffs' suit cannot be allowed to be rejected on account of the invalidity of the notice as projected by the defendants. In other words, the trial Court has clearly found that the plaintiffs' notice to quit issued to the defendants is valid in law and held that the plaintiffs had rightly determined the tenancy of the defendants in accordance with law by way of the said quit notice.

13. As above seen, in the first appellate Court by way of an interlocutory application in I.A. No.60 of 2001, the plaintiffs had come forward to mark the notice and the reply notice as additional documents in support of their case contending that though the said documents referred to in the plaint and filed along with the plaint, by mistake, as they had not been exhibited in the trial Court, prayed for the reception of the said documents as additional evidence in support of their case and it is further seen that the defendants opposing the said application contended that the plaintiffs by way of the said application have failed to satisfy the requirements of Order 41 Rule 27 of the Code of Civil Procedure and come forward to mark the additional documents in support of their case only to fill up the lacunae and accordingly sought for the dismissal of the application. However, it is found that the first appellate Court, on a consideration of the materials placed on record, finding that the said documents had been referred to in the plaint and also not disputed by the defendants in the written statement as such, other than disputing the validity of the quit notice and further, finding that the issue regarding the contentions of the respective parties with reference to the quit notice had been elaborately discussed by the trial Court and accordingly, finding that as regards the reception of the additional documents projected by the plaintiffs, no prejudice would be caused to the defendants as such, as the said documents have been omitted to be marked by the plaintiffs by mistake in the trial Court, accordingly, proceeded to entertain the above said application preferred by the plaintiffs for the reception of additional documents filed by them and accordingly, exhibited the same as Exs.A3 and A4. It is found that the first

appellate Court has disposed of the first appeal and as well as the application for the reception of the additional evidence on the same date though by separate judgment and order respectively and accordingly, considered the additional evidence while disposing of the first appeal.

14. Accordingly, the first appellate Court in the course of its judgment finding that though a common quit notice had been issued by the plaintiffs to all the tenants inclusive of the defendants, noticing that inasmuch as the description of the properties, the terms of the tenancy etc., had been vividly disclosed in the said notice by the plaintiffs and further, as the plaintiffs had correctly determined the tenancy of the defendants by way of the said notice and further noting that the defendants had not in any manner being misled by the common notice to quit issued by the plaintiffs and further holding that the law does not require that only independent notice should be issued to various tenants and a common notice could not be issued by the landlord to the various tenants under them, accordingly finding that no infirmity or illegality is attached to the notice to quit marked as Ex.A3, held that the quit notice Ex.A3 is perfectly valid and accordingly, rejected the challenge thrown to the same by the defendants.

15. In this second appeal also, the same contentions were putforth by the defendants' counsel contending that a common notice issued by the plaintiffs to quit sent by way of Ex.A3, to all the tenants, is bad in law and on that score alone the second appeal should be entertained. However, when it is noted and as determined by the Courts below rightly, the terms of tenancy, description of the properties and the termination of the tenancy had been correctly spelt out in the quit notice marked as Ex.A3 and when it is further found that the defendants had not been in any manner misled by the said notice as far as their tenancy determination is concerned, the defendants had also responded by sending a reply to the quit notice marked as Ex.A3, further, other than contending that the common notice to quit should not have been issued by the plaintiffs and only independent notice should have been issued by the plaintiffs to the different tenants and when it is noted that the plaintiffs are not required to send only independent notice to all the tenants as such under them and when there is no bar under law on the part of the plaintiffs to issue a common notice to all the tenants under them, in particular, when it is found that the

defendants had not been, at the slightest mode, been misled by the said notice in any manner, I do not find any infirmity or error in the reasonings of the Courts below for declaring that the notice issued by the plaintiffs marked as Ex.A3 is perfect in law and valid. The defendants counsel has not placed any material to hold, in the light of the above position, that a common quit notice issued by the plaintiffs is against the provisions of Section 106 of the Transfer of Property Act. On the other hand, on a perusal of the provisions contained in Section 106 of the Transfer of Property Act, it is found that the above section is intended to give notice in advance to the tenants so as to make known the intention of the landlord to quit the property, calling upon the tenant to vacate the property by a particular date, determining the tenancy as per the nature of the tenancy of the respective parties and accordingly, it is found that even if there is any defect in the notice to quit, that by itself could not be held against the landlord, when it is found that the tenants as such had not been misled by way of the same. In such view of the matter, when it is found that the notice had been issued by the plaintiffs perfectly determining the tenancy of the defendants and as above said, the defendants had not been misled in any manner by way of the said notice and when all the particulars as regards the tenancy had been detailed in all aspects, it is found that in the light of the import of Section 106 of the Transfer of Property Act, the quit notice being intended only to put on notice in advance to the tenants to vacate the properties concerned and when the quit notice has to be construed liberally and not to be examined with a view to find fault or render it defective, as held by the Courts below rightly, I do not find any error or infirmity as regards the determination of the Courts below holding that the quit notice issued by the plaintiffs marked as Ex.A3 is perfectly valid in law.

16. However, it is contended by the defendants' counsel that the first appellate Court has erred in straightaway marking the additional documents, namely, the quit notice and reply as Exs.A3 and A4 without giving a fair opportunity to the defendants to adduce evidence as regards the same and by way of the same, the first appellate Court has controverted the provisions of Order 41, Rule 28 & 29 of the Code of Civil Procedure and hence, the judgment and decree of the first appellate Court requires

interference. However, when the parties had approached the lis involved between them in all aspects inclusive of the validity of the quit notice and accordingly, adduced evidence with reference to the same in the matter and also raised contentions surrounding the same, both before the trial Court as well as the first appellate Court and when it is further found that the trial Court and the first appellate Court had gone into the said issue in extenso touching upon the various contentions putforth by the respective parties and further, in particular, the factum of the issuance of the quit notice and the response sent to the same by the defendants as such has not been controverted excepting the validity of the quit notice, in my considered opinion, as it is found that there is nothing remain to provide any further opportunity to the parties, particularly, the defendants to adduce further evidence as regards the additional documents marked Exs.A3 and A4 and as the first appellate Court has itself rightly found that the parties had let in evidence as regards the same already before the trial Court and accordingly, also found that the various contentions with reference to the same had been putforth before the trial Court itself finding that if really the evidence on the above issue had not been let in by the parties concerned, such contentious arguments would not have been projected before the trial Court with reference to the same and in such view of the matter, the arguments putforth by the defendants counsel that the first appellate Court erred in suo motu marking the additional evidence without providing an opportunity to the defendants or the parties in the matter to let in further evidence with reference to the same, as such, cannot be accepted in any manner and in the light of the facts and circumstances of the present case above noticed, it is found that the first appellate Court by way of entertaining the additional evidence projected by the plaintiffs as Exs.A3 and A4, straightaway, had not violated the provisions of Order 41, Rules 28 and 29 of the Code of Civil procedure in any manner and it is further found that the defendants had not been prejudiced or misled in any manner in the approach of the first appellate court in entertaining the reception of the additional evidence when there is no need for the parties to adduce any further oral evidence on the said additional evidence as above discussed.

The substantial questions of law formulated in this second appeal are accordingly answered against the defendants and in favour of the plaintiffs.

17. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.