

MADRAS HIGH COURT**Bench: Mrs. Justice R. Kalaimathi****Date of Decision: October 19, 2023**S.A.No.1665 of 2003

1. Y. Davidson (died)
2. D. Rajadhas
3. D. Vijila ... Appellants

vs.

1. Nagercoil Home Church CSI,
Rep. by its Secretary S. Euztace Nayagom
Son of A. Samuel,
7/A Louisammal St.,
Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

2. J. S. Chandrasan
3. E. G. M. Johnson
4. P. Syed Mohamed ... Respondents

(A2 and A3 are brought on record as LRs of the deceased sole appellant vide Court order dated 24.01.2020 in C.M.P.(MD)No. 9146 of 2019 in S.A.No.1665 of 2003)

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 03.09.2003 in A.S.No.68 of 2002 on the file of the District Judge, Kanyakumari at Nagercoil confirming the Judgment and Decree dated 22.02.2002 in O.S.No.845 of 1987 on the file of the Principal District Munsif, Nagercoil.

Section, Acts, Rules, and Article:

Section 100 of the Code of Civil Procedure

Section 106, 111, 113, 116 of the Transfer of Property Act

Rent Control Act

Subject: Property Law - Tenant holding over after the termination of the lease, the applicability of Section 116 of the Transfer of Property Act, and the necessity of notice under Section 106 of the Transfer of Property Act for eviction against a tenant under the Rent Control Act.

Headnotes:

Property Law - Tenant holding over after the termination of lease - Applicability of Section 116 of the Transfer of Property Act - Whether notice under Section 106 of the Transfer of Property Act is necessary for eviction against tenant under the Rent Control Act - Supreme Court's clarification on the acceptance of rent after the expiration of the lease term - Tenant continuing without the landlord's consent - Distinction between a tenant holding over with consent and a tenant by sufferance - Protection under Section 116 denied. [Para 10-16]

Decision - The Second Appeal is dismissed, and the Judgment and Decree of the first Appellate Court are set aside - The suit in O.S.No.845 of 1987 stands allowed - Time for handing over possession is four months from the date of the judgment. [Para 17]

Referred Cases:

- Sri Kayaroganaswamy Neelayadhatchi Amman Devasthanam represented by its Executive Officer vs. Nagapattinam Co-operative Housing Society Limited represented by its Secretary (2012 2 LW 633).
- Arulmigu Vedaranyeswaraswamy Devasthanam vs. A. Ibrahim Sahib (2017 5 LW 772).
- V. Dhanapal Chettiar vs. Yesodai Ammal (1979 AIR 1745).
- Gangadutt Muraka vs. Kartik Chandra Das (AIR 1961 SC 1067).

Representing Advocates:

For Appellants: Mr. P. Thiyagarajan

JUDGMENT

Being aggrieved by the Judgment of the First Appellate Court namely District Court, Kanyakumari at Nagercoil in A.S.No.68 of 2002 dated 03.09.2003, the first defendant, Y.Davidson has preferred this Second Appeal.

2. For the sake of convenience, parties are referred to as per their litigative status before the Trial Court.

3. On behalf of Nagercoil Home Church CSI, a suit was laid against Davidson, Syed Mohamed, Daniel and Chelladurai for recovery of possession of plaint schedule properties - non residential building bearing Door Nos.679 and 680 from the defendants 1, 2 and 4 and for permanent injunction restraining the first defendant from evicting the third defendant from the plaintiff's shop No.681 as per the Judgment in O.S.No.527 of 1984 and for future *mesne* profits.

4. According to the plaintiff, the lease has expired on 27.10.1986 by efflux of time. It was further claimed that notice was issued to the first defendant on 19.02.1987 terminating the lease in his favour by 27.03.1987 and requesting him to surrender the vacant possession of the leasehold buildings by 28.03.1987. It was further claimed that though the first defendant received the notice on 21.02.1987, he has not surrendered the leasehold buildings.

5. Counteracting to the plaint details, *per contra*, it was claimed by the first defendant that the tenancy was commenced in the year 1969 for a period of 11 years and 9 months. Thereafter, it was extended for five years from 28.10.1980. From 18.10.1985, for an year, lease was further extended.

It was further claimed that though, thereafter, lease was not extended, he continue to be a lessee and has been paying rent to the plaintiff as lessee holding over. Even after the issuance of notice dated 19.02.1987, the plaintiff continues to receive rent from the first defendant accepting his status as lessee. Therefore, the possession of the first defendant is legal and as there is no cause of action arose to file the suit and the suit has to be dismissed.

6. The Trial Court framed relevant issues. At trial, PW1 and PW2 have been examined. Exs.A1 to A20 were marked. On the side of the defendants, DW1 and DW2 were examined. Exs.B1 to B11 were marked. Two Documents have been marked as Exs.X1 and X2.

7. After hearing both sides and upon considering the oral and documentary evidence, Trial Court decreed the suit, against which, the first defendant Y.Davidson preferred the First Appeal in A.S.No.68 of 2002, which was allowed in part by modifying the Judgment of the Trial Court as follows.

(i) The suit is decreed for recovery of plaint schedule properties except shop No.681.

(ii) The quantum of *mesne* profits will be decided in separate proceedings.

(iii) Time for eviction is one month.

(iv) The suit is dismissed regarding the prayer for injunction without costs.

8. Aggrieved by the said Judgment, the first defendant has preferred this Second Appeal on various grounds besides suggesting some substantial questions of law.

9. Pending Second Appeal, the appellant, namely, Y.Davidson has passed away and therefore, his LRs are brought on record as appellants 2 and 3 in this appeal.

10. The learned counsel appearing for the appellants would vehemently argue that the notice which was issued by the plaintiff on 19.02.1987 was received by the first defendant on 21.02.1987. As the rent was being paid continuously by the first defendant, it has to be taken that the first defendant was continuing as a tenant holding over. He would stress upon the fact that after the receipt of the notice, as the plaintiff has been receiving rents from the first defendant and his men, the first defendant is entitled to be protected under Section 116 of the Transfer of Property Act. To buttress his arguments, the following Judgments were referred to.

(i) *Sri Kayaroganaswamy Neelayadhatchi Amman Devasthanam represented by its Executive Officer vs. Nagapattinam Co-operative Housing Society Limited represented by its Secretary reported in 2012 2 LW 633.*

(ii) *Arulmigu Vedaranyeswaraswamy Devasthanam vs. A.Ibrahim Sahib reported in 2017 5 LW 772.*

11. Despite service of notice, the respondents neither appeared nor represented through counsel.

12. The following substantial question of law arise for consideration.

"After the issuance of notice, as the plaintiff has been receiving rents, whether the first defendant gets any protection under Section 116 of the Transfer of Property Act?"

13. The significant question which arises for consideration is 'whether notice under Section 106 of the Transfer of Property Act is necessary for eviction against tenant under the Rent Control Act'. The answer to the above question was already decided by Seven Judges Bench of the Hon'ble Apex Court in the year 1979 in the case of *V.Dhanapal Chettiar vs. Yesodai*

Ammal dated 23.08.1979 reported in 1979 AIR 1745. As per the Apex Court decision, notice under Section 106 of the Transfer of Property Act is not necessary. Issuance of notice is a mere technicality.

14. As per Section 111 of the Transfer of Property Act, tenancy comes to end pursuant to the notice dated 19.02.1987 issued on behalf of the plaintiff to the first defendant terminating the lease by 27.03.1987, wherein, the first defendant was asked to surrender the vacant possession of the leasehold buildings by the next day. Section 111 of Transfer of Property Act is extracted hereunder.

"111. Determination of lease.—A lease of immovable property determines—

- (a) by efflux of the time limited thereby;*
- (b) where such time is limited conditionally on the happening of some event—by the happening of such event;*
- (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event;*
- (d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;*
- (e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;*
- (f) by implied surrender;*
- (g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease;*
- (h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.*

Therefore, by efflux of time, lease was expired on 27.10.1986 and for subsequent periods of occupation, the first defendant is liable to pay damages for the use and occupation.

15. The learned counsel for the appellants would vehemently contend that after receipt of notice, the first defendant has continued to pay rent and it was also received by the plaintiff and the same would amount to waiver under Section 113 of the Transfer of Property Act. In order to determine whether the said act of the plaintiff comes under 'waiver' or not, the details of notice has to be gone into. Ex.A5 (Ex.B2) notice clearly reads that the tenancy was terminated by 27.03.1987 and the first defendant was directed to surrender vacant possession of the leasehold building by 28.03.1987. Therefore, the intention of the plaintiff is so clear in the pre-suit notice namely, Ex.A5 (Ex.B2). When that being the case, though the rents were received by the plaintiff, the conduct of accepting the rent does not amount to 'waiver' for the reasons mentioned *supra*. The tenancy which runs after the termination is not a tenancy afresh. Whether under these circumstances, the first defendant gets protection under Section 116 of the Transfer of Property Act or not is the pivot question. The Section 116 of the Transfer of Property Act is extracted hereunder.

"116. Effect of holding over—

If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106."

16. In order to invoke Section 116 of the Transfer of Property Act, it has to be read along with Section 111 (a) of the Transfer of Property Act, which deals with the termination of tenancy by efflux of time. In this situation, whether Section 116 would apply or not is clarified by the Honourable Apex Court in the decision in *Gangadutt Muraka vs. Kartik Chandra Das reported in AIR 1961 SC 1067*, wherein, it has been observed

that where a contractual tenancy, to which rent control legislation applied, had expired by efflux of time or by determination of notice to quit and the tenant continued in possession of the premises, acceptance of rent from the tenant by the landlord after the expiration or determination of the contractual tenancy will not afford ground for holding that the landlord had assented to a new contractual tenancy. It was further held that acceptance by the landlord from the tenant, after contractual tenancy had expired, of amounts equivalent to rent, of amounts which were fixed as standard rent, did not amount to acceptance of rent from a lessee within the meaning of Section 116 of the Transfer of Property Act. Therefore, when the act of holding over is created after the expiration of the term, it does not create a tenancy of any kind. There is a difference between a tenant continuing in possession after the determination of the lease with the consent of the landlord and the tenant continuing without the landlord's consent. If at all the tenant continues with the landlord's consent, he comes under the 'tenant holding over'. Here, the tenant is called a 'tenant by sufferance'. So law is well settled that where a tenant remains in possession after the expiry of the date on which he requires to deliver possession, he is not entitled to take advantage under Section 116 though he has paid rent for such period. Therefore, based on the aforesaid discussions, the first defendant cannot seek protection under Section 116 of the Transfer of Property Act. For the reasons stated *supra*, the substantial question of law framed by this Court is answered in favour of the plaintiff.

17. In the result, the Second Appeal stands dismissed and the Judgment and Decree passed by the first Appellate Court is set aside. The suit in O.S.No.845 of 1987 stands allowed. Time for handing over the possession is four months from today. No costs.

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