

(2011) 09 MAD CK 0093

Madras High Court

Case No: S.A. No. 1029 of 2009 and M.P. No. 1 of 2009

Vijayakumari

APPELLANT

Vs

T.J. Rajalakshmi

RESPONDENT

Date of Decision: Sept. 7, 2011

Acts Referred:

- Transfer of Property (Amendment) Act, 2002 - Section 106, 106(3)

Hon'ble Judges: R.S. Ramanathan, J

Bench: Single Bench

Advocate: Ashok Menon, for the Appellant; V. Muralidharan, for the Respondent

Final Decision: Dismissed

Judgement

R.S. Ramanathan

1. The unsuccessful Defendant is the Appellant herein. The Respondent/Plaintiff filed the suit for eviction and also for future damages.

2. The case of the Respondent/Plaintiff was that the property was given on lease to the Appellant/Defendant on a monthly rent of Rs. 500/- from 29.10.1992 onwards. Thereafter, the rent was enhanced to Rs. 1,200/- per month from the year 2000 onwards. As the premises was required for the Plaintiff's daughter-in-law, a notice to quit was issued on 10.11.2003, giving 15 days" time to the Appellant/Defendant to vacate and handover vacant possession of the suit property. As the Appellant/Defendant did not vacate and handover possession of the suit property, the suit was filed for eviction.

3. The Appellant/Defendant contested the suit stating that the suit for eviction is not maintainable and the Respondent/Plaintiff ought to have filed a petition by invoking the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, and notice to quit was also not proper, as the lease was for manufacturing purpose and six months" notice was not given.

4. The trial Court decreed the suit holding that notice to quit was properly given and the Civil Court has got jurisdiction to entertain the suit, as the Village is not notified under the provisions of Act 18 of 1960. The First Appellate Court also confirmed the judgment and decree of the trial Court and hence, the Second Appeal.

5. The following substantial questions of law arises for consideration in the Second Appeal:

Whether proper notice to quit was given by the Respondent?

6. Mr. Ashok Menon, the Learned Counsel appearing for the Appellant submitted that admittedly under Ex.B3, notice to quit was given on 20.1.2003 and thereafter, the rent was received by the Respondent/Plaintiff and under Ex.A1, dated 10.11.2003, another notice was given, giving 15days" time to vacate and hand over the vacant possession of the suit property and having regard to the purpose for which the property was taken on lease, six months" time ought to have been given for vacating the premises. Therefore, the suit is bad for want of proper notice.

7. The Learned Counsel for the Appellant further submitted that even if the notice issued under Ex.B3, was taken into consideration as proper notice to quit, as per the provisions of 106(3) of the Transfer of Property Act, (hereinafter referred to as "the Act") as amended by Act 3 of 2003, notice-Ex.B3, cannot be considered as proper notice, as the Respondent/Plaintiff issued another notice under Ex.A1, dated 10.11.2003, and by reason of provision of Section 113 of the Act, earlier notice-Ex.B3, dated 20.1.2003, can be said to have been waived by the issuance of subsequent notice under Ex.A1. Therefore, no proper notice was given to terminate the lease.

8. The Learned Counsel for the Appellant also submitted that having regard to the purpose for which the property was taken on lease, viz., for running a Flour Mill and Oil Mill, the lease must be deemed to be a lease for manufacturing purpose and six months" notice is necessary and in this case, under Ex.A1, only 15 days" notice was given and the suit was filed on 10.12.2003, and therefore, the suit is hit by Section 106 of the Act. The Learned Counsel also relied upon a judgment reported in AIR (1982) S.C. 127 in the case of Idandas v. Anant Ramchandra in support of his contention, wherein, in similar circumstances, the Hon"ble Supreme Court has held that lease granted for running a Flour Mill must be construed as a lease for manufacturing purpose and six months" notice is necessary and in the absence of such notice, the suit is not maintainable. The Learned Counsel, therefore, submitted that the suit filed by the Respondent/Plaintiff is not maintainable and these aspects were not properly appreciated by the Courts below

9. I am unable to accept the contention of the Learned Counsel for the Appellant. It is seen from the averments made in the plaint that the Respondent/Plaintiff as alleged that the tenancy was obtained only for non-residential purpose and there was a rental agreement entered into between the parties on 29.10.1992. The subject matter of the property is also three shops, measuring 10 feet x 10 feet each, and

total extent of three shops is only 300 sq.fts. It is not admitted by the Respondent/Plaintiff that the suit property was let out to the Appellant/Defendant for running a flour mill nor the lease was for manufacturing purpose. The Appellant/Defendant also did not state in the written statement that she had taken the property on lease for manufacturing purpose. On the other hand, the Appellant/Defendant has admitted in the written statement that, after taking the property on lease, she obtained three phase electricity service connection in her name for running the Flour Mill and Oil Mill, after getting Plaintiff's written consent as per the rules in that matter.

10. Therefore, it is seen from the averments made in the written statement that the Flour Mill came into existence, after the property was taken on lease and according to me, the use of the property by a lessee will not determine the purpose for which the lease was initially given and unless, it was proved that the lease was taken for manufacturing purpose, the subsequent use of the property by the lessee for manufacturing purpose, will not make the lease one for manufacturing purpose.

11. As stated supra, in this case, there is no pleadings on the part of the Appellant/Defendant that the suit property was leased out for manufacturing purpose. Further, considering the nature of shops that were let out to the Appellant/Defendant, it could not also be deemed to be given for manufacturing purposes. This case can also be approached from another angle. As per Section 106 of the Act, in the absence of any contract to the contrary, a lease of immovable property either for agricultural or for manufacturing purpose, shall be deemed to be a lease from year to year, terminable on the part of lesser or lessee, by six months" notice; and as per Section 111(a) of the Act, a lease of immovable property is determined by efflux of time limited thereby. Therefore, when under written contract of lease, the period is prescribed as duration of the lease, then the said lease is determined by efflux of time limited in that agreement. In that case, the provisions of 106 of the Act viz., six months" notice need not be given, as Section 106 of the Act, begins with the sentence that "in the absence of a contract or local law or legal usage to the contrary".

12. In this case, it is admitted that there was a written contract entered into between the parties and as per the written statement, the lease was given for a particular period and it was not extended after that period. In that case, as per Section 111(a) of the Act, the said lease got terminated or determined on the expiry of the period from the year prescribed in that lease deed and therefore, there is no need to give notice as per Section 106 of the Act.

13. Further, according to me, the lease was given only for non-residential purpose and it was not the case of the Appellant/Defendant that the lease was for manufacturing purpose. The Appellant tried to take advantage of the business run by her in that premises and tried to create an impression that it is for manufacturing purpose.

14. As stated supra, unless, there is clear evidence to show that the lease was taken for manufacturing purpose, it cannot be presumed to be a lease for manufacturing purpose, depending upon the use of the premises by the lessee. In this case, the Respondent/Plaintiff had stated that the lease is for non-residential purpose. In the written statement, the Appellant/Defendant had not stated that she had taken the property for manufacturing purpose. She has also stated that after taking the property on lease, she started running a Flour Mill. Therefore, the subsequent use of the property by the lessee/Appellant for manufacturing purpose will not make the lease one for manufacturing purpose.

15. Therefore, having regard to the facts and circumstances of the case that there was an agreement of lease and that the period of lease was not extended, in my opinion, there is no need to give any notice of termination, as the lease got terminated by efflux of time, as per Section 111(a) of the Transfer of Property Act. Even assuming that notice ought to have been given, in my opinion, the lease was given for non-residential purpose and not for manufacturing purpose, where, six months" notice is required and 15 days" notice is sufficient and that was given under Ex.A1, and all these aspects have been properly appreciated by both the Courts below and both the Courts below ordered for eviction.

16. In the judgment reported in AIR (1982) S.C. 127 (cited supra) it was found that yearly rent was fixed and the property was taken for manufacturing purpose and on the facts of that case, having regard to the fixation of yearly rent and the purpose for which the property was taken on lease, the Hon"ble Supreme Court has held that the lease was for manufacturing purpose and six months" notice was necessary. The facts of that case are quite different from the facts of the case on hand and in this case there was no evidence to show that the lease was given for manufacturing purpose and there was an agreement of lease and that was not extended thereafter.

17. Considering all these aspects, I do not find any reason to interfere with the concurrent findings of the Courts below and the substantial question of law is answered against the Appellant/Defendant and I hold that notice to quit was properly given.

18. In the result, the Second Appeal is dismissed, confirming the judgment and decree of the Courts below. In the circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

19. The Appellant/Defendant is given six months" time to vacate and hand over the possession of the suit property to the Respondent on condition of filing an affidavit of undertaking by the Appellant within 15 days from the date of notice.