

(2011) 06 MAD CK 0386

Madras High Court

Case No: S.A. No. 603 of 2011 and M.P. No. 1 of 2011

Moorthy

APPELLANT

Vs

Govindaraj

RESPONDENT

Date of Decision: June 8, 2011

Acts Referred:

- Transfer of Property Act, 1882 - Section 106

Hon'ble Judges: G. Rajasuria, J

Bench: Single Bench

Advocate: Sounthar, for the Appellant;

Final Decision: Dismissed

Judgement

G. Rajasuria, J.

This second appeal is filed by the Defendant, inveighing the judgement and decree 14.6.2010 passed by the Principal Sub Court, Mayiladuthurai, in A.S. No. 74 of 2009 confirming the judgement and decree dated 26.10.2009 passed by the Additional District Munsif Court, Mayiladuthurai, in O.S. No. 48 of 2009, which was filed for recovery of possession.

2. The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court.

3. A recapitulation and "resume" of facts absolutely necessary and germane for the disposal of this second appeal would run thus:

(i) The Respondent herein, as Plaintiff, filed the suit seeking the following reliefs:

(a) to direct the Defendant to put the Plaintiff in possession of the suit property.

(ii) The Defendant filed the written statement resisting the suit.

(iii) Whereupon the trial Court framed the relevant issues. On the Plaintiff's side, the Plaintiff examined himself as P.W.1 and marked Ex.A1 and Ex.A2. The Defendant

examined himself as D.W.1 along with D.W.2 and marked Exs.B1 and B2.

(iv) Ultimately, the trial Court decreed the suit, as against which, the appeal was filed for nothing but to be dismissed by the first appellate Court, confirming the judgement and decree of the trial Court.

4. Challenging and impugning the judgements and decrees of the Courts below, this second appeal is focussed by the Defendant on various grounds and also suggesting the following substantial questions of law:

a) Whether the Courts below erred in law in holding notice to quit under Sec.106 of Transfer of Property Act is proper and valid when admittedly the tenancy between parties was not terminated?

b) Whether the Courts below erred in decreeing the suit for ejectment on the ground that filing of plaint would amount to termination of tenancy?

c) Whether the plaint for ejectment is maintainable when there is no cause of action on the date of filing of suit? Even assuming filing of suit and service of suit summons would amount to termination of tenancy, whether subsequent accrual of alleged cause of action would cure the inherent defect on the date of presentation of plaint?

(extracted as such)

5. The learned Counsel for the Appellant/Defendant would mainly focus his attention on only one point that Ex.A1 the termination notice was not in accordance with law for the reason that there is no version in it to the effect that the lease emerged between the Plaintiff and the Defendant was terminated; in the absence of such specification in the termination notice, by no stretch of imagination, it could be taken that the said Ex.A1 satisfied the ingredients of Section 106 of the Transfer of Property Act. The Courts below, according to him, have not taken into consideration the said point.

6. I hark back to the principles as found embodied in the following judgement of the Honourable Apex Court:

[Hero Vinoth \(minor\) Vs. Seshammal, ;](#)

24. ...(iii) The general rule is that the High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.

and the other precedents emerged in this regard.

(ii) [Vijay Kumar Talwar Vs. Commissioner of Income Tax, Delhi](#), certain excerpts from it would run thus:

19. It is manifest from a bare reading of the section that an appeal to the High Court from a decision of the Tribunal lies only when a substantial question of law is involved, and where the High Court comes to the conclusion that a substantial question of law arises from the said order, it is mandatory that such question(s) must be formulated. The expression "substantial question of law" is not defined in the act. Nevertheless, it has acquired a definite connotation through various judicial pronouncements.

(iii) [Kashmir Singh Vs. Harnam Singh and Another](#), .

(iv) 2009 (1) L.W. 1 State Bank of India and Ors. v. S.N. Goya:

7. A bare perusal of the above precedents would exemplify and demonstrate that unless there is any perversity or illegality in the decisions rendered by the Courts below, the question of interfering in second appeal on the finding of facts would not arise and there should be valid legal grounds also for interference.

8. The nitty-gritty, the gist and kernel of the case of the Plaintiff is that the Defendant became a tenant under him in respect of the residential house as found set out in the schedule of the plaint. Subsequently, Ex.A1 the termination notice u/s 106 of the Transfer of Property Act was issued to the Defendant, calling upon him to vacate the premises and hand over possession of it.

9. Indubitably and indisputably, after the receipt of the notice Ex.A1, the suit was filed long after 15 days and in such a case, the Courts below felt that there was substantial compliance with Section 106 of the Transfer of Property Act.

10. Various pleas were taken by the Defendant/tenant to the effect that there was no specification relating to the period of lease and there was no clarity as to whether it was from the first of English calendar month to the end of the month or from a different date etc.

It is also the contention of the Defendant that there was no proper termination of the lease at all. But the Courts below, after considering the pro et contra and also analysing the evidence, arrived at the conclusion that such pleas were not tenable in view of the amended Section 106 of the Transfer of Property Act.

11. Applying the Mischief rule as well as the Heydon's Rule if the matter is viewed, it is crystal clear that the object of the amended Section 106 of the Transfer of Property Act is that on technical grounds, a landlord should not be deprived of his right to recover possession of his property from the tenant. However, the Legislators were zealous and jealous in safe-guarding the interest of the tenant to the effect that at least the tenant in occupation of the premises should have at least

15 days time to vacate the premises, after receipt of the notice u/s 106 of the T.P. Act.

12. The very fact that the landlord called upon the tenant, who is the Defendant in this case, to vacate and hand over possession would amply as well as unambiguously highlight and spotlight the fact that the landlord intended to terminate the tenancy. Simply because there is no express version to the effect that the lease emerged was terminated, that it does not mean that the landlord never intended to terminate the tenancy. Wherefore, the Courts below au fait with law and au courant with facts and on appreciation of facts held that Ex.A1 was a proper termination notice. In my opinion, there is no question of law much less substantial question of law is involved in the second appeal.

13. In the result, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

14. The learned Counsel for the Appellant would make an extempore submission that sufficient time may be granted for vacating the premises.

15. I would like to grant four months" time for vacating the premises subject to payment of rent without any default and to that effect affidavit shall be filed by the Appellant/Defendant within 15 days from this date.