



2023/KER/55491

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 5TH DAY OF SEPTEMBER 2023 / 14TH BHADRA, 1945

RSA NO. 838 OF 2020

AGAINST THE JUDGMENT AND DECREE DATED 20.12.2019 IN AS 21/2017 ON

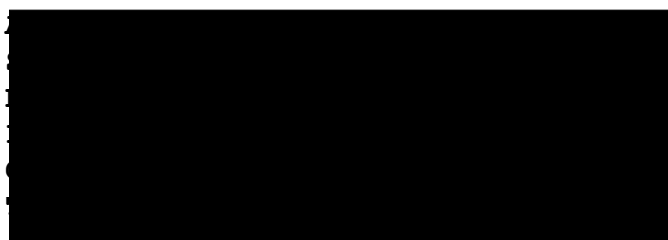
THE FILE OF THE SUB COURT, ATTINGAL

AGAINST THE JUDGMENT AND DECREE DATED 30.06.2017 IN OS NO.115/2013

OF MUNSIF COURT, ATTINGAL

APPELLANT/APPELLANT/DEFENDANT:

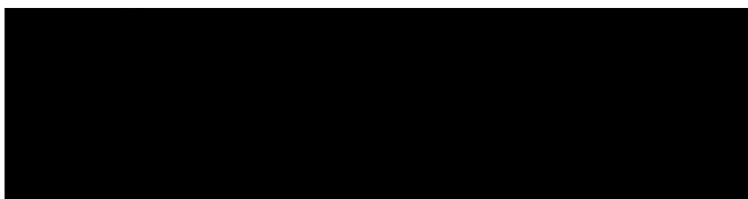
RATHEESH



BY ADV K.SIJU

RESPONDENT/RESPONDENT/PLAINTIFF:

V.S.MARY



BY ADV SRI.LATHEESH SEBASTIAN

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ORDERS ON
05.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT

Dated this the 5th day of September, 2023

This regular second appeal has been filed under section 100 of the Civil Procedure Code (hereinafter referred to as 'CPC' for short) and the appellant is the defendant in O.S.No.115/2013 on the files of the Munsiff 's Court, Attingal. The appellant is aggrieved by the decree and judgment dated 30.06.2017 in OS No.115/2013 as well as decree and judgment in AS No.21/2017 dated 20.12.2019 on the files of the Sub Court, Attingal. The respondent herein is the plaintiff in the above Suit.

2. Heard the learned counsel for appellant as well as the learned counsel appearing for the respondent.

3. This appeal got admitted by raising the following substantive questions of law.

- i) *Whether a document required to be registered is admissible in to evidence U/s.49 of the Registration Act?*
- ii) *Whether Ext.A1 agreement is one coming under proviso to Sect.49(c) of the Registration Act if so the same is a collateral transaction or not?*



iii) Whether issuance of a quit notice U/s.106 of Transfer of Property Act is necessary before initiating suit for eviction?

4. I shall refer the parties in this regular second appeal as 'plaintiff' and 'defendant' for convenience.

5. The case put up by the plaintiff before the trial court was that the plaint schedule shop bearing No. 30 in ward No.IX of Pazhayakunnummel Grama Panchayat, originally owned and possessed by the plaintiff, was given on rent to the defendant with effect from 01.08.2009 for a period of three years, agreeing to pay rent at the rate of Rs.800/- (Rupees eight hundred only) per month. While occupying the building as tenant, the defendant defaulted payment of rent due for a period of 30 months. Accordingly, the plaintiff filed suit to get vacant possession of the plaint schedule shop room and also for getting decree of permanent prohibitory injunction restraining the defendant from causing any harm, obstruction, waste or any mischief which would affect the right of the plaintiff over the plaint schedule shop room.



6. The defendant resisted the suit, admitting execution of the rent deed in favour of the plaintiff, contending that the defendant constructed a shop room in the year 1989 in the building and he had spent Rs. 50,000/- for the said purpose. Further, the defendant used to pay rent to one Sreekumaran Nair, who was the manager of the brother of the plaintiff. That apart, it has been contended that the statutory notice prescribed under Section 106 of the Transfer of Properties Act, 1882 (hereinafter referred to as 'the TP Act' for convenience), was not issued before filing the suit for eviction and as such, the suit is not maintainable.

7. The trial court framed necessary issues and recorded evidence. PWs 1 to 3 examined and Exhibits A1 to A8 marked on the side of the plaintiff. DWs 1 and 2 examined on the side of the defendant.

8. On appreciation of evidence, the learned Munsiff granted the decree as under:

“In the result, the suit is decree as follows:

- i) The defendant shall surrender vacant possession of the plaint schedule shop room within a period



of 30 days, failing which the plaintiff shall be entitled to get the vacant possession of the plaint schedule shop room through the process of the Court.

- ii) The defendant shall pay the plaintiff arrears of rent at the rate of Rs.800 per month from December 2012 upto the date of surrender of vacant possession of the plaint schedule shop room.
- iii) The defendant is restrained by a permanent prohibitory injunction from causing any waste in the plaint schedule shop room.”

9. Although the decree and judgment of the trial court dated 30.06.2017 was challenged before the Sub Court, Attingal, as per judgment and decree dated 20.12.2019 in AS No. 20/2017, the learned Sub Judge dismissed the appeal and confirmed the decree and judgment passed by the Munsiff court. As I have already pointed out at the time of admission, three substantive questions of law were raised, out of which questions 1 and 2 required to be addressed together and the third one to be answered separately.

10. Now, the first and second questions raised in this appeal required to be answered. In this case, Ext. A1 is the lease agreement executed in between the plaintiff and the



defendant as on 01.08.2009 and the period of lease is shown as three years. Thus, it appears that Ext. A1 is the tenancy agreement beyond the period of one year and the same is a compulsorily registrable document under Section 17 of the Registration Act, 1908 as well as under Section 107 of the TP Act. Section 107 of the TP Act provides that a lease of a movable property from year to year or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered document. It is borne out from the records that Exhibit A1, the rent agreement, was tendered in evidence without any objection from the side of the defendant.

11. Indubitably an unregistered document, required to be registered, if unregistered, the same is inadmissible in evidence. However, as provided under proviso to Section 49 of the Registration Act, the same can be used for collateral purposes. In this connection, it is relevant to refer Sections 17(1) (d) and 49 of the Registration Act. Section 17 (1)(d) of the Registration Act reads as under:



“17. Documents of which registration is compulsory - (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (7 of 1871) or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely:—

- (a) xxxx;
- (b) xxxx;
- (c) xxxx;
- (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;”

12. Section 49 of the Registration Act reads as under:

“49. Effect of non-registration of documents required to be registered.—No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall—

- (a) affect any immovable property comprised therein, or
- (b) confer any power to adopt, or
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:



Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.”

13. In the decision in **K.B.Saha and Sons Private Limited v. Development Consultant Limited**, reported in **2008 KHC 4901 : (2008) 8 SCC 564 : 2008 (9) SCALE 490 : 2008 (68) AIC 78 : 2008(3) CHN 45** (placed by the learned for the appellant), the Apex Court considered the necessity of registration of a document required to be registered and its legal consequences, if unregistered. It was held that such document is inadmissible in evidence, but as per proviso to Section 49 of the Registration Act, such unregistered document could be used as evidence of collateral purpose. As far as the definition of collateral purpose is concerned, it was held that *the same is a purpose/transaction which is independent of, or devisable from*



the transaction which requires registration.

14. In this context, it is relevant to refer another decision of the Apex court on this point, in **S.Kaladevi Vs.Somasundaram**, reported in **(2010) 5 SCC 401** and the Apex Court held as under:

"12. The main provision in Section 49 provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. The proviso, however, would show that an unregistered document affecting immovable property and required by the 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be affected by registered instrument. By virtue of the proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs.100 and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document.



When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908, Act.

15. In **K.B.Saha's** case (*Supra*), the Apex Court referred (SCC pp.576-77, para 33) the following text from Mulla's *Indian Registration Act*, (7th Edition, at page 189):

"The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu & Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court at Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under Section 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it."

The Apex Court then culled out the following principles in **K.B. Saha's** case, SCC p. 577, para 34:

“1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.



3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.”

To the aforesaid principles, one more principle may be added, namely, that a document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance.

16. It has been held in **Ameer Minhaj v. Dierdre Elizabeth (Wright) Issar and Others** report in **(2018) 7 SCC 639**, after quoting Sec.17 Registration Act, as under:

“10. On a plain reading of this provision, it is amply clear that the document containing contract to transfer the right, title or interest in an immovable property for consideration is required to be registered, if the party wants to rely on the same for the purposes of Section



53A of the 1882 Act to protect its possession over the stated property. If it is not a registered document, the only consequence provided in this provision is to declare that such document shall have no effect for the purposes of the said Section 53-A of the 1882 Act. The issue, in our opinion, is no more *res integra*. In **S. Kaladevi Vs. V.R. Somasundaram and Ors**, this Court has restated the legal position that when an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received as evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act.”

17. Further referring Sec.49 of the Registration Act, it has been observed by the Apex Court in **Ameer's** case (*Supra*) as under:

“12. In the reported decision, this Court has adverted to the principles delineated in **KB. Saha & Sons (P) Ltd. v. Development Consultant Ltd.** and has added one more principle thereto that a document required to be registered, but if unregistered, can still be admitted as evidence of a contract in a suit for specific performance. In view of this exposition, the conclusion recorded by the High Court in the impugned judgment that the sale agreement dated 9-7-2003 is



inadmissible in evidence, will have to be understood to mean that the document though exhibited, will bear an endorsement that it is admissible only as evidence of the agreement to sell under the proviso to Section 49 of the 1908 Act and shall not have any effect for the purposes of Section 53-A of the 1882 Act. In that, it is received as evidence of a contract in a suit for specific performance and nothing more. The genuineness, validity and binding nature of the document or the fact that it is hit by the provisions of the 1882 Act or the 1899 Act, as the case may be, will have to be adjudicated at the appropriate stage as noted by the trial court after the parties adduce oral and documentary evidence."

18. In **S Kaladevi's case** (*Supra*), as stated in Para 12, it was held that a document required to be registered, if unregistered, could be admitted in evidence as evidence of contract in a suit for specific performance.

19. Another question arises is the legal effect of marking a document without objection.

20. In the decision in **Javer Chand and Others v. Pukhraj Surana**, reported in **AIR 1961 SC 1655**, a Four Bench



decision of the Apex Court considered the validity of an instrument which had not been duly stamped and held that when a question as to the admissibility of a document is raised on the ground that it has not been stamped or has not been properly stamped, it has to be decided then and there when the document would be tendered in evidence. Once the court rightly or wrongly decided to admit the document in evidence, so far as the parties are concerned, the matter is closed. It has further held that once a document had been admitted in evidence, as aforesaid, it is not open either to the trial court itself or to the court of appeal or revision to go behind that order.

21. In this matter, Ext.A1 is a document which would require compulsory registration in tune with the mandate of Section 17 of the Registration Act. Therefore, Ext.A1, in fact, is inadmissible in evidence. In this matter, the document has been marked without any objection and objection regarding its admissibility has been raised before this Court at the second



appellate stage. Therefore, the said contention cannot be appreciated in a case wherein the defendant filed written statement admitting his status as that of a tenant for payment of rent at the rate of Rs.800/- per month and no other right claimed otherwise than that of a tenant.

22. As regards to the third question, the learned counsel for the respondent placed decision of the Full Bench of this Court in **Jacob Philip v. State Bank of Travancore & Others**, reported in **1972 KLT 914 (F.B.)** and submitted that when there is a contract to the contrary, Section 106 of the Transfer of Property Act ('TP Act' for short hereafter) has no application and in such cases, notice under Section 106 of the TP Act is not mandatory. He also placed another decision of the Apex Court in **NOPANY Investments (P) Ltd. Vs. Santokh Singh (HUF)**, reported in **(2008) 2 SCC 728** and submitted that in paragraph 22 of the above judgment, it was held by the Apex Court that *it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant. Therefore, we have no hesitation to hold that no notice to quit was necessary under*



Section 106 of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant. This view has also been expressed in the decision of this Court in V.Dhanapal Chettiar v. Yesodai Ammal.

23. In this connection, it is necessary to refer another decision of the Apex Court in **Vijayalaxmi M. v. G.Goverdhan Reddy**, reported in **1997 KHC 3882 SC : 1997 KHC 3882 : (1997) 11 SCC 358**. In the said case, the Apex Court considered a lease agreement providing 11 months period, wherein sufficiency of notice was challenged on the ground that the termination of tenancy with effect from 28.02.1985, in a case where the tenancy started on 02.04.1984 for a period of 11 months, is invalid. The Apex Court held in paragraph No.4 as under:

“4. The learned counsel for the respondent has urged that the suit filed by the appellant was based on the alleged termination of the tenancy by notice dated 28-1-1985 and since the said notice was invalid the suit must fail. We are unable to agree. The suit was for recovery of possession of the premises after termination of the tenancy. Merely because the appellant had given a



notice terminating the tenancy by notice dated 28-1-1984 (sic 1985) would not mean that the appellant was not entitled to seek the possession of the property after tenancy had come to an end by efflux of time under S.111(a) of the Transfer of Property Act. Therefore, even if it is held that the notice dated 28-1-1985 was not a valid notice under S.106 of the Transfer of Property Act it could be regarded as a notice indicating that the tenancy would not be continued after the term of the tenancy comes to an end. In these circumstances it cannot be said that the suit filed by the appellant was not maintainable and decree for eviction could not be passed in favour of the appellant.”

24. To be on necessity of notice under Section 106 of TP Act. Section 106 provides as under:

“106: Duration of certain leases in absence of written contract or local usage:-- (1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months’ notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days’ notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section



(1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.”

On reading the provision, it is clear that in the absence of a contract or local law for usage to the contrary, a lease of immovable property from year to year shall be terminable by issuance of 6 months' notice and month to month shall be terminable by 15 days' notice. Therefore, in a case, where there is a contract and determination of lease by efflux of time is provided in the contract as per Section 111(a) of the TP Act, the lease shall come to an end. In this matter, as borne out from the records, the lease arrangement started with effect from 01.08.2009 for 3 years and as on 31.07.2012, the term of lease



came to an end and, therefore, the present suit is one filed after termination of tenancy by efflux of time and in such a case, notice mandated under Section 106 of the TP Act is not necessary and, therefore, this challenge is found against the defendant.

25. In this case, the trial court as well as the appellate court meticulously analysed the evidence available and found that the plaintiff is the landlord of the plaint schedule room, which was given on rent to the defendant and the defendant admitted his status as a tenant. Therefore, the plaintiff is entitled to get recovery of possession of the same, being the landlord. In fact, no perversity or illegality in the said finding could be gathered and as such, the regular second appeal must fail.

In the result, this regular second appeal stands dismissed and there shall be no order as to cost.

However, considering the request of the learned counsel for the defendant/appellant three months' time is granted to the defendant for vacating the plaint schedule room, provided the



defendant/appellant shall file an affidavit before the trial court within a period of three weeks from today undertaking to vacate the building on expiry of three months from today. If no such affidavit will be filed within three weeks, the time granted by this Court shall not be available and the decree impugned can be put in execution without waiting for three months.

Registry is directed to forward a copy of this judgment to the court below concerned, within two weeks, for information and compliance.

Sd/-

A. BADHARUDEEN

JUDGE