



2023/KER/77510

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 8TH DAY OF DECEMBER 2023 / 17TH AGRAHAYANA, 1945

RSA NO. 817 OF 2019

AGAINST THE DECREE AND JUDGMENT DATED 15.03.2019 IN AS
10/2018 OF SUB COURT, MANJERI

AGAINST THE DECREE AND JUDGMENT DATED 24.10.2017 IN OS
372/2015 OF MUNSIF COURT, MANJERI

APPELLANT/APPELLANT/DEFENDANT :

SAMEERALI,



BY ADVS.

LIJI.J.VADAKEDOM

SMT.REXY ELIZABETH THOMAS

SRI.RAJEEV JYOTHISH GEORGE

RESPONDENT/RESPONDENT/PLAINTIFF :

MUHAMMED,



BY ADVS.

SRI.P.SAMSUDIN

SRI.M.ANUROOP

SMT.S.K.SREELAKSHMY

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
30.11.2023, THE COURT ON 08.12.2023 DELIVERED THE FOLLOWING:

**"C.R"*****A. BADHARUDEEN, J.***

R.S.A No.817 of 2019

*Dated this the 8th day of December, 2023****J U D G M E N T***

This appeal filed under Order XLII Rule 1 read with Section 100 of the Code of Civil Procedure, is at the instance of the sole defendant in O.S.No.372/2015 on the files of the Munsiff Court, Manjeri. The defendant assails the decree and judgment in the above suit dated 24.10.2017, confirmed by the Sub Court, Manjeri in A.S.No.10/2018 as per the decree and judgment dated 15.03.2019. The sole respondent is the plaintiff.

2. I shall refer the parties in this appeal with reference to their status before the trial court, as 'plaintiff' and 'defendant' hereafter for easy reference.



3. Heard the learned counsel on both sides.
4. Perused the verdicts under challenge and the copies of documents placed by the learned counsel on both sides, form part of the trial court records.
5. The plaintiff, being the landlord of the plaint schedule building which was given on rent in favour of the defendant, filed the suit and sought for eviction of the defendant from the plaint schedule building after terminating the tenancy by issuing notice on 29.06.2015.
6. The defendant filed written statement and admitted the tenancy arrangement between the plaintiff and the defendant. The defendant raised contentions which would be available to a tenant under the Building (Lease and Rent Control) Act, 1965 though such contentions could not be raised in a suit for eviction.
7. The trial court raised necessary issues and recorded evidence. PW1 was examined and Exts.A1 to A2 were marked on the side of the plaintiff. DW1 was examined and Exts.B1 to B5



were marked on the side of the defendant.

8. Thereafter, the trial court decreed the Suit directing the defendant to surrender vacant possession of the plaint schedule building and also granted Rs.3,000/- per month as occupation charges till the date of surrender. On appeal, as per judgment in A.S.No.10/2018 dated 15.03.2019, the learned Sub Judge concurred with the finding of the trial court and dismissed the Suit.

9. At the time of admission, my learned predecessor admitted this appeal raising the following substantial question of law:

(1) Does receipt of rent by the landlord after receipt of quit notice by the tenant amount to waiver of the quit notice?

10. While addressing the substantial question of law, the learned counsel for the defendant submitted that during cross examination, PW1 stated that the defendant has been continuing in occupation as a tenant and, therefore, Section 113 of the Transfer of Property Act ('T.P Act' for short hereinafter) would apply to the



facts of this case. It is submitted further that the landlord, who received rent after receipt of quit notice, waived the quit notice earlier issued and therefore fresh quit notice is necessary to succeed the Suit.

11. Whereas it is submitted by the learned counsel for the plaintiff that PW1 never intended that quit notice issued in this case was waived and what is intended by PW1 was till the tenant is in possession of the tenanted building.

12. In this matter, Ext.A1 is the copy of lawyer notice dated 29.06.2015 and Ext.A2 is the reply notice dated 08.07.2015. As per Ext.A1, the tenancy was terminated. Exts.B1 to B3 are the copies of rent agreements dated 01.07.2007, 08.10.2011 and 11.11.2013. In fact, the rental arrangement in between the plaintiff and the defendant is not disputed at all. Issuance of Ext.A1 quit notice was not disputed and reply notice also was given by the tenant. Now the question is how far Section 113 of T.P Ac would apply to the facts of this case. Section 113 deals with waiver of



notice to quit. It has been provided that a notice given under Section 111, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting. Going by the plain reading of Section 113, an express or implied consent of the person on behalf of the quit notice was issued, showing an intention to treat the lease as subsisting, would waive the quit notice. The learned counsel for the defendant placed a decision of the Apex Court reported in [AIR 2006 SC 1734 : (2006) 4 SCC 205], *Sarup Singh Gupta v. S.Jagdish Singh & Ors.* to contend that when the landlord accepts the rent after notice of termination of lease and also shows an intention to treat the lease as subsisting by express or implied consent, notice to quit shall stand waived and, therefore, eviction on the basis of the said quit notice could not be granted. I have gone through the judgment. In the said case the Apex Court considered the impact of Section 113 of the T.P Act and in paragraph 8 of the judgment



the Apex Court discussed the facts and also the impact of Section 113 of the T.P Act as under:

“In the instant case, as we have noticed earlier, two notices to quit were given on 10.02.1979 and 17.03.1979. The suit was filed on 2.06.1979. The tenant offered and the landlord accepted the rent for the months of April, May and thereafter. The question is whether this by itself constitutes an act on the part of the landlord showing an intention to treat the lease as subsisting. In our view, mere acceptance of rent did not by itself constitute an act of the nature envisaged by Section 113, Transfer of Property Act showing an intention to treat the lease as subsisting. The fact remains that even after accepting the rent tendered, the landlord did file a suit for eviction, and even while prosecuting the suit accepted the rent which was being paid to him by the tenant. It cannot, therefore, be said that by accepting rent, he intended to waive the notice to quit and to treat the lease as subsisting. We cannot ignore the fact that in any event, even if rent was neither tendered nor accepted, the landlord in the event of success would be entitled to the payment of the arrears of rent. To avoid any controversy, in the event of termination of lease the practice followed by the courts is to permit the landlord to receive each month by way of compensation for the use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. It cannot, therefore, be said that mere acceptance of rent amounts to waiver of notice to quit unless there be any other evidence to prove or establish that the landlord so intended. In the instant case, we find no other fact or circumstance to support the plea of waiver. On the contrary, the filing of and prosecution of the



eviction proceeding by the landlord suggests otherwise.”

13. Ratio of the above ruling is that mere acceptance of rent for the subsequent month/months from the tenant, whose tenancy was terminated, and has been continuing the occupation of the demised premises, would not satisfy the consent of the landlord to continue the lease even after the expiry of lease, moreover when the landlord already filed a suit for eviction.

14. A decision of the Apex Court (three-Judge Bench) reported in [1961 KHC 626 : AIR 1961 SC 1067 : 1961 (3) SCR 813 : 1962 (2) MLJ (SC) 161], ***Ganga Dutt Murarka v. Kartik Chandra Das & Ors.*** also has been placed in support of this contention, where the Apex Court considered the impact of Section 116 of the T.P Act dealing with tenancy by holding over. It was held that payment and acceptance of contractual rent or statutory rent by landlord did not give the stature of tenant by holding over and as such quit notice under Section 106 of T.P Act is not necessary.



15. In [(1968) 2 SCR 20], *Calcutta Credit Corporation Ltd. & anr. v. Happy Homes (P) Ltd.*, a three-Judge Bench of the Apex Court declared the law to be that when there is waiver of notice within the meaning of Section 113 of the T.P Act, the old tenancy is not resurrected and on issuance of quit notice the lease is determined, then by consent of parties all what happens is creation of new tenancy. Therefore, after issuance of quit notice, the tenancy can be terminated and thereafter the status of the tenant is that of a tenant at sufferance, that is, a trespasser. In view of the settled law, the status of the defendant herein is that of a tenant at sufferance and merely because PW1 given evidence during cross examination that till now also the defendant has been continuing in occupation of the building, the quit notice would not waive and the status of the tenant is a 'tenant at sufferance' and not beyond that. Therefore, the defendant is bound to vacate the building. Accordingly, the substantial question of law stands answered holding that mere receipt of rent by the landlord, after receipt of



quit notice by the tenant, would not tantamount to waiver of the quit notice, contemplated under Section 113 of the T.P Act.

16. Therefore, the trial court rightly granted decree of eviction with damages for use and occupation and the appellate court rightly confirmed the same. Thus the concurrent verdicts do not require any interference at the hands of this Court.

17. Hence the appeal must fail and is accordingly dismissed.

18. All interlocutory orders stand vacated and all interlocutory applications pending in this Regular Second Appeal stand dismissed.

Registry shall inform this matter to the trial court as well as the appellate court forthwith.

Sd/-

(A.BADHARUDEEN, JUDGE)

rtr/