

**IN THE COURT OF CIVIL JUDGE AND JMFC,
SAKALESH PURA**

**Present : Sri. Nagesh Patil., B.com., L.L.B.,
Civil Judge and JMFC.,
Sakaleshpura.**

ORIGINAL SUIT No.29 / 2020.

Dated this 18th day of February 2021

PLAINTIFF: A.G. Jagadeesh,
S/o Late A.S. Gurappagowda,
aged about 65 years,
R/at B.M. Road, Banavase Village,
Ballupete Hobli, Belagodu Hobli,
Sakaleshpura Taluk, Hassan District.
(Rep. by Sri. K.S.G., Advocate)

:V/S:

DEFENDANT B.M. Rajamma W/o Rajashekar,
aged about 62 years,
Retired BSNL Employee,
R/at B.M. Road, Banavase village,
Ballupete Hobli, Sakaleshpura Taluk,
Hassan District.
(Defendant placed Exparte)

Date of institution of suit	-	27.01.2020		
Nature of suit	-	Possession and recovery of arrears of rent		
Date of commencement of recording of evidence	-	11.02.2021		
Date on which the judgment was pronounced	-	18.02.2021		
Total duration	-	Year/s	Month/s	Day/s
		01	00	21

(Nagesh Patil),
Civil Judge & JMFC.,
Sakaleshpura.

J U D G M E N T

The plaintiff has filed the suit against the defendant for the relief of possession and recovery of arrears of rent..

2. The case of the plaintiff in brief is that:

It is the case of the plaintiff that he is in absolute owner and possession of the suit property same is purchased the suit property from its previous owner on 05-10-2018 and as per sale deed khatha has been changed in the name of the plaintiff. At a time of purchase the defendant was occupying the said house as a tenant on the date of purchase the plaintiff took constructive the possession of the schedule house and thereafter plaintiff approached the defendant and gave her attornment notice asking to pay the rent of the house to him at that time defendant told that she will vacate the house within short time and requested to allow her to continue until she makes alternative arrangements. At that time it was orally agreed that defendant shall pay rent of Rs.4,000/- per month and Rs.30,000/- towards advance. Accordingly defendant continued her stay in the suit schedule premises as a tenant. The defendant paid 2 months rent as agreed and later she failed to pay the rent and went on keeping arrears when ever plaintiff demanded to pay the rent defendant postponing the payment of rent by one or other pretext and thus kept use arrears of rent. Apart from that plaintiff is a need of schedule house for his own occupation and plaintiff is in urgent need of schedule premises for his bonafide use and occupation as such plaintiff requested the defendant to vacate

the schedule premises but defendant has not heeded the request of plaintiff. Therefore the plaintiff has no other way got issued legal notice to the defendant on 18-12-2019 terminating the tenancy of the defendant and calling upon the defendant to pay the arrears of rent the said notice was refused by the defendant. Therefore the plaintiff without any alternative way is compelled to file the suit.

3. In response to the summons issued by this court defendant not appeared before the court hence defendant is placed as Exparte.

4. The plaintiff in order to prove his case plaintiff examined as P.W.1 and produced 12 documents as Ex.P.1 to Ex.P.12.

5. Heard the learned counsel for the plaintiff on merits.

6. Now the points that would arise for consideration of this Court are as follows-

P O I N T S

1. Whether the plaintiff proves that he is the absolute owner and in possession of the suit schedule property?
2. Whether the plaintiff proves that the defendant is the tenant under him in respect of suit property for a monthly rent of Rs.4,000/- and has paid advance amount of Rs.30,000/-?
3. Whether the plaintiff is entitled for the relief as sought in the plaint?
4. What Order or Decree?

7. On hearing the plaintiff, perusal of pleadings, oral and documentary evidences on record, my answer to the above points are as follows :

- Point No.1 - In the Affirmative
- Point No.2 - In the Affirmative
- Point No.3 - In the Affirmative
- Point No.4 - As per the final order,
for the following.

:REASONS:

8. **POINT No.1 to 3:-** To avoid repetition of facts these points are taken together for common discussion.

It is a specific case of the plaintiff that he is in absolute owner and possession of the suit property same is purchased the suit property from its previous owner on 05-10-2018 and as per sale deed khatha has been changed in the name of the plaintiff. At a time of purchase the defendant was occupying the said house as a tenant on the date of purchase the plaintiff took constructive the possession of the schedule house and thereafter plaintiff approached the defendant and gave her attornment notice asking to pay the rent of the house to him at that time defendant told that she will vacate the house within short time and requested to allow her to continue until she makes alternative arrangements. At that time it was orally agreed that defendant shall pay rent of Rs.4,000/- per month and Rs.30,000/- towards advance. Accordingly defendant continued her stay in the suit schedule premises as a tenant. The defendant paid 2 months rent as agreed and later she failed to

pay the rent and went on keeping arrears when ever plaintiff demanded to pay the rent defendant postponing the payment of rent by one or other pretext and thus kept use arrears of rent. Apart from that plaintiff is a need of schedule house for his own occupation and plaintiff is in urgent need of schedule premises for his bonafide use and occupation as such plaintiff requested the defendant to vacate the schedule premises but defendant has not heeded the request of plaintiff. Therefore the plaintiff has no other way got issued legal notice to the defendant on 18-12-2019 terminating the tenancy of the defendant and calling upon the defendant to pay the arrears of rent the said notice was refused by the defendant. Therefore the plaintiff without any alternative way is compelled to file the suit.

9. The plaintiff in order to prove his case, apart from examining plaintiff himself as P.W.1, also produced the Ex.P.1 to Ex.P.12 and P.W.1 has reiterated the plaint averments in his chief examination Ex.P.1 is the certified copy of sale deed, Ex.P.2 is the certified copy of tax paid receipt, Ex.P.3 is the certified copy of official memorandum, Ex.P.4 is the certified copy of E-khatha, Ex.P.5 to 8 are certified copy of the Electricity bill, Ex.P.9 is the certified copy of encumbrance certificate, Ex.P.10 is the office copy of legal notice, Ex.P.11 is the returned postal cover, Ex.P.12 the notice there in the cover.

10. On perusal of the above documents it reveals that as per Ex.P.1 the plaintiff purchase the suit schedule property from its previous owner on 05.10.2018 through registered sale deed

and plaintiff is the owner of the suit property. The defendant in this case has not appeared and filed any written statement. It is a well settled principle of law that when a person approached the court of law seeking the relief of possession and arrears of rent on the ground that he is the owner and defendant is tenant, he has to establish his title and the relationship of landlord and tenant by producing substantial evidence before the court, he cannot take the weakness of the defendant. The defendant, not appeared before the court and not chosen to cross-examine the P.W.1. In the absence of written statement and cross-examination, it is deemed that the defendant has admitted the plaint averments and documents. The evidence of P.W.1 is remained unchallenged and unrebutted. There are no reasons to discard the version of plaintiff, in the absence of the written statement and contrary evidence on record. Under these circumstances, this Court has no other option except to come to the conclusion that plaintiff is in possession of the suit schedule property and the question whether the plaintiff is landlord and defendant is tenant under the plaintiff is to be determined. As such defendant is having knowledge that the plaintiff is the landlord and defendant is the tenant in the suit property. There is no contrary evidence on the side of defendant to disprove the stand taken by the plaintiff. Hence it is clear that the plaintiff is the landlord of the suit schedule property and defendant is the tenant of the suit schedule property.

11. As rightly submitted by the learned counsel for the plaintiff, the tenancy is oral. As per Sec. 107 of Transfer of

Property Act a lease of immovable 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. All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. Hence, in the case on hand as per the plaint averments the defendant is tenant under plaintiff. The lease is not for agricultural or manufacturing purpose. Hence it is a lease of immovable property from month to month terminable on the part of either lessor or lessee by 15 days notice. Plaintiff has issued notice to defendant terminating tenancy. The tenancy if it is oral then there cannot be any document about tenancy. The evidence placed by the plaintiff is not at all challenged by the defendant. Hence, the said facts remained admitted. The plaintiff being landlord need not reside in the other property. There is no bar to a owner to let out his house and to reside somewhere else where he is conformable.

12. The specific assertion of the plaintiff that the defendant is tenant under plaintiff on a monthly rent of Rs.4,000/- remained unchallenged. The plaintiff specifically pleaded that the defendant is tenant in the suit schedule property and he is not paying the rent regularly. However, the said fact also remained unchallenged. Hence, on perusal of the entire evidence it is crystal clear that the defendant is tenant in the suit schedule property on a monthly rent of Rs.4,000/-.

13. When the plaintiff has produced oral and documentary evidence and succeeded to prove that, he is the absolute owner of the suit schedule property and shop premises is let out to defendant on a monthly rent of Rs.4,000/-, then the burden to prove contrary shifts on the defendant. But admittedly, though the defendant is duly served with suit summons, but he has not chosen to give any oral and documentary evidence in support of his defence for the reasons best known to him. When the plaintiff has proved that the defendant is tenant in the suit schedule property and he is not paying rent regularly, he is bound to deliver the same to the rightful owner.

14. Under all these circumstances, even if it is re-analised the entire evidence on record, the defendant has not placed any evidence to prove that, he is not the tenant of the suit schedule property. On the other hand, the plaintiff has produced tax paid receipts and tenancy termination notice and succeeded to prove that, he is the absolute owner of the suit schedule property. The defendant is tenant in the suit schedule property, under the oral agreement on month to month basis the tenancy is duly terminated. Accordingly, he is entitled for the relief of possession of suit schedule property. When the defendant has failed to prove contrary he is bound to deliver possession in favour of the rightful owner. Accordingly, Point No.1 to 3 are held in the **Affirmative.**

15. POINT No.4:- For the reasons and discussions made above and finding on the above Points, I proceed to pass the following:

ORDER

The suit of plaintiff is hereby decreed.

The defendant shall hand over the vacant possession of the suit schedule property to the plaintiff within 2 months from the date of this order.

The defendant is directed to pay the arrears of rent of Rs.4,000/- per month from 05.12.2018 after deducting the advance amount if any paid by him to plaintiff.

If the defendant fails to comply the order the plaintiff is at liberty to execute the same in accordance with law.

There is no order as to cost.

Office to draw decree accordingly.

(Dictated to the Stenographer, transcribed by her, after corrections, pronounced by me in the open Court on this the 18th day of February 2021)

(Nagesh Patil)
Civil Judge and JMFC.,
Sakaleshpur.

ANNEXURE

1. List of witnesses examined on behalf of plaintiff :

P.W.1 - A.G. Jagadeesh

2. List of documents exhibited on behalf of plaintiff:

- Ex.P.1 - C/c of sale deed
- Ex.P.2 - C/c of tax paid receipt
- Ex.P.3 - C/c of official memorandum
- Ex.P.4 - C/c of E-khatha
- Ex.P.5 to 8 - C/c of electricity Bill
- Ex.P.9 - C/c of Encumbrance certificate
- Ex.P.10 - Office copy of legal notice
- Ex.P.11 - Returned postal cover
- Ex.P.12 - Notice there in the cover.

3. List of witnesses examined on behalf of defendant: nil

4. List of documents exhibited on behalf of defendant : nil

Civil Judge and JMFC.,
Sakaleshpura.