

**IN THE COURT OF I ADDL. CITY CIVIL &  
SESSIONS JUDGE AT BENGALURU (CCH.No.2)**

**Present: - Sri. SABAPPA, B.Com., LLB., (Spl.)**  
IX Addl. City Civil & Session Judge,  
C/c I Addl. City Civil & Session Judge,  
Bengaluru.

**Dated this the 30<sup>th</sup> day of October 2021**

**O.S.No.4616 / 2009**

**Plaintiffs:**

- 1. Sri. K.R. Keshava Murthy,**  
S/o. Late Rangaiah,  
Aged about 61 years,  
R/at No.1089, 11<sup>th</sup> Main,  
10<sup>th</sup> C Cross, West of Chord Road,  
II Stage, Nagapura,  
Bengaluru-560 086.
- 2. Smt. N.M. Sumadevi,**  
W/o. N.B. Manjunath,  
Aged about 56 years,  
D/o. C.H. Patil,  
R/at Pushpagiri,  
1<sup>st</sup> Stage, 9<sup>th</sup> Cross, Sharavathinagar,  
Shimoga – 577 201.

(By Sri.T. Seshagiri Rao, Adv.)

**- VS -**

**Defendant:**

**Sri. Punith P.,**  
S/o. Not known to the plaintiff,  
Major,  
No.596 and 601, II Floor, Dr. Rajkumar  
Road, Prakashnagar, Rajajinagar III  
Stage, Bengaluru.

And r/at W/38, B Main,  
Basappa Garden, 4<sup>th</sup> Cross,

Datthatreya Temple Road,  
Malleshwaram, Bengaluru-560 003.

(Exparte)

|                                                                                                        |                        |                |              |
|--------------------------------------------------------------------------------------------------------|------------------------|----------------|--------------|
| Date of Institution of the suit                                                                        | <b>27.06.2019.</b>     |                |              |
| Nature of the Suit (suit for pronote, Suit for declaration and possession, Suit for injunction, etc.): | <b>Ejectment suit.</b> |                |              |
| Date of the commencement of recording of the Evidence:                                                 | <b>19.08.2021.</b>     |                |              |
| Date on which the Judgment was pronounced:                                                             | <b>30.10.2021.</b>     |                |              |
| Total duration:                                                                                        | <u>Year/s</u>          | <u>Month/s</u> | <u>Day/s</u> |
|                                                                                                        | <b>02</b>              | <b>04</b>      | <b>03</b>    |

**(SABAPPA)**

IX Addl. City Civil & Sessions Judge,  
C/c. I Addl. City Civil & Sessions Judge,  
Bengaluru.

### **JUDGMENT**

This is a suit for ejectment and other reliefs.

#### **2. The brief facts of the plaintiffs' case are that:**

The plaintiffs are the joint and absolute owners of property bearing premises No.596 and 601 measuring East to West 92 ft., and North to South 30 ft. on which there exists a building consisting of basement floor, ground floor, first and second floors situated at Dr.Rajkumar Raod, Prakash Nagar, Rajajinagar III Stage, Bengaluru. It is further case of the plaintiffs that, the

plaintiffs being the owners of the suit schedule premises, they on 21.09.2018 have leased a portion of the building i.e., in the 2<sup>nd</sup> floor portion of the building to the defendant on a monthly rent of Rs.45,000/- w.e.f. 01.10.2018 for a period of six months and thereafter the defendant has agreed to pay the rent at the rate of Rs.55,000/- p.m. with an earnest money deposit of Rs.4,50,000/-. It is stated that, further the defendant had agreed to pay another sum of Rs.1,00,000/- as an additional earnest money deposit after six months from 21.09.2018, which is over and above Rs.4,50,000/-. Said property is morefully described as schedule premises.

It is further submitted that, the defendant at the time of taking the schedule premises on lease on 21.09.2018, has executed an agreement of lease in favour of the plaintiffs. The defendant while taking the schedule premises on lease in order to pay the earnest money deposit, he has paid a sum of Rs.50,000/- by way of cash and issued a cheque bearing No.000913 dated 01.12.2018 drawn on ICICI Bank, Malleshwaram, for a sum of Rs.4,00,000/- to pay the remaining portion of the earnest money deposit.

It is further submitted that, as per the terms of the lease agreement dated 21.09.2018, the tenancy month is from 1<sup>st</sup> of each calendar and ending on the last day of same calendar month. The defendant had agreed to pay the rent on 5<sup>th</sup> of every succeeding month. The defendant had taken the schedule premises for establishing BPO call center and data entry. Further he has agreed to enhance the rent at 10% at the end of every year over and above the existing rent. The

agreement was for a period of 11 months. As per the terms of the agreement of lease, in case if fails to pay the rent for 3 consecutive months, then the plaintiffs will have every right to terminate the lease of the defendant.

It is further submitted that, on 27.02.2019 when the plaintiffs presented the cheque issued by the defendant to the Bank for encashment, it came back with a shara "funds insufficient". The defendant after taking the schedule premises on lease has not paid the rent from 01.10.2018 till date. As on today, he is liable to pay a sum of Rs.3,80,000/-. It is further submitted that, taking note of the conduct of the defendant in not paying the rent in terms of the lease agreement, on 03.04.2019 the plaintiffs got issued a legal notice terminating the tenancy of the defendant by the end of April 2019 over the suit schedule property. The plaintiffs terminated the tenancy of the defendant that, the possession of the defendant from 01.05.2019 is that of a trespasser and he has no legal right to remain in the schedule premises. Even after termination of his tenancy, he has been in illegal occupation of the schedule premises. Hence, he is liable to evict from the suit schedule premises.

It is further submitted that, the defendant as on 01.06.2019 is liable to pay a sum of Rs.3,80,000/- under the head of partly as arrears of rent and partly as damages i.e., subsequent to termination of tenancy. Despite notice, the defendant failed to pay the same. As such the plaintiffs constrained to file this suit not only for ejectment and also for arrears of rent as well as for damages. The cause of action

arose to file suit on 21.09.2018 when the plaintiffs leased the schedule premises to the defendant, on 27.02.2019 when the cheque issued by the defendant returned with a shara insufficient funds, on 03.04.2019 when the legal notice issued to the defendant terminating the tenancy and subsequently. Hence, this suit.

**3.** After registration of the suit, this Court has issued suit summons to the defendant, it is returned as no such person in this address, again the plaintiffs have taken the notice under Order 5 Rule 20 of C.P.C. It is duly published in the Vijaya Karnataka Kannada daily newspaper, inspite of it, the defendant remained absent. Hence, placed ex-parte.

**4.** In order to prove the case, the 1<sup>st</sup> plaintiff examined himself as P.W.1 and got documents marked at Ex.P.1 to Ex.P.7.

**6.** Heard the arguments.

**7.** Now, the points that arise for my consideration are as under :

1. Whether the plaintiffs prove that, they have terminated the tenancy of the defendant over the suit schedule property by issuance of notice under Sec.106 of T.P.Act ?
2. Whether the plaintiffs further prove that, the defendant in defaulter for payment of rent as agreed by him ?
3. Whether the plaintiffs are entitled for the reliefs as sought in this suit ?

4. What order or decree?

8. My findings on the above points are recorded as under:

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

### **REASONS**

9. **POINT NOS.1 to 4:** I have gone through the pleadings, evidence and documents. It is the case of the plaintiff that, they have leased out the 2<sup>nd</sup> floor of the suit schedule premises to the defendant on 21.09.2018. The defendant is the tenant in the suit schedule premises. In order to prove the same, the plaintiff relied upon the lease agreement held between the parties. It is marked at Ex.P.1. Both the parties put the signatures on the said document. The tenant never disputed about the execution of the lease deed. In view of the terms and conditions of the lease agreement, the defendant ought to pay the monthly rent of Rs.45,000/- and he has agreed to pay the earnest money of Rs.4,50,000/-. He has paid an amount of Rs.50,000/- by way of cash. It is admitted by the plaintiffs in the pleadings and evidence. The defendant issued cheque in respect of remaining earnest money deposit of Rs.4,00,000/-. The said cheque was presented by the plaintiff for encashment. The same is returned as funds insufficient. It is intimated by the plaintiffs to the defendant. In spite of it, the defendant is not diligent to pay the earnest money. The document relied by the

plaintiffs at Ex.P.1 reveal there is a relationship of landlord and tenant between the plaintiffs and defendant. This aspect is not disputed by the defendant. The document clearly reveals that, the defendant has agreed the terms and conditions of the lease agreement. The parties and the attesting witnesses have put their signatures on the lease agreement Ex.P.1. In view of the oral evidence of PW.1, I come to the conclusion that, the plaintiffs are able to prove the relationship of landlord and tenant. At the same time, the documentary evidence prevails over the oral evidence of the parties.

**10.** Another point to be noted here that, the defendant issued the cheque dated 01.12.2018 for Rs.4,00,000/- in favour of the plaintiffs. The same was presented for encashment. The bank issued intimation stating that, funds are insufficient. The document marked at Ex.P.4 is the legal notice. Ex.P.5 to Ex.P.7 are the legal notice and paper publication. The plaintiffs issued legal notice to the defendant. It is returned unserved no such person in the said address. The address mentioned in the envelop reveals the defendant is residing at W/38, B Main, Basappa Garden, 4<sup>th</sup> Cross, Datthatreya Temple Road, Malleshwaram, Bengaluru-560 003. The same address is mentioned in the cause title of the plaint. This goes to show that, the defendant is residing in the said address, inspite of it, he is not ready to receive the legal notice. Another point to be noted here that, the plaintiff has taken the steps against the defendant by issuance of paper publication. This Court published the suit summons in Vijaya Karnataka newspaper. In spite of it, the defendant is not diligent to appear and contest

the case. Thereby, I am of the opinion that, the plaintiffs are the owners of the suit schedule property. They have leased out the 2<sup>nd</sup> floor of the suit schedule premises to the defendant as per Ex.P.1. The defendant is not abide by the terms and conditions of the lease agreement, thereby, he has no right to reside in the suit schedule premises. The contents of the legal notice are also clearly reveal that, the plaintiffs have terminated the tenancy of the defendant over the suit schedule premises as per Sec.106 of T.P.Act. The entire pleadings, evidence and documents clearly go to show that, the plaintiffs are able to prove their case with cogent evidence and documents. There is no impediment on the part of the defendant to challenge the oral testimony of plaintiffs and documents. It presumed that, the defendant has admitted the lease agreement and the case of the plaintiffs. Therefore, I come to the conclusion that, the plaintiffs are made out sufficient grounds to evict the defendant from the suit schedule premises and also the defendant is liable to pay the arrears of rent as claimed by the plaintiffs. Once the plaintiffs are able to prove the termination of tenancy of the defendant over the suit schedule premises, later on, the possession of the defendant is illegal possession, thereby, the defendant shall pay the damages to the plaintiffs an amount of Rs.55,000/- per month as claimed them. Hence, I answer the above points are in the AFFIRMATIVE and proceed to pass the following :

### **O R D E R**

The suit of the plaintiffs is hereby  
decreed with costs.

The defendant is hereby directed to evict and hand over the suit schedule premises to the plaintiffs within two months from the date of this order.

It is further ordered that, the defendant shall pay a sum of Rs.3,80,000/- to the plaintiffs from 01.10.2018 till 31.05.2019.

It is further ordered that, after termination, the defendant shall pay the rent of Rs.55,000/- per month from 01.06.2019 till vacate and hand over the possession of the suit schedule premises to the plaintiffs.

It is further ordered that, if the defendant fails to vacate and pay the arrears of rent as discussed above, the plaintiffs are at liberty to recover the same by following due process of law.

Draw the decree accordingly.

(Dictated to the Stenographer, transcript thereof is corrected and then pronounced by me in the open court on this the day of 30<sup>th</sup> day of October 2021)

**(SABAPPA)**

IX Addl. City Civil & Sessions Judge,  
C/c. I Addl. City Civil & Sessions Judge,  
Bengaluru.

**A N N E X U R E****List of witnesses examined for plaintiff:**

P.W.1        Sri. K.R. Keshava Murthy.

**List of documents exhibited for plaintiff:**

Ex.P-1        Original rent agreement.

Ex.P-2        Cheque.

Ex.P-3        Bank memo.

Ex.P-4        legal notice.

Ex.P-5 & 6    Two postal covers.

Ex.P-5a &

6a            Legal notices in Ex.P.5 and Ex.P.6.

Ex.P-7        Vijaya Karnataka news paper.

**List of witnesses examined for defendants:**

Nil

**List of documents exhibited for defendants:**

Nil

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