

**IN THE COURT OF XVII ADDL. JUDGE, COURT OF SMALL
CAUSES, MAYO HALL UNIT, BENGALURU**

Dated this the 15th day of DECEMBER 2018

**PRESENT: VANI A. SHETTY, B.A. Law, LL.B.
XVII ADDL. JUDGE.**

S.C.No.15208/2018

PLAINTIFF

: Sri. H.G. Suresh,
S/o. Late Sri. H.Gangadhar Setty,
Aged about 62 years,
#164, Chickpet Main Road,
Bangalore – 560 053.

(By Sri. M.D.R., Advocate)

V/s.

DEFENDANT

: Sri. Rajeev,
Proprietor,
M/s. Manpasand,
#4 and 4/1, Kuber Sahuji Lane,
(D.S.Lane), Chickpet,
Bangalore – 560 053.

(By Sri. V.K.M., Advocate)

Date of institution of the suit : 10.07.2018

Nature of the suit : Ejectment, mesne profit and
arrears of rent

Date of commencement of recording of the evidence : 11.12.2018

Date on which the Judgment was pronounced : 15.12.2018

Duration of the suit : Year/s Month/s Day/s
00 05 05

JUDGEMENT

The present suit is filed by the plaintiff for ejectment, arrears of rent amounting to Rs.25,000/- and for recovery of mesne profits in respect of suit schedule property from the date of suit till the delivery of vacant possession.

2. The case of the plaintiff in brief as follows:

The plaintiff submits that defendant is tenant under him in respect of suit schedule property consisting shop premises bearing No.4 and 4/1, Kuber Sahuji lane(D.S. lane), Chickpet, Bengaluru. The tenancy month begins as per English calendar month and monthly rental is fixed at Rs.2,500/- p.m. Defendant is a chronic defaulter in payment of rents and he is in due of rents from 01.07.2017 to 30.04.2018 amounting to Rs.25,000/-. The plaintiff terminated the tenancy of the defendant in respect of suit property by issuing a legal notice on 10.05.2018. The said notice is refused by the defendant for the reasons best known to him. In spite of it, defendant has not complied the terms of notice nor handed over the vacant possession of the suit property. Plaintiff claims for mesne profits @ Rs.2,500/- from 01.05.2018 till date of suit and future mesne profits at Rs.25,000/- from the date of suit till delivery of vacant possession of the suit premises. Hence, plaintiff has filed this suit.

3. On service of summons, defendant entered his appearance through his learned counsel. But, in spite of sufficient opportunity given, defendant has not filed his written statement.

4. In order to prove the case, plaintiff got examined himself as PW.1 and got marked Ex.P1 to Ex.P3 documents.

5. Heard the argument by the learned counsel appearing for the plaintiff.

6. The points that arise for my consideration are;

1. Whether plaintiff has proved that the defendant is tenant under him in respect of suit schedule property ?
2. Whether the plaintiff proved that defendant is liable to pay arrears of rent from 01.07.2017 to 30.04.2018 amounting to Rs.25,000/- in respect of suit schedule property?
3. Whether plaintiff proved the valid termination of tenancy in respect of suit property?
4. Whether plaintiff is entitled for mesne profits in respect of suit property @ Rs.2,500/- p.m. from 01.05.2018 till date of suit and future mesne profit @ Rs.25,000/- p.m. from the date of suit till handing over of the vacant possession?
5. Whether plaintiff is entitled for the delivery of vacant possession of the suit schedule property?
6. What order or decree?

7. My answer to the above points is:

Point No.1 : In the Affirmative,

Point No.2 : In the Affirmative,

Point No.3 : In the Affirmative,

Point No.4 : Partly in the Affirmative,

Point No.5 : In the Affirmative,

Point No.6 : As per the final order
for the following:

REASONS

8. **POINTS NO.1 & 2:** The suit schedule property is a shop premises. According to the plaintiff, defendant is the tenant in respect of suit property on monthly rent of Rs.2,500/- and he is in due of rents from 01.07.2017 to 30.04.2018 amounting to Rs.25,000/-. The plaintiff in addition to his oral testimony, has produced his passbook of Corporation bank, Srinivas Nagar, Bengaluru at Ex.P2 and 3. The positive evidence of PW.1 that defendant is tenant under him and he is in due of arrears of rent amounting Rs.25,000/- remained unchallenged and uncontroverted. Therefore, I am constrained to hold that defendant is tenant in respect of suit property under the plaintiff and he is in due of arrears of rent amounting to Rs.25,000/-. Accordingly, I answer **Point No.1 & 2 in the Affirmative.**

9. **POINT NO. 3:** It is the contention of the plaintiff that, he has validly terminated the tenancy of the defendant in respect of suit schedule property. Plaintiff has not produced the registered lease deed entered between the parties. Therefore, the tenancy of defendant in respect of suit schedule property shall be considered as monthly tenancy. Admittedly, suit property was not let out for agricultural or manufacturing purpose. Therefore, as contemplated under section 106 of Transfer of property Act, the present lease was

from month to month terminable by 15 days quit notice. In the present case, the plaintiff has issued quit notice to the defendant on 10.05.2018. The present suit is filed by the plaintiff on 10.07.2018. Hence, the plaintiff has complied the legal requirements of quit notice as contemplated under section 106 of Transfer of property Act. Therefore, the termination of tenancy of the defendant is valid. Accordingly, I answer **Point No.3 in the Affirmative.**

10. **POINT No.4:** Plaintiff has claimed the mesne profits @ Rs.2,500/- p.m. from 01.05.2018 till the date of suit and future mesne profits @ Rs.25,000/- p.m. from the date of suit till handing over of the vacant possession for the unauthorized occupation of the suit schedule premises by the defendant. While discussing Point No.3, I have already observed that tenancy of the defendant in respect of suit schedule premises is terminated. After the termination of the tenancy, the possession of the defendant over the suit schedule property is wrongful possession. As per Sec.2(12) of Civil Procedure Code, 'Mesne Profits' means, those profits which a person in wrongful possession of such property has actually received or might with ordinary diligence have received there from together with interest on such profits. Therefore, failure of the defendant to deliver the vacant possession of suit schedule premises makes him liable to pay the mesne profits.

11. It is the contention of the plaintiff, that he is entitled for mesne profits @ Rs.2,500/- and future mesne profits @ Rs.25,000/- p.m. Plaintiff has deposed that the suit schedule property is situated in a posh locality and

fetches the same rent. The basis for calculation of mesne profits at the rate of Rs.25,000/- per month is not forthcoming on record. As pleaded by the plaintiff, the monthly rent is fixed at Rs.2,500/-. Therefore, plaintiff is entitled for mesne profits in respect of the suit schedule property @ Rs.2,500/- p.m. from 01.06.2018 till the delivery of its vacant possession. Accordingly, I answer **Point No.4 partly in the Affirmative.**

12. **POINT No.5 & 6:** In view of above discussion, plaintiff is entitled for the delivery of vacant possession of the suit schedule premises. Hence, I answer **Point No.5 in the Affirmative** and pass the following:

ORDER

Suit is decreed in part with cost.

Defendant is directed to quit and deliver the vacant possession of the suit schedule premises to the plaintiff within 15 days from today.

Plaintiff is entitled for arrears of rent in respect of suit schedule property from 01.07.2017 to 30.04.2018 amounting to Rs.25,000/- and for mesne profits @ Rs.2,500/- p.m. from 01.06.2018 till the delivery of vacant possession of the suit schedule premises.

On failure of the defendant to vacant and deliver the vacant possession of the suit schedule premises, the plaintiff is at liberty to get the vacant possession of the suit schedule premises by the process of court.

Draw decree accordingly.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the Open Court on this the 15th day of December 2018)

(VANI A. SHETTY)
XVII ADDL.JUDGE,
COURT OF SMALL CAUSES,
MAYO HALL UNIT, BENGALURU.

A N N E X U R E

List of witnesses examined on behalf of plaintiff:

PW.1: H.G.Suresh

List of exhibits marked on behalf of plaintiff:

Ex.P1	:	Copy of Legal notice
Ex.P1(a)	:	Postal receipt
Ex.P2 & 3	:	Passbooks of Corporation bank

List of witnesses examined on behalf of defendant: -Nil-

List of exhibits marked on behalf of defendant: -Nil-

(VANI A. SHETTY)
XVII ADDL.JUDGE,
COURT OF SMALL CAUSES,
MAYO HALL UNIT, BENGALURU.
