

**Ariff Vs. M.E. Aliyar**

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**SooperKanoon Citation :** [sooperkanoon.com/820145](http://sooperkanoon.com/820145)

**Court :** Chennai

**Decided On :** Aug-27-1993

**Reported in :** (1993)2MLJ669

**Appellant :** Ariff

**Respondent :** M.E. Aliyar

**Judgement :**

**Thanikkachalam, J.**

1. This second appeal is directed against the judgment and decree rendered in A.S. No. 131 of 1989, which in turn arose out of the judgment and decree rendered in O.S. No. 262 of 1988. The defendant is the appellant herein. The plaintiff filed O.S. No. 262 of 1988 for eviction and for collection of arrears of rent. The defendant is a tenant under the plaintiff in respect of the suit property on a monthly rent of Rs. 200 payable on or before 5th day of every English calendar month. According to the plaintiff the defendant committed default in payment of rent for a period of five months from 1.5.1988 amounting to Rs. 1,000. The plaintiff sent a notice dated 27.8.1988 to the defendant calling upon the defendant to quit and deliver vacant possession on or before 30.9.1988. The tenancy was also terminated from 30.9.1988. The defendant received the notice sent by the plaintiff on 6.9.1988. However, the defendant did not send any reply for this notice. Hence, the plaintiff came forward with this present suit for eviction.

2. The defendant in his written statement submitted that the consent letter from this defendant was obtained under duress, with the help of Vilathikulam Sub Inspector of Police. The notice issued by the plaintiff dated 27.8.1988 is not valid. The notice is not in accordance with the provisions of Section 106 of the Transfer of Property Act. The defendant paid an advance of Rs. 1,000 to the plaintiff at the time of inception of the tenancy. The plaintiff unreasonably refused to renew the lease agreement. The defendant is paying the rent regularly. The plaintiff has no right to terminate the tenancy. Since the plaintiff forcibly attempting to evict the tenant, the defendant filed another suit O.S. No. 194 of 1988 against the plaintiff in O.S. No. 262 of 1988 for a permanent injunction restraining him from evicting the tenant unreasonably. It was, therefore, pleaded that the suit for eviction filed by the plaintiff is liable to be dismissed.

3. Both the suits were taken up together and a common judgment was rendered. Considering the facts arising in these cases, the trial court dismissed O.S. No. 194 of 1988 filed by the tenant and decreed the suit O.S. No. 262 of 1988 filed by the landlord. On appeal, the first appellate court confirmed the common judgment and decree rendered by the trial court in both the suits. As against the judgment and decree rendered in A.S. No. 131 of 1989, which in turn arose out of the judgment and decree in O.S. No. 262 of 1988, the tenant/defendant is in appeal before this Court. When this matter came up for admission, notice of motion was ordered by this Court. The respondent entered appearance through his counsel and contested the matter.

4. The learned Counsel appearing for the defendant/appellant submitted as under:

Both the courts below failed to note that the tenancy commenced on 20th of every English calendar month and ended on the 19th of the succeeding calendar month. The tenancy agreement is available with the respondent landlord. The respondent refused to produce the same in court. If the tenancy agreement is produced, that would show that the date of commencement of the tenancy is 20th of every English calendar month. Since the respondent herein refused to produce the said tenancy agreement, this Court should draw every adverse inference against the respondent herein for non production of the lease agreement. The suit notice

issued by the respondent herein terminating the tenancy is not in accordance with Section 106 of the Transfer of Property Act. Therefore, the said notice is not valid in law. The lease deed even though an unregistered one, it can be used for proving collateral matters. It is not correct to state that the tenancy commenced on the 1st of every English calendar month, and ending with the end of every English calendar month. It was therefore pleaded that the suit is liable to be dismissed for want of proper notice to suit.

5. On the other hand, the learned Counsel appearing for the respondent/plaintiff submitted that there was no rental agreement as alleged by the plaintiff/appellant herein. The appellant failed and neglected to pay the rent of Rs. 200 per month from 1.5.1988 onwards. The respondent herein sent a notice to the appellant herein calling upon him to quit and deliver vacant possession on or before 30.9.1988. This notice was received by the tenant on 6.9.1988. The tenancy commences from the 1st of every English calendar month ending with the 30th of the previous English calendar month. The appellant did not send any reply to the notice sent by the respondent herein. The notice sent by the respondent terminating the tenancy with effect from 30.9.1988 is perfectly valid under Section 106 of the Transfer of Property Act. It is not correct to state that the tenancy commences from 20th of every English calendar month ending with 19th of succeeding English calendar month. It was therefore pleaded that the courts below were correct in holding that the notice dated 27.8.1988 is valid and in accordance with Section 106 of the Transfer of Property Act. Hence, the courts below ordered eviction.

6. I have heard the rival submissions.

7. The fact remains that the appellant herein is the tenant under the respondent herein on a monthly rent of Rs. 200 in respect of the suit premises. According to the respondent the tenant committed default in payment of rent for a period of five months from 1.5.1988 onwards amounting to Rs. 1,000. According to the appellant he did not commit default in payment of rent as alleged by the respondent herein. The appellant submitted that at the time of inception of the tenancy, he paid an advance of Rs. 1,000 to the landlord. According to the appellants additional written

statement, the tenancy was renewed on 20.12.1985. The appellant submitted that on 20.12.1985 a fresh lease agreement was entered into between the respondent and the appellant and according to the said agreement the tenancy commences from 20th of every English calendar month ending with the 19th of the succeeding English calendar month. The tenant submitted that this agreement was executed in the police station under duress. It was also submitted that two copies were taken and both the copies are with the respondent herein. Therefore, according to the appellant herein, if the rental agreement dated 20.12.1985 is produced before the court, that would show that the tenancy commenced from the 20th of every English calendar month. On the other hand, the respondent denied having executed any such agreement dated 20.12.1985. The appellant herein did not produce any evidence to substantiate his version that a fresh lease agreement was executed on 20.12.1985. According to him, it was executed in the police station under duress. Nobody from the police station was examined to prove this version.

8. The appellant herein did not send any notice to the respondent herein calling upon him to produce the said agreement dated 20.12.1985. It is under these circumstances, that both the courts below, correctly came to the conclusion that the appellant failed to prove that there was a rental agreement dated 20.12.1985 as alleged by him. The appellant herein filed Ex.B-1 and Ex.B-2 which are the returned money order coupons. This would go to show that the respondents refused to receive the rent sent by the money order. Again the appellant herein sent the rent by money order and that was also refused to be received by the respondent. Therefore, it is clear that from 1.5.1988 the rent was not paid by the appellant herein. The tenancy was terminated on 30.9.1988. Hence, from 1.5.1988 till 30.9.1988 the rent was not paid by the appellant. Concurrently, this was the conclusion arrived at by the courts below. Therefore, the courts below gave a decree for Rs. 1,000 for arrears of rent.

9. The main point for consideration in this appeal relates to the notice issued by the respondent herein on 27.8.1988 terminating the tenancy on 30.9.1988 and calling upon the tenant to quit and deliver vacant possession on 30.9.1988. According to the appellant the said notice is not in accordance with Section 106 of

the Transfer of Property Act. According to the respondent herein, the notice issued on 27.8.1988 is valid in accordance with Section 106 of the Transfer of Property Act. In support of his contention, the learned Counsel appearing for the respondent relied upon a decision reported in P.S. Abdul Hameed v. K.V. Rangasamy Chettiar : AIR1977 Mad415 . According to the facts arising in that case, the plaintiff issued a notice on 7th November, 1969 terminating the tenancy and called upon the tenant to vacate the property and give possession within the end of the month. He also called upon the tenant to vacate and surrender possession of the property on 30th November, 1969. The question was whether this was in accordance with Section 106 of the Transfer of Property Act. While answering this question, this Court held as under:

Section 106 requires the action to expire with the end of the month of the tenancy:

In the instant case, the tenant was asked to deliver possession on the 30th November which would be at the last moment of the day as pointed out by the Privy Council in Sidebottom v. Hollend (1895) 1 Q.B. 378. The notice was therefore in order. On the basis of the abovesaid judgment rendered by this Court, the learned Counsel appearing for the respondent submitted that the notice issued by the respondent on 27.8.1988 terminating the tenancy on 30.9.1988 and also calling upon the appellant herein to quit and deliver vacant possession on 30.9.1988 itself is in order.

10. On the other hand, the learned Counsel appearing for the appellant submitted that terminating the tenancy and calling upon the tenant to quit and deliver vacant possession on the same date ending with the month is invalid in accordance with Section 106 of the Transfer of Property Act. In support of his contention, reliance was placed upon a decision reported in Madhavan Vydiar v. Janaki A.I.R. 1973 Ker. 278, wherein while considering the provisions of Section 106 of the Transfer of Property Act, the Kerala High Court held that the correct position seems to be that the tenancy has to be terminated either on the day on which the monthly tenancy commenced or at the end of the day preceding that date with a further stipulation that vacant possession of the building has to be given on the next day. Further according to the facts arising in that case the notice was sent stating that

the tenancy commenced from 1.2.1952. But the defendant said that the tenancy commenced from 12.12.1952. Since the plaintiff failed to prove his version that the tenancy commenced from 1.2.1952, the plaintiffs case was not accepted.

11. The learned Counsel for the appellant also relied upon a decision reported in *Fakiragouda S. Patil v. Paivari Bai Mahadev Mahardrakar* : AIR1977 Kant112 . According to the facts arising in that case, the tenancy was a monthly tenancy. In the notice given by the landlord it was stated that the tenant should vacate by the end of December, 1972 and before the beginning of January, 1973. While considering this notice, the Karnataka High Court, following the decision of the Supreme Court in *Dattondant Gopalarao v. Vithal Rao Mamltrao* : AIR 1975 SC1111 , held that the notice is invalid as the tenant was not given the full day of the 31st December and hence did not end with the month of tenancy. However, in the decision rendered by the Supreme Court in *Dattondant Gopalarao v. Vithal Rao Mamltrao* : AIR 1975 SC1111 , the facts are different. According to the facts arising in that case, the tenancy commenced from 10th of every month ending with the 9th of succeeding month. But in the notice to quit the tenancy was terminated with effect from 8th of a particular month and demanding vacant possession on the 8th itself. Therefore, the Supreme Court held that the notice is bad. Thus considering the facts arising in this case in the light of the judicial pronouncements cited supra, especially the decisions in *P.S. Abdul Hameed v. K. V. Rangcisamy Chettiar* : AIR1977 Mad415 , rendered by this Court, I hold that the notices issued by the respondent landlord in the present case is valid in accordance with the provisions of Section 106 of the Transfer of Property Act.

12. Accordingly, the judgment and decree rendered by the first appellate court are confirmed and the second appeal is dismissed. But there will be no order as to costs.