

Ashok Varma vs A.N.Subash Chandra on 3 December, 2016

C.R.P. 67] Government of Karnataka
Form No. 9
(Civil) TITLE SHEET FOR JUDGEMENTS IN SUITS
Title Sheet for IN THE COURT OF THE SMALL CAUSES AT BANGALORE
Judgment in
Suits PRESENT: BASAVARAJ CHENGTI., B.Com.,LL.B.,(spl)
XVI ADDL. JUDGE,
Court of Small Causes,
BANGALORE.

Dated this the 3rd day of December 2016

PLAINTIFF: S.C.No.952/2016
ASHOK VARMA
S/o V.Ananda Varma
Aged about 40 years,
R/at No.503, Block 04,
Sun City Apartments
Sarjapur Outer Ring road,
Iblur,
HSR post, Bengaluru-560 102.

(By pleader Sri KP)

Vs.

DEFENDANTS : A.N.SUBASH CHANDRA
S/o late Narasimha Reddy
Aged about 68 years,
R/at Flat No.105,
Radiance Block-20
Sun City Apartments
Sarjapur Outer Ring road,
Iblur,
HSR post, Bengaluru-560 102.

(By pleader Sri AMS)

SCCH-14

2

SC No.952/2016

10.06.2016

Date of institution of the suit:

Nature of the suit (suit on pronote,
suit for declaration and possession Recover of money
suit for injunction, etc.):

Date of the commencement of 11.08.2016
recording of the evidence:

Date on which the Judgment was pronounced: 03.12.2016

	Year/s	Month/s	Days
Total duration:	00	05	22

SCCH-14	3	Additional Judge SC No.952/2016
---------	---	------------------------------------

JUDGMENT

This is a small cause suit for recovery of money.

2. Brief averments of the plaint are as under:

The plaintiff is a qualified professional, at a company having its offices in Bengaluru. Being a native of Cochin city, he was on the lookout for suitable premises for the purpose of his residence in Bengaluru. The defendant had represented to him that he is the owner of residential flat bearing No.803, Radiance Block-20, Sun City Apartments, HSR layout, Iblur village, Sarjapura road, Outer ring road, Bangalore. Based on the representations of the defendant, the plaintiff and the defendant executed a rental agreement in respect of the premises on 01.05.2007 and the plaintiff had advanced to the defendant as refundable security deposit a sum of Rs.1,00,000/- by way of two separate cheques receipt of which was acknowledged by the defendant and he had duly encashed the cheques. Thereafter, on the expiry of the tenure of the previous agreement dated 01.05.2007, the plaintiff and the defendant executed a fresh rental agreement on 10.05.2013. The amount deposited with the defendant under the previous agreement would be retained by him as interest-free security deposit for the fresh rental agreement. It is evident from the terms of the fresh rental agreement of 10.05.2013 that all obligations of the parties to each other under the previous agreement had stood fully discharged and exhausted. In November-2014, the plaintiff had given one month's notice to the defendant of his intention to terminate the rental agreement and to vacate the premises, as required by him under Clause 12 of the said rental agreement. The defendant acknowledged the plaintiff's notice and even he brought four prospective tenants to the premises to show the same during the month of December-2014 itself., i.e., even before the plaintiff had vacated the premises. Upon the expiry of one month's notice duly given by him, the plaintiff met the defendant on 26.12.2014 to personally handover the keys of the premises to him, having already duly vacated the said premises earlier to that day. When he demanded the refund of the deposit lawfully due to him under Clause 5 of the Rental agreement, the defendant for reasons best know to him, arbitrarily and

unreasonably refused to refund the deposit due to him, or to even take the keys of duly vacated premises. Therefore, the plaintiff has got issued a legal notice to the defendant through his counsel on 09.01.2015, stating that he had already duly vacated the premises on 26.12.2014 and calling upon the defendant to forthwith refund the deposit of Rs.61,300/- (after the agreed deduction of two months' rent in accordance with Clauses 15 and 16 of the rental agreement) and to come forward to collect the keys of the premises. On 13.01.2015, the defendant has issued a reply for the legal notice wherein he refused to refund the deposit amount to him and instead made false and concocted claims about certain alleged unpaid "maintenance dues" under the previous agreement dated 01.05.2007. However, the defendant did not deny his receipt of the amount of Rs.1,00,000/- which he concedes was carried forward as interest free security deposit under the fresh rental agreement. One month's rent for the month of December, in accordance with Clause 15 of the rental agreement (since he had duly vacated the premises on 26.12.2014) and one month's rent in accordance with Clause 16 of the rental agreement towards charges for re-painting the premises. The last monthly rent payable by him to the defendant, prior to his vacating the premises, was Rs.19,350/-. Accordingly, the defendant was entitled to deduct a total amount of Rs.38,700/- from the deposit. The plaintiff has in the eyes of law, duly vacated the premises as on 26.12.2014 when he personally met the defendant to handover the keys and demanded refund of the deposit. The defendant has unilaterally and unjustly refused to receive custody of the keys from him. When the same were tendered to him unconditionally, he has immediately thereafter taken over both de jure and de facto possession of the premises and has repeatedly entered into the premises using his own independent set of keys. The plaintiff is lawfully entitled to the balance amount in total sum of Rs.61,300/-. The defendant has unreasonably refused to do so, citing wholly baseless and unsustainable grounds, even though he is fully liable to make the said refund payment. The defendant has sought to contend now for the first time that some maintenance arrears are allegedly due to him under previous agreement dated 01.05.2007. These claims have been raised by him for the first time only in his reply notice in 2015 and they are all wholly false and without basis. The defendant is liable to pay Rs.61,300/- towards refund of deposit and Rs.2,418.41 towards interest @18% p.m., Hence, the plaintiff has filed this suit for a judgment and decree directing the defendant to pay him Rs.63,718.41 with interest @18% per annum on principal amount of Rs.61,300/- from the date of suit till realization. Originally the suit was filed before Hon'ble City Civil Court, Bangalore which was numbered as OS No.2625/2015.

3. In pursuance of summons, the defendant has appeared before Hon'ble City Civil Court and filed his written statement denying the averments of the plaint as false and contended that the suit is not maintainable. However, he has admitted that he let out the premises to the plaintiff on rental basis as per rental agreement dt.1.5.2007, that the plaintiff had deposited Rs.1,00,000/- with him towards interest free security deposit through two cheques, but he has contended that the plaintiff had agreed to pay rent @Rs.12,000/- p.m., excluding maintenance charges @Rs.1.50 per sft were

payable regularly without any default to the builder directly, that monthly maintenance charges of the premises was Rs.1,735.50 and the plaintiff is in due of Rs.60,742.50 towards maintenance charges for the period from 1.5.2007 to 1.4.2010 and hence, he claims set off of suit claim. He has further contended that the plaintiff is liable to pay rent in respect of the premises till the date of delivery of possession/keys of the premises, that as per rental agreement dt.10.5.2013, the plaintiff is liable to pay rent @Rs.18,000/- p.m., by way of cheque excluding maintenance charges which are payable directly to the association, that the plaintiff was liable to pay enhanced rent @7.5% for every renewed term, that the term of rental agreement dt.10.5.2013 was 11 months, that security deposit amount is refundable to the plaintiff only on vacating the premises after deducting arrears of rent, maintenance charges, electricity bills and damages if any, that despite clear recital in the rental agreement dt.1.5.2007, the plaintiff has failed to provide documents substantiating the payment of maintenance charges, that at the time of rental agreement dt.10.5.2013, the plaintiff has not delivered vacant possession of the flat nor paid security deposit and as such, recital in rental agreement dt.10.5.2013 can not be construed that there were no due or outstanding amount from the plaintiff, that notice of termination is required to be done through a written notice as per Clause 14 of the agreement, that the plaintiff did not offer keys of the flat to him and as such, question of refusing to take the keys is highly imaginary and unfounded. He has admitted the issuance of notice dt.9.1.2015 by the plaintiff, but he has contended that the notice was suitably replied making it clear that withholding of keys would attract monthly rents and maintenance charges as per Clause 14 and in spite of it, the plaintiff has failed to hand over the keys of the premises or to deposit it before the Court or to send it to him in any of the modes permissible under law, that the plaintiff is liable to pay rent and maintenance charges till the date of handing over of keys of the premises to him, that he had only one key and that key was handed over to the plaintiff at the time of letting out the premises which is in the custody of the plaintiff, that the alleged vacating of the premises and surrendering of the leasehold rights are not in accordance with law and the alleged claim of the plaintiff is without any legal basis, that the plaintiff was liable to pay Rs.6,932.50 to him as on the date of reply and he was liable to hand over the keys of the premises, that cause of action pleaded by the plaintiff is imaginary, that the plaintiff is liable to pay him rent @Rs.19,350/-p.m., totally amounting to Rs.1,35,450/- for the period from January 2015 to July 2015 as per Clause 14 of rental agreement dt.10.5.2013. Hence, he has sought for dismissal of the suit and put forward a counter claim for Rs.1,35,450/- with interest @18% p.a., and for a direction to the plaintiff to pay Rs.19,350/- p.a., till the date of handing over of keys of the premises.

4. The plaintiff has filed rejoinder denying the set off and counter claim of the defendant as false, frivolous, vexatious and not maintainable. He has contended that required Court fee is not paid on set off, that right to set off is vaguely described by the plaintiff, that he does not owe any maintenance charges as alleged by the defendant and such claim is unquestionably time barred, that security deposit was carried forward from previous agreement to fresh agreement which indicates all obligations were fully discharged, that he is not liable to pay rent from January to July 2015, that he had given one month's notice of his intention to terminate the rental agreement and to vacate the premises as required under Clause 12, that the defendant had acknowledged receipt of his notice and immediately, he brought some prospective tenants to the premises to show the same even before he vacated the premises, that he has vacated the premises on 26.12.2014 and personally went to the defendant to handover the keys and then the defendant had undertaken a joint inspection of

the premises in presence of his friends and got himself satisfied, that when he demanded the refund of security deposit, the defendant arbitrarily and unreasonably refused to refund the deposit and to receive the keys to the duly vacated premises, that in spite of issuing legal notice, the defendant did not come forward to receive the keys, that there is both express and implied surrender of the lease by him to the defendant on 26.12.2014, that refusal of the defendant to receive the keys and to refund deposit are unlawful and he is not liable to pay any rental after such date, that the defendant can not be permitted to take advantage of his own wrongs, that the defendant has set up counter claim with a sole intention to harass him, that the defendant has admitted in his reply that he has telephonically informed him in November 2014 about his intention to vacate the premises in the last week of December, that there was no contractual obligation to issue termination notice in writing, that obligation to pay rent to the defendant ceased on 26.12.2014, that the defendant is liable to refund the security deposit of Rs.61,300/- on the very day itself. Hence, he has sought for dismissal of the set off and counter claim of the defendant with exemplary cost.

5. On the basis above pleadings, the following issues were framed by Hon'ble City Civil Court:

ISSUES

1. Whether the plaintiff proves that, the defendant is liable to pay Rs.63,718.14 as alleged in the plaint?
2. Whether the plaintiff proves that, the defendant is liable to pay pendent lite Rs.691,300/- and future interest at the rate of Rs.18% p.a., on the said amount as contended in the plaint?
3. Whether the defendant proves that the plaintiff is liable to pay Rs.135450.00 with interest at the rate of Rs.18% p.a., as contended in the written statement?
4. Whether the defendant proves that, the plaintiff is liable to pay Rs.19,350/- p.m., till the date of handing of the of keys of the schedule premises as contended in the plaint?
5. Whether the plaintiff is entitled for the claim amount as prayed in the plaint?
6. Whether the defendant if entitled for the counter claim amount as prayed in the written statement?
7. What order or decree?

When the matter was posted for evidence, it is noticed that the suit and counter claim are triable by this Court. Then, Hon'ble Court was pleased to pass an order transferring the suit and counter claim to this Court i.e., Court of Small Causes, Bangalore vide order dt.31.5.2016. After receipt of records, this suit is registered on 10.6.2016 and it is made over to this Court. The plaintiff has appeared suo moto and the defendant put in appearance on service of process. Then, the case proceeded further

from the stage of evidence.

6. The plaintiff has examined himself as PW-1 and got marked documents as Ex.P-1 to 4 and closed his side. On the other hand, the defendant did not chose to adduce any evidence on his behalf. Then, heard the arguments. The counsel for the plaintiff has filed written argument with following citations:

1. 1999(3) SCC 457: Iswar Bhai Patel V Harithar Behera and Anr.,
2. 1999 (3) SCC 573: Vidhyadhar V. Manikrao and Anr.,
3. 2001(5) kar lj 570: The Statement Trading Corporation of India Limited, Bangalore Vs., Vanivilas Co-operative Sugar factory limited, Hiriyut, Chitradurga District
4. 1997)43 DRJ 754: Cofex Exports Ltd., Vs., Canara Bank
5. ILR (2000) Delhi 434: M/s International Building and furnishing Company Pvt.,Ltd., Vs. Indian Oil Corporation Ltd.,
6. RFA 784/2010: H.S Bedi Vs. National Highway Authority of India
7. 2007 (98)DRJ 638: ICRA Limited Vs. Associated Journals Ltd., & Anr.,
8. 2012 SCC On line Del 1524: Associated Journal Limited Vs. ICRA Limited
9. 2009 (107) DRJ 418 (DB) Tamil Nadu Handloom Weavers' Co-operative Society Vs. Harbans Lal Gupta I have gone through the said citations and perused the records.

7. The points arise for my consideration are:

1. Whether the plaintiff has proved that he has duly terminated the lease dated 10.05.2013 and vacated the premises on 26.12.2014 ?
2. Whether the plaintiff has proved that the defendant is liable to pay Rs.61,300/- towards refund of security deposit and Rs.2,418/- towards interest as on the date of suit ?
3. Whether the defendant has proved that the plaintiff is in arrears of maintenance charges amounting to Rs.60,742.50 for the period from 1.5.2007 to 1.4.2010 and he is entitled to set off the same against refund of security deposit as claimed by the plaintiff ?

4. Whether the defendant has proved that the plaintiff is liable to pay rent of the premises till the date of handing over of keys of the premises ?
5. Whether the set off claimed by the defendant is time barred ?
6. Whether the plaintiff is entitled for the suit claim ?
7. Whether the defendant is entitled for set off and counter claim ?
8. What order or decree ?

8. My findings are as under:

POINT NO.1: In negative POINT NO.2: Partly in affirmative POINT NO.3: In negative POINT NO.4: In affirmative POINT NO.5: In affirmative POINT NO.6: Partly in affirmative POINT NO.7: Partly in affirmative POINT NO.8: as per final order REASONS

9. The admitted facts of the case can be summed up as under:

The defendant is the owner and landlord of the following premises:

Flat bearing No.803, Radiance Block-20, Sun City Apartments HSR Layout, Iblur village, Sarjapura road, Outer ring road, Bengaluru-560 102.

The plaintiff was inducted as tenant in the said premises under rental agreement dt.1.5.2007 for 11 months with refundable interest free security deposit of Rs.1,00,000/- on a monthly rent of Rs.12,000/- excluding maintenance charges and electricity charges. The lease was renewable on enhanced rent @5% every year. The security deposit amount was paid by the plaintiff to the defendant through 2 cheques which were encashed by the defendant. The second rental agreement between the plaintiff and the defendant was executed on 10.5.2013 which was for a period of 11 months on monthly rent of Rs.18,000/- excluding maintenance charges with condition to renew the lease on enhancement of rent by 7.5%. Last paid rent was Rs.19,350/- p.m., The security deposit of previous rental agreement was carried forward to the rental agreement dt.10.5.2013. It is agreed between the parties that lease was terminable by giving one month prior notice and security deposit is refundable on vacation and handing over the vacant possession of the premises by deducting arrears of rent, arrears of maintenance charges, arrears of electricity charges, white washing charges and damages. The plaintiff has telephonically informed the defendant his intention to vacate the premises in the last week of December 2014. He got issued legal notice to the defendant on 9.1.2015 calling upon him to collect the keys of the premises and to refund security deposit of Rs.61,300/- after deduction of arrears of rent and white washing charges. The said notice was

duly served on the defendant who issued reply dt.13.1.2015 denying his liability to refund security deposit as claimed. He has put forward a plea of set off and counter claim. He has called upon the plaintiff to hand over the keys of the premises. Then, the plaintiff has instituted the present suit before Hon'ble City Civil Court, Bangalore on 19.3.2015 which was numbered in O.S.No.2625/15.

The plaintiff had filed I.A. U/o 39 R.1 R/w Sec.151 CPC seeking permission to deposit the keys before the Court. No order is passed on the said I.A. The defendant has appeared before Hon'ble Court in said suit on 27.4.2015. Keys were not tendered to him. On 9.6.2015, the defendant filed a memo to the following effect:

MEMO The defendant without prejudice to his rights to contest the above SUIT on merits, would receive the keys of the SUIT SCHEDULE PREMISES, from this Hon'ble Court.

Advocate for Defendant Defendant The plaintiff has not delivered the keys to the defendant on 9.6.2015. Then, the matter was referred to mediation. The parties have appeared before BMC, Bangalore. Keys were not handed over to the defendant before BMC. It is reported that mediation is failed.

Matter was sent back to Court. On 22.8.2015, the defendant has filed his written statement. The plaintiff has not delivered the keys to the defendant on that day also. On the next date of hearing i.e., on 10.9.2015, the plaintiff has handed over the keys of the premises to the defendant under memo in the open Court.

10. The plaintiff has asserted that the defendant is liable to refund security deposit of Rs.1,00,000/-, that one month rent amounting to Rs.19,350/- towards rent for the month of December 2014 and one month rent amounting to Rs.19,350/- towards repainting charges of the premises are deductible, that after deduction of said amount, the defendant is liable to pay him Rs.61,300/- towards balance deposit amount and Rs.2,418/- towards interest totally amounting to Rs.63,718/-. Hence, he has sought for passing of Judgment and decree against the defendant for the said amount with interest @18% p.a., On the contrary, the defendant has not denied his liability to refund the security deposit of Rs.1,00,000/- to the plaintiff, but he has contended that the plaintiff had not paid maintenance charges of Rs.1735.50 p.m., from 1.5.2007 to 1.4.2010 totally amounting to Rs.60,742.50. He seeks for a set off for the amount claimed by the plaintiff with arrears of maintenance charges. He has further contended that there is no legal termination of lease and handing over of the possession of the premises and as such, the plaintiff is liable to pay rent till the date of handing over of keys, that the plaintiff is liable to pay Rs.1,35,450/- towards arrears of rent for the period from January 2015 to July 2015. Hence, he has put forward a counter claim for Rs.1,35,450/- with interest @18% p.a.,

11. The plaintiff has pleaded that he has vacated the premises on 26.12.2014 after giving one month prior notice and tendered the keys of the premises to the defendant who has refused to receive the keys and to refund the security deposit amount without any reason. The defendant has denied the

issuance of one month prior notice, the vacating of the premises and the tendering of keys by the plaintiff. There is an implied admission by the plaintiff that one month prior notice given by him was not in writing, but it was an oral notice. He has asserted that there was no contractual obligation upon him to issue notice in writing. With these admitted and disputed facts, I proceed to take up the points under consideration for discussion.

12. POINT NO.1: It is settled law that mere vacating the premises is not legal termination of lease unless the owner accepts the possession either expressly or impliedly. PW-1: Ashok Varma is the plaintiff and he has stated about vacating the premises on 26.12.2014. Ex.P-3 is the NOC dt.23.10.2014 issued by Sun city Apartments Owner's Association and it reveals that the plaintiff moved out of Flat no.803. But, mere vacating the premises does not amount to delivery of vacant possession of the premises to the defendant.

13. Rental agreement dt.10.5.2013 is at Ex.P-4. Clause 12 is pertaining to termination of lease which reads as under:

"The parties at liberty to terminate the lease by giving one month prior notice".

The said clause does not mandate the issuance of the notice in writing, but we can not read the clause in isolation. We have to consider the agreement as a whole. Clause 13 of the agreement reads as under:

"If the lessee fails to pay the rent continuously for three months, the lessor will have the right to evict the lessee without issuing any notice".

The above clause makes it clear that the notice under preceding clause shall be in writing. Moreover, the parties have reduced the terms and conditions of the lease in writing. There is no scope for giving oral notice in the said agreement. In view of Clause 13, I am of the opinion that notice required to be given as per Clause 12 of the agreement was a written notice and not oral notice. Admittedly, the plaintiff has not issued any such written notice to the defendant of his intention to terminate the lease. Therefore, there was no due termination of lease as on 26.12.2014.

14. PW-1: Ashok Varama has stated that he went to the defendant on 26.12.2014 and tendered the keys of duly vacated premises and demanded him to refund security deposit amount, that defendant has refused to receive the keys and to refund the security deposit amount. He has denied the suggestion that he never approached the defendant for handing over the keys and to demand the refund of security deposit amount as false. There is no corroboration to the evidence of PW-1 that he has approached the defendant on 26.12.2014 and tried to hand over the keys of the premises to him. PW-1 speaks about presence of Nabajit Das and Parameshwarappa when he tendered the keys to the defendant. The plaintiff has not examined said persons to prove that he has tendered the keys of the premises to the defendant. Since, the burden to prove the delivery of vacant possession was upon the plaintiff, the defendant not entering the witness box is not fatal to his defence. If the plaintiff had discharged his burden successfully, then failure of the defendant to adduce evidence would be fatal. The rulings at Sl.No.1 and 2 cannot be applied to the present case.

15. Ex.P-1, 2, order sheet in O.S.No.2625/15, memo filed by the plaintiff and by the defendant before Hon'ble City Civil Court reveal that the plaintiff has issued notice to the defendant on 9.1.2015. Reply was given to said notice on 13.1.2015. There was no delay in issuing reply. The defendant has called upon the plaintiff to deliver the keys. He cautioned the plaintiff that he would be liable to pay rent till delivery of keys and of vacant possession of the premises. In spite of it, the plaintiff did not make any efforts of deliver the keys to the defendant. Then, the plaintiff filed O.S.No.2625/15 on 19.3.2015 i.e., two months after service of reply notice. He was not diligent in instituting the suit. Though, he had filed I.A. seeking permission to deposit the keys before Court, he fails to get any order and to deposit the keys into Court. The defendant has appeared before the Court on 27.4.2015. He filed memo expressing his willingness to receive the keys. Matter was referred to mediation. Settlement was not reached. Then, the defendant filed W.S. on 22.8.2015. On 10.9.2015, the plaintiff has delivered the keys to the defendant. Thus, keys were handed over to the defendant almost 6 months after filing of the suit. There were several occasions for the plaintiff to hand over the keys to the defendant well before 10.9.2015, but he did not make use of the same. Thus, conduct of the plaintiff clearly indicates that he has not tendered the keys to the defendant on or about 26.12.2014. So, question of refusal by the defendant to receive the keys does not arise. Rulings at Sl.No.6 to 9 are pertaining to deemed delivery of possession if landlord refuses to receive the keys. The said rulings are not applicable to this case as there was no legal termination of lease and there was no attempt by the plaintiff to tender the keys and to deliver the vacant possession of the premises to the defendant. I am of the opinion that evidence of PW-1 is not sufficient to prove the point. His conduct is not of a prudent man. His admissions go in favour of the defendant and prove the defence. Hence, I answer the point in negative.

16. POINT NO.2 AND 4: PW-1 has deposed about the liability of the defendant to refund the security deposit of Rs.1,00,000/-, about the right of the defendant to deduct two months rent towards rent for the month of December 2014 and towards repainting of the premises. The last paid rent is Rs.19,350/-. Two months rent comes to Rs.38,700/-. The defendant has admitted the said facts. Rental agreement at Ex.P-4 corroborates the evidence of PW-1. Therefore, I am of the opinion that the defendant was liable to pay Rs.61,300/- towards refund of security deposit as on 31.12.2014. But, it is held above that the plaintiff has not issued termination notice in writing and as such, there is no legal termination of lease. It is further held that the plaintiff has failed to hand over the keys and to deliver the vacant possession of the premises to the defendant. He has delivered the keys to the defendant before Court on 10.9.2015. Therefore, the plaintiff is liable to pay rent till 10.9.2015. Arrears of rent till August 2015 @Rs.19,350/- comes to Rs.1,54,800/-. But, the defendant has put forward a counter claim for Rs.1,35,450/- only. Hence, the arrears of rent can be restricted to Rs.1,35,450/- till the date of delivery of keys. The defendant is liable to refund Rs.61,300/- to the plaintiff towards refund of security deposit amount. On the other hand, the plaintiff is liable to pay Rs.1,35,450/- to the defendant towards arrears of rent till delivery of keys to the defendant. There was no obligation on the parties to pay interest on the said amounts to each other. Consequently, I answer points as above.

17. POINT NO.3: The defendant has not produced any evidence to believe that the plaintiff has not paid maintenance charges from 1.5.2007 to 1.4.2010. He has not entered the witness box to depose about the liability of the plaintiff to pay the said amount. On the contrary, PW-1 has deposed before

the Court denying his liability to pay the said amount. Except bare denials, nothing is elicited from him. Ex.P-4 rental agreement was executed on 10.5.2013. If any amount is due from the plaintiff under previous agreement, it would have been definitely mentioned in the fresh agreement. There was security deposit under previous agreement. The defendant would have definitely deducted such arrears of maintenance charges from the security deposit. The said amount would not have been carried to fresh agreement. Moreover, no prudent landlord will permit the tenant to continue to occupy the premises without paying maintenance charges for such a long period. There is no claim by the defendant in that regard before issuing reply notice on 13.01.2015.

18. Secondly, Or. 8 Rule 6 CPC and Sec.14 r/w Sec.11 and Article I of Karnataka Court Fees and Suit Valuation Act make it mandatory to pay Court fee on set off. The rulings at Sl.No.3 and 4 confirm the same. It held by Hon'ble Court as under:

The position regarding Court fee may be summarized thus:

(i) A defendant who wants to claim set-off or make a counterclaim should state specifically in the written statement that he is claiming set-off or making a counter-claim. He should show the valuation regarding the set-off or counter-claim for purposes of Court fee and pay Court fee. The Court shall decide whether the Court fee paid on the written statement is proper as done in the case of plaint under Sec.14 read with Section 11 of the KCF Act.

(ii) The amount sought to be set-off or the subject-matter of counter-claim should be specified. If the claim of defendant is for damages, that the amount claimed should be stated. The claim for set-off or counter-claim cannot be tentative. Making a tentative claim, followed by ascertainment of the amount due and direction to pay Court fee on the difference after judgment (between the amount found due and the tentative claim) is permissible only where the relief sought is for accounts or for dissolutions of partnership or for mesne profits under Sections 33, 34 and 42 of the KCF Act.

(iii) If the relief of set-off or counter-

claim is properly valued, but only a part of the court fee is paid thereon by the defendant, the Court shall fix a time for payment of deficit Court fee as contemplated under Order 7, Rule 11 (c) of the CPC. If there is no valuation and if no Court fee is paid, then there is no need for the Court to grant time for payment of the Court fee under Order 7, Rule 11 or any other provision of the CPC.

(iv) Where no Court fee is paid, there is no need to frame any issue on the set-

off claimed or counter-claim. On the other hand, if necessary Court fee is paid by defendant, after giving due opportunity to the plaintiff to file his defence (written statement) regarding such claim for set-off or counter-claim, the court should frame appropriate issues thereon in addition to the issue on the claim in the plaint, and then proceed with the evidence.

(v) Where no Court fee is paid, it is impermissible for the Court to examine the claim for set-off or counter-claim in the judgment and grant relief and then permit the defendant to pay Court fee.

The defendant has valued his counter claim and paid Court fee on it. But, he has not valued his plea of set off and has not paid Court fee on it. Hence, his claim in respect of arrears of maintenance need not be considered. Hence, I am of the opinion that the defendant has failed to prove this point and I answer the same in negative.

19. POINT NO.5: The defendant has claimed set off in respect of maintenance charges for the period from 1.5.2007 to 1.4.2010. He has filed written statement on 22.8.2015 which contains his plea of set off. The defendant ought to have claimed the arrears within three years from the date on which it fell due and payable. In 5th ruling, it is held as under:

13. As already mentioned above, under Section 3 of the Limitation Act, any claim by way of set off or a counter claim has to be treated as a separate suit and will be deemed to have been instituted, in the case of a counter claim on the date on which a counter claim was made in Court.

It is, therefore, clear that the counter claim is treated as a suit. A suit is filed on the date when a counter claim was made, as in the present case, will be clearly barred by time. There is no provision in law which could condone the delay in filing a suit which has become barred by time. In case, delay in filing a suit cannot be condoned, in my opinion, by way of amendment, the court cannot make a counter claim within time in case a suit if filed would have been beyond the period of limitation. It is not a case where a suit had already been filed by the plaintiff and he wanted to add an additional or alternate prayer in that suit. It is a case where for the first time a decree is being claimed by way of a counter claim for an amount recovery of which has clearly become barred by time".

The above ruling makes it clear that Limitation Act is applicable to set off and counter claim. In this case, the arrears of maintenance charges have become time barred from time to time from 31.5.2010 to 30.4.2013. The defendant has claimed set off on 22.8.2015. By the said date, all the arrears claimed by him were hopelessly barred by time. Hence, I answer the point in affirmative.

20. POINT NO.6 AND 7: These points are interlinked and hence, I have taken them together for common discussion. It is held above that the plaintiff has deposited Rs.1,00,000/- as interest free refundable deposit with the defendant, that the plaintiff has already handed over the keys of the premises to the defendant in the open Court on 10.9.2015. Therefore, the defendant is liable to refund the security deposit amount by deducting rent for the month of December 2014 and one month rent towards repainting charges. The last paid rent is Rs.19,350/-. Hence, deductible amount comes to Rs.38,700/-. Hence, the defendant is liable to pay Rs.61,300/- to the plaintiff towards security deposit. The defendant has put forward plea of set off. It is held above that the defendant has failed to prove that the plaintiff was in due of Rs.60,742.50 towards arrears of maintenance charges in respect of previous rental agreement. The defendant has not paid Court fee on his plea of set off which makes the Court to ignore the prayer of the defendant regarding set off. Moreover, the claim of arrears of maintenance charges is hopelessly barred by time. Thus, there can not be any set

off as prayed by the defendant. Therefore, the plaintiff entitled for Rs.61,300/- from the defendant.

21. It is held above that the plaintiff has failed to issue termination notice in writing in accordance with the terms of rental agreement dt.10.5.2013. He has failed to handover the keys and to deliver the vacant possession of the premises to the defendant till 10.9.2015. The evidence on record and admissions of PW-1 clearly indicate that the plaintiff has not acted like a prudent man, that he did not hand over the keys to the defendant till 10.9.2015. It appears that he withheld it only for refund of security deposit amount. There is no deemed delivery of possession of the premises. There is no evidence except uncorroborated testimony of PW-1 that the defendant was using the premises after 26.12.2015 and well before 10.9.2015. He could have examined any person from Association that the defendant was taken constructive possession of the premises and has shown the premises to prospective tenants. Hence, it can be held that the premises was in possession of the plaintiff till 10.9.2015 and he is liable to pay rent @Rs.19,350/- to the defendant from January to August 2015 which comes to Rs.1,54,800/-. Thus, the defendant has proved his counter claim, but in view of his counter claim, arrears of rent is restricted to Rs.1,35,450/-. Therefore, the defendant is entitled for Rs.1,35,450/- from the plaintiff towards arrears of rent. Since, there is no agreement regarding payment of interest, I find no ground to award interest to either of the parties. Hence, I answer the points as above.

22. POINT NO.8: In view of above discussion and findings, I proceed to pass following:

ORDER The suit of the plaintiff is partly decreed.

The defendant is liable to pay Rs.61,300/- to the plaintiff.

The counter claim of the defendant is also partly decreed.

The plaintiff is liable to pay Rs.1,35,450/- to the defendant.

The amount due to defendant is more than the amount due to the plaintiff. If said amount is adjusted, the plaintiff shall be liable to pay Rs.74,150/- to the defendant.

The defendant is entitled to recover Rs.74,150/- from the plaintiff after adjustment of the amount payable by him to the plaintiff.

The plaintiff shall pay the said amount to the defendant within 2 months from the date of decree.

The plea of set off put forward by the defendant is dismissed.

Under the peculiar circumstances of the case, I direct the parties to bear their own costs.

Draw decree accordingly.

(Dictated to the Stenographer, directly on computer and then corrected by me and pronounced in the open court, on this the 3rd day of December 2016.) (Basavaraj Chengti) XVI ADDL.JUDGE, Court of Small Causes, BANGALORE.

ANNEXURE Witnesses examined on behalf of the plaintiff :

PW-1 Ashok Varma Witnesses examined on behalf of the defendants: NIL.

Documents exhibited on behalf of the plaintiff:

Ex.P1	- Copy of legal notice
Ex.P2	-Reply notice
Ex.P3	-NOC
Ex.P4	-Rental agreement dated 10.05.2013

Documents exhibited on behalf of the defendant:Nil XVI ADDL.JUDGE, Court of Small Causes, BANGALORE.

Dt.03.12.2016 P-KP D-AMS For Judgment Judgment pronounced in open court vide separate judgment.

ORDER The suit of the plaintiff is partly decreed.

The defendant is liable to pay Rs.61,300/- to the plaintiff.

The counter claim of the defendant is also partly decreed.

The plaintiff is liable to pay Rs.1,35,450/- to the defendant.

The amount due to defendant is more than the amount due to the plaintiff. If said amount is adjusted, the plaintiff shall be liable to pay Rs.74,150/- to the defendant.

The defendant is entitled to recover Rs.74,150/- from the plaintiff after adjustment of the amount payable by him to the plaintiff. The plaintiff shall pay the said amount to the defendant within 2 months from the date of decree.

The plea of set off put forward by the defendant is dismissed.

Under the peculiar circumstances of the case, I direct the parties to bear their own costs. Draw decree accordingly.

XVI ADDL.JUDGE, Court of Small Causes, BANGALORE.

DECREE S.C.C.H.NO.14 IN THE COURT OF SMALL CAUSES COURT, AT BANGALORE.

S.C.No.952/2016

PLAINTIFF:

ASHOK VARMA
S/o V.Ananda Varma
Aged about 40 years,
R/at No.503, Block 04,
Sun City Apartments
Sarjapur Outer Ring road,
Iblur,
HSR post, Bengaluru-560 102.

(By pleader Sri KP)

Vs.

DEFENDANTS :

A.N.SUBASH CHANDRA
S/o late Narasimha Reddy
Aged about 68 years,
R/at Flat No.105,
Radiance Block-20
Sun City Apartments
Sarjapur Outer Ring road,
Iblur,
HSR post, Bengaluru-560 102.

(By pleader Sri AMS)

CLAIM: Suit filed on
to pay a sum of Rs.
and such other reliefs.

prays for directing defendant
with interest % , costs

This suit coming on

for final disposal before

Sri.Basavaraj Chengti., XVI ADDL.JUDGE, CSC, Bangalore, in the presence of
Sri/Smt Advocate, for the plaintiff and Sri/Smt Advocate, for the defendant.

ORDER The suit of the plaintiff is partly decreed.

The defendant is liable to pay Rs.61,300/- to the plaintiff.

The counter claim of the defendant is also partly decreed.

The plaintiff is liable to pay Rs.1,35,450/- to the defendant.

The amount due to defendant is more than the amount due to the plaintiff. If said amount is adjusted, the plaintiff shall be liable to pay Rs.74,150/- to the defendant.

The defendant is entitled to recover Rs.74,150/- from the plaintiff after adjustment of the amount payable by him to the plaintiff.

The plaintiff shall pay the said amount to the defendant within 2 months from the date of decree.

The plea of set off put forward by the defendant is dismissed.

Under the peculiar circumstances of the case, I direct the parties to bear their own costs.

And it is further ordered and decreed that defendant do pay to the plaintiff sum of Rupees being the amount of costs incurred in this suit, as by memorandum annexed with interest thereon at per cent per annum from this date unto the date of realization.

Given under my hand and the seal of the Court this Day of 2016.

REGISTRAR, COURT OF SMALL CAUSES, Bangalore.

MEMORANDUM OF COST INCURRED IN THIS SUIT By the Plaintiff Defendant
Court fee on plaint Court fee on power Court fee on exhibits Service of process +
P o s t a l c h a r g e s C o m m i s s i o n e r ' s f e e s P l e a d e r s f e e
_____ Total _____

Amount payable by the defendant to the plaintiff is Rs.

Decree Drafted Scrutinised by REGISTRAR, COURT OF SMALL CAUSES,
BANGALORE.

Decree Clerk SHERISTEDAR