

Smt.B.R.Godadevi vs Sri.Dalapatraj Bafna on 12 February, 2016

IN THE COURT OF THE XXX ADDL.CITY CIVIL
JUDGE, BANGALORE CITY

DATED THIS THE 12th DAY OF FEBRUARY 2016

- : PRESENT: -

SRI.M.G.KUDAVAKKALIGER, B,Com., LL.M.,
XXX Addl.City Civil Judge,
Bangalore.

O.S.NO.633/2013

PLAINTIFF : Smt.B.R.Godadevi,
W/o Sri.B.Bhakthavatsala
Bhatta, No.2, 3rd Floor,
I Cross, 4th main,
Sampangiramanagar,
Bengaluru-560 027.
(By Pleader Sri.Y.N.
Satyanarayana Rao ,Adv.)

/VS/

DEFENDANT: Sri.Dalapatraj Bafna,
S/o Roopchand Bafna,
No.15 (Portion), I Main,
Byatarayanapura, Mysore
Road, Bengaluru-560 026.

(By Pleader Sri.,K.R.Adv.)

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O.S.No.633/2013

DATE OF INSTITUTION	19-01-2013
NATURE OF THE SUIT (Suit on Pronote, Suit for declaration and Possession, Suit for injunction, etc.)	Suit for Ejectment
DATE OF THE COMMENCEMENT OF RECORDING OF THE EVIDENCE	17-09-2014
DATE ON WHICH THE JUDGEMENT WAS PRONOUNCED	12-02-2016

TOTAL DURATION	:	YEAR/S	MONTH/S	DAY/S
		3	-	22

(M.G.KUDAVAKKALIGER) ,
XXX ADDL.CITY CIVIL JUDGE,
BANGALORE .

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O.S.No.633/2013

JUDGEMENT

1. Plaintiff has filed this suit against the defendant to quit, vacate and deliver the vacant possession of the suit schedule property to the plaintiff, to recover arrears of rent amounting to Rs.1,27,368/- as on 27-12-2012 i.e. for a period of 29 months and to direct the defendant to damages at Rs.10,000/- p.m. from the date of filing this suit.
2. This suit has been filed before the Prl.City Civil & Sessions Judge which has been made over to CCH.25 for disposal according to law. Thereafter, on 2-2-2015 in view of the notification of the Office of the Prl.City Civil & Sessions Judge, Bengaluru City bearing No.PPS(CCC)68/2014, dtd.1-12-2014 this case stands transferred to this Court.
3. The following are the brief and relevant facts leading to the plaintiff's case:

That the plaintiff is the landlord and absolute owner of the house property bearing No.15, Old No.110/15, measuring east to west 40 ft. and north to south 60 ft.

consisting of two portions situated at 5th Cross, Corporation Div.No.36, Byatarayanapura, Mysore Road, Bengaluru-26. The plaintiff has purchased the said property from one Sri.B.P.Lingesh, S/o Puttalingegowda under Registered Sale Deed dtd.15-11-1993 for valuable consideration and the same is registered in the office of the Sub-Registrar, Basavanagudi under Document No.2520, Book-I, Vol.1844 at pages 122-125 and khatha has been transferred in her name and she has been paying the taxes. After purchase of the said property, the plaintiff has put up construction by obtaining necessary plan and license from the Corporation in the year 1998. The defendant approached the plaintiff to let out the northern half portion of the above said property on 27-5-1998.

The plaintiff has let out the same to defendant and defendant has executed a rental agreement on 27-5-1998 and at the inception of the tenancy, the defendant has paid a sum of Rs.65,000/- as security deposit amount and agreed to pay the rent at Rs.3,000/- p.m. and the enhanced rent at 10% beyond three years and the tenancy is

from 1st May 1998 as per English Calendar month and also agreed to pay the rents on or before 10th of every succeeding month. The rental agreement was for a period of three years commencing from 27-5-1998 and the defendant had agreed to vacate the schedule premises and handover the vacant possession to the plaintiff. After expiry of the said period of 3 years, the defendant has failed to pay the enhanced rent at 10% as agreed and the present rate of rent is Rs.4,392/- and has become defaulter in payment of rents and now defendant is due a sum of Rs.1,27,368/- as on 26-12-2012 for a period of 29 months.

The plaintiff has got two sons and her family is residing in a rented house situated at No.2, I Cross, Sampangirama Nagar, Bengaluru and they require the suit schedule property for their use and occupation. Hence, plaintiff has requested the defendant to vacate the schedule premises for their use and occupation, but the defendant went on postponing on one pretext or the other and having no other alternative, plaintiff filed HRC petition against the defendant in HRC No.10/2011 on the file of Court of Small Causes, Bengaluru and said petition was dismissed on 29-11-2011 on the ground that petition is not maintainable under Sec.2(3)(e)(i) of the K.R.Act, 1999 and aggrieved by the said order, the plaintiff preferred a revision petition before the Hon'ble High Court in HRRP.47/2012 and set aside the order of the lower court and directed to dispose off the proceeding expeditiously and again the matter has been taken up by the Court of Small causes, Bengaluru and once again it was dismissed on 31-10-2012 holding that the petition is not maintainable and hence, having no other alternative, the plaintiff got issued a legal notice to the defendant on 15-12-2012 calling upon the defendant to vacate and deliver the vacant possession of the schedule property within one month from the date of issuance of legal notice and also directed the defendant to pay the arrears of rent of Rs.1,22,976/- for a period of 28 months as on 26-11-12 and said notice has been duly served on the defendant and the defendant has got issued an untenable reply on 24-12-2012. The plaintiff further contended that the suit property is bonafidely and reasonably required for the use and occupation of the plaintiff and her family members and if the defendant does not vacate the schedule premises, plaintiff and her family will be put to untold hardship, irreparable injuries and injustice. Plaintiff claimed the damages of Rs.10,000/- p.m. from the defendant from the date of filing of the suit till the date of vacating the schedule premises. Hence, plaintiff is hereby constrained to file this suit and prayed to decree the suit with costs.

4. After registration of the suit, suit summons were issued to the defendant. Defendant has put appearance through his advocate and filed his written statement inter-alia contending that the suit filed by the plaintiff is not maintainable in law or on facts and the suit is frivolous, vexatious and filed only with an intention to harass the defendant. He admitted that he is the tenant in respect of the suit schedule property for the last 15 years from 1- 5-1998 and he has been paying the rent regularly. The defendant has submitted that he had no comments with regard to the contents of plaint para No.1. Defendant has expressed that he has not aware of the averments made by the plaintiff in para No.2 to 7. The defendant further contended that initially he was paying monthly

rent of Rs.3,000/- from 27-5-1998 and the rent was enhanced to Rs.3500/- p.m. from July 2008 and to Rs.4,000/- p.m. from April 2010 and he has paid Rs.65,000/- as refundable advance to the plaintiff. On 28-7-2010 at around 3 p.m., the husband of the plaintiff along with some persons entered into the schedule property and threatened to vacate the schedule property immediately. On the same day, the defendant lodged a police complaint against the husband of the plaintiff. Thereafter, plaintiff refused to receive the rent from July 2010 when tendered personally. Therefore, defendant sent the rent of Rs.4,000/- for the month of July 2010 through Money Order vide receipt dtd.25-8-2010 to the plaintiff, but the said money order was returned by the postal department without assigning any reason. The defendant sent a letter dtd.1-10-2010 to post Master requesting for the reason for return of the money order and the Post Master issued an endorsement dtd.2-11-2010 stating that it was returned to the remitter with remarks "Refused by the Payee". The plaintiff, without any reason has refused to receive the rent and hence, the defendant filed a petition before the Rent Controller, West Zone at Bengaluru under Sec.17 of K.R.C.Act, 1999 on 26-11-2011 seeking permission to deposit the rent in respect of suit schedule property until the plaintiff is ready and willing to receive the rent. The plaintiff has filed his statement of objections in the said case and it is pending. The defendant denies all the allegations made in the plaint paras as false and calls the plaintiff for the strict proof of the same and contended that plaintiff is not entitled to claim damages of Rs.10,000/- p.m. Hence, it is requested to dismiss the suit with costs.

5. On the basis of the rival contentions taken up by respective parties in the above pleadings, the following issues have been framed by my Learned Predecessor in office for disposal of the case:

1. Whether the plaintiff proves that the defendant to pay the arrears of rent of Rs.1,27,368/- as on 27-12-2012?
2. Whether the plaintiff is entitled for claiming damages from the defendant about the suit property?
3. Whether the tenancy is terminated in accordance with law?
4. Whether the plaintiff is entitled for the suit reliefs?

6. In order to substantiate the case made out by the plaintiff, the Spl. Power of attorney holder of plaintiff has entered into witness box and has filed his affidavit evidence under Order 18 Rule 4 of C.P.C. as per P.W.1 and got marked as many as 17 documents as per Ex.P.1 to P.17. In order to rebut the case of the plaintiff, defendant has entered into witness box and has filed his affidavit evidence under Order 18 Rule 4 of C.P.C. as per D.W.1 and got marked as many as 7 documents as per Ex.D.1 to D.7. Case posted for arguments.

7. I have heard the arguments on both side and perused the materials placed on record.

8. On the basis of the evidence both oral and documentary and other materials., I record my findings to the above issues as follows:

Issue No.1: In the affirmative.

Issue No.2: Partly in the affirmative. Issue No.3: In the affirmative.

Issue No.4: As per the final order for the following:

REASONS

9. ISSUE NO.1: It is the brief case of the plaintiff that he is the landlord and owner of the suit schedule property consisting of one hall, two bed rooms, one dinning hall, one kitchen, one bathroom with toilet and one Pooja room having electricity and water facility. The plaintiff has let out the suit schedule property to the defendant on 27-5- 1998. At the inception of the tenancy, the rent was fixed for Rs.3,000/- payable on or before 10th of every succeeding month and defendant has paid security deposit of Rs.65,000/-, it has been agreed by the plaintiff and defendant that period of tenancy is for 3 years, which commence from 1st May 1998 as per English Calendar month and agreed to pay the enhanced rate of rent at 10% beyond 3 years. It is the case of the plaintiff that this tenancy continued till the year 2010. At that time, the rent agreed between plaintiff and defendant as per rental agreement was comes to Rs.4,392/-. But, the defendant is a defaulter in payment of the rent and rent falls due for a period of 29 months at the rate of Rs.4,392/-. Hence, the plaintiff has issued legal notice to the defendant on 15-12- 2012 calling upon to pay the arrears of rent for 29 months at Rs.4,392/- in all Rs.1,27,368/-. The plaintiff has also averred in the plaint that both the sons of the plaintiff got married and they are residing in rented house. Hence, now, the plaintiff requires the suit schedule property for their bonafide use and occupation for their family members. Meanwhile, the HRC proceedings No.10/2011 and HRRP No.47/2012 proceedings was continued and disposed of. The petition filed by the plaintiff was dismissed as not maintainable. Hence, having no other alternative, the plaintiff got issued legal notice calling upon the defendant to vacate and deliver the vacant possession of the suit schedule property, claimed for arrears of rent of Rs.1,27,368/-. The notice was duly served upon the defendant on 26-11-2012. Defendant has got issued untenable reply on 24-12-2012. Hence, this present suit.

10. Pursuant to the suit summons, defendant appeared and filed his written statement admitting the contents of the plaint with regard to the relationship of the plaintiff and defendant and admitted that defendant is the tenant in respect of the plaint schedule property for the last 15 years from 1-5-1998 and he has been paying the rent regularly. Defendant has also admitted the contents of the rent agreement dtd.27-5-1998 that initially defendant is paying monthly rent of Rs.3000/-. He has paid refundable advance of Rs.65,000/- to the plaintiff. The rent was enhanced to Rs.3,500/- p.m. from July 2008 and the rent has been again enhanced to Rs.4,000/- p.m. from August 2010. But, the relationship of the plaintiff and defendant was strained due to the alleged incident dtd.28-7-2010 at about 3 p.m. and the husband of the plaintiff along with some persons entered into the suit schedule property and threatened the wife and daughter-in-law of the plaintiff to vacate the suit schedule property and the same day the defendant has lodged the police complaint against the husband of the plaintiff. Thereafter, plaintiff refused to receive the rent for the suit schedule property from July 2010 onwards and defendant tried to pay the rent through money order, but the plaintiff refused to receive the same. Defendant has also admitted that he has filed petition before

the Rent Control, West Zone under Sec.17 of the K.R.Act, 1999 on 26-11-2011 seeking permission to deposit the rent in respect of the suit schedule property. The said case was pending. The defendant at no point refused to pay the rent. The plaintiff has refused to receive the rent and hence, he has filed a petition before the Rent Controller seeking permission to deposit the rent. The defendant is ready and willing to pay the rent at Rs.4000/- p.m. The defendant denied that plaintiff has required the schedule property for their use and occupation. There is no valid termination of tenancy. The defendant further contended that he is not liable to pay damages of Rs.10,000 p.m. from the date of filing of the suit. Hence, prayed to dismiss the suit with exemplary cost.

11. In order to substantiate the case made out by the plaintiff, the Spl. Power of attorney holder of plaintiff has entered into witness box and has filed his affidavit evidence under Order 18 Rule 4 of C.P.C. as per P.W.1 and got marked as many as 17 documents as per Ex.P.1 to P.17. In order to rebut the case of the plaintiff, defendant has entered into witness box and has filed his affidavit evidence under Order 18 Rule 4 of C.P.C. as per D.W.1 and got marked as many as 7 documents as per Ex.D.1 to D.7. Case posted for arguments.

12. It is the admitted facts by both plaintiff and defendant that the plaintiff has inducted the defendant in the suit schedule property as a tenant on 27-5-1998 on a monthly rent of Rs.3,000/- and both parties have agreed for enhanced rent at 10% on the existed rent for every three years and defendant has paid interest free rent advance of Rs.65,000/- and rent is to be paid on or before 10th of every succeeding month. But, the defendant has contended that after completion of three years, the plaintiff and defendant have not acted on the terms of the said rent agreement. The rent agreement was not in force. It is also admitted by both the parties that after giving statutory notice, plaintiff has filed HRC No.10/2011 under Sec.27(2)(r) of K.R.Act 1999 for eviction of respondent from the suit schedule premises which was seriously contested. The defendant has taken contention in his written statement admitting the fact that he was inducted as a tenant on 27-5-1998 for a monthly rent of Rs.3,000/- and paid rent advance of Rs.65,000/- and defendant has also admitted that the rent was enhanced to Rs.3,500/- p.m. from July 2008, rent has been again enhanced for Rs.4,000/- in the year 2010. In the said judgment in HRC No.10/2011, the Court has considered with regard to the argument advanced by the learned Counsel for the respondent (defendant) with regard to the terms of the alleged agreement and calculated the enhanced rent up to 27-5-2010 which falls due for every three years. For better appreciation, I cull out the same at para No.14 of the judgment in HRC No.10/2011 as under:

"14. The counsel for the respondent has argued that the respondent/tenant was inducted to the schedule premises in pursuance of the Rent agreement dtd.27-5-1998, which s marked as Ex.P.1. As per the terms of the agreement, the rent payable by lessee was Rs.3,000/- p.m. The duration of the lease shall be for 3 years with an increase of 10% for every 3 years of the existing rent and that the lessee has paid an amount f Rs.65,000/- as security deposit by way of cash, which shall be repaid to the lessee at the time of handing over vacant possession of the schedule property. From reading terms and conditions of the agreement regarding quantum of rent and enhancement of rent, it is obvious that if rent is calculated b enhancing 10% for every 3 years, as on the date of petition, it exceeds Rs.4,000/- p.m. The rent agreement was

executed on 27-5- 1998. The rent was fixed at Rs.3,000/-. After 3 years, i.e. as on 27-5-2001, it comes to Rs.3,300/-. As on 27-5-2004, it comes to Rs.3,630/-. As on 27-5-2007, it comes to Rs.3,993/-. As on 27-5-2010, it comes to Rs.4,392/-. The petition was filed on 22-1- 2011. As per the above calculation, the rent of the premises as on the date of filing of the petition was Rs.4,392/- i.e. to say as on the date of the filing of the petition, the rent of the premises exceeds Rs.3,500/- p.m."

13. Hence, on the basis of which HRC No.10/2011 has been dismissed by the then Chief Judge of the Court of Small Causes, Bengaluru by considering the enhanced rent of Rs.4,392/- as on 27-5-2010. The findings given by the Hon'ble Court in HRC No.10/2011 binds the defendant. Now the defendant cannot take defence that parties have not acted upon the terms of the alleged lease agreement and there is no base for calculating the rent. Therefore, the defence taken by the defendant is not sustainable in the eye of law. As the plaintiff and defendant have impliedly admitted and acted upon the terms of the agreement of the lease deed even though lease agreement dtd.27-5-1998 has not been renewed for further period. The learned Chief Judge of the Small Causes Court has observed at para No.15 in Judgment of HRC No.10/2011 about the enhanced rent paid by the respondent. For better appreciation I cull out the same as under:

".....the learned counsel for the respondent/tenant has taken me through the Rent book, marked as Ex.R.1, wherein, the rent received by the petitioner; has been acknowledged. Moreover, the petitioner who has been examined as P.W.1 has admitted in her cross-examination that the respondent is maintaining a Note Book in respect of the rent paid to her. She has also admitted that the rent is being collected from the respondent by her husband and some times by her brothers' in law namely Madhusudhan Bhat and Narasimha. Rent Book Ex.P.R.1 discloses that there are so many entries in the Book for having received rent at the rate of Rs.3,000/- per month way back from 20-6-1998. There is also an entry in the Rent Book which is marked as ExP.R.1(a), which reveals that Madhusudhan Bhat has put his signature having received Rs.12,000/- as rent for 3 months on 8-7-2010. Entry to that effect marked as Ex.R.1(a) under Ex.R.1 reads as under:-

"8-7-2010 UÄÄgÄÄªÁgÄªÄÄÆgÄÄ wAUÄ¼ÄÄ ªÁrUÄÉ §AçzÉ. 12,000-00 gÄÆ.UÄ¼ÄÄ. ,Ä»,ªÄÄzÄsÄ,ÄÆzÄ£Ä ªÄsmi"

Thus, if we go by enhancement clause in the Rent Agreement, the rent as on the date of filing of the petition exceeds Rs.3,500/- per month and there is also evidence for having received rent at the rate of Rs.4,000/- per month. The rent stipulated in the Agreement entered into between the parties is the agreed rent. Further, even if it is presumed for a while that the respondent has not paid the rent at the rate of Rs.4,000/- p.m., the petitioner; has every right to recover the rent at the rate of Rs.4,000/- p.m., having regard to the enhancement clause in the rent agreement.

17. On this ground itself the Learned Chief Judge of the Small Causes Court has dismissed the HRC petition NO.10/2011 observing that..... looking from any angle the rent of the schedule premises exceeds Rs.3,500/-. In that case, in view of Sec.2(3)(e)(i) of the Karnataka Rent Act, 1989, this Court

no jurisdiction to entertain the petition and grant the relief. Accordingly, point No.1 for consideration is answered in the negative."

14. Hence, Now, defendant cannot take defence that the terms of the lease agreement dtd.27-5-1998 not binding and not acted upon by the plaintiff and defendant. Hence, this Court is of the opinion that the plaintiff and defendant have acted upon the terms and conditions of the lease agreement dtd. 27-5-1998, are binding to both the parties and periodical enhancement of rent at the rate of 10% for every 3 years is applicable to both the parties. The plaintiff is justified in claiming the arrears of rent and also damages equal to the enhanced rent which falls due from 27-5-2013 onwards till the handing over of the vacant possession of the suit schedule property to the plaintiff as damages. It works out as under:

On 27-5-2010 (Rs.3993/- +399/-) it comes to Rs.4,392/- On 27-5-2013 (Rs.4,392/-+439/-) it comes to Rs.4,831/- On 27-5-2016 (Rs.4,831/- +483/-) it comes to Rs.5,314/-

16. The defendant is liable to pay damages as per the rate mentioned above as calculated as per the escalation clause mentioned in the lease agreement. Soon after the dismissal of the HRC no.10/2011, the plaintiff filed HRRP No.47/2012, it also came to be dismissed and remanded to the trial Court with direction to dispose off the proceedings expeditiously. Thereafter, again the trial Court decided the case afresh and the learned Judge was pleased to dismiss the petition filed by the petitioner by an order dtd.31-10-2012 on the same ground on which the petition was dismissed earlier. Thereafter, the plaintiff has got issued legal notice on 15-12-2012 to the defendant calling upon the defendant to vacate and deliver the vacant possession of the suit schedule property and filed this petition for ejectment. Thereafter, defendant has sent rent of Rs.4,000/- to the plaintiff by way of money order on 28-8-2010, which was refused by the plaintiff.

Thereafter, defendant has not paid any rent till date and defendant volunteers as under:

"The witness volunteers that as plaintiff rejects the same, I have not sent any rent there as he has filed this case before the Court."

17. On careful perusal of the above deposition of the voluntary statement of the defendant before the Court, it is quite clear that defendant has not paid any rent on filing of this suit.

18. The defendant has also taken contention in his written statement as well as deposed in his cross-examination that he has filed petition before the Rent Control Authority in the year 2011, and further deposed that as rent Contraol Authority has not given any permission to deposit the rent before them, he has not deposited the rent before the Rent Control Authority. For better appreciation, I cull out the same:

"It is true to suggest that I have filed petition before the Rent Control Authority in the year 2011. As rent control authority has not given any permission to deposit the rent before them, I have not deposited any rent."

19. The learned Counsel for the plaintiff has shown the order copy passed by the Rent Control Authority on 23-5-2014, the D.W.1 identified and admit the same which has been marked as per Ex.P.17. On careful perusal of the order of the Rent Control Authority, it is very much clear that though permission has been accorded to the defendant by the Rent Control Authority to deposit the rent, the defendant has not deposited the arrears of rent even before the Rent Control Authority and petition filed by the defendant has been dismissed with direction to the respondent (plaintiff) to approach the Civil Court for eviction. For better appreciation I cull out the same:

¢£ÁAPÀB 23-10-2013 gÀAzÀÄ ¥ÀæwªÁ¢UÀ¼ÄÄ °ÁdjzÀÄÝ. ªÁ¢UÀ½UÉ ,ÀéAvÀ ªÄÄÉÉ EzÀÄÝ, ªÁrUÉUÉ ªÁrzÀ ¥ÀæwªÁ¢UÀ¼ÄÄ ªÄÄÉÉAiÀÄ°è ªÁ,À«gÀÄªÄÄzÀV w½¹zÁÝg.É F §UÉÎ zÁR¯É °ÁUÀÆ ªÁ¢/¥ÀæwªÁ¢UÉ ªAiÀÄªÄzÀAvÉ ªÁrUÉ ¥ÁªÀw,À®Ä ªÁ¢UÉ ,ÀÆa,À¯À ªÁvÀÄ °ÁUÀÆ ªÁrUÉ ¥ÁªÀw,Àz,É ,ÀéAvÀ ªÄÄÉÉ EzÀÄÝ ªÄÄÉÉ SÁ° ªÁiÁqÀzÄÉ -ÄgÀÄªÄÄzÀ ÄzÀ ¥ÁæxÀ«ÄPÀªÁV ªÁrUÉ ¥ÁªÀw,À®Ä ªzÉÄð²¹ ¢£ÁAPÀB 27-11-2013PÉÎ ¥ÀæPÀgt À ªÄÉÄÄß ªÄÄÄzÀÆqÀ¯À-ÄvÀÄ. ¢£ÁAPÀ 27- 11-2013 gÀAzÀÄ ªÁ¢AiÀÄªÁJUE 15 ¢ª, z À ÉÆ¼ÀUÉ ªÁrUÉ ¥ÁªÀw,À®Ä CAwªÄÄ CªPÀ± ªÄqÀ¯À-ÄvÀÄ. ¥ÀæwªÁ¢UÀ¼ÄÄ ªÉÄªÉÆÄ zÉÆA¢UÉ ªÁ¢UÀ½UÉ ,ÀéAvÀ ªÄÄÉÉ EgÀÄªÁ §UÉÎ zÁR¯É ªÁrgÀÄvÁÛg.É ¢£ÁAPÀB 15-03-2014 gÀAzÀÄ ¥ÀæwªÁ¢ °ÁdjzÀÄÝ ªÁ¢ ªÁrUÉ °Àt ¥ÁªÀw,ÀzÀ PÁgÀt ªÄÄvÀÄÛ ªÁ¢UÉ ,ÀéAvÀ ªÄÄÉÉ EzÀÄÝ ªÄ ª° ªÄÄÉÉAiÀÄÄÄß ªÁrUÉUÉ ªÁr, ¥ÀæwªÁ¢AiÀÄ ªÄÄÉÉAiÀÄ°è ªÁ,À«zÁÝ PÁgÀt, ¥ÀæwªÁ¢UÀ½UÉ ¹«¯i ÉÁÄAiÀiÁ®AiÀÄPÉÎ J«PÀiÉi UÉ °ÉÆÄUÀ®Ä ,ÀÆa¹ F PÉ¼PÀ ÄÄ qÀAvÉ CzÉÄ²¹zÉ.

,ÀASÉâB °ÉZi.Dgï.¹(¥À)/Dgï.r.01/2010-11 ¢£ÁAPÀB 23-05-2014 DzÉÄ±À ²æÄ. J¯i.¹. ÉÁUÀGÄei, GYÀ«ªÁUÀ¢üPÁjUÀ¼ÄÄ, ªÉAUÀ¼ÄÆgÀÄ zÀQët GYÀ«ªÁUÀ °ÁUÀÆ ªAiÀÄAvÀæuÁ¢üPÁjUÀ¼ÄÄ ªÄÄÉÉ ªÁrUÉ, ¥À²ÑªÄÄ ªÀ®AiÀÄ (¥ÀæªÁgÀ), ªÉAUÀ¼ÄÆgÀÄ DzÀ ÉÁÉÄÄ, ªÁ¢UÀ½UÉ ,ÀéAvÀ ªÄÄÉÉ EzÀÄÝ ªÄÄÉÉ SÁ° ªÁiÁqÀzÄÉ EgÀÄªÄÄzÀ ÄzÀ ªÄÄvÀÄÛ ªÁrUÉ °Àt ¥ÁªÀw,ÀzÀ PÁgÀt ¥ÀæwªÁ¢UÀ½UÉ ¹«¯i ÉÁÄAiÀiÁ®AiÀÄPÉÎ J«PÀiÉi UÉ °ÉÆÄUÀ®Ä ,ÀÆa¹ ¥ÀæPgÀ ÀtªÄÉÄß ªÁeÁUÉÆ½,À¯ÀvzÉ. F CzÉÄ±ªÄÄ ÄÄß ªÉg¼À ÄzÀÄUÑ ÁgÀJUE GPÀÛ ªÁRÉÄ ªÁr ªÉg¼À Z À ÄÄÑ ªÁiÁr¹ ¢£ÁAPÀB 23- 5-2014 gÀAzÀÄ vÉgz É À ÉÁAiÀiÁ®AiÀÄzÀ°è WÉÆÄ¶,À¯À-ÄvÀÄ.

20. On careful perusal of the entire materials adduced before this Court, it is quite clear that the defendant has abused the process of law systematically and illegally squatted on the house property of the plaintiff till date without paying any rent. Hence, the defendant is not deserving for any lenience and liable to be evicted. The defendant is liable to pay arrears of rent and damages as the case may be as per the calculation made above. Hence, I answer issue No.1 in the affirmative.

21. ISSUE NO.2: In the instant case, the plaintiff has claimed damages of Rs.10,000/- p.m. from the date of filing of the suit till handing over of the vacant possession of the suit schedule property. The defendant himself has admitted in his cross-examination that he has not paid rent from the date of legal notice and he has not deposited the any amount of rent before the Rent Control Authority under the petition filed by the very defendant himself in the year 2011 though Rent Control Authority has accorded the permission to defendant as per Ex.P.17. Thereafter, as per the direction issued by the Rent Control Authority the plaintiff has filed HRC No.10/2011 which came to be dismissed as the rent for the suit schedule property is more than Rs.3,500/- against which present plaintiff has filed HRRC petition before the Hon'ble High Court which also came to be dismissed. Thereafter, the plaintiff has filed this suit terminating the tenancy by giving legal notice on 15-12-2012 till date, defendant has not paid any rent and not vacated the suit schedule premises though he is having four storied building near Gali Anjaneya Swamy Temple in Municipal No.94, Ranganatha Layout, Ward No.41 in the name of his wife and recently, it has been sold to his son Sanjay Bafna by creating sale deed in the year 2013. In this way, defendant has made the plaintiff to wander pillar to post from Rent Control Authority to Small Causes Court and Small Causes Court to City Civil Court for getting his premises vacated and for the arrears of rent by abusing the process of law. Such tactics of the defendant is deprecated and should be nipped in the bud by imposing cost and defendant not deserves any lenience from the hands of the Court and he is liable to pay damages. At this juncture, it is to be noted that plaintiff has issued quit notice on 15-12-2012 as per Ex.P.11 claiming arrears of rent for a period of 28 months at the rate of Rs.4,392/- i.e. at the escalated rate of enhanced rent at the rate of 10% as agreed in the original rent agreement dtd.27-5-1998 for every 3 years which comes to Rs.1,27,368/-, legal notice was duly served on the defendant and he has issued evasive reply notice as per Ex.P.12 on 24-12-2012. Hence, the relationship of the plaintiff and defendant as landlord and tenant comes to an end on the date of service of legal notice dtd.15-12-2012. Therefore, defendant is no more a tenant from 15-12- 2012. The possession of the defendant from 15-12-2012 onwards becomes unlawful possession. Hence, defendant is liable to pay means profit for his unlawful possession of the suit schedule property from 15-12-2012. Therefore, the plaintiff is justified in claiming the damages from month of January 2013 to till handing over of the vacant possession of the suit schedule property to the plaintiff. The recent relationship of the plaintiff and defendant was governed as per the terms of the rent agreement as per Ex.P.4 as admitted by both plaintiff and defendant. As per the said rent agreement, the tenancy commences from 27- 5-1998. Rent was fixed for Rs.3,000/- p.m. payable on or before 10th of every subsequent month. Both plaintiff and defendant have admitted for the escalated rent at the rate of 10% on the existing rent after completion for the period of 3 years. But, defendant continued in possession of the suit schedule property even after completion of the 3 years period from 27-5-1998. Hence, the escalation clause is applicable to the defendant and he has to pay enhanced rent at the rate of 10% over and above the existing rent of the previous year after completion of every third year. It works out as under:

On 27-5-2013 (Rs.4,392/-+439/-) it comes to Rs.4,831/- On 27-5-2016 (Rs.4,831/-+483/-) it comes to Rs.5,314/-

22. In this way, the plaintiff is entitled to receive arrears of rent as stated above up to arrears of rent of Rs.1,27,368/- up to 15-12-2012 the month in which tenancy has

been terminated by issuing quit notice dtd.15-12-2012.

Thereafter, the possession of the suit schedule property by the defendant becomes unlawful and defendant is liable to pay mesne profits/damages from the month of January 2013 to till handing over of the vacant possession of the suit schedule property to the plaintiff. The defendant has to pay the damages/mesne profits as per the calculation made above. Hence, the plaintiff is entitled for the arrears of rent and also damages/mesne profits after producing up to date calculation memo and entitled for damages at the rate of Rs.4,831/- from January 2013 and Rs.5,314/- from 27-5-2016 to till handing over of the vacant possession of the suit schedule property. Hence, I answer issue No.2 partly in the affirmative.

23. ISSUE NO.3: On the basis of the rival contentions taken up by the defendant, this issue has been framed, whether the tenancy is terminated in accordance with law. Before advertng to the other aspects of the case, let me note some statutory principles which govern the aspect of lease enumerated under Sec.105 to 107 of the Transfer of Property Act.

" Sec.105. Lease defined - A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or nay other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined.- The transferor is called the lessor, the transferee is called the lessee, the price is called the premium and the money, share service or other thing to be so rendered is called the rent.

Sec.106:- Duration of certain lease in absence of written contract or local usage- (1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable on the part of either lessor or lessee, by fifteen days' notice. (2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice. (3) A notice under Sub-Sec.(1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceedings is filed after the expiry of the period mentioned in that sub-section. (4) Every notice under sub-section(1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

Sec.107:Leases how made _ 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 instrument."

24. On careful perusal of the above statutory provisions, Sec.105 defines and governs the definition of lease and other related terms such as lessor, lessee and rent. As per Sec.107 of T.P.Act, the lease of immovable property from year to year, or from any term exceeding one year or reserving a yearly rent can be made only by way of registered instrument. All other lease of immovable property can be made either by registered instrument or by oral agreement accompanied by delivery of possession. Sec.106 of T.P.Act governs the provisions as to how the lease of immovable property be terminated. As per section 106 of T.P.Act, the lease of immovable property i.e. (i)lease from year to year or lease for any term exceeding one year or reserving yearly rent terminable on the part of either lessor or lessee by giving six months written notice expiring with the end of the year of the tenancy. (ii) the lease of immovable property for a lease from month to month terminable on the part of either lessor or lessee by giving 15 days written notice expiring with the end of month of the tenancy.

25. With this background of these statutory principles let me consider the facts of this case in the light of the principles evolved by their Lordships of our own Hon'ble High Court in the case of Smt.Rudravva and others .VS. Smt.Suma and others¹ held that:

"Transfer of Property Act, 1882 - Section 107 - Lease of immovable property exceeding one year

- Duty of the Appellate Court while writing a judgment of reversal - Caution given by the High Court to the First Appellate Court - Held, Section 107 of T.P.Act speaks about the manner in which leases may be made n respect of immovable property from year to year or for any term exceeding one year or reserving a yearly rent. Such lease can be made only by a registered document.

-Lease for 11 months on monthly rent created on the basis of Kabuliyat signed by the lessees need not be registered. In view of the first paragraph of the provisions of Sec.107 of T.P.Act, lease cannot be allowed to be circumvented for setting up permanent tenancy. In the absence of registered document, lease shall be deemed to be leased from month to month.

(a) xxxxxx

(b) If there is an oral lease for manufacturing purpose, not created by registered written lease, such lease cannot be construed as from year to year terminable by six months notice as per Section 106 of the TP Act. It is held that, 15 days notice terminating the tenancy would be valid.

¹ ILR 2015 KAR 2188

(c) Section 106 of the TP Act has stood amended with effect from 31-12-2002 vide Act 3 of 2003 of the Parliament. Sub-Section 3 of Section 106 of amended Act, a notice under sub-Section 1 of Section 106 shall not be deemed to be invalid, merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry, the period mentioned in that sub-section. Section 3 of Act 3 of 2003 provides for transitory provisions. The provisions of Section 106 of the Principal Act as amended by Section 2 shall apply to all notices in pursuance of which any suit or proceedings pending on the finding of the Act and all notices which would have been issued before commencing of the Act, but where no suit has been filed before such commencement. Therefore, the case on hand is also perfectly covered under the transitory provisions as per Sub-Section 3 of Act 3 of 2003 also. Therefore, for all practical purposes, notice, so got issued is a valid notice within the purview of Section 106 of the TP Act."

26. In the instant case, the period of lease is 3 years, but the parties have entered into lease agreement as per Ex.P.4 which is not registered. Hence, the tenancy between the plaintiff and defendant cannot be considered as year to year tenancy. It is considered as month to month tenancy, for which 15 days advance notice by either side is sufficient. The plaintiff has issued legal notice on 15-12- 2015 for which defendant has submitted his reply on 24- 12-2012. the suit has been filed on 19-1-2013. Defendant has also admitted in his evidence that he has been inducted as a tenant on 27-5-1998 on a monthly rent of Rs.3,000/-. On careful perusal of the above principles enumerated under Sec. 107 of the Transfer of Property Act lease of immovable property may be from year to year or for any term exceeding one year or reserving yearly rent can be made only by a registered instrument. All other lease of immovable property can be made either by registered instrument or by oral agreement accompanied by delivery of possession. In the instant case, the present lease is from month to month commencing every month terminable on the part of either lessor or lessee by 15 days written notice expiring the end of month of the tenancy. Hence, on careful perusal of the contents of the Ex.P.11 & 12, it is quite clear that monthly lease may be oral and not compulsorily registerable and it can be terminated by the lessor or by lessee by giving 15 days written notice expiring the end of month of tenancy. Hence, the lease was terminated by the plaintiff by giving legal notice on 15-12-2012 itself. Hence, all the contentions taken up by the defendant appears to be bald allegations, which have not been substantiated by adducing cogent and convincing trustworthy evidence. Hence, the allegations taken by the defendant are not sustainable in the eye of law as defendant has made the plaintiff to wander pillar to post i.e. from Rent control authority to Small Causes Court and Small Causes Court to City Civil Court in this case without vacating the suit schedule premises and without paying the arrears of rent from the date of legal notice. Hence, notice issued by the plaintiff is proper, correct and is sufficient. In the instant case, the quit notice has been validly sent to the defendant and tenancy has been validly terminated. Hence, this Court is of the opinion that the quit notice issued by lessor has been duly served on the lessee and month to month lease has been terminated validly. Hence, I answer issue No.3 in the affirmative.

27. ISSUE NO.4: In view of my above discussion and the reasons stated therein and my answer to issue Nos.1 to 3, I proceed to pass the following:

ORDER The suit of the plaintiff is hereby decreed with costs.

The plaintiff is entitled for vacant possession of the suit schedule property.

The defendant is hereby directed to handover the vacant possession of the suit schedule property within one month from date of judgment and decree.

The defendant is liable to pay the arrears of rent of Rs.1,27,368/- with interest at the rate of 12% p.a. from the date of suit till the realization of the amount.

The defendant is also liable to pay damages of Rs.4,850/- p.m. from 27-5-2013 to till the handing over of the vacant possession of the suit schedule property to the plaintiff. If defendant failed to vacate the suit schedule property on the date fixed by the Court, defendant is liable to pay interest at the rate of 12% p.a. on the damages for the succeeding months.

The plaintiff is at liberty to adjust the advance amount of Rs.65,000/- towards the arrears of rent or damages as the case may be.

Draw decree accordingly.

(Dictated to the Judgment Writer and also dictated on computer, transcribed thereof, corrected, signed and then pronounced by me in the open Court on this THE 12th DAY OF FEBRUARY 2016).

(M.G.KUDAVAKKALIGER), XXX ADDL.CITY CIVIL JUDGE, BENGALURU.

ANNEXURE WITNESSES EXAMINED FOR THE PLAINTIFF/S:

P.W. 1 Bhakthavatsala Bhatta WITNESSES EXAMINED FOR THE DEFENDANTS/S:

Nil. Dalpathraj Bafna.

DOCUMENTS MARKED FOR THE PLAINTIFF/S:

Ex.P.1	: Katha extract.
Ex.P.2	: Katha certificate.
Ex.P.3	: Tax paid receipt.
Ex.P.4	: Rent agreement.
Ex.P.5	: Spl. Power of attorney.
Ex.P.6	: Katha Certificate.
Ex.P.7	: Sale Deed.
Ex.P.8	: Memo.
Ex.P.9	: Judgment
Ex.P.10	: Decree in HRRP No.47/2012.
Ex.P.11	: Copy of legal notice.
Ex.P.12	: Reply.
Ex.P.13	: EMS receipt.
Ex.P.14	: Acknowledgement.
Ex.P.15 & 16	: Postal receipts.

Ex.P.17 : CC of the order passed by Rent
Control Authority.

DOCUMENTS MARKED FOR THE DEFENDANTS/S:

Ex.D.1 : Complaint.
Ex.D.2 : Endorsement issued by police.
Ex.D.3 : Money Order copy.

Ex.D.4 : Postal receipt.
Ex.D.5 : Letter written to postal Dept.

Ex.D.6 : Endorsement issued by Postal Dept. Ex.D.7 : Application to Rent Control
Authority.

(M.G.KUDAVAKKALIGER), XXX ADDL.CITY CIVIL JUDGE, BENGALURU.