

## **Dr.M.Muniprasad vs Smt.A.Pushpa on 17 April, 2018**

IN THE COURT OF THE XLII ADDL., CITY CIVIL & SESSIONS JUDGE  
AT BENGALURU CITY (CCH.NO.43).

PRESENT: Sri.P.SRINIVASA,  
B.A.L., LL.M.,  
XLII ADDL., CITY CIVIL AND  
SESSIONS JUDGE, BENGALURU.

Dated this the 17th day of April 2018.

O.S.No.4970/2015

Plaintiffs:-

1. Dr.M.Muniprasad,  
S/o.Sri.Balaramaiah Chetty,  
Aged about 56 years,
2. Dr.Vanaja,  
W/o.Dr.M.Muniprasad,  
S/o.Sri.Balaramaiah Chetty,  
Aged about 51 years,

Both R/at No.61, 3rd Cross,  
1st Block, Katriguppe,  
Banashankari III Stage,  
Bengaluru - 560 085.

(By Sri.K.K.Bopaiah,Adv.)

v.

Defendant:-

Smt.A.Pushpa,  
w/o.Sri.J.Arun Kumar,  
Aged about 51 years,  
R/at No.755, 5th Cross,  
3rd Block, 3rd Phase,  
Banashankari III Stage,  
Bengaluru - 560 085.

(By Sri.Amaresh A.Angadi, Adv.)

Date of institution of the suit : 09.06.2015

Nature of the suit	:	Ejectment, Arrears of Rents and Damages
Date of commencement of Recording of the evidence	:	29.03.2016
Date on which the Judgment was pronounced	:	17.04.2018
Total Duration	:	Years Months Days 02 10 08

(P.SRINIVASA)  
XLII ADDL., CITY CIVIL & SESSIONS JUDGE,  
BENGALURU.

#### JUDGEMENT

The plaintiffs have filed the above suit for ejectment, arrears of rents, damages and costs.

#### 2. The plaintiffs' case in brief as under:-

The plaintiffs are the absolute owners of the suit schedule property. The defendant is the tenant under the plaintiffs vide., Rental Agreement dated 11.10.2010 on a monthly rent of Rs.40,000/- for a period of 11 months and has paid a sum of Rs.4,00,000/- towards security deposit to the plaintiffs herein. The defendant had agreed to pay the electricity and water charges as per bills. Both parties had agreed to renew the lease period by mutual consent and defendant had agreed to pay Judgement enhanced rent at the rate of 5% on the last paid rent. The defendant had undertaken to use the suit schedule property for residential purpose only and not to utilize the suit property for running business, godown, self-employment or non-residential purposes. The defendant is a chronic defaulter in paying the rents. The defendant failed to pay enhanced rate of rent as agreed and continued to pay rents at the rate of Rs.40,000/- per month. The defendant is liable to pay a sum of Rs.13,08,600/- towards arrears of rents, which is calculated based on the enhanced rent at the rate of 5% for 11 months commencing from 15.09.2010 upto 15.03.2015. The defendant is also utilizing the suit schedule property for non-residential purposes and has allowed her son namely, Yash, a Cine Actor, to run his office in the suit schedule property and has erected huge cut-outs in front of the suit schedule property, in violation of terms of the Rental Agreement and also causing nuisance to

the neighbours. The defendant is also running a chit fund business illegally in the suit schedule property. In spite of repeated requests, the defendant failed to pay the arrears of rents and threatened the plaintiffs with dire consequences. On 23.03.2015, the plaintiffs issued legal notice to the defendant terminating the tenancy of the defendant and called upon the defendant to pay arrears of rents and also demanded the defendant to hand over vacant Judgement possession of the suit property after lapse of 15 days from the date of receipt of the said notice. The said notice returned with postal endorsement as 'not claimed'. The defendant is aware of the said notice and has failed to comply with the terms and conditions of the said notice. After termination of tenancy, the defendant is liable to pay damages for use and occupation of the suit schedule property at the rate of Rs.60,000/- per month from 08.06.2015 till the date of delivering the vacant possession of the suit schedule property to the plaintiff. The defendant is liable to pay Rs.21,37,972.50 towards arrears of rents and damages as on the date of filing of the suit. Hence, the plaintiffs have filed the above suit.

3. In response to the suit summons, the defendant has appeared before the court through her counsel and has filed the written statement. In the written statement, the defendant has contended that on 01.10.2010, the defendant approached the plaintiffs and requested the plaintiffs to lease the schedule property but, the plaintiffs informed the defendant that the premises is still to be completed and as they are in need of funds to complete it and it would not be possible to rent it out to the defendant. Further, the plaintiffs also stated that if the defendant is interested in completing the suit schedule property and furnishing the same, the plaintiffs would lease the suit schedule Judgement property and based on the negotiations, the suit schedule property was leased to the defendant on oral agreement and lease commenced from 01.10.2010 and the defendant paid advance amount of Rs.4,00,000/- to the plaintiffs on 11.10.2010. The defendant has completed the construction and furnished the house based on the authorization given by the plaintiffs through construction agency and has spent Rs.12,50,000/- towards construction of compound wall, sump tank and overhead tank, roof top flooring, painting the entire building inside and outside, installing the sanitary fittings such as taps and pipes, completing the sanitary works and installing the electricity fittings such as fans, geezers and tube lights etc. After completion of said works, the plaintiffs promised the defendant that said amount incurred by her shall be adjusted towards the rent in the future days. But the plaintiffs have failed to do so. The defendant has paid the rent regularly to the plaintiffs. On 10.08.2014, the plaintiffs approached the defendant and informed to vacate the suit schedule property and the defendant requested the plaintiffs to pay the amount spent on completion of construction work along with interest and also requested to pay the advance amount paid by the defendant. On 30.08.2014, the defendant was ready to hand over the keys to the plaintiffs. But, the plaintiff was unable to pay the advance amount and amount spent on completion of Judgement the suit schedule property and requested the defendant to continue for a period of another three years till the advance and amount spent on completion of the said premises is adjusted. Therefore, the defendant continued in possession of the suit schedule property. The defendant has claimed counter claim to the tune of Rs.12,50,000/- along with interest at the rate of 18% p.a., in total Rs.23,75,000/- spent towards completion of the suit schedule property and also claimed refund of advance amount paid by the defendant to the plaintiffs. The plaintiffs have not

terminated the tenancy as per law. Hence, prayed that suit may be dismissed with costs and counter claim may be decreed.

4. The plaintiffs have filed rejoinder and have denied defendant's counter claim. The plaintiffs have denied the defendant's averment that she has completed construction of the suit schedule property as per authorization given by the plaintiffs and the plaintiffs are liable to pay counter claim. Hence, prayed that counter claim of the defendant may be rejected.

5. On the basis of above pleadings, below mentioned issues arise for consideration:-

### ISSUES

1. Whether the plaintiffs prove that the defendant is liable to quit and deliver the vacant possession of the suit property to the plaintiffs?

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2. Whether the plaintiffs prove that the defendant is liable to pay a sum of Rs.21,37,972.50 towards arrears of rents, damages and legal charges as stated in para-9 of the plaint along with interest at the rate of 24% p.a. from the date of the suit till the payment?

3. Whether the plaintiff is entitled for future damages from the date of the suit? If so, at what rate?

4. What order or decree?

### ADDITIONAL ISSUES

1. Whether the plaintiffs prove that the plaintiffs have terminated the tenancy as per law?

2. Whether the defendant proves that the premises was incomplete and plaintiffs orally agreed and authorized the defendant to complete the construction of the compound wall, sump tank and overhead tank, roof top flooring including materials, flooring near the compound wall, paint including labour and the defendant has completed the above construction work and also installing the sanitary fittings and electricity fittings as contended in the counter claim?

3. Whether the defendant proves that plaintiffs are liable to pay a sum of Rs.12,50,000/- i.e., amounts spent towards the construction of the compound wall, sump tank and overhead tank, roof top Judgement flooring including materials, flooring near the compound wall, paint including labour and the defendant has completed the above construction work and also installing the sanitary fittings and electricity fittings as contended in the counter claim?

4. Whether the defendant proves that the plaintiffs are liable to pay interest at the rate of 18% p.a. as claimed in the counter claim?

5. Whether the defendant proves that the plaintiffs are liable to refund the advance amount paid by the defendant?

6. Whether the court fee paid by the defendant is proper?

6. To prove the case of the plaintiff, plaintiff no.2 examined as PW-1 and marked Ex.P1 to P8. The defendant examined herself as DW-1 and examined one witness as DW-2 and got marked Ex.D1 to D7.

7. Heard arguments. The learned counsel for the plaintiffs has relied upon the following citations:

1. AIR 2002 ALLAHABAD 212, in the case of Union of India and another v. Sudarshan Lal Talwar.

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2. AIR 1971 ALLAHABAD 372, in the case of Smt.Amina Khatoon and others v.

Smt.Johra Bibi and others.

3. 1989(3) KAR.L.J. 85 - in the case of M/s.Cool All Corporation and others v.

Miss Jane A.Vaz.

4. ILR 2004 KAR 2864, in the case of M/s.Khadelwal Brothers Co. Ltd., v.

G.S.Nisar Ahmed.

5. 2007(1) Kar.L.J. 380, in the case of M.C.Mohammed v. Smt.Gowramma (DB)

6. LAWS (DLH - 1994-2 -73, in the case of P.S.Bedi v. Project and Equipment Corporation of India Limited.

The learned counsel for the defendant has relied upon the following citations:

1. AIR 2010 (NOC) 921 (P. & H.) in the case of Rama Nand v. Mulakh Raj and another.

2. (2001) 6 SUPREME COURT CASES 512, in the case of Kewal Chand Mimani (D) by LRs. v. S.K.Sen and others.

3. AIR 2013 KARNATAKA 165, in the case of Smt.Bharathi Shetty v. B.Hanuman-thap.

4. AIR 2016 SUPREME COURT 4038, in the case of M/s.Park Street Properties (Pvt) Limited v. Dipak Kumar Singh and another.

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5. ILR 1991 KAR 1608, in the case of M/s.Bharathi Family Trust v.

Dr.B.Doraiswamy Naidu.

8. My findings on the above said issues are as follows:-

Issue No.1:-	In the Affirmative.
Issue No.2:-	Partly in the Affirmative.
Issue No.3:-	In the Affirmative.
Addl. Issue No.1:-	In the Affirmative.
Addl. Issue No.2:-	In the Negative.
Addl. Issue No.3:-	In the Negative.
Addl. Issue No.4:-	In the Negative.
Addl. Issue No.5:-	In the Affirmative.
Addl. Issue No.6:-	In the Affirmative.
Issue No.4:-	As per final order. for the following:-

### REASONS

9. Issue Nos.1 to 3 & Additional Issue Nos.1 to 5:-

These issues are taken up together for consideration to avoid repetition of facts, evidence and convenience.

PW-1 in her examination-in-chief has stated that the plaintiffs are the absolute owners of the suit schedule property and they have purchased the same vide., registered Sale Deed 04.09.2010. In support of the same, PW-1 has produced original Sale Deed dated 04.09.2010 at Ex.P1. Ex.P1 is the original registered document hence, admissible in evidence. Ex.P1 is not Judgement disputed by the defendant. The evidence of PW-1 regarding execution of Ex.P1 is sufficient to prove the same. From the recitals of Ex.P1, it clearly goes to show that the plaintiffs have purchased the suit schedule property for valuable consideration from their vendors. The plaintiffs have acquired title over the suit schedule property vide., Ex.P1. It is pertinent to note that, the defendant is not claiming any title over the suit schedule property. Therefore, contention of the plaintiffs that they are the absolute owners of the suit schedule property has to be accepted.

10. PW-1 in her examination-in-chief has stated that after negotiations, the suit schedule property was leased out to defendant for 11 months, on a monthly rent of Rs.40,000/- and defendant paid a

sum of Rs.4,00,000/- towards security deposit and executed Rental Agreement on 11.10.2010 in favour of the plaintiffs herein. Further, has stated that lease period can be extended by mutual consent and the defendant agreed to pay enhanced rent at the rate of 5% on the last paid rent, upon every such renewal of lease. Further, PW-1 has stated that the said original Rental Agreement is in the custody of the defendant herein. Per contra, DW-1 in her examination-in-chief has stated that suit schedule property was leased to the defendant on oral agreement and lease commenced from 01.10.2010 on a monthly rent of Rs.40,000/- and the defendant paid advance amount of Judgement Rs.4,00,000/- to the plaintiffs on 11.10.2010. The defendant says that as per oral agreement she is the tenant under the plaintiffs and there is no written rental agreement as contended by the plaintiffs. Per contra, DW-1 in her cross-examination admits as follows:-

".....zÁ<sup>a</sup>Á , ÀévÀÛ£ÀÄß "ÁrUÉUÉ vÉUÉzÀÄPÉÆ¼Àî®Ä ¢Á<sup>a</sup>ÄÄ<sup>a</sup>Á¢UÀ¼À PÀqÉ-ÄAzÀ "ÁrUÉ PÀgÁgÄÄ ¥ÀvÀæ<sup>a</sup>ÀiÁrPÉÆAr¢ÝÁgÁ JAzÀgÉ ,ÁQë °ÉzÄÄ JAzÄÄ °ÉÄ¼ÄÄvÁÛgÉ. PÀgÁgÄÄ ¥ÀvÀæ £À£Äß °ÀwÛgÀ EzÉ ¥ÄÄ£Äß ,ÁQë £À£Äß °ÀwÛgÀ E®è JAzÄÄ °ÉÄ¼ÄÄvÁÛgÉ. AiÀÆ<sup>a</sup>À DzSÁgÄzÀ<sup>a</sup>ÉÄÄ-É ¢Á<sup>a</sup>ÄÄ "ÁrUÉAiÄÄ£Äß PÉÆqÄÄwì¢ÝÁgÁ JAzÀgÉ ,ÁQë PÀgÁgÄÄ EzÉ £Ä<sup>a</sup>ÄÄ °ÀwÛgÀ E®è C<sup>a</sup>ÄgÀ °ÀwÛgÀ EzÉ JAzÄÄ °ÉÄ¼ÄÄvÁÛgÉ. PÀgÁjUÉ M'àPÆ É AqÄÄ £À£ÄÄ ,À»<sup>a</sup>ÀiÁrzÉÝÄ£É....."

The defendant in her cross-examination evidence admits execution of Rental Agreement and existence of Rental Agreement. Further, the defendant admits that Rental Agreement is in her custody. The defendant in one breath says that as per oral agreement the defendant is the tenant under the plaintiffs and in another breath she says that she has executed the Rental Agreement. The defendant is trying to blow hot and cold simultaneously. Therefore, adverse inference has to be drawn against the defendant herein. Therefore, contention of the plaintiffs that the defendant has entered into Rental Agreement Judgement and said Rental Agreement is in the custody of the defendant has to be accepted. It is pertinent to note that, the defendant in her written statement and evidence admits monthly rent of Rs.40,000/- and payment of security deposit of Rs.4,00,000/- to the plaintiffs herein. There is no dispute regarding monthly rent of Rs.40,000/- payable by the defendant to the plaintiffs and security deposit of Rs.4,00,000/- paid by the defendant to the plaintiffs herein. Advocate for the defendant argued that the plaintiffs have not produced the Rental Agreement before this court therefore, the plaintiffs have failed to prove the tenancy as contended in the plaint. It is pertinent to note that, the defendant in her cross-examination evidence admits execution of Rental Agreement, monthly rate of rent, security deposit amount and also existence of tenant and landlord relationship. Therefore, non-production of Rental Agreement by the plaintiffs is not fatal to plaintiffs' case. The admissions on the part of the defendant are sufficient to prove the existence of landlord and tenant relationship between the parties. Hence, above argument of the defendant's counsel falls to ground.

11. PW-1 has stated that the defendant is liable to pay enhanced rent at the rate of 5% on the last paid rent, upon every such renewal of lease. It is pertinent to note that, the plaintiffs herein have not produced any documentary evidence in their Judgement evidence to show that defendant had agreed to pay enhanced rent at the rate of 5% on the last paid rent, upon every such renewal of lease. The defendant in her cross-examination has not admitted that she had agreed to pay enhanced rent

at the rate of 5%. The plaintiffs in their plaint admit that the defendant was not paying enhanced rate of rent of 5% on the last paid rent, upon every such renewal of the lease. Therefore, contention of the plaintiffs that the defendant is liable to pay enhanced rent at the rate of 5% on the last paid rent cannot be accepted.

12. PW-1 in her evidence has stated that the defendant is a chronic defaulter in paying the rents and the defendant is liable to pay rents as shown herein below:

Amount in Sl.

No.	Description	INR
1.	Rents covering from 16.10.2010 till 15.09.2011 at the rate of Rs.40,000/- per month.	Rs.4,40,000.00
2.	Rents covering from 16.09.2011 till 15.08.2012 at the rate of Rs.42,000/- per month.	Rs.4,62,000.00
3.	Rents covering from 16.08.2012 till 15.07.2013 at the rate of Rs.44,100/- per month.	Rs.4,85,100.00
4.	Rents covering from 16.07.2013 till 15.06.2014 at the rate of Rs.46,300/- per month.	Rs.5,09,300.00
5.	Rents covering from 16.06.2014 till 15.04.2015 at the rate of Rs.48.620.25 per month. Rs.4,86,202.50	Judgement Per contra, DW-1 in her evidence has stated that she paid the rents regularly to the plaintiffs and not liable to pay any arrears of rents to the plaintiffs. It is pertinent to note that, PW-1 in her cross-examination admits that "till the year 2013, April month rentals were paid regularly by the defendant". From the said admission of PW-1, it can be held that the till April, 2013 the defendant has paid the rentals to the plaintiffs regularly.

Therefore, contention of the plaintiffs that from 16.10.2010 the defendant is liable to pay arrears of rents cannot be accepted. Therefore, the plaintiffs are barred from claiming arrears of rents from 16.10.2010 till April, 2013. Further, the plaintiffs have claimed arrears of rents from May, 2013 till 15.04.2015. The plaintiffs have produced Bank Statement of Account before this court at Ex.P4. From Ex.P4, it clearly goes to show that the defendant has not paid the rents to the plaintiffs regularly. The defendant has not produced any documentary evidence to show that she has paid the rents for the period from May, 2013 till 15.04.2015. Therefore, adverse inference has to be drawn against the defendant herein. DW-1 in her evidence has stated that she has paid the rents by way of cash to second plaintiff's brother namely, K.Upendra Kumar. The defendant has not produced any documentary evidence before this court to show that she has paid rents by way of cash to second plaintiff's brother. Except self serving statement by the defendant, no material evidence is produced by the defendant. Hence, contention of the defendant that she has paid rents by way of



cash to second plaintiff's brother cannot be accepted. Advocate for the defendant argued that the plaintiffs have claimed arrears of rents for more than 3 years. Therefore, suit is barred by limitation. The plaintiffs have claimed arrears of rents from 16.10.2010 to 15.04.2015. The suit is filed on 09.06.2015. The plaintiffs are claiming arrears of rents for 4½ years. As per Article 52 of the Limitation Act, the plaintiffs are entitle only to recover arrears of rents for 3 years, from the date when the arrears become due. Therefore, the plaintiffs are entitle to recover arrears of rents for the period from May, 2103 till 15.04.2015 only. Hence, the defendant is liable to pay arrears of rents from May, 2013 till 15.04.2015. The plaintiffs have failed to prove that the defendant is liable to pay enhanced rent at the rate of 5% on the last paid rent. Therefore, the plaintiffs are entitle for the admitted monthly rent of Rs.40,000/-. Accordingly, the plaintiffs are entitle to recover arrears of rents from May, 2013 till 15.04.2015 at the rate of Rs.40,000/- per month.

13. The defendant has filed memo stating that she has paid rents for the period from January, 2017 to November, 2017. In support of the same, she has produced Bank Statement of Judgement Account at Ex.D7. From Ex.D7, it goes to show that after filing of the suit, the defendant has paid the above said amounts to the plaintiffs herein. The plaintiffs have not denied the above said payments in their evidence. Therefore, contention of the defendant that she has paid rents for the period from January, 2017 till November, 2017 has to be accepted. Advocate for the defendant argued that after filing of the suit the plaintiffs have accepted the rent, therefore plaintiffs have waived the termination notice. In AIR 2002 ALLAHABAD 212, in the case of Union of India and another v. Sudarshal Lal Talwar, wherein their lordships have held as under:-

"(A) - Transfer of Property Act (4 of 1882).

S.113 - Notice to quit - Waiver - Mere acceptance of rent after period of termination of tenancy - Does not amount to waiver - There must be some intention of waiver - Landlord actively prosecuting suit for ejectment filed by him - It cannot be inferred that notice has been waived."

From the above judgment it is clear that mere acceptance of rents after the period of termination of tenancy doesn't amount to waiver. Therefore, the above argument of defendant's counsel is not sustainable.

14. DW-1 in her evidence has stated that suit schedule property was incomplete and she completed the construction Judgement through agency by spending Rs.12,50,000/-. Therefore, the plaintiffs are liable to pay the said amount to the defendant. DW.1 says that construction of the building was incomplete. Per contra, the photographs produced by the plaintiffs before this court at Ex.P2, clearly goes to show that the construction of the building was completed at the time of House Warming Ceremony. DW-1 in her cross-examination also admits the said photographs produced at Ex.D2. More over, the defendant has not produced any material evidence before this court to show that building was incomplete as contended in her written statement. The defendant has not produced any documentary evidence before this court to show that the plaintiffs had agreed and authorized the defendant to complete the construction and agreed to pay the amount spent by the defendant towards completion of the building. Except self serving statement of DW-1, no documentary evidence is produced by the defendant to prove the above said contention. Therefore, adverse

inference has to be drawn against the defendant herein. Civil Contractor is examined as DW-2. DW-2 has stated that he has completed the work of the suit schedule property and he has issued quotations and bills as per Ex.D1 to D6. It is pertinent to note that, Ex.D1 to D6 are computer print out taken on letter head of Srinivasa Construction. DW-2 has not produced any documentary evidence to show that Judgement Srinivasa Construction belongs to him and he has obtained necessary license from competent authority to carry out construction business. DW-2 admits that he has not mentioned about the receipt of payment of Rs.12,50,000/- from defendant in his income tax returns. The evidence of DW-2 is inconsistent and cannot be relied upon. Therefore, adverse inference has to be drawn against DW-2 herein. Hence, Ex.D1 to D6 cannot be relied upon. The defendant has failed to prove that she has completed the construction by spending Rs.12,50,000/- as contended by her. Therefore, the defendant is not entitle for any interest at the rate of 18% p.a. on the said amount as claimed in her counter claim. Advocate for the defendant argued that PW-1 in her cross-examination has admitted that photographs produced by her doesn't show the construction of compound wall. It is pertinent to note that, PW-1 in her cross-examination has categorically stated that the structure seen in the photographs itself is the compound wall. From the entire evidence of PW-1, it clearly goes to show that PW-1 has not admitted that compound wall was not constructed by her. Therefore, the above argument of defendant's counsel cannot be accepted.

15. PW-1 in her evidence has stated that she has issued legal notice on 23.03.2015 as per Ex.P6 to the defendant and called upon the defendant to pay arrears of rents and terminated Judgement the tenancy and called upon the defendant to hand over vacant possession of the suit property to the plaintiffs herein. Further, has stated that since the door was locked, the postal authorities had left intimation to the defendant on 24.03.2015, 25.03.2015 and 26.03.2015. But, the defendant failed to take the said notice therefore, the notice was returned to the plaintiffs with shara "not claimed". The plaintiffs have produced copy of the said legal notice, postal receipt, returned RPAD cover at Ex.P6 to P8 herein. Ex.P6 to P8 are marked without any objections hence, admissible in evidence. From Ex.P6, it goes to show that the plaintiffs have issued legal notice on 23.03.2015, calling upon the defendant to pay the arrears of rent and also terminated the tenancy. Ex.P7 is the postal receipt and goes to show that said notice was sent by RPAD to the defendant herein. Ex.P8 is the returned RPAD cover containing postal endorsement to the effect that intimation was delivered to the defendant and RPAD cover returned as "not claimed". It is pertinent to note that, DW-1 in her cross-examination admits the receipt of said notice. Therefore, it can be held that notice is duly served on the defendant herein. Advocate for the defendant argued that the plaintiffs have failed to examine the postman to prove the postal shara before this court and further contended that legal notice is not served on the defendant herein. It is pertinent to note that, DW-1 in her cross-

Judgement examination has admitted the receipt of legal notice. In view of said admission, the above argument of defendant's counsel doesn't survive. The plaintiffs have issued legal notice as per Section 106 of Transfer of Property Act and have terminated the tenancy lawfully. The defendant has not vacated the suit schedule property inspite of termination of tenancy. Therefore, the defendant is bound to vacate and hand over vacant possession of the suit property to the plaintiffs herein.

16. PW-1 in her evidence has stated that inspite of termination of tenancy, the defendant has failed to vacate and hand over vacant possession of the suit property to the plaintiffs herein hence, the

defendant is liable to pay damages for the use and occupation of the suit schedule property at the rate of Rs.60,000/- per month from 08.06.2015 till the date of delivery of vacant possession of the suit property. It is pertinent to note that, the plaintiffs have not produced any material evidence to show that suit schedule property is capable of fetching rent at the rate of Rs.60,000/- per month. The defendant is paying the rent at the rate of Rs.40,000/- per month. Therefore, taking into consideration the facts and circumstances of the case, it is fit award damages at the rate of Rs.40,000/- per month towards use and occupation of the suit property from 08.06.2015 till the date of delivery of vacant possession of the suit property.

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17. The plaintiffs have claimed interest at the rate of 24% p.a. from the date of suit till payment. The plaintiffs have not produced any documentary evidence before this court to show that the defendant had agreed to pay interest at the rate of 24% p.a. on the arrears of rent. Therefore, contention of the plaintiffs that the defendant is liable to pay interest at the rate of 24% p.a. cannot be accepted. Taking into facts and circumstances of the case, it would be reasonable to award simple interest at the rate of 9% p.a. on the outstanding amount from the date of suit till realization. The defendant has contended the plaintiffs are liable to refund advance amount of Rs.4,00,000/- paid by the defendant to the plaintiffs. It is pertinent to note that, the plaintiffs in their pleadings and evidence admit receipt of Rs.4,00,000/- as security deposit from the defendant herein. Therefore, the plaintiffs are liable to refund the security deposit of Rs.4,00,000/- to the defendant herein. Since, the defendant is liable to pay arrears of rent as discussed hereinabove, the security deposit amount of Rs.4,00,000/- shall be adjusted towards the payment of arrears of rent and damages.

18. The learned counsel for the plaintiffs has relied upon the following citations:

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1. AIR 1971 ALLAHABAD 372, in the case of Smt.Amina Khatoon and others v.

Smt.Johra Bibi and others.

2. 1989(3) KAR.L.J. 85 - in the case of M/s.Cool All Corporation and others v. Miss Jane A.Vaz.

3. ILR 2004 KAR 2864, in the case of M/s.Khadelwal Brothers Co. Ltd., v. G.S.Nisar Ahmed.

4. 2007(1) Kar.L.J. 380, in the case of M.C.Mohammed v. Smt.Gowramma (DB)

5. LAWS (DLH - 1994-2 -73, in the case of P.S.Bedi v. Project and Equipment Corporation of India Limited.

The learned counsel for the defendant has relied upon the following citations:

1. AIR 2010 (NOC) 921 (P. & H.) in the case of Rama Nand v. Mulakh Raj and another.
2. (2001) 6 SUPREME COURT CASES 512, in the case of Kewal Chand Mimani (D) by LRs. v. S.K.Sen and others.
3. AIR 2013 KARNATAKA 165, in the case of Smt.Bharathi Shetty v. B.Hanuman-thap.
4. AIR 2016 SUPREME COURT 4038, in the case of M/s.Park Street Properties (Pvt) Limited v. Dipak Kumar Singh and another.

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5. ILR 1991 KAR 1608, in the case of M/s.Bharathi Family Trust v.

Dr.B.Doraiswamy Naidu.

The above said citations are not applicable to the facts and circumstances of the present case. In the light of the above discussion, I answer Issue Nos.1 & 3 and Additional Issue Nos.1 & 5 in the Affirmative, Issue No.2 partly in the Affirmative and Additional Issue Nos.2 to 4 in the Negative.

#### 19. Additional Issue No.6:-

The plaintiffs have contended that the defendant has not properly valued the counter claim and court fee paid by the defendant is insufficient. It is pertinent to note that, by way of counter claim the defendant has claimed Rs.23,75,000/- in all and has paid court fee of Rs.1,30,000/-. As per Karnataka Court Fees and Suits Valuation Act Schedule I Article I (ix), the defendant is liable to pay court fee of Rs.1,24,625/-. The defendant has paid Rs.1,30,000/- court fee on the counter claim. The valuation made by the defendant on the counter claim and court fee paid by the defendant on the counter claim is correct. Hence, the contention of the plaintiffs that the defendant has paid insufficient court fee falls to ground. In the light of the above discussion, I answer Issue No.6 in the Affirmative.

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#### 20. Issue No.4:-

In view of my above discussion, I proceed to pass the following:

ORDER Suit of the plaintiffs is partly decreed with costs. The defendant is directed to vacate and hand over vacant possession of the suit schedule property to the plaintiffs

within 3 months from the date of the decree.

The defendant is liable to pay Rs.9,60,000/- to the plaintiffs (i.e., arrears of rents from May, 2013 till 15.04.2015 at the rate of Rs.40,000/- per month) within 3 months from the date of the decree.

Further, the defendant is liable to pay damages at the rate of Rs.40,000/- per month from 08.06.2015 till the date of delivery of vacant possession of the suit property.

Further, the defendant is liable to pay simple interest at the rate of 9% p.a. on the outstanding amount from the date of suit till realization.

Counter claim of the defendant is partly allowed. The plaintiffs are liable to pay Rs.4,00,000/- i.e., security deposit amount to the defendant and same shall be deducted in the decreetal amount. Further, the rents paid by the defendant for the period from January, 2017 till November, 2017 shall be taken Judgement into credit by the plaintiffs and deduction shall be given in the decreetal amount.

Draw decree accordingly.

(Dictated to the Judgement Writer, typed by her, the transcript thereof corrected and then pronounced by me, in the open court, this the 17th day of April 2018) (P.SRINIVASA) XLII Addl., City Civil & Sessions Judge, Bengaluru.

ANNEXURE I. List of witnesses examined on behalf of:

(a) Plaintiff's side:

PW.1 - Dr.Vanaja

(b) Defendants' side:

DW.1 - Smt.A.Pushpa DW.2 - Sri.Hemanth II. List of documents exhibited on behalf of:

(a) Plaintiff's side:

Ex.P1 : Original Sale Deed dated 04.09.2010 Ex.P2 : 33 Photos Ex.P3 : 1 CD Ex.P4 : Statement of Account Ex.P5 : 3 Digital Photos Ex.P6 : Copy of Legal Notice Ex.P7 : Postal Receipt Ex.P8 : Returned Postal Cover Judgement

(b) Defendant's side:

Ex.D1	: Quotation dated 05.10.2010
Ex.D2	: Approved Quotation dated

07.10.2010

Ex.D3 to 6

: 4 Bills

Ex.D7

: Statement of Account

XLII ADDL., CITY CIVIL & SESSIONS JUDGE  
BENGALURU.

SRINIVASA

KARNATAKA, o=GOVER

Judgement