

Smt.Sheela vs Sri.R.Dilip Kumar on 17 August, 2016

IN THE COURT OF THE XXX ADDL.CITY CIVIL &
SESSIONS JUDGE, BENGALURU CITY

DATED THIS THE 17th DAY OF AUGUST 2016

PRESENT: SRI. M.G.KUDAVAKKALIGER, B.Com.LLM.
XXX Addl.City Civil Sessions Judge,
Bengaluru.

O.S.NO.6659/2012

PLAINTIFFS/S.

1. Smt.Sheela,
W/o Sri Uday Lal.

2.Smt.Leela Devi,
W/o Late Chittar mal,
Both are at No.1781, 18th
A Main Road, 4th T Block,
Jayanagar, Bengaluru-560 045.

(By Pleader Sri.Kumar & Kumar
Associates , adv.)

/VS/

DEFENDANT/S.

Sri.R.Dilip Kumar,
S/o Late A. Ramachandra
Rao, No.124, 4th Floor,
Ashirwad Apartments,
Palace Cross Roads,
Bengaluru-560 020.
(By Pleader Sri. C.S.C., Adv.)

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O.S.No.6659/2012

DATE OF INSTITUTION

14-09-2012

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 17-12-2015

DATE ON WHICH THE JUDGEMENT
WAS PRONOUNCED 17-08-2016

TOTAL DURATION :	YEAR/S	MONTH/S	DAY/S
	3	11	3

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

3 0.S.No.6659/2012

JUDGEMENT

1. Plaintiffs have filed this suit against the defendant to quite and deliver the vacant possession of the suit schedule premises to the plaintiffs and to direct the defendant to pay arrears of rent of Rs.2,20,500/- and also to pay damages at the rate of Rs.70,000/- p.m. from the date of termination of tenancy till the date of vacating and handing over the vacant possession of the suit schedule property to the plaintiffs.
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 31-01-2015 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 plaintiffs' case:

That the plaintiffs are the absolute owners of the premises bearing No.1317, Bhikshu Tower, Ring Road, J.P.Nagar, Bengaluru-560 078 consists of Basement, ground, 1 and 2nd floors and a Terrace. The defendant is the tenant under rental agreement dtd. 17-07-2006 for a period of 3 years on an initial monthly rent of Rs.55,000/- and defendant has paid Rs.6,50,000/- as security deposit amount. Due to recession, a fresh rental agreement has been executed on 1-4-2009 for a period of 11 months whereby the security deposit amount has been reduced to Rs.5,00,000/- and rent was also reduced and the revised rent was fixed at Rs.35,000/- p.m. and the remaining amount of security deposit of Rs.1,50,000/- was adjusted towards the arrears of rent at the rate of Rs.35,000/- p.m. at the request of the defendant. During the period of initial 11 months, the defendant was a chronic defaulter in payment of monthly rent and after expiry of 11 months, the plaintiffs requested the defendant to

vacate the schedule premises for which the defendant agreed and orally requested to grant one year time to vacate the schedule premises. Accordingly, on humanitarian ground the plaintiffs agreed and the rent was increased from Rs.35,000/- to Rs.36,750/- and defendant has paid rent of Rs.36,750/- p.m. up to March 2011. After expiry of one year when the defendant was requested to vacate the schedule premises, there was no response from him and after repeated requests and demands instead of vacating the schedule premises the defendant sent a letter dtd.20-7-2011 stating that he has accepted the request of the plaintiff to increase the rent from Rs.36,750/- to Rs.45,000/- and sent two cheques to the plaintiffs. Since there was no such request from the plaintiffs, plaintiffs returned those cheques. But, defendant has sent a letter dtd.9-9-2011 directing the plaintiffs to execute a fresh lease agreement and also issued another two cheques towards part arrears of monthly rent and the same were returned by the plaintiff. The defendant is in unauthorized occupation of the schedule premises from April 2011.

The plaintiffs got issued a legal notice dtd.5-11-2011, the defendant has given an untenable reply dtd.24-11-2011. The plaintiffs averred that they require the schedule premises for their own use and occupation. The defendant is squatting on the schedule premises inspite of termination of the tenancy and is liable to pay damages, the defendant is due Rs.2,20,500/- towards the unauthorized occupation from April 2011 to October 2011 at the rate of Rs.36,750/- p.m. Plaintiffs came to know that defendant is attempting to lease the suit schedule premises to third person as if he is the absolute owner. Hence, plaintiffs are hereby constrained to file this suit and prayed to decree the suit with costs.

3. After registration of the suit, suit summons was issued to the defendant. Defendant has put appearance through the advocate and filed written statement contending inter-alia that the suit filed by the plaintiffs is false, frivolous and vexatious and the same may be dismissed with costs. The defendant admits the relationship of landlord and tenant and terms of the initial lease agreement 17-7-2006. The defendant admitted the execution of the lease deed dtd.1-

4-2009 but defendant contended that the period of tenancy was not for 11 months, but for further period of 3 years extendable on the mutual consent of both the parties. The defendant has denied the averments made at para 6 of the plaint. He further contended that plaintiffs have threatened the defendant and his employees to vacate and quit the premises unless the defendant pay the exorbitant rental of Rs.75,000/-p.m. He was regular in payment of rent every month. The defendant further contended that the husband of plaintiff No.1 Sri.Udayalal and their children on 27-5-2012 at 10.00 a.m. barged into the suit schedule premises and ransacked the shop by throwing out on the road the curtain materials, bed covers etc. valued in lakhs of rupees which forced the defendant to lodged a complaint before the S.I. of Police of J.P.Nagar P.S. on the same day and with the help of the police, defendant has to regain into his shop. The averments made at para Nos.7 to 10 & 13 are all denied as false. Plaintiff got issued a legal notice dtd.5-11-2010 for the first time and the same was suitably replied after lapse of pretty length of time and got issued rejoinder on 2-4-2012.

Defendant denied the contents of plaint para Nos.11, 12 & 14 as false. In spite of sending the cheques as per the terms and conditions of the lease agreements, plaintiffs are not receiving the same and sending them back to the defendant. The suit of the plaintiff is not maintainable in view of the averments made at paras 11 and 12 of the plaint. The plaintiffs have filed this suit just to harass and humiliate the defendant. The plaintiffs have not approached this Court with clean hands. The suit is barred by law of limitation and there is no cause of action for the plaintiff to file this suit. Hence, it is requested to dismiss the suit with costs.

4. After filing of the suit, as per the Order of this Court, prayer column of the plaint was amended. Initial prayer Nos.(b), (c) & (d) have been deleted and fresh prayer Nos.(b) & (c) have been included and prayer No.(e) has been renumbered as prayer No.(d). Amendment carried out on 29-4-2015 and amended plaint was furnished on 29-6-2015. Additional written statement was not filed. Case posted for plaintiff's evidence.

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 plaintiffs prove that the suit premises were let out on 17/7/2006 to the defendant tenant past three years on monthly rentals of Rs.55,000/- and security deposit of Rs.6,50,000/-?
2. Whether they further prove that defendant has executed fresh rental agreement on 1/4/2009 for 11 months with revised monthly rentals of Rs.35,000/- and security deposit of Rs.5,00,000/-?
3. Whether they further prove that defendant committed default in payment of rentals and in spite of request demands?
4. Whether they further prove that they have terminated the tenancy by issuing dtd:05/11/2011 by defendant failed to vacate the premises?
5. Whether they further prove that he is entitled for arrears of rentals of Rs.2,20,500/-?
6. Whether suit is barred by time?
7. What order or decree?

6. In order to substantiate the case made out by the plaintiffs, power of attorney holder of the plaintiffs 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 7 documents as per Ex.P.1 to P.7. In order to rebut the case of the plaintiffs, the defendant has entered into the witness box and has filed his affidavit evidence and got marked as many as 6 documents as per Ex.D1 to D.6. 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: In the affirmative.

Issue No.3: In the affirmative.

Issue No.4: In the affirmative.

Issue No.5: In the affirmative.

Issue No.6: In the negative.

Issue No.7: As per the final order for the following:

REASONS

9. ISSUE NOS.1 & 2: As Issue Nos.1 & 2 are interlinked, discussion on one issue has its direct bearing on the discussion on another issue. In view to avoid repetition of discussion and facts of evidence, I am going to consider these issues jointly.

10. The brief facts of the plaintiffs' case are that the plaintiffs are the absolute owners of the suit schedule premises. The defendant is the tenant under rental agreement dtd. 17-07-2006 for a period of 3 years on an initial monthly rent of Rs.55,000/- and defendant has paid Rs.6,50,000/- as security deposit amount. Due to recession, a fresh rental agreement has been executed on 1-4-2009 for a period of 11 months whereby the security deposit amount has been reduced to Rs.5,00,000/- and rent was also reduced and the revised rent was fixed at Rs.35,000/- p.m. and the remaining amount of security deposit of Rs.1,50,000/- was adjusted towards the arrears of rent at the rate of Rs.35,000/- p.m. at the request of the defendant. During the period of initial 11 months, the defendant was a chronic defaulter in payment of monthly rent and after expiry of 11 months, the plaintiffs requested the defendant to vacate the schedule premises for which the defendant agreed and orally requested to grant one year time to vacate the schedule premises. Accordingly, on humanitarian ground the plaintiffs agreed and the rent was increased from Rs.35,000/- to Rs.36,750/- and defendant has paid rent of Rs.36,750/- p.m. up to March 2011. After expiry of one year when the defendant was requested to vacate the schedule premises. But, the defendant sent a letter dtd.20-7-2011 stating that he has accepted the request of the plaintiff to increase the rent from Rs.36,750/- to Rs.45,000/- and sent two cheques to the plaintiffs. Since there was no such request from the plaintiffs, plaintiffs returned those cheques. But, defendant voluntarily has sent a letter dtd.9-9-2011 directing the plaintiffs to execute a fresh lease agreement and also issued another two cheques towards part arrears of monthly rent and the same were returned by the plaintiff. The

plaintiffs got issued a legal notice dtd.5-11-2011, the defendant has given an untenable reply dtd.24-11-2011. The plaintiffs averred that they require the schedule premises for their own use and occupation. The defendant is squatting on the schedule premises from April 2011 inspite of termination of the tenancy and is liable to pay arrears of rent, Rs.2,20,500/- from April 2011 to October 2011 at the rate of Rs.36,750/- p.m. and also liable to pay damages towards the unauthorized occupation and claimed Rs.70,000/- p.m. till handing over the vacant possession of the suit schedule property. Hence, plaintiffs are hereby constrained to file this suit and prayed to decree the suit with costs. After registration of the suit, suit summons was issued to the defendant. Defendant has put appearance through the advocate and filed written statement contending inter-alia that the suit filed by the plaintiffs is false, frivolous and vexatious and the same may be dismissed with costs. The defendant admits the relationship of landlord and tenant and terms of the initial lease agreement dtd.17-7-2006 and the lease deed dtd.1-4-2009, but defendant contended that the period of tenancy was not for 11 months, but for further period of 3 years extendable on the mutual consent of both the parties. He was regular in payment of rent every month. The defendant further contended that the husband of plaintiff No.1 Sri.Udayalal and their children on 27-5-2012 at 10.00 a.m. barged into the suit schedule premises and ransacked the shop, the defendant to lodged a complaint before the S.I. of Police of J.P.Nagar P.S. on the same day and with the help of the police, defendant has to regain into his shop. The averments made at para Nos.7 to 10 & 13 are all denied as false. Plaintiff got issued a legal notice dtd.5-11-2010 for the first time and the same was suitably replied after lapse of pretty length of time and got issued rejoinder on 2-4-2012.

11. Defendant denied the contents of plaint para Nos.11, 12 & 14 as false and contended that inspite of sending the cheques as per the terms and conditions of the lease agreements, plaintiffs are not receiving the same and sending them back to the defendant. The plaintiffs have filed this suit just to harass and humiliate the defendant. The plaintiffs have not approached this Court with clean hands. The suit is barred by law of limitation and there is no cause of action for the plaintiff to file this suit. Hence, it is requested to dismiss the suit with costs.

12. In order to substantiate their case, power of attorney holder of the plaintiffs has entered into witness box and filed his affidavit evidence as per P.W.1 and got marked as many as 7 documents as per Ex.P.1 to P.7. In the examination-in-chief P.W.1 reiterated all the averments made in the plaint and deposed that the suit schedule property is required for their personal use and occupation and defendant was the chronic defaulter in payment of rent regularly. Hence, they have filed this suit for ejectment and prayed to handover the vacant possession of the suit schedule property and has deposed that defendant has failed to pay the rent from April 2011 to October 2011 for Rs.2,20,500/- at the rate of Rs.36,750/- p.m. and prayed to decree the suit. The plaintiff has averred in the plaint and also P.W.1 deposed in his evidence that the plaintiffs are the absolute owners of the suit schedule premises. The defendant is the tenant under rental agreement dtd. 17-07-2006 for a period of 3 years on an initial monthly rent of Rs.55,000/- and defendant has paid Rs.6,50,000/- as security deposit amount. Due to recession, a fresh rental agreement has been executed on 1-4-2009 for a period of 11 months whereby the security deposit amount has been reduced to Rs.5,00,000/- and rent was also reduced and the revised rent was fixed at Rs.35,000/- p.m. and the remaining amount of security deposit of Rs.1,50,000/- was adjusted towards the arrears of rent at the rate of Rs.35,000/- p.m. at the request of the defendant. The defendant admits the relationship of landlord

and tenant and terms of the initial lease agreement dtd.17-7-2006 and the lease deed dtd.1-4- 2009, but defendant has disputed the period of tenancy was not for 11 months and contended that it is for a period of 3 years extendable on the mutual consent of both the parties. During the course of the evidence, the plaintiff has got marked the rental agreement dtd.1-4-2009 as per Ex.P.2. On careful perusal of the terms and conditions of the lease agreement, Clause-I of the lease agreement at page No.2 contains about the period of lease which runs as under:

"The tenancy shall be month to month tenancy according to English Calendar month commencing from 1st of every month and ending on the last day of the same month and shall be for a period of 11 months subject to renewal by mutual consent of both the parties for a further period."

13. On careful perusal of the Clause-I of the lease agreement dtd.1-4-2009 signed by both plaintiffs and defendant and agreed by present defendant, the present tenancy is the month to month tenancy commencing from 1st day of every month ending on the last day of the same month and shall be for a period of 11 months subject to renewal by mutual consent of both the parties for a further period. Therefore, the contentions taken up by the defendant in his written statement at para No.5 that the tenancy is for a period of 3 years is not sustainable. In view of the admission of the defendant in his written statement as well as in his cross-examination at page No.11 and 12, this Court is of the opinion that plaintiff has proved issue Nos.1 and 2. Hence, I answer issue Nos.1 and 2 in the affirmative.

14. ISSUE NOS.3: On the basis of the averments made in the plaint para No.6, this issue no.3 has been framed placing the burden on the plaintiff to prove the same. It has been admitted by the defendant also that fresh lease agreement has been executed between the plaintiffs and defendant on 1-4-2009 and due to recession terms of the agreement has been changed, rent was refixed at Rs.35,000/- p.m. and security deposit was fixed for Rs.5 lakhs, remaining amount of security deposit amount of Rs.1,50,000/- was adjusted towards the arrears of rent. Fresh lease commenced from 1st April 2009. After completion of 11 months, the plaintiff requested the defendant to vacate the suit schedule premises, but defendant prayed further enhancement of one more year to vacate the premises and rent was increased to Rs.36,750/- till March 2011. Defendant has also admitted the same. But, when plaintiff requested the defendant to vacate the suit schedule premises in the month of March 2011, defendant has not responded and not vacated the suit schedule premises. Thereafter, all of a sudden the defendant sent a letter dtd.20-7-2011 requesting the plaintiff to accept two cheques of Rs.45,000/- at an increased rate of rent for the month of May and June 2011, of which plaintiff not accepted and sought for enhanced rent and also continuation of tenancy. Thereafter, once again defendant has sent a letter dtd.9-9-2011 seeking the plaintiff to execute fresh lease agreement and sent another two cheques towards the part of arrears of monthly rent. These two letters addressed by the defendant to the plaintiff have been marked as per Ex.P.4 & 5. These two letters contain that there was an arrears of rent for the month of April, May and June 2011 and rent for the month of July and August 2011. These two letters clearly discloses that defendant has not paid the arrears of agreed rent as agreed between the plaintiffs and defendant from April to August 2011. No doubt, defendant has sent in all four cheques towards the rent for a particular period at the rate of Rs.45,000/- p.m. splitting the amount between Smt.Leela and Smt.Sheela Devi.

This rate of rent at the rate of Rs.45,000/- was not admitted by the plaintiffs for the alleged enhanced period from 1st April 2011. On the contrary, the plaintiffs sought vacation of the suit schedule premises from the defendant after expiry of 11 months and also enhanced period of one year which comes to an end after completion of March 2011. Hence, the plaintiffs have validly rejected the cheques issued by the defendant at the rate of Rs.45,000/- p.m. On careful perusal of the contents of Ex.P.4 & P.5, it clearly discloses that defendant was the chronic defaulter in payment of rent, and attempted to get a passive acceptance of the further period under the guise of enhanced rentals of which there is no material before this Court. In the instant case, the plaintiffs have sought for termination of tenancy on the ground that the suit schedule premises is required for personal use and occupation. Considering the question of hardship in the present case would not arise at all as that of Karnataka Rent Act. Hence, I answer issue No.3 in the affirmative.

15. ISSUE NO.4: This issue has been framed by my predecessor on the basis of the rival contentions taken up by the respective parties placing the burden on the plaintiffs to prove that they have validly terminated the tenancy by issuing legal notice dtd.5-11-2011. As per the provisions of Sec.105 to 117 of Transfer of Property Act, 1882, which governs the various tenancy. Sec.105 defines the definition of the lease and other related terms such as lessor, lessee and premium or rent. Sec.106 of the Transfer of Property Act, 1882 governs as to how the immovable property be terminated i.e. (i) lease from year to year or exceeding one year or reserving yearly rent terminable on the part of either lessor or lessee by six months written notice expiring with the end of the year of the tenancy,(ii) lease of immovable property 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. Sec.107 of the Transfer of Property Act, 1882, governs the terms as to how the lease of immovable property can be made. As per this provision lease of immovable property from year to year or from any term exceeding one year or reserving 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. The counsel for the defendant has argued that as per the lease agreement, Ex.P.2 Clause-13 three months notice is require to terminate the tenancy. However, in the termination notice issued by the plaintiff as per Ex.P.6 at para No.9, the counsel for the plaintiff has directed the defendant and called upon to vacate and deliver the vacant physical possession of the suit schedule property within three months from the date of receipt of the notice. Hence, the notice is bad in law. As provision of 15 days notice in case of termination of months to months tenancy or six months notice in case of yearly tenancy is of no consequence as Clause-13 of Ex.P.2 governs the plaintiffs and defendant and plaintiffs. However, Sub- Sec.3 of Sec.106 of Transfer of Property Act, 1882 mandates that notice under Sub-Sec.1 shall not be deemed to be invalid merely because period mentioned therein falls short of the period specified under that sub-section, where a suit or proceedings is filed after the expiry of period mentioned in that sub-section. Suit is not vitiated. For better appreciation I cull out the provisions of Sec.106 Clause-3 of Transfer of Property Act, 1882 which runs as under:

(3) A notice under sub-section(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.

The learned Counsel for the plaintiff has argued that after the amendment to Sec.106 of Transfer of Property Act, 1882, Clause-3 was introduced. As per the provisions of Clause-3 if the notice is short of the period specified in Sub- clauses-1, but the suit or proceedings is filed after the expiry of period mentioned in sub-section 1. The notice shall not be deemed to be invalid. The learned Counsel for the plaintiff relied on the rulings reported in the case of Shree Ram Urban Infrastructure Limited (Formerly known as Shree Ram Mills Ltd.) Vs. Court Receiver, High Court of Bomany1. Their Lordship of the Hon'ble Supreme Court held that:

(A) xxxx (B) Transfer of Property Act (4 of 1882) S.106 -

Eviction suit- Quit notice falling short of period specified - But suit filed 6 months after notice- Not invalid.

Para.16: --- The second point urged by Mr.Ranjit Kumar, learned Senior Counsel, is that the suit is bad with regard to Section 106 of the Transfer of property; Act. We have duly considered the said question and we find that the suit was filed after six months from the date of the notice issued under Sec.106 of Transfer of Property Act, 1882, by the Receiver and furthermore, after the amendment of Sec.106(3) which reads as follows:

1 AIR 2014 SC 2286 (3) A notice under sub-section(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.

We have noticed that the High Court duly considered the question of notice and correctly came to the conclusion that the Legislature wanted to plug the loopholes and to redress the mischief by making a change in the law. Therefore, if the notice is short of the period specified in Sub-section (1) but the suit or proceeding is filed after the expiry of the period mentioned in sub-section (1), the notice shall not be deemed to be invalid.

16. 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 others2 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 in 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.

(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 1206 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."

17. In view of these statutory provisions and the principles evolved by the Lordships of the Hon'ble Supreme Court and our own Hon'ble High Court, in the light of the facts of the present case, it clearly establishes that in this case, the notice was issued on 5-11-2011. The defendant has issued reply notice on 24-11-2011. However, the suit was 2 ILR 2015 KAR 2188 actually filed on 31-8-2012 i.e. after the expiry of 9 months from the date of quit notice. Therefore, the notice issued by the plaintiffs cannot be declared or deemed to be invalid. Hence, this Court is of the opinion that the plaintiff has validly terminated the tenancy by issuing legal notice dtd.5-11-2011. Hence, I answer issue No.4 in the affirmative.

18. ISSUE NO.5: On the basis of the averments made in the plaint, the plaintiff has claimed arrears of rent and this issue has been framed placing the burden on the plaintiff to prove the same. On careful perusal of the plaint averments, quit notice was issued by the plaintiff to the defendant on 5-11-2011. The said legal notice was duly served upon the defendant and defendant replied the notice on 24-11-2011 and plaintiff has claimed arrears of rent from April 2011 to October 2011 at the rate of Rs.36,750/- i.e. for a period of 6 months. $\text{Rs.36750/-} \times 6 = \text{Rs.2,20,500/-}$. No doubt, defendant has issued four cheques by making his own calculation considering the rent at the rate of

Rs.45,000/- p.m. and sought to extend the lease period without the consent of the plaintiffs. But, as plaintiffs are not interest to extend the lease period, they have returned those cheques. Hence, the rent for the month of April 2011 to October 2011 remained unpaid. After the institution of the suit, till date defendant has not paid any arrears of rent. This fact has also been admitted by the defendant in his cross-examination. Hence, the plaintiff has proved that there was an arrears of rent of Rs.2,20,500/- for the month of April 2011 to October 2011. Hence, I answer issue No.5 in the affirmative.

19. In the instant case, the plaintiff has also sought for the damages at the rate of Rs.70,000/- p.m. for the subsequent period till the defendant has handed over the vacant possession of the suit schedule property. In the instant case, till date, the defendant has not vacated the suit schedule property and not paid any amount towards the arrears of rent and also towards the mesne profits or subsequent use and enjoyment of the suit schedule property. The learned counsel for the defendant has argued that the damages claimed by the plaintiff at the rate of Rs.70,000/- p.m. appears to be unreasonable, hence, cannot be awarded. At this juncture it is to be noted that after issuing legal notice relationship of landlord and tenant comes to an end. But as per the legal notice, defendant has not vacated the suit schedule premises and the possession of the suit schedule property' by the defendant is converted itself into illegal possession and defendant is liable to pay the damages. After termination of the tenancy, defendant is squatting upon the property of the plaintiffs and continuing his business in the suit schedule property of the plaintiffs and earning profits by doing business till date. Hence, the plaintiffs are justified in claiming the mesne profit/damages for the suit schedule property during the proceedings. Hence, this Court is of the opinion that defendant is liable to pay the damages/mesne profits for his illegal possession. In assessing the damages, the plaintiff has argued that original agreement executed between the plaintiffs and defendant in the year 2006 and subsequent conduct of the defendant expressing his intention to pay excessive rent can be taken into consideration. At the initial period of the lease agreement dtd.17-7-2006, the plaintiffs and defendant both have agreed that the rent of the suit schedule premises was Rs.55,000/- and advance security deposit was Rs.6,50,000/-. Thereafter, in the year 2011 the defendant himself has wrote letter to the plaintiffs as per Ex.P.4 & 5 expressing his intention to give Rs.45,000/- rent p.m. for the suit schedule premises. As per the original lease agreement Clause-2 the rate of rent was agreed Rs.55,000/- p.m. payable on or before 10th of every calendar month subject to increase of 15% every completed 3 years i.e. 5% escalation every year. If that is taken into consideration from 2006 to 2016, 10th year is running. If escalation per year at the rate of 5% is calculated the probable rent for the year 2016 would be Rs.55,000/- + 50% escalation that comes to Rs.82,500/- (i.e. 55,000/- + 27,500/- (50% of 55,000/-) = Rs.82,500/-) Hence, as per the normal calculation in the normal circumstances, defendant is liable to pay Rs.82,500/-. Hence, the claim of the plaintiff for Rs.70,000/- p.m. as damages appears to be reasonable. But as per the request of the defendant, the plaintiffs have considered the demand of the defendant on account of recession reduced the rent and deposit in the year 2009. Defendant has taken undue advantage of the same, now squatting on the suit schedule property and earning profits every day without giving any rent. Therefore, claim of the plaintiff Rs. 70,000/- p.m. towards damages appears to be reasonable and entitled for the same. The plaintiff is entitled for damages at the rate of Rs.70,000/- p.m. from the date of service of legal notice and next continuing years of unlawful possession of the suit schedule property till the defendant has been dispossessed from the suit schedule property with due process of law. The

defendant has to pay the damages/mesne profits as per the calculation made above. Hence, the plaintiffs are entitled for the arrears of rent and also damages/mesne profits after producing up to date calculation memo. Plaintiffs are liable to pay balance of Court fees for the arrears of rent/damages/mesne profits. The plaintiffs are at liberty to file memo of calculation pertaining to arrears of rent/damages/mesne profit and submit to the Court and defendant is liable to pay the rent and damages as the case may be. The plaintiffs is at liberty to adjust the rent/damages/mesne profits as the case may be in the advance amount of Rs.5,00,000/- deposited by the defendant.

20. ISSUE NO.6: My predecessor has framed this issue on the basis of the contentions taken up by the defendant. However, in the present case of rent agreement, the question of limitation would not arise at all. Hence, this issue No.6 appears to be redundant. Hence, I answer issue No.6 in the negative.

19. ISSUE NO.7: In view of my above discussion and the reasons stated therein and my answers to issue No. , I proceed to pass the following:

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

The plaintiffs are entitled for vacant possession of the suit schedule property and recover the arrears of rent of Rs.2,20,500/- and damages/mesne profits at the rate of Rs.70,000/- p.m. from November 2011 to till dispossession of the defendant with due process of law.

Plaintiffs are at liberty to adjust the security amount of Rs.5,00,000/- towards the arrears of rent and damages as calculated above.

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 17th DAY OF AUGUST 2016).

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

ANNEXURE WITNESSES EXAMINED FOR THE PLAINTIFFS/S:

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

D.W.1 R.Dilipkumar.

DOCUMENTS MARKED FOR THE PLAINTIFFS/S:

Ex. P. 1	GPA.
Ex. P. 2	Rental Agreement.

Ex.P.3	Bank statement.
Ex.P.4 & 5	Letter of defendant No.1 .
Ex.P.6	Legal notice.
Ex.P.7	Reply notice.

DOCUMENTS MARKED FOR THE DEFENDANTS/S:

Ex.D.1 to 4 Cheques.

Ex.D.5	Rejoinder.
Ex.D.6	Acknowledgement.

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