

Is The Absolute Owner Of The Suit ... vs On The Same Refundable Security Deposit ... on 24 February, 2020

BEFORE I ADDL. JUDGE, COURT OF SMALL CAUSES,
BANGALORE. (SCCH-11)

DATED THIS 24TH DAY OF FEBRUARY, 2020

PRESENT: SMT. B.S.RAYANNAWAR, B.A., L.L.B.
I ADDL.SMALL CAUSES JUDGE & MACT

SC.993/2015

BETWEEN

Mr.K.N.Ramachandra Murthy,
Since deceased by his Lrs.

1(a) Smt.A.V. Nagamani,
Aged about 53 years,
Wife of late K.N.Ramachandra Murthy

1(b) Smt.K.R.Nalini,
aged 33 years,
D/o. Late K.N.Ramachandra Murthy,

Both are residing at No.23, Draakshi Tota,
1st Cross, 3rd Block,
Tyagarajnagar,
Bangalore 560 028.

(By Sri S.S.M.... Advocate)

....Plaintiff.

AND

Sri. A.V.Rajgopal,
S/o. Late Venkatachalaiah,
aged about 57 years,
Residing at No.36,
"Akshaya Nilaya" 34th Main,
5th B Block, BHCS Banagirinagar,
SCCH - 11

2

SC 993/2015

BSK 3rd Stage,
Bengaluru 560 085.

(By Sri. K.T.D.... Advocate)

..... Defendant.

JUDGMENT

Present suit filed by the plaintiff for ejectment and also directing the defendant to pay Rs.30,000/□ being arrears of rent with interest @ 18% p.a. and also pay Rs.20,000/□p.m. towards damages from the date of filing the suit, till vacating the schedule premises.

2. The brief facts of the case as projected by the parties are as under.

Plaintiff is the absolute owner of the suit schedule premises that, is House bearing No.36, "Akshaya Nilaya" 34 th Main, 5th 'B' Block, BHCS Banagirinagar BSK 3rd stage, Bengaluru□560085. Defendant is the tenant in occupation of the first floor of suit schedule premises . The defendant entered into the premises as tenant under unregistered Rental Agreement for eleven months. The rent was fixed the rate of Rs.9,500/□(Rupees Nine Thousand Five Hundred Only) per month and the Refundable Security Deposit of Rs.50,000/□ The defendant was paying rent at the rate of Rs.9,500/□per month under the unregistered 'Rent Agreement' dated 07.01.2013 and thereafter from 07.01.2014 the tenancy was renewed for further period of eleven months with the same security deposit and monthly rent. Though the rent prevailing in and around locality of the schedule premises is between Rs.18,000/□to Rs.20,000/□per month for the similar accommodation as that of the schedule premises, the monthly rent of the schedule premises was fixed only at the rate of Rs.9,500/□per month, on the concern that the defendant is the relative of the plaintiff.

3. It is further averred that, during the year 2014□2015 the defendant informed the plaintiff that he was diagnosed of Cancer and he is incurring huge amount towards the treatment, under the changed circumstances he wants to vacate the schedule premises and move to a suitable rental premises on the Ground Floor for a lesser rent as the rent which he was paying become unaffordable. The plaintiff on taking into consideration the pathetic condition of the defendant and on humanitarian considerations let out schedule premises by reducing the rent from Rs.9,500/□per month to monthly rent of Rs.5,000/□exclusive of electricity and water consumptions charges. Accordingly, an unregistered Rental Agreement dated 05.02.2015 was entered into between the plaintiff and Defendant, on the same refundable security deposit of Rs.50,000/□commencing from 1st day of each English calender month and ending with the last day of the same month. Defendant having obtained the lease extended on a reduced monthly rent, on the pretext of vacating the premises and on his illness, not vacated the premises, defendant become the continual defaulter in the matter of payment of monthly rents. The defendant has not paid rent from 1.03.2015 to 01.08.2015. The arrears of rent due till the month of July amounts to Rs.30,000/□ On the other hand the defendant has been assuring the plaintiff that, he is in lookout for the suitable premises to shift his residence and planned to vacate the schedule premises. The defendant has been playing evasive tactics in the matter of payment of arrears of rent and vacating the premises. Plaintiff daughter has a disturbed marital life and presently took shelter under him. Hence, the plaintiff need the schedule premises for his bonafide use and occupation for his daughter. The plaintiff already appraised of the said facts to the defendant orally and defendant is well aware of the said fact. The defendant assured plaintiff that he will vacate and deliver vacant possession of schedule premises to the plaintiff. Plaintiff is not

interested in continuing the tenancy of the defendant in respect of the schedule premises. Therefore, the plaintiff issued a legal notice dated 17.07.2017 terminated the tenancy of the defendant as provided under Section 106 of T.P.Act. The legal notice was duly served on the defendant and defendant instead of complying with demand made in the said legal notice, has sent untenable reply making all false averments and allegations. Hence, the plaintiff is constrained to file the present suit for the eviction. Hence, this suit.

4. In pursuance of summons defendant appeared before the court. Filed written statement denying the contents of plaint in toto. It is the contention of defendant that, The premises no.36 consisting of ground and first floor having separate dwelling accommodation, is correct but it is specifically denied that the said property is the self acquired property of the plaintiff. The payment of taxes in no way confirms the right, title and interest of the plaintiff. The defendant never entered the property as a tenant of the plaintiff. The alleged rental agreement alleged to be dated 7.1.2013 and 7.1.2014 are concocted, fraudulent documents created by the plaintiff, taking advantage of the relationship and health condition of the defendant. The defendant at no point of time paid rent to the plaintiff, the question of prevailing rent of Rs.18,000/□or Rs.20,000/□p.m. has no any relevance as there is no relationship of landlord and tenant, between the plaintiff and the defendant. The defendant entered the house property i.e. the first floor and in possession of first floor from 2004 as per the understanding and oral agreement between the defendant and the plaintiff by investing the consideration. Thus the question of defendant entered into an agreement in the year 2013 is unmeaning and have no any sense. The alleged unregistered agreement is again a concocted document. The question of not vacating the premises does not arise, so also the defaulter in the matter of monthly rent. The allegation that the daughter of the plaintiff has disturbed marital life and took shelter under him has no meaning. The daughter is residing with him from last 6 to 7 years, the allegation of separate stay, bonafide use for his daughter are all false and the defendant assuring the plaintiff that he will vacate and deliver vacant possession is false. There is no cause of action for the Plaintiff to file this suit. On these grounds prays to dismiss the suit with exemplary cost.

5. Heard arguments both respective counsels.

6. Upon hearing arguments and on perusal of materials placed on record the following points arise for consideration.

1 Whether plaintiff proves there is jural
relationship of land lord and tenant

relationship between him and the defendant?

2 Whether plaintiff complied section 106 of T.P Act?

3 Whether plaintiff is entitled for the reliefs sought?

4 What order or decree?

7. The trial consisted of examination of plaintiff as PW.1 and got marked the documents as per Ex.P.1 to 13. Defendant got examined as Dw.1 got marked documents Ex.P.1 to Ex.P.15 and closed his side of evidence.

8. My findings to the above issues are as under.

Issue No.1 ☐In the Affirmative.

Issue No.2 ☐Partly In the Affirmative.

Issue No.3 ☐As per final order for the following.

REASONS

9. POINT NOS.1 AND 2: ☐Since these points are interlinked with each other, they are taken up together for consideration in order to avoid repetition, as here under.

As far as present suit is concern it is the contention of plaintiff that, plaintiff is the owner of the suit premises and defendant is the tenant in occupation of the first floor that is in schedule premises. Unregistered rent Agreement executed between the plaintiff and defendant on 07.01.2013, monthly rent fixed at the rate of Rs.9,500/☐per month and the refundable security deposit of Rs.50,000/☐ During the year 2014☐15 the defendant informed the plaintiff that he was diagnosed of cancer and he is incurring huge amount towards the treatment. Informed the plaintiff that under the changed circumstances he wants to vacate the schedule premises and move to a suitable rental premises on the Ground Floor for a lesser rent as the rent which he was paying become unaffordable. The defendant with the said state of affairs requested the plaintiff to reduce the rent. The plaintiff on taken into consideration the pathetic condition of the defendant and on humanitarian consideration let out the schedule premises by reducing the rent from Rs.9,500/☐per month to monthly rent of Rs.5,000/☐ Rental agreement renewed on 05.02.2015, the defendant having obtained the lease extended on a reduced monthly rent, on the pretext of vacating the premises and on his illness, not vacated the premises, on the other hands the defendant become the continual defaulter in the matter of payment of monthly rents. The defendant has not paid the rent from 01.03.2015 to 01.08.2015 the defendant has defaulted to pay the rent without any sufficient cause or reasons. Plaintiffs daughter has a disturbed marital life and presently took shelter under him. In the circumstance she is intends to stay separately with her son, hence the plaintiff need the schedule premises for his bonafide use and occupation for his daughter.

10. Question of arrears of rent is concerned, plaintiff has averred in the plant that monthly rent of the plaintiff premises is Rs.5,000/☐per month and the tenancy is according to 1 st day of each English Calendar, month and ending with the last day of the same month. It is further averred that defendant withheld the payment of rent from 01.03.2015 to 01.08.2015. It is further averred that, on 17.07.2015 a notice was issued to the defendant terminating the tenancy. The defendant has denied

all these aspects by replying to notice.

11. It is pertinent to note that, this court has raised a point for consideration regarding existence of relationship of landlord and tenant between the parties.

To prove that, plaintiff is the owner of the suit property has produced Ex.P.1 Khatha Certificate of property no.36, Ex.P.2 Khatha Extract property no.36, Ex.P.3 Tax paid receipt, Ex.P.8 Original Sale deed and Ex.P.9 Certified Copy of Rectification Deed. Defendant not denied the ownership of plaintiff, but denied jural relationship of land lord and tenant.

12. It is the contention of plaintiff that, the defendant is in possession of the suit premises as a tenant. During cross examination DW.1 admitted that, " 8

. 70,000/□ .
□ □ □ □
. . □
. 4 17.07.2015 □
. □ □

. Hence it shows that, defendant also not disputed the ownership of property. But it is the contention of the defendant that, the defendant entered the house property i.e., the first floor and in possession of first floor from 2004 as per the understanding and oral agreement between the defendant and the plaintiff by investing the consideration. There is no relationship of Land lord and tenant between the plaintiff and the defendant. As defendant admitted that, the plaintiff is the owner of the property the moot question to be considered in the present suit is whether the defendant is tenant under the plaintiff or not.

13. To prove that, the defendant is tenant in occupation of the first floor house bearing No.36, "Akshaya Nilaya", plaintiff produced Ex.P.10 and Ex.P.11 Rental Agreements. Plaintiff got himself as PW.1 and filed his chief affidavit in lieu of his examination in chief. Produced documents Ex.P.1 to Ex.P.12. During cross examination PW.1 deposed that defendant is elder brother of his wife. Defendant came to the suit premises in the year 2004 on lease. In the year 2004 the defendant was paying rent of Rs.6,000/□per month. Rental agreement has been misplaced. Admitted that, as on today, he has no documents to show that the defendant came to the suit property as tenant in the year 2004. There are no documents to show that the defendant is paying rent to him since from 2004. Admitted he has not shown the rent received by him in the income tax returns for the year 2004. It is denied suggestion that, the defendant was never tenant under him and for that reasons, he has not shown the rent particulars in the income tax returns in the year 2004. PW.1 further deposed that he was not having any documents to show that the defendant is tenant under him even in the year 2009 but he was paying rent to him by way of cash. PW.1 Further deposed that the rental agreement has been drafted in the office of the Sri.Krishne Gowda Advocate. Ex.P.11 is the old agreement and Ex.P.10 is the new agreement. It is denied suggestion that, Ex.P.10 and Ex.P.11 are created and he has forged the signature of defendant. It is denied suggestion that the 1st and ground floor are constructed on the vacant site by him and defendant by making joint investment and defendant has paid some instalments of loan to the bank.

14. It is the contention of the defendant that, he entered the suit premises in the year 2004 as per the Oral understanding between him and the plaintiff, as he invested the amount for purchase and construction of the building. Himself and plaintiff jointly used to invest money on immovable properties in the name of plaintiff as he was the employee of a private company. They used to invest the amount and they also used to share the profit, whenever the property was sold. In the same way, the schedule site was purchased and construction was put up by them by joint investment. It was agreed that the plaintiff shall enjoy the Ground floor and himself shall enjoy the first floor as owners and to be transferred to his name at a later date.

15. Defendant Produced Ex.D.1 I.T Returns, Ex.D.2 seven Gas receipts, Ex.D.3 Driving License, Ex.D.4 Ration Card, Ex.D.5 Original Aadhar Card, and Ex.D.6 Bank Pass Book, Ex.D.7 C.T.Scan Repot, Ex.D.8 to Ex.D.12 five Discharge Summary and Ex.D.13 prescription, Ex.D.14 Application addressed to Sub□Registrar and Ex.D.15 Endorsement issued by Sub□Registrar.

16. During cross examination DW.1 admitted the ownership of plaintiff. Further DW.1 admitted that, since from 1979 to 1992 he has been residing with the plaintiff, after his marriage till 2004 he was residing in rented house. DW.1 admitted that plaintiff purchased the suit property as per Ex.p.8 sale deed. Further admitted that the Khatha is standing in the name of Sri.Ramchandramurthy and till his death Sri.Ramachandramurthy was paying property tax to the schedule premises. Admitted that, the water bills and electricity bills are also standing in the name of Sri.Ramachadramurthy. Further DW.1 admitted issuance of notice dated 17.07.2015 by the plaintiff.

17. The above documents produced by defendant proves the defendant is in possession of suit premises, and defendant was suffering from some disease which is not disputed by plaintiff. Perused Ex.P.8 and Ex.P.9 Sale Deed dated 16.03.2000 executed between Smt.Vijaya Nagaraja Rao and plaintiff that, is Sri.K.N.Ramachandra Murthy S/o Late Sri.K.Narayana Rao, perused rectification deed no where it is mentioned sale consideration was paid by plaintiff and as well as defendant by joint investment, but defendant not produced any document to show that, defendant also invested the amount for purchase and construction of the building, he and plaintiff jointly used to invest money on immovable properties in the name of plaintiff. Khatha Certificate, Khatha Extract, Revenue documents standing in the name of plaintiff, it is the contention of defendant that, the suit property purchased by investment of plaintiff and defendant, but revenue document standing in the name of plaintiff. No document produced by the defendant to prove his contention. Hence by perusal of documents produced by plaintiff reveals that, plaintiff is the owner of the suit property by virtue of Sale deed dated 16.03.2000.

18. Plaintiff has examined himself as PW.1 and stated in his examination□n□chief by reiterating the contents of plaint. PW.1 to show that, he is the owner of the plaint schedule property has produced, Ex.P.1 Khatha Certificate of property no.36, Ex.P.2 Khatha Extract property no.36, Ex.P.3 Tax paid receipt, Ex.P.4 Office Copy of legal notice, Ex.P.5 and Ex.P.6 Postal receipt and postal acknowledgement, Ex.P.7 Reply notice, Ex.P.8 Original Sale deed, Ex.P.9 Certified Copy of Rectification Deed, Ex.P.10 and Ex.P.11 Rental Agreement (stamp duty and penalty of Rs.4928/□ Rs.4356/□has been collected vide receipt no.132/2016 and 131/2016 dated 12.02.2016).

19. Defendant is none other than the elder brother of wife of plaintiff. During cross examination PW.1 deposed that, the defendant came to the suit premises in the year 2004 on lease. In the year 2004 defendant was paying rent of Rs.6000/- per month, but the rental agreement has been misplaced. PW.1 admitted that, he is not having any documents to show that the defendant is tenant under him even in the year 2009 but defendant was paying rent to him by way of cash. It is denied suggestion that, the 1st and ground floor are constructed on the vacant site by him and defendant by making joint investment.

20. To prove that the defendant is the tenant under the plaintiff. Plaintiff produced Ex.P.10 and Ex.P.11 Rental Agreement dated 05.02.2015 and Ex.P.13 Rental agreement dated 01.01.2013. Defendant denied the execution of agreement of lease, but in reply notice issued by him Ex.P.7 in para no.7 defendant mentioned that, "My client apprehend your client taking advantage of various illness of my client who is a cancer patient when was under the influence of drugs your client took some signature on the blank paper and how your client trying to misuse the said signature in creating the alleged tenancy in respect of the schedule property".

21. Defendant denied jural relationship of land lord and tenant between him and the plaintiff. It is the contention of defendant that, he entered the suit premises as per oral understanding between him and the deceased plaintiff. But present suit filed by the deceased plaintiff for ejectment, and in his plaint plaintiff mentioned that, he required the property for bona fide reason and did not intends to continue tenancy. Plaintiff issued termination notice. During cross examination of DW.1 admits that, the plaintiff issued legal notice dated 17.07.2015 as per Ex.P.4 calling upon him to pay the arrears of rent and vacate and hand over vacant possession of schedule premise. PW.1 deposed that, defendant was paying the rent by way of cash. It is trite that payment of rent follows the jural relationship of landlord and tenant. During cross examination PW.1 admitted that, he has not produced any document to show that, defendant was paying the rent, but during cross examination PW.1 deposed that, defendant paying the rent by way of cash.

22. Defendant not produced any document to show that, the 1st and ground floor are constructed by making joint investment of him and the plaintiff. Nor defendant produced any bank statement to show that he has paid some installments of loan to the bank.

23. It is the contention of defendant that, he never entered into the suit schedule property as a tenant, he entered the suit premises in the year 2004 as per the oral understanding between him and the deceased plaintiff. He invested the amount for purchase and construction of the building. Himself and plaintiff jointly use to invest money on immovable properties in the name of plaintiff. It was agreed that the plaintiff shall enjoy the Ground floor and he shall enjoy the first floor as owners and to be transferred to his name at a later date by this understanding he entered the schedule property in the year 2004. There was no relationship of tenant and landlord between him and the deceased plaintiff. Defendant denied signature on rental agreement. Further deposed that, when he was admitted int he hospital, the deceased plaintiff requested him to put his signature on blank sheet of paper stating that it requires for some purpose, however, he was under treatment and medication, without questioning the same, signed on a sheet of paper which was blank. Except that, he never made any signature on any document styled as Rental Agreement or any other papers. But

when the property purchased by joint investment of plaintiff and defendant and when all revenue documents standing in the name of plaintiff alone defendant not disputed the same.

24. Defendant produced, Ex.D.1 I.T returns, Ex.D.2 Seven Gass receipts, Ex.D.3 Driving license, Ex.D.4 Ration Card, Ex.D.5 Aadhar Card (Ex.D.3 to Ex.D.5 returned to defendant by retaining the certified copy of the same in record) and Ex.D.6 Bank Pass Book. These documents helped the defendant to prove that he is in the possession of the suit premises. It is also not disputed by the plaintiff.

25. During cross examination DW.1 admitted that, the deceased plaintiff is the owner of site no.36, Akshay Nilay 34 th Main Road, 5th Block, BHCS Banagiri Nagar, DW.1 admitted that since from 1979 to 1992 he was residing in the house of plaintiff and after his marriage started residing in rented house, after his marriage till 2004 he was residing in rental house. Admitted that, deceased plaintiff purchased the suit property that is site no.36 as per Ex.P.8 sale deed by Bhavani Housing Co-operative Society. Further deposed that, he also makes payment of Rs.70,000/- through D.D. DW.1 admitted that, the Khatha of the suit property standing in the name of deceased plaintiff, also admitted that, till his death the plaintiff was paying khatha to the suit property. Defendant admitted issuance of legal notice dated 17.07.2015. Admitted that, in his legal notice he has stated that, he signed the blank papers when he is under the influence of drug. But such defense not taken by defendant in his written statement. It is pertinent to note that during cross examination for identification of signature, when learned counsel for plaintiff shown defendant his signatures , defendant identified his signature by reading the contents of documents, the defendant is so confused in identifying his signature. By perusal of documents it reveals that, defendant put his signature in kannada and english languages and size, and also put signatures in different sizes like short signature, long signature, signature in kannada language and in english. Even Defendant not identified his signature put to his affidavit of Chief Examination without going to its contents. It shows that, defendant put his signatures in kannada and english language and different sizes. DW.1 further deposed that, the deceased plaintiff Sri K.N.Ramachandramurthy forced his signature in Ex.P.13 rental agreement, but no action is taken against the plaintiff by defendant to get back blank papers, nor defendant lodged any complaint against plaintiff for forzery of his signature.

26. Learned counsel for defendant submits that, as per plaint averments defendant entered into suit property from 07.01.2013. But during cross examination PW.1 admitted that, he was resided with plaintiff from the year 1979 to 1992, after his marriage till 2004 he resided in rented house. During cross examination also PW.1 deposed that, defendant entered to suit premises in the year 2004 on lease and was paying rent of Rs.6000/-pm, but rent agreement was misplaced. The defendant was paying rent at the rate of 9,500/-per month under the unregistered rent agreement dated 07.01.2013 and thereafter from 07.01.2014 the tenancy was renewed for further period of eleven months. In the present case no documents are produced by the defendant to show that, he residing in the said premises as co-owner by oral understanding between him and the plaintiff.

27. Plaintiff deposed that defendant in possession of the property as a tenant. Hence plaintiff issued termination notice. Defendant disputed notice and it is the contention of defendant that, two months notice is required. Hence plaintiff relied on citation Learned counsel for plaintiff relied on

citation RFA.No.40/2010 of Hon'ble High Court of Delhi, DD 20.12.2011 (Shri Radhakrishana Temple Truse Maithan, Agra V/s Hindco Rotatron Pvt.Ltd and others), "Held "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 period mentioned in that sub-section".

Further Held "Therefore, we have no hesitation to hold that no notice to quit was necessary under Section 106 of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant".

Further Held "Also the Hon'ble Supreme Court in Nopany's case has held that no notice to quit was necessary under section 106 of the Act in order to enable the landlord to get a decree for eviction against a tenant".

Further Held "I may not that requirement of a simple option being exercised cannot be taken as a registered lease deed, is in view of Sections 107 of the Act read with section 17(1)(b) and (d) of the registration Act, 1908 whereby all leases in excess of a period of twelve months have necessarily to be only by means of a registered instrument".

RFA.No.638/2014 of Hon'ble High Court of Delhi, DD.10.04.2015 (Pradeep Khanna V/s Renu Khetarpal). -O XII ADMISSIONS "In Maria Margarida Sequeria Fernandes V Evasmo Jack de Sequeria, the Supreme Court held that the person resisting a claim for recovery of possession or claiming a right to continue in possession has to establish that he has such a right. The observations of the Supreme Court are as under:

"66. A title suit for possession has two parts—first, adjudication of title, and second, adjudication of possession. If the title dispute is removed and the title is established in one or the other, the, in effect, it becomes a suit for ejectment where the defendant must plead and prove why he must not be ejected.

28. In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession".

29. But in the present case after issuance of notice defendant given replied to the notice. And moreover Even if the legal notice is not as per law, the service of summons for settlement of issues of the suit for ejectment clearly reveals that, intention of plaintiff to terminate tenancy summons of the

suit can be treated as notice under Section 106 of the Transfer of Property Act 1882. In *Nopany investments (P) Ltd., Vs. Santokh K.H. Singh* (HUF) 2008 (2) SCC 728, the Hon'ble Supreme Court held that, filing of the suit itself a notice to quit on the tenant and therefore no notice is quit under Section 106 of the transfer of property Act in necessary to enable to the landlord to get the decree of possession. The observations of the Hon'ble Supreme Court are reproduced hereunder " In any view of the matter, it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant, therefore we have no hesitation to hold that, no notice to quit was necessary under Section 106 of Transfer of Property Act. In order to enable the respondent to get a decree of eviction against the appellants".

30. In *Jeevan Diesels and Electricals Vs. M/s. Jabeer Singh Chadha* (HUF), 182 (2011) DLT 402, the Hon'ble Supreme Court held that even assuming that the notice of termination was not served, the tenancy shall stand terminated on filing of the suit (*Bhawanjeet Singh Vs. Deewan Singh*).

31. Defendant not produced any document to show that, he also invested the amount for purchase of suit property and construction of building. Document produced by the defendant proves possession but not proved the schedule site as purchased and construction was put up by him and deceased plaintiff by joint investment and he is co-owner.

32. By perusal of contents in Ex.P.7 reveals that, defendant has put his signatures on some papers. When it is the contention of defendant is that plaintiff obtained his signatures on blank papers, plaintiff forced his signature, the defendant has not taken any action against the plaintiff to get back the blank papers from the plaintiff. Defendant denied the execution of agreement of lease, but as per reply notice reveals that, defendant signed some papers, and it is the contention of plaintiff that, the defendant signed the agreement of lease. but it is the contention of defendant that, plaintiff obtained his signature on blank papers when he was under the influence of drugs, but later on defendant not taken any steps to get back those signed blank papers from the plaintiff. It is the contention of plaintiff that, the signature in agreement deed are belongs to defendant. Defendant disputed signature his signature on Rental Agreement Ex.P.10 Ex.P.11 and Ex.P.13 after filing necessary applications, by both parties disputed signature and admitted signature sent to expert opinion. Hand writing expert CW.1 opined that, the person who wrote the standard signatures marked SI to S20 and Ex.P.12 a To Ex.12c also wrote the questioned signatures marked as Ex.P.10a, Ex.P.11a and Ex.P.11b and Ex.P.13a to Ex.P.13c. Cumulative consideration of the afore said divergences are significant and sufficient in questioned and the standard signatures in both the general and individual writing habits which constitutes the basis for my opinion that the questioned signature marked as Ex.P.10a to Ex.P.10d, Ex.P.11a & Ex.P.11b and Ex.P.13a to Ex.P.13c the and standard signatures marked as SI to S20 and Ex.P.12 a to Ex.P.12c were also written by one and the same person.

33. Learned counsel for defendant relied on citation reported in (2003)8 SCC 745 (*Narbada Devi Gupta V/s Birendra Kumar Jaiswal And Another*) - It is held by lordships that "A.Evidence Act, 1872 "Ss.17, 61 and 62 - Proof of contents of documents -Mere production and marking of a documents as exhibit not enough "Execution has to be proved by admissible evidence "But where documents produced are admitted by the signatories thereto and then marked as exhibits, held, no

further burden to lead additional evidence to prove the writing and its execution survives Civil Procedure Code, 1908, Order 2, A, 3 and 6 Admission Evidence Act, 1872, Ss. 101 and 106.

34. AIR 2003 S.C 282 (Alamgir V/s State (NCT, Delhi)) Lordships Held (C) Evidence Act (1 of 1872), S.47 Penal Code (45 of 1860), S.300 Opinion of Handwriting Expert Conviction cannot be based on it Accused alleged to have killed his wife in room of guest house and left Police opened door and dead body of female was recovered with two slips of paper Handwriting and signature on said slips of paper stand to be proved by Handwriting Expert as that of accused Opinion of Handwriting Expert can be relied upon when supported by other items of evidence and simply corroborates circumstantial evidence.

(1980) 1 SCC 704 (Murari Lal V/s State of Madhya Pradesh) Lordships Held "Evidence Act, 1872 Sections 45, 46, 73 and 3 - Evidence of hand writing expert Held, need not be invariably corroborated - It is for the court to decide whether to accept such an uncorroborated evidence or not Court should approach the question cautiously and after examining the reasonings behind the expert opinion and considering all other evidence should reach its conclusion Even where there is no expert court has power to compare the writings itself and decide the matter on facts, courts below on such comparison concurring with the expert's view and the defence raising no doubts against the reasons given by the expert for his opinion Held, opinion evidence acceptable without any corroboration."

AIR 1997 S.C 1091 (Magan Bihari Lal V/s The State of Punjab) Lordships Held Evidence Act (1 of 1872), S.45 Evidence of handwriting expert Conviction solely on expert opinion - Permissibility.

35. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. It is unsafe to base a conviction solely on expert opinion without substantial corroboration. This type of evidence, being opinion evidence, is by its very nature, weak and infirm and cannot of itself form the basis for a conviction. Case law traced."

AIR 1991 Orissa 289 (A.Chandrabati V/s Laxmi Dei) Lordships held that (c) Succession Act (39 of 1925), S.283, S.63 - Will Proof of execution Handwriting expert opinion Two signatures of testator on two pages of Will - Unexplained difference in ink and writing in two signatures Comparison of signatures with specimen signature was of no significance Expert opinion was not credit worthy Execution not proved."

36. I am not disputed the dictum of lordships but in the present case admitted and disputed signatures of defendant sent to the expert opinion, CW.1 submitted his report opined that, the admitted signature and questioned signature written by one and the same person. Along with Agreement of rent plaintiff also produced sale deed, and termination notice proved his ownership over the property and terminated the tenancy by issuing notice under 106 of T.P.Act.

37. Further it is the contention of plaintiff that, the defendant without paying the rent enjoying suit property from 2015, hence relied citation RFA.No.638/2014 of Hon'ble High Court of Delhi,

DD.10.04.2015 (Pradeep Khanna V/s Renu Khetarpal). -O XII ADMISSIONS □Held□In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

38. In Satyender Singh V.Gulab Singh, 2012(129) DRJ 128, the Division Bench of this court following Dalip Singh V. State of U.P (supra) observed that, the courts are flooded with litigation with false and incoherent pleas and tainted evidence led by the parties due to which the judicial system in the country is choked and such litigants are consuming Courts' time for a wrong cause. The observations of this Court are as under:

"2. As rightly observed by the Supreme Court, Satya is a basic value of life which was required to be followed by everybody and is recognized since many centuries. In spite of caution, courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the court.

"24...It has become quite common for tenants, whose tenancies have been terminated validly, to continue occupation as trespassers, drive the landlords to file suits for eviction and profits with a view to see how far the patience of the landlords may last or how far the landlords or their legal representatives could fight the tenants□ particularly if the tenant had stopped payment of admitted rents. It is rather unfortunate that even public section bodies like the appellant are taking such postures and driving landlords from pillar to post.."

Reverting to present case on hand. At this juncture it is pertinent to note that, by the experts opinion it is proved that, the signature of Ex.P.10, Ex.P.11 and Ex.P.13 are belongs to defendant, plaintiff has placed Ex.P.10, Ex.P.11 and Ex.P.13, an Rental agreement which reveals that plaintiff and defendant entered into lease agreement and defendant agreed for rent of Rs.5,000/□ Defendant denied lease deed and he is the tenant under the plaintiff, but when signature of defendant obtained by fraud by the plaintiff, the defendant has not taken any action against the plaintiff. It is the contention of the defendant that, he is co□owner but not produced any document to show that, he has also contributed finance to the purchase of suit premises, and there are no recital in sale deed for payment made by the defendant. Ownership not disputed by the defendant. To show that plaintiff is the owner has produced sale deed, khatha extract, to show that the defendant is the tenant under the defendant has produced lease deed. Hence plaintiff proves there is land lord and tenant relationship between plaintiff and defendant. Plaintiff required the property for bonafide use, plaintiff issued termination notice, hence plaintiff complied the requirement under the law. Ex.P.5 is the postal receipt Ex.P.6 is postal acknowledgment dated 20.7.2015 for the receipt of Ex.P.4.

39. It is the contention of plaintiff that rent fixed Rs.5,000/ and defendant paying rent by way of cash. Hence, it can be concluded that, undisputed monthly rent for the petition premises is Rs.5000/□per month.

40. On meticulous perusal of pleadings, evidence and documents placed on record, it reveals that, the defendant has not paid rent to the plaintiff, hence notice is issued. Hence it is established that, defendant is in arrears of rent from 01.03.2015 01.08.2015, but no agreement with regard to interest hence plaintiff not entitled for interest. Hence in total defendant is in arrears of rent of Rupees 30,000/□payable to the petitioner.

41. On perusal of Ex.P.4 discloses that, the Plaintiff has got issued a legal notice dated 17.07.2015 through her counsel, terminating the tenancy of the Defendant and called upon him to quit and deliver the vacant possession of the schedule premises. Ex.P.7 discloses that, the Defendant had issued reply dated 17.07.2015 to the legal notice of the Plaintiff. Plaintiff proved that, he is the owner of the suit premises, and issued termination of tenancy notice to the defendant.

42. It is the contention of defendant that, he also invested the amount purchased of suit premises. But failed to prove the same. The tenant inducted by landlord is stopped and cannot dispute the title of his landlord in view of the provisions of Section 116 of the Indian Evidence Act without there being any subsequent change in the situation. Section 116 of Indian Evidence Act, □Estoppel of tenant and of licensee of person in possession. - No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property: and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that, such person had a title to such possession at the time when such license was given.

116□The section deals with estoppel of (1) a tenant, and (2) a licensee of the person in possession. It postulates that there is a tenancy still continuing and that it had its beginning at a given date from a given landlord, and provides that neither a tenant nor any one claiming through a tenant shall be heard to deny that the particular landlord had at that date a title to the property.....

Hence, according to plaintiff the schedule property is bona□fide required for them. Hence, the Defendant has to vacate and handover the possession of the suit schedule property. Consequently in my opinion the Plaintiff is entitled for the relief sought for.

43. On scrutinize the evidence and documents, it is pertinent to note that, defendant did not paid the arrears of rent after filing of the suit or proceedings till the culmination of the suit proceedings, so, the plaintiff is entitled for damaged after conducting separate enquiry.

44. Since, the plaintiff has proved her ownership over the suit schedule property and also jural relationship between herself and Defendant, within the tune of two months the Defendant has to quit and vacate the suit schedule property to the Plaintiff along with arrears of rent. From the above discussion, the court is of the opinion that, the plaintiff is entitled for the relief sought for in the

plaint. Hence issue Nos.1 and 2 answered in Affirmative Issue Nos.1 & 2 answered partly in Affirmative.

45. Issue No.3: In view of the above discussion I proceed to pass the following:

ORDER The suit of the plaintiff is hereby partly decreed with costs. The Defendant is hereby directed to vacate and handover the suit schedule property to the plaintiff within two months from the date of this order.

Failing which the Plaintiff is at liberty to proceed with due process of law.

Further the plaintiff is entitled for the damages after conducting separate enquiry.

Draw decree accordingly.

(Dictated to the stenographer on line and corrected by me, then pronounced in Open court on this the 24 th day of February, 2020.) (B.S.RAYANNAWAR) I ADDL.SMALL CAUSES JUDGE & ACMM ANNEXURE WITNESSES EXAMINED FOR PLAINTIFF:

PW.1 - K.N.Ramachandra Murthy

DOCUMENTS MARKED FOR PLAINTIFF:

Ex.P.1 - Khatha certificate of property no.36
Ex.P.2 - Khatha extract of property no.36
Ex.P.3 - Tax paid receipt
Ex.P.4 - Office copy of legal notice

Exs.P.5 &6 ☐Postal receipt and postal acknowledgment Ex.P.7 ☐Reply to Legal notice Ex.P.8 ☐Original Sale deed Ex.P.9 ☐Certified copy of Rectification deed Ex.P.10 ☐Rental agreement Ex.P.10(a) to 10(d) ☐Signatures in 4 pages Ex.P.11 ☐Another Rental agreement Ex.P.11(a) ☐Signatures Ex.P.12 ☐Copy of Sale deed Ex.P.13 ☐Rental agreement Ex.P.13(a) to (c) ☐Signatures WITNESSES EXAMINED FOR DEFENDANT:

DW.1 - A.V.Rajgopal

DOCUMENTS MARKED FOR DEFENDANT:

Ex.D.1 - I.T. returns (5)
Ex.D.2 - 7 Gas receipts
Ex.D.3 - Original D.L.
Ex.D.4 - Original Ration card
Ex.D.5 - Original Aadhaar card
Ex.D.6 - Bank pass book

Ex.D.7	-	C.T. Scan report
Ex.D8 to 12	-	5 Discharge summaries
Ex.D.13	-	1 prescription
Ex.D.14	-	Application addressed to Sub-registrar
Ex.D.15	-	Endorsement given by Sub-registrar with register extract

WITNESSES EXAMINED FOR CW:

CW.1 - Sri.Shankarappa Mural

DOCUMENTS MARKED FOR CW:

Ex.C.1 - FSL

I ADDL.SMALL CAUSES JUDGE & ACMM

(Judgment pronounced in open court

vide separate Order.)

ORDER

The suit of the plaintiff is hereby partly decreed with costs. The Defendant is hereby directed to vacate and handover the suit schedule property to the plaintiff within two months from the date of this order.

Failing which the Plaintiff is at liberty to proceed with due process of law.

Further the plaintiff is entitled for the damages after conducting separate enquiry.

Draw decree accordingly.

I ADDL.SMALL CAUSES JUDGE & ACMM DECREE S.C.C.H.No.11 DECREE IN THE COURT OF SMALL CAUSES AT BANGALORE SC.993/2015 BETWEEN Mr.K.N.Ramachandra Murthy, Since deceased by his Lrs.

1(a) Smt.A.V. Nagamani, Aged about 53 years, Wife of late K.N.Ramachandra Murthy
1(b) Smt.K.R.Nalini, aged 33 years, D/o. Late K.N.Ramachandra Murthy, Both are residing at No.23, Draakshi Tota, 1st Cross, 3rd Block, Tyagarajnagar, Bangalore 560

028.

(By Sri S.S.M.... Advocate)Plaintiff.

AND Sri. A.V.Rajgopal, S/o. Late Venkatachalaiah, aged about 57 years, Residing at No.36, "Akshaya Nilaya" 34th Main, 5 B Block, BHCS Banagirinagar, th BSK 3rd Stage, Bengaluru 560 085.

(By Sri. K.T.D.... Advocate) Claim: Suit filed on prays for directing defendants to vacate and handover vacant possession of the schedule property.

This suit coming on for final disposal before Smt.B.S.Rayannawar, I Addl. Judge, Court of Small Causes, Bangalore, in the presence of Sri/Smt. Advocate, for the plaintiff and Sri/Smt Advocate, for the defendants.

ORDER The suit of the plaintiff is hereby partly decreed with costs. The Defendant is hereby directed to vacate and handover the suit schedule property to the plaintiff within two months from the date of this order.

Failing which the Plaintiff is at liberty to proceed with due process of law.

Further the plaintiff is entitled for the damages after conducting separate enquiry.

And it is further ordered and decreed that, the defendants do pay to the plaintiff, a sum of Rs. being the amount towards costs.

SCHEDULE All that piece and parcel of the first floor portion of the house no.36, "Akshaya Nilaya" 34th Main, 5th B Block, BHCS Banagirinagar, BSK 3rd stage, Bengaluru 560085, consisting of one hall, two wed rooms, one kitchen, one bathroom cum toilet, with RCC roofing with electricity and water facility with portico and fittings like one Geyser, 4 tube lights, 3 ceiling fans, and 2 wall fans and fittings and bounded on: East by : Site No.25, West by : Road North by : Site No.35 South by : Site No.37 Given under my hand and the seal of the Court this day of 2020.

ASST.REGISTRAR, Court of Small Causes, Bangalore.

MEMORANDUM OF COST INCURRED IN THIS SUIT

Court fee on plaint
Court fee on power

By the
Plaintiff defendants

Court fee on exhibits
Service of process + Postal charges
Commissioner's ,fees
Pleaders fee

Total of Rs.

Amount payable by the defendants to the plaintiff is Rs.

Decree Drafted

Scrutinised by

ASST.REGISTRAR,
Court of Small Causes,
Bangalore.

Decree Clerk

Sheristedar