

THE HON'BLE SRI JUSTICE SUBBA REDDY SATTI

SECOND APPEAL No.204 of 2021

JUDGMENT:

The above second appeal is filed by the defendant in the suit, aggrieved by the judgment and decree dated 18.03.2021 in A.S.No.145 of 2019 on the file of the Special Sessions Judge for SC and ST Cases-cum-XI Additional District and Sessions Judge, Visakhapatnam, confirming the judgment and decree dated 21.02.2019 in O.S.No.1090 of 2015 on the file of II Additional Junior Civil Judge, Visakhapatnam.

2. For the sake of convenience, the parties herein are referred to as they were arrayed in the plaint.

3. Plaintiff filed suit O.S.No.1090 of 2015 seeking eviction of the defendant and for delivery of vacant possession of the schedule property; to pay arrears of rent of Rs.74,550/- and for future damages etc.

4. In the plaint it was contended *inter alia* that the plaintiff is the absolute owner of the shop in the ground floor bearing Door No.9-14-12/4 in VIP Road, CBM Compound, Visakhapatnam; that defendant was inducted into schedule premises as tenant on 10.09.2006 on a monthly rent of Rs.5,325/- payable on or before first of every succeeding month; that the tenancy is month to month; that defendant is running a mobile, music and movie store under the name and style of M/s Mobile and Movie World; that defendant committed default in payment of rents

from August, 2014 till filing of suit; that defendant filed suit O.S.No.129 of 2015 against the plaintiff seeking permanent injunction; that in spite of requests made by the plaintiff, defendant failed to pay the rents; that the plaintiff got issued a quit notice dated 02.10.2015 and terminated the tenancy and further directed the defendant to vacate the premises by 10.11.2015 and also to pay arrears of rents; that defendant having received the said notice, neither vacated the premises nor paid the arrears of rents and hence, filed the suit.

5. Defendant filed written statement and admitted tenancy, however, contended that monthly rent is Rs.3,000/-. He further contended that an advance amount of Rs.70,000/- was paid, which is refundable; that the rent is being enhanced from time to time and the rent at the time of filing of written statement is Rs.5,325/-; that he paid rents upto November, 2014 and later filed suit O.S.No.129 of 2015 seeking permanent injunction, wherein I.A.No.212 of 2015 was filed; that the rents are being deposited from November, 2014 till January, 2016 in the suit and thus, prayed the Court to dismiss the suit.

6. During the Trial, plaintiff examined himself as P.W.1 and got marked Exs.A-1 to A-3. On behalf of defendant, the proprietor of defendant was examined as D.W.1 and Ex.B-1 was marked.

7. The trial Court on consideration of oral and documentary evidence, decreed the suit by judgment dated 21.02.2019 and

directed the defendant to vacate and deliver vacant possession of the plaint schedule property within two months from the date of judgment. Trial Court further held that the plaintiff is at liberty to file separate application claiming future damages.

8. Against the said judgment and decree, the appellant herein (defendant), filed A.S.No.145 of 2019. The Lower Appellate Court being final factfinding Court on consideration of oral and documentary evidence, by framing necessary points for consideration, dismissed the appeal with costs on 18.03.2021. The lower Appellate Court directed the appellant to vacate the schedule premises and handover vacant possession to the plaintiff within a month. Aggrieved by the said judgment and decree, the present second appeal is filed.

9. Heard Sri S.V.S.S.Siva Ram, learned counsel appearing for appellant and Sri V.V.Ravi Prasad, learned counsel appearing for the respondent.

10. Learned counsel for appellant contended that rents have been regularly paid to the landlord and the appellant did not commit any default. When the landlord tried to dispossess the appellant forcibly, appellant was constrained to file suit for injunction O.S.No.129 of 2015 and, in fact, have been depositing rents in that suit. He also would contend that the notice issued under Section 106 of the Transfer of Property Act, 1882 (for short "**TP Act**") is not valid notice and finally he also

contended that the respondent is not owner of the schedule property.

11. Learned counsel for the respondent supported the judgements and decrees of the Court and contended that no substantial questions of law arise for consideration in the second appeal and prayed the Court to dismiss the appeal.

12. The following are the substantial questions of law arise for consideration in the appeal:

- 1) Whether landlord and tenant relationship exist between respondent and appellant herein?**
- 2) Whether the notice issued under Section 106 of TP Act is valid?**

13. Undisputed facts, as per the pleadings and evidence, are that appellant took shop on lease from respondent and paid Rs.75,000/- at inception. Appellant paid rents to the respondent till September, 2018. Appellant filed suit O.S.No.129 of 2015 against the respondent herein for injunction and filed I.A.No.212 of 2015. Appellant also deposited rents in I.A.No.212 of 2015. Landlord issued notice Ex.A-2 dated 02.10.2015 under Section 106 of TP Act and terminated the lease with effect from 10.11.2015. No reply was issued by the appellant to the quit notice Ex.A-2.

14. Trial Court after framing necessary issued recorded findings that jural relationship of tenant and landlord exists between appellant and tenant; that appellant fell in arrears of rent; that the tenancy is month to month; that tenancy is validly

terminated by issuing notice Ex.A-2. Trial Court also recorded finding that appellant paid rents till September 2018; that landlord is not entitled to arrears of rent of Rs.74,550/- and the Rs.10,000/- claimed by landlord towards damages for use and occupation be adjusted from Rs.75,000/- advance amount. With regard to claim of future damages, it was held that landlord may file separate petition.

15. Against the said judgment and decree, appellant herein filed A.S.No.145 of 2019. Lower Appellate Court being the final factfinding Court discussed oral and documentary evidence and dismissed the appeal by judgement and decree dated 18.03.2021.

16. Though it was argued by the learned counsel for the appellant that there is no landlord and tenant relationship, he failed to prove the same. Apart from that being D.W.1, appellant herein admitted about taking lease of shop from the respondent/plaintiff and paying advance amount of Rs.75,000/- . Appellant/Tenant having entered into premises pursuant to the oral lease, cannot deny the jural relationship. In **Mohd. Saber Vs Rafiunnisa Begam (died) and others**¹, it was held that “lessee cannot deny the title of lessor/landlord”. The finding of fact recorded by Courts below is basing on evidence.

17. The learned counsel for the appellant further contended that notice issued under Section 106 of TP Act is not valid in law. As noted supra, lease entered into between appellant and

¹ 2016(4) ALD 308

respondent is oral and month to month. Landlord by issuing one month notice under Ex.A-2, mandated under Section 106(1) of TP Act, determined the lease. Though it was argued that notice issued under Sec 106 TP Act is not valid, nothing was made out in that regard. Hence, the ground urged by the learned counsel for the appellant that notice issued under Ex.A-2 is not valid falls to ground.

18. Mere payment of advance amount at the time of entering into lease would not inure to the benefit of tenant. Tenant at the most is entitled to recover the amount. In **Chittajallu Srinivasa Rao Vs Narmada Joshi**², it was held that “even if payment of advance is proved, lessee would at the most be entitled to recover it, but cannot plead that lease stands extended for corresponding period”.

19. The second appeal was listed on 31.03.2022 for admission. Learned counsel for appellant argued appeal for admission and later sought time for filing affidavit of the appellant to vacate the schedule premises. Accordingly, the appeal is adjourned to 07.04.2022. Affidavit, duly sworn by the appellant, was filed *vide* USR No.18174 of 2022. A perusal of the affidavit indicates that the appellant stopped paying rents to respondent from September, 2021; that the appellant has been running business in the schedule premises from the last 16 years; that because of Covid-19 pandemic, minuscule business

² 2017 (5) ALT 767

activity is going on and hence, sought time to vacate the schedule premises till 01.04.2023.

20. Learned counsel for the landlord opposed the request made on behalf of tenant to grant time till 01.04.2023 and also submitted that the another tenant in the neighbouring shop in the same complex is paying monthly rent of Rs.35,000/- and in fact, execution petition was filed after judgment and decree and it is pending consideration.

21. The findings of facts recorded by the Courts below are based on evidence and hence, do not call for interference by this Court under Sec 100 CPC. Hence, the second appeal is liable to be dismissed, however without costs.

22. The appellant has been carrying on business since 2006, this Court, in view of the affidavit filed by the appellant, deem it appropriate to grant time to vacate the schedule premises till 31.08.2022. The appellant also agrees to pay rent at Rs.12,000/- per month from March, 2022 till he vacates the schedule premises.

23. In view of the same, time is granted to vacate the premises till 31.08.2022 subject to following conditions:

- (1) The proprietor of appellant shall file an undertaking affidavit before the executing Court on or before 25.04.2022 that he would vacate the schedule premises by 31.08.2022.

(2) The proprietor of appellant shall continue to pay the rent at Rs.12,000/- per month from March, 2022 till 31.08.2022 on or before 10th of succeeding month. The rent for the month of August, 2002 is to be paid by 31.08.2022. However, this will not preclude the landlord from filing separate application as per decree claiming future damages for use and occupation.

(3) If the appellant (proprietor) failed to adhere to any of the conditions referred supra, the respondent/plaintiff is entitled to execute the decree without reference to time granted by the Court to vacate the schedule premises till 31.08.2022.

24. With the above directions, the second appeal is dismissed, however without costs.

As a sequel, all the pending miscellaneous applications shall stand closed.

SUBBA REDDY SATTI, J

13th April, 2022

PVD

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