

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

SECOND APPEAL No.330 of 2015

JUDGMENT :

The appellant Nos.2 and 3, no other than the legal representatives of late appellant No.1, are defendant Nos.2 and 3 (tenants) and respondent Nos.1 to 3 herein are the plaintiffs (landlords). O.S.No.643 of 2011 was filed by the plaintiffs for eviction of defendants from the schedule property belongs to them. The trial Court dismissed the suit with costs vide judgment dated 04.02.2014. Aggrieved by the same, the plaintiffs filed A.S.No.27 of 2014 on the file of Principal District Judge, Kadapa, and the same was allowed on 23.04.2015, reversing the trial Court's dismissal judgment and directing the defendants to vacate the schedule premises within three months and to pay the damages for the use and occupation meanwhile at Rs.20,000/- per month. It is impugning the same, present second appeal is filed.

2. Before admission it was heard on the question of law. The question of law involved is whether once an agreed period of lease expired, which is out come of oral tenancy originally and the landlord without protest having accepted the rent by not treating the tenant as tenant by sufferance to say giving protection to the tenant as tenant holding over of the tenancy; by virtue of the same any further quit notice after efflux of the oral lease period of month to month for the non agricultural to mean a

commercial tenancy of the premises, required?

3. Learned counsel for the appellants placed reliance of the expression of the Honourable Supreme Court in **Burmah Shell Oil Distributing now known as Bharat Petroleum Corporation Ltd., v. Khaja Midhat Noor and another**^[1], which not only deals with the validity of the quit notice prior to amendment to Section 106 of the Transfer of Property Act, but also the protection of tenant holding over of the tenancy is there once landlord has accepted the rent. Here, this judgment is no way specific to say a quit notice is must even after the tenant holder over of the oral tenancy for month or month, the landlord refuses to accept rents and treats the tenant as tenant by sufferance.

4. To decide said question of law involved, the second appeal is admitted. Immediately on admission as it is a short point involved, both parties are heard at length and perused the pleadings. Though several contentions raised with reference to the observations of the Court below against the sufficiency of quit notice, as per Section 106 of the Transfer of Property Act amended in 2003 irregularity or improper giving of quit notice is not a ground in favour of the tenants to attack. From the provisions of the Transfer of Property Act in the case of oral tenancy other than for agricultural, it is a lease from month to month. When original tenancy itself was oral irrespective of the period for which it was continued including from the

mention or admission in the first notice-Ex.A.1 of the year, 2010 and subsequent notice of the year 2012 including with a whisper to vacate within 15 days else to take legal recourse; undisputedly the second notice indicates that after expiry of the original agreed oral lease period, there was no renewal of lease, but for the landlord accepting the rent by giving protection to the tenant as tenant holding over. It is needless to say even for arguments sake, from the protection given as a tenant holding over of the premises, for month to month by acceptance of rents. Later, the protection to the tenant holding over of the premises is no better than of the original tenancy of month to month. Once even the tenant holding over of the premises under the oral lease of month to month, irrespective of Ex.A.1 and A.2 notices, after expiry of every and any month, the landlord can express his unwillingness to accept the rent to treat the tenant from holding over as tenant by sufferance, to say then no quit notice of 15 days time even is required under Section 106 of the Act. Practically the answer on the question of law involved it suffice to dispose of the appeal.

5. Having regard to the above, the second appeal is disposed of by accepting the findings of the lower appellate Court, however, by modifying the period of three months time to vacate granted, to 12 months period of time from today dt.23.06.2015 till 24.06.2016 to vacate the premises by the appellants subject to condition of their

paying the damages as claimed in the suit at Rs.20,000/- per month. There is no order as to costs.

6. Miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

23rd June 2015.

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[\[1\]](#) (1988) 3 SCC 44