

HON'BLE SRI JUSTICE R. SUBHASH REDDY

SECOND APPEAL No.32 of 2013

JUDGMENT :

This Second Appeal is filed by the appellant/defendant challenging the judgment and decree dated 19.11.2012 in A.S.No.350 of 2011 passed by the VII Additional District and Sessions Judge (Fast Track Court), Vijayawada, Krishna District, dismissing the appeal and confirming the judgment and decree dated 12.09.2011 in O.S.No.3387 of 2004 passed by the III Additional Junior Civil Judge, Vijayawada, Krishna District, decreeing the suit for eviction and deliver vacant possession of the plaint schedule property.

2. The unsuccessful defendant in both the Courts below is the appellant herein. Respondent is the plaintiff. For the sake of convenience, in this appeal, the parties are referred to as they are arrayed in the suit O.S.No.3387 of 2004 before the trial Court.

3. The plaintiff filed the aforesaid suit for eviction and deliver vacant possession of the plaint schedule property i.e., one Big Hall and one room with ACC sheet roofing in an extent of 40 square yards of site with Door No.27-14-24, Rajagopalachari Street, Governorpet, Vijayawada, and for grant of damages for use and occupation of the said premises from 1.9.2004 till delivery of possession. It is the case of the plaintiff that he is the absolute owner

and possessor of 80 square yards of land, in which the plaint schedule house was constructed, and the defendant was inducted as a tenant in the said premises initially on 1.7.1984 on a monthly rent of Rs.1,050/-, which was enhanced from time to time, and at the time of filing the suit, the rent payable was Rs.1,500/- per month. Alleging default in payment of rents, on behalf of the plaintiff, a quit notice dated 30.7.2004 was issued to the defendant demanding to vacate the plaint schedule premises and also to pay the arrears of rent. On receipt of the said notice, the defendant got issued a reply notice stating that the rent payable was only Rs.650/- per month and he also incurred huge expenditure on the plaint schedule property for RCC roof and spent an amount of Rs.60,000/- to the plaintiff for his medical expenses. After issuing rejoinder notice dated 31.8.2004, the plaintiff filed suit for the aforesaid relief. The defendant filed his written statement denying various allegations made in the suit. It is the case of the defendant that initially the agreed rent was Rs.600/- and, thereafter in the year 1995, he has vacated two rooms, on which the plaintiff agreed to receive the rent at Rs.550/- per month, which was to be enhanced at the rate of Rs.50/- for every three years, and as on the date of filing the suit, the rent was Rs.650/- per month and, as such, the civil Court has no jurisdiction to try the suit. It is further pleaded that he has spent Rs.50,000/- for construction and repairs of ACC roof to the

plaint schedule premises and also gave Rs.60,000/- to the plaintiff for his medical expenses and, as such, the plaintiff himself is due an amount of Rs.1,10,000/- to him with interest, which is payable at the time of vacating the premises.

4. Basing on the rival pleadings, the trial Court has framed the following issues and an additional issue:

- (1) Whether this Court has got jurisdiction to try the suit?
- (2) Whether the termination of lease by the plaintiff is proper and valid?
- (3) Whether the plaintiff is entitled to the relief of eviction of defendant from the schedule property as prayed for?
- (4) Whether the plaintiff is entitled for arrears of rent as prayed for?
- (5) Whether the plaintiff is entitled for damages as prayed for?
- (6) To what relief?

Additional issue:

Whether the quit notice dated 30.7.2004 is in contrary to the understanding between the plaintiff and defendant, so the said notice is invalid?

5. During the course of trial, on behalf of the plaintiff, he himself was examined as P.W.1, besides examining P.W.2, and got marked Exs.A.1 to A.13. On behalf of the defendant, the defendant himself was examined as

D.W.1, besides examining D.Ws.2 to 4, and got marked Exs.B.1 to B.58.

6. After appreciating the evidence on record, both oral and documentary, the trial Court has recorded a finding that the rent, which was being paid as per Ex.A.1 - Rent agreement dated 7.7.1984, is Rs.1,050/- and, as such, the trial Court has got jurisdiction to entertain the suit. While considering issue Nos.2 and 3, the trial Court held that the defendant has not paid the water charges, as agreed, till 2014 and further held that the quit notice dated 30.7.2004 issued by the plaintiff terminating the tenancy is valid. Further, while answering all other issues also in favour of the plaintiff, by judgment and decree dated 12.09.2011, the trial Court decreed the suit in favour of the plaintiff directing the defendant to handover vacant possession of the suit schedule property to the plaintiff within two months and to pay arrears of rent from 1.1.2004 to 31.8.2004 at the rate of Rs.1,500/- per month and also granted liberty to the plaintiff to file a separate application for recovery of damages.

7. Aggrieved by the said judgment and decree dated 12.09.2011, the defendant preferred an appeal in A.S.No.350 of 2011 on the file of VII Additional District and Sessions Judge (Fast Track Court) , Vijayawada. The lower appellate Court, after re-appreciation of evidence and the material on record, vide judgment and decree dated 19.11.2012, dismissed the appeal, confirming the

judgment and decree of the trial Court and granted two months time to the defendant to vacate the suit schedule premises and to deliver the same to the plaintiff. Hence, the present second appeal.

8. Sri V.S.R. Anjaneyulu, learned counsel for the appellant/defendant, submits that the findings recorded by the trial Court as well as the lower appellate Court are erroneous and contrary to the evidence on record. It is submitted that as the rent, which was being paid, is only Rs.650/- per month and, as such, the trial Court has no jurisdiction at all to try the suit, but inspite of the same, the trial Court has erroneously recorded a finding that the rent payable as per Ex.A.1 was Rs.1,050/- and, as such, the trial Court has got jurisdiction to try the suit. The learned counsel further contended that there are no arrears of rent and, in fact, the plaintiff himself is due an amount of Rs.1,10,000/- to the defendant towards repairs to the suit schedule house and also the amount advanced for his medical expenses.

9. On the other hand, Sri V. Subrahmanyam, learned counsel for the respondent/plaintiff submits that in view of the concurrent findings recorded by both the Courts below, there are no grounds to admit the second appeal.

10. Having heard learned counsel for the parties, I have perused the judgments and decrees passed by both the Courts below.

11. It is to be seen that with regard to the quantum

of rent being paid by the defendant, the trial Court, after appreciating the evidence on record, found that the agreed rent at the time of Ex.A.1 – Rent agreement dated 7.7.1984 is Rs.1,050/- per month, which has been confirmed by the lower appellate Court, and in view of the concurrent findings of fact recorded by both the Courts below, the same cannot be a ground to entertain the second appeal. Further, having regard to the evidence on record, this Court is of the view that the plaintiff has sufficiently proved that the defendant has defaulted in payment of rents and also after issuing valid quit notice, the tenancy is terminated.

12. Having regard to the aforesaid aspects and in view of the concurrent findings of fact recorded by both the Courts below, this Court is of the view that there is no question of law, much less substantial, warranting interference by this Court under Section 100 of the Civil Procedure Code.

13. For the aforesaid reasons, the Second Appeal is devoid of merits and is accordingly dismissed, at the admission stage. As a sequel, miscellaneous petitions pending, if any, in this appeal shall stand closed. No order as to costs.

14. At this juncture, though the learned counsel for appellant/ defendant sought six months time to vacate the premises, as the suit is of the year 2004, the appellant/defendant is granted three months time to

vacate the suit schedule premises, subject to the condition of his filing an undertaking before the trial Court within four weeks from today to the effect that he will pay the arrears of rent as ordered by the trial Court before vacating the premises.

JUSTICE R. SUBHASH

REDDY
13.03.2015.
Msr

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