

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Second Appeal No.798 of 2015

Date : 11-12-2015

Between :

Kunisetty Gopala Krishna

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Appellant

And

Kanchan Devi

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Respondent

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Counsel for appellant : Mr. Raja Reddy Koneti

Counsel for respondent : Mr. B. Chandrasekhar

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The Court made the following :

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JUDGMNET:

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This Second Appeal arises out of Judgment and decree dt. 18.09.2015 in A.S.No.144 of 2012, on the file of the learned III Additional District Judge, Guntur, whereby he has confirmed the Judgment and decree dt. 25.04.2012 in O.S.No.692 of 2009 on the file of the learned I Additional Senior Civil Judge, Guntur.

The respondent has filed the above mentioned suit against the appellant for ejectment and recovery of possession of the plaint schedule property, for future profits at the rate of Rs.15,000/- per month towards damages from the date of the suit for illegal occupation and for costs. The appellant has filed written statement resisting the suit. The trial Court framed the following issues:

1. Whether the plaintiff is entitled to get the order of eviction of the defendant from the suit schedule property?
2. Whether the defendant paid Rs.75,000/- to the plaintiff towards advance by way of cheque No.922338 dt.2.1.2005 as pleaded by him?
3. Whether the plaintiff is entitled to get Rs.15,000/- p.m. towards damages from the defendant as prayed for?
4. To what relief?

On behalf of the respondent-plaintiff, she has examined her son and General Power of Attorney as P.W.1. and filed Exs.A.1 to A.4 in support of her case. On behalf of the appellant-defendant, he has examined himself as D.W.1 and also examined D.Ws.2 to 4 and got Exs.B.1 to B.89 marked. On appreciation of the oral and documentary evidence, the trial Court held all the issues in favour of the respondent-plaintiff. In the appeal, the findings as well as the Judgment and decree of the trial Court were confirmed by the lower appellate court.

At the hearing, Mr. K. Raja Reddy, learned Counsel for the appellant, has advanced only one submission, namely, that admittedly the quit notice was issued by the respondent by giving fifteen days time to his client, which is contrary to sub-section (1) of Section 106 of the Transfer of Property Act 1882 (for short 'the Act').

Sub-section (1) of Section 106 of the Act reads as under :

“106. Duration of certain leases in absence of written contract or local usage-

- (1) *In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agriculture or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other*

purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice."

No doubt, considered in isolation, the above reproduced provision envisages six months' notice for termination of lease of immovable property for agricultural or manufacturing purposes. However, sub-section (3) thereof, which is an exception, reads 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 proceeding is filed after the expiry of the period mentioned in that sub-section."

Admittedly, in this case though a fifteen days' notice was given by the respondent, the suit was filed after expiry of six months' period. Therefore, by operation of sub-section (3) of Section 106, the suit notice is not rendered invalid as the initial defect due to short fall in the notice period got cured as the suit was filed after the expiry of the notice period prescribed under sub-section (1) of Section 106 of the Act.

Learned Counsel for the appellant submitted that his client is using the demised premises for storage of stainless steel utensils and that he may be given six months' time for vacating the premises.

After hearing Mr. B. Chandrasekhar, learned Counsel for the respondent, this Court is of the opinion that as the appellant is running the business, it is

reasonable to permit him to remain in possession for a period of six months from today, subject, however, to the condition that he shall file an undertaking to vacate the premises without any demur and handover the vacant possession to the respondent on the expiry of six months from today, before the trial Court within four weeks from today. If such affidavit is not filed, the respondent is entitled to execute the decree for the appellant's eviction.

Subject to the above directions, the Second Appeal is dismissed.

As a sequel to dismissal of the Second Appeal, S.A.M.P.No.2254 of 2015 shall stand disposed of as infructuous.

Justice C.V. Nagarjuna Reddy

11-12-2015
BNR/AM