

HON'BLE SRI JUSTICE R. SUBHASH REDDY

SECOND APPEAL No.790 of 2015

JUDGMENT :

This Second Appeal is filed under Section 100 of C.P.C., by the defendant in the suit in O.S.No.161 of 2011 on the file of XI-Junior Civil Judge, City Civil Court, Secunderabad, aggrieved by the judgment and decree of eviction, dated 22.12.2012, as confirmed by the appellate Court vide judgment, dated 12.08.2015, passed in A.S.No.14 of 2013, by the I-Additional Chief Judge, City Civil Court, Secunderabad.

2. Respondent/plaintiff has filed suit in O.S.No.161 of 2011 for eviction of appellant herein from the suit schedule premises and for recovery of arrears of rent. Case of respondent/plaintiff is that she is the absolute owner of the residential plot admeasuring 400 square yards bearing Plot Nos.38 and 43 including residential house bearing Door No.8-4-19, situated in Sy.Nos.111, 112, 113 and 114 of Old Bowenpally village, Secunderabad and during October 2015, the appellant/defendant, who is a Doctor, approached her and requested to let out the suit premises on rental basis and the same was given on rent on month-to-month basis initially on payment of rent of Rs.3,000/- per month and delivered vacant possession to the defendant on 01.12.2005. It is her case that the Defendant wanted to

continue in possession of suit schedule premises during construction of his hospital-cum-residential house, but he has not vacated the premises and ultimately, he executed lease deed, dated 04.01.2008, in favour of respondent/plaintiff for a period of 11 months initially from 04.01.2008 to 03.12.2008 on a monthly rent of Rs.3,500/- . It is pleaded that even after expiry of such period, the appellant/tenant continued his possession illegally and that he has increased the rent and was paying rent at the rate of Rs.4,500/- per month. Pleading that he was not vacating the premises inspite of demand, quit notice, dated 29.01.2011, was issued, which was returned with an endorsement that there was no such addressee. It is also pleaded that even after tenancy is terminated, the appellant/tenant is continuing in illegal possession, and hence, sought for his eviction and also for recovery of arrears of rent.

3. The appellant/defendant has filed written statement. While denying the various averments made in the plaint, it is pleaded in the written statement that only on the instigation of respondent/plaintiff, he has executed undertaking to vacate the premises and further pleaded that he is paying rents regularly and he is a Doctor by profession and he leaves the premises by 8 a.m. and returns back from consultancy by 8 p.m., as such, the question of his refusing to receive the notice does not

arise.

4. In the suit, respondent/plaintiff was examined as PW-1 and another witness was examined as PW-2 and documents under Exs.A-1 to A-15 were marked on her behalf. The appellant/defendant was examined as DW-1 and documents under Exs.B-1 to B-5 were marked on his behalf. The trial Court, on appreciating the oral and documentary evidence on record, by judgment dated 22.12.2012, has decreed the suit by ordering eviction of appellant/defendant and also ordered to pay arrears of rent for three months.

5. As against the said judgment and decree, the matter was carried in appeal before the I-Additional Chief Judge, City Civil Court, Secunderabad, in A.S.No.14 of 2013. Even the appellate Court, by re-appreciating the evidence on record, has recorded a finding that the appellant/defendant has failed to establish any ground to set aside the decree and judgment of the trial Court and granted three months time to vacate the premises.

6. Heard Sri N.Mukunda Reddy, learned counsel for appellant and Sri P.S.Raja Sekhar, learned counsel for respondent.

7. In this appeal, it is contended by the learned counsel for appellant that the appellant has not committed

any default in payment of rent and that the suit schedule premises is not required for personal occupation of the landlady and inspite of the same, eviction is ordered. On the other hand, it is submitted by the learned counsel for respondent/plaintiff that as the appellant has continued in possession illegally even after quit notice is issued, suit is filed for eviction, and hence, the grounds of willful default and bonafide requirement need not be established to seek order of eviction. It is submitted that in the absence of valid lease, the trial Court has rightly ordered eviction and ordered for payment of arrears of rent for three months, which is rightly accepted by the lower appellate Court and there are no grounds to interfere with the same.

8. From the evidence on record, it is clear that there is no dispute that the respondent/plaintiff is the owner of the suit schedule premises. It is her specific case that she has parted possession on the request of appellant in October, 2005 on the ground that he will continue in possession only until completion of his hospital-cum-residence. It is also clear that the appellant, inspite of vacating the premises, has executed an undertaking on 08.04.2009. From the evidence on record, it is also clear that even after quit notice is issued, the appellant has not vacated the premises. As the eviction is sought based on the termination of tenancy, there is no requirement of establishing either bonafide requirement or willful default,

to seek eviction. As the subject matter is not covered by the A.P.Buildings (Lease, Rent and Eviction) Control Act, 1960, such grounds cannot be the grounds, which constitute substantial questions of law within the meaning of Section 100 of CPC.

9. For the aforesaid reasons, there is no ground to interfere in this Second Appeal under Section 100 of CPC and the same is accordingly dismissed.

10. As it is pleaded that the appellant requires some time to secure alternate accommodation, the appellant is granted Four months time to vacate the premises, subject to filing an undertaking before the Registry of this Court within two weeks from the date of receipt of this order, undertaking to vacate the premises before the expiry of four months from today, by serving a copy of such undertaking on the learned counsel for respondent.

Pending miscellaneous applications, if any, shall stand closed. No order as to costs.

R. SUBHASH REDDY, J

4th December 2015

ajr