

HON'BLE SRI JUSTICE R. SUBHASH REDDY

SECOND APPEAL No.353 of 2015

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JUDGMENT :

This Second Appeal is filed under Section 100 of C.P.C., by the defendant in O.S.No.1017 of 2009 on the file of X-Additional Senior Civil Judge (FTC), City Civil Court, Hyderabad, aggrieved by judgment and decree dated 30.05.2011, as confirmed by judgment dated 31.03.2015, passed in appeal A.S.No.209 of 2011, by the III-Additional Chief Judge, City Civil Court, Hyderabad. For the purpose of disposal, I refer to the facts as narrated in O.S.No.1017 of 2009.

2. Plaintiff is the absolute owner and possessor of suit schedule property. The suit in O.S.No.1017 of 2009 is filed for eviction of defendant and for past and future mesne profits. It is the case of plaintiff that he is the owner and possessor of suit schedule property admeasuring 2200 square yards covered by M.C.H.N.o..7-2-1851/2, situated at Fatehnagar, Hyderabad and the father of plaintiff, in the capacity of natural guardian of the plaintiff, has leased out the schedule property to the defendant by executing lease deed dated 15.10.1978, on a rent of Rs.1,100/- per month, for a period of 11 months. The rent was enhanced from time to time and defendant was paying Rs.7,500/- per month by the time of filing suit. By issuing notice of termination of tenancy dated 28.02.2009,

suit for eviction is filed.

3. Defendant has filed the written statement admitting the tenancy, but he denied the other contentions in the plaint. It is the case of defendant that though the lease was for a period of 11 months commencing from 15.10.1978, he continued as such by increasing the rent, and in the month of June 1987, there was a meeting of plaintiff and defendant, in which, the plaintiff has accepted for granting lease perpetually subject to condition of periodical review of rent, keeping in view the cost of index and the propensity of the business of defendant. It is further pleaded that the defendant had developed the property by constructing compound wall and by digging a borewell.

4. In the suit, plaintiff was examined as PW-1 and Exs.A-1 to A-20 were marked on his behalf. On behalf of defendant, Dws.1 to 3 were examined and Ex.B-1 was marked. The trial Court, by appreciating the oral and documentary evidence on record, by not accepting the plea of defendant about perpetual lease, has ordered eviction and also ordered for payment of an amount of Rs.18,000/- towards rent for two months i.e. past mesne profits. For future mesne profits, it was observed in the judgment that the plaintiff may file a separate application.

5. Aggrieved by the said judgment and decree of the

trial Court, the appellant carried the matter by way of appeal in A.S.No.209 of 2011 before the III-Additional Chief Judge, City Civil Court, Hyderabad. The appellate Court has also recorded a finding that the defendant has failed to establish perpetual lease, and thus, confirmed the judgment and decree passed for past mesne profits of Rs.18,000/-.

6. Heard Sri M.M.Firdos, learned counsel for appellant and Sri M.V.S.Suresh Kumar, learned counsel for respondent/plaintiff.

7. It is submitted by the learned counsel for appellant that the property, when originally leased, was in an undeveloped area and the appellant/defendant has developed the same by constructing compound wall and digging borewell. It is submitted that the appellant is using the premises for his business purposes by paying the rents and inspite of acceptance by the plaintiff to grant the suit schedule property on perpetual lease to the appellant, the trial Court has erroneously allowed the suit filed by the respondent-plaintiff. It is submitted that even the appellate Court has committed the same error by not appreciating the evidence on record in proper perspective.

8. On the other hand, it is submitted by Sri M.V.S.Suresh Kumar, learned counsel appearing for respondent/plaintiff that except the alleged oral

acceptance by plaintiff, no other evidence is adduced by the defendant in support of his claim for perpetual lease. It is submitted that originally the lease deed was executed for a period of 11 months and after expiry of said 11 months, the lease is to be considered from month to month, as such, by issuing termination notice, lease is terminated. It is submitted that in the absence of any substantial question of law, there are no grounds to interfere with the concurrent findings recorded by the Courts below.

9. Having heard learned counsel for appellant/defendant and respondent/plaintiff, I have perused the judgment of the trial Court as well as the appellate Court.

10. In this case, it is not in dispute that the respondent/plaintiff is the owner of suit schedule property and it was leased-out to the appellant/defendant for a period of 11 months vide Ex.A-1/lease deed, and after expiry of the original lease period of 11 months also, the defendant continued in the suit premises. Except pleading that in the meeting held in the month of June 1987 respondent/plaintiff has agreed to grant perpetual lease subject to review of rent from time to time, there is no document at all to that effect. Further, respondent/plaintiff has denied any such acceptance for grant of perpetual lease. In view of the concurrent

findings recorded by the trial Court as well as the appellate Court on the claim of defendant with regard to perpetual lease, this Court is of the view that no substantial question of law is involved in this second appeal, so as to admit the same.

11. Accordingly, the second appeal is dismissed at the stage of admission. No order as to costs.

12. As much as it is pleaded that the appellant/defendant is using the suit schedule property for business purposes and is in continuous possession from 15.10.1978, counsel for appellant requested for grant of some time to vacate the premises. Considering the request of the appellant and as much as the appellant need some time to secure alternate accommodation for his business, appellant is granted six months time from today to vacate the suit schedule premises, subject to filing of undertaking before the Registry of this Court, undertaking to vacate the premises by 15.01.2016. In addition to such undertaking, the appellant shall continue to pay the rent at the rate of Rs.9,000/- per month on or before 10th of every calendar month. It is made clear that no further extension of time will be granted to the appellant for vacating the premises.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

15th July 2015

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