

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

SECOND APPEAL No.890 of 2015

JUDGMENT:

This Second Appeal is preferred by the defendant in the suit which was instituted for his eviction. The suit was decreed and the appeal preferred by the appellant herein was dismissed on 01.12.2015. It is against this judgment, the present Second Appeal is preferred.

Heard Sri C.Naresh Reddy, learned counsel for the appellant and Sri J.Sridhar, learned counsel for the respondent landlady.

It is the specific case of the plaintiff that the tenant has fallen in arrears of payment of monthly rent and he was also consistently in arrears in tendering the monthly rent. In those set of circumstances, a quit notice was issued calling upon the appellant to vacate the premises by 31.08.2013. But, however, the appellant has taken the plea that he was not irregular in tendering the monthly rent and that he had not received the quit notice. The trial Court upon considering the evidence marshalled before it has rejected both the pleas. The quit notice was in fact sent by the learned advocate on behalf of the respondent landlady by way of registered post to the same address, which is the leased premises of the appellant. The postal acknowledgment card furnished by the post office discloses that the cover was delivered at the same address. However, Sri Naresh Reddy, learned counsel for the appellant would contend that the postal acknowledgment card did not bear the signature of the appellant and hence, he urges that the finding of fact recorded by the trial Court that the quit notice is delivered is a perverse finding. I am afraid, there is no merit in this contention. The trial Court has marked the quit notice, dated 10.08.2013 as Ex.A.1 and the postal

receipt of sending the said notice by registered post on 12.08.2013 is marked as Ex.A.2 and the postal acknowledgment card returned by the post office is marked as Ex.A.3. Ex.A.1 notice was sent to the same address, which premises was leased out by the landlady to the appellant tenant. Ex.A.3 clearly recorded the name of the appellant, his father's name and his complete postal address. There is also a stamp affixed by the post office in proof of delivering the cover at the said address. Therefore, burden lies heavily on the person, who disputes such a factum, to establish by examining relevant person in support of his plea of non-receipt. No such attempt has been made by the appellant.

On the other hand, the appellant went into the box and has examined himself as D.W.1 and did not examine any authority from the post office or any other person on his behalf. He has also not filed any documentary evidence. Hence, the finding of fact recorded by the trial Court and as affirmed by the appellate Court that Ex.A.1 - quit notice, dated 10.08.2013 is delivered on the appellant cannot be faulted. The other contention canvassed by

Sri Naresh, learned counsel is that the landlady has not gone into the box and on the other hand, her grandson, by name, R.Sandeep, was examined as P.W.1 and hence, P.W.1 being an agent, cannot vouch for the facts which are within the domain of knowledge of landlady. This contention also would not detain us further, for, the trial Court has clearly recorded that the landlady is a septuagenarian old lady. She is staying with her daughter, who is taking care of her. It appears, the landlady is also ailing. Hence, her grandson who was examined as P.W.1 was looking after her affairs. He did say so in his deposition. He also added that it is he who is collecting the monthly rent from the appellant tenant. Therefore, the facts spoken to by P.W.1 cannot be said as without any backup knowledge. No substantial question of law of general importance falls for consideration in this Second Appeal.

Hence, it is liable to be dismissed at the admission stage.

However, learned counsel for the appellant has filed an undertaking affidavit in this Second Appeal into the Court today. In paragraph 4 thereof, the appellant has asserted that he has looked for alternative accommodation at premises bearing No.31-117, Ramakrishnapuram, Neredmet X Roads, Secunderabad and it is stated that the said premises would fall vacant by 05.03.2016. He therefore urges in paragraph 5 of the undertaking affidavit that he may be granted time till 05.03.2016 for vacating the present premises bearing No.37-93/51, Madhuranagar, Neredmet, Malkajgiri, Ranga Reddy District. In view of his unconditional undertaking furnished to this Court that he will vacate the suit schedule premises latest by 05.03.2016, I consider that the ends of justice would be served adequately by granting time to the appellant till 05.03.2016 for vacating the premises latest by 6.00 p.m. on that day and deliver vacant possession of the suit schedule premises without causing any damage and any breakage to the fixtures and fittings available there at. It is needless for me to observe that the appellant is required to clear all arrears of rents and shall also continue to pay the rents right up to 05.03.2016. Only because of the undertaking furnished by the appellant, a compassionate view is taken in this matter though while dealing with civil suit for eviction of a tenant such a measure is not generally adopted by this Court.

Accordingly, the Second Appeal stands dismissed. No costs.

Consequently, Miscellaneous Petitions, if any pending, shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

23rd DECEMBER, 2015.

Note: issue c.c. today.

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