

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

SECOND APPEAL No.441 of 1999

JUDGMENT:

The unsuccessful plaintiff, whose suit—O.S.No.45 of 1993 for eviction of the defendant No.1 from the suit schedule shop rooms and for past and future damages @ Rs.10,000/- p.m from February, 1993 though decreed in its favour by the Principal Munsif Magistrate, Tenali in its judgment dt:28.04.1998 but reversed by learned Additional Senior Civil Judge, Tenali in his judgment dt:18.02.1999 in A.S.No.32 of 1998, preferred the instant second appeal.

2) The brief facts of the case are thus:

- a. The plaintiff is the Vasavi Kanyaka Parameswari Vysya Vidhanidhi Committee and its case is that D.1 is its tenant in respect of plaint schedule 6 shop rooms. Originally, D.1 took the plaint schedule premises on lease from D.2—Vasavi Kanyaka Parameswari Devasthanam Satram Committee in or about 1951. Afterwards plaint schedule premises was transferred to the plaintiff by D.2 and D.1 attorned to plaintiff as a lessee and continuing as its tenant by paying rents since 1954 onwards. D.1 also executed fresh lease agreements in favour of plaintiff on several times, one of which was dt:01.09.1972 for the period from 01.04.1972 to 31.03.1973. Further, at the instance of plaintiff, D.1 enhanced rent on several times and by the date of suit, the rent for the plaint schedule premises was Rs.1030/-. The lease is a month to month lease payable on the end of every month.
- b. The further case of plaintiff is that D.1 sublet the shops to others at higher rents without the consent of plaintiff which forced plaintiff to file R.C.C.Nos.22/1988 to 27/1988 against D.1 before

Rent Control Court, Tenali for eviction. Those petitions were dismissed on technical ground that the total rent paid en-bloc to all the 6 shop rooms exceeded Rs.1000/- p.m and hence the rent controller had no jurisdiction. Later the plaintiff issued quit notice dt: 08.01.1993 under Sec.106 of Transfer of Property Act (for short "T.P. Act") demanding D.1 to vacate the plaint schedule premises and also treating him as trespasser w.e.f 01.02.1993 and claiming damages @ Rs.10,000/- p.m. D.1 gave reply with false allegations as if he took the premises on lease from D.2 and D.2 alone was the owner of the premises. Plaintiff reiterated that D.2 transferred the property and it has nothing to do with the premises and the contention of D.1 is untenable. Hence the suit —O.S.No.45 of 1993 for eviction of D.1 and for damages.

- c. D.1's case in his written statement was that he took premises on lease from D.2 in 1951 under registered lease deed dt: 11.11.1951 but it is false to say that the plaint schedule premises was transferred by D.2 to plaintiff and D.1 attorned to plaintiff as tenant since 1954 and executed lease agreement in plaintiff's favour several times and one such agreement was dt:01.09.1972 and enhanced the rent at the instance of plaintiff. D.1 contended that he was not the tenant of the plaintiff and the plaintiff has no right to terminate the lease of the D.1.
- d. The further case of D.1 was that as per the lease deed dt: 11.11.1951 executed between D.1 and D.2, it was agreed that D.1 can sublease the shops and also adjacent vacant site on the condition that D.2 should build a shop over the vacant site. Accordingly, D.2 constructed shop in the vacant site and delivered to D.1. In the year 1956 on the request of D.2, D.1 delivered back 2 out of 8 shop rooms to D.2 to enable D.2 to

construct a staircase and retained remaining 6 shop rooms with him. D.1 used to carry on electrical goods business and cloth business in four shop rooms and let out the remaining 2 shop rooms. There was a clause in the registered lease deed dt:11.11.1951 which authorized D.1 to sub-lease all or any of the plaint schedule shops, pursuant to which, he let out two shops. Whenever there was expansion of his business, he used to take back possession of those 2 shops from the tenants and was carrying on business and whenever it was not necessary for him, he used to lease out the plaint schedule shops. Step by step, D.1 closed his business from the November, 1987 onwards and he let out all the 6 shops by virtue of the aforesaid enabling clause. By 15.06.1986, the rent was Rs.1030/-. Initially, the clerk of D.2 used to come and collect rents from D.1 and it went on for 20 years. Later the said clerk used to pass rent receipts in the name of plaintiff. When D.1 questioned it, he replied that plaintiff is only a sister concern of D.2 and D.2 resolved to spend the rents derived from the plaint schedule shops for the poor Vysya students and therefore, receipts were being issued on behalf of the plaintiff. Hence, D.1 did not object. After filing of RCC No.32/1987 by the plaintiff committee, the clerk stopped coming to D.1 for collection of rents and D.1 used to send rents by way of cheques and after filing of other R.C.Cs, he was depositing the rents into the Court. D.1 spent about Rs.4,00,000/- for fixing counters, showcases and other accessories in the plaint schedule shop rooms. D.1 never took the shop rooms on lease from plaintiff and D.1 continued to be a tenant under D.2 from 1951 till date. There is no landlord and tenant relationship between plaintiff and D.1. Hence, the suit is liable to be

dismissed.

- e. Whereas D.2 in its written statement admitted that it transferred the plaint schedule property to plaintiff committee and the plaintiff has been in management of the same. D.2 made it clear that D.1 has to pay rents to the plaintiff committee and thus prayed for dismissal of the suit accordingly.
- f. The following issues were framed for trial.
 - vii. Whether there is the relationship of landlord and tenant between the plaintiff and the 1st defendant in respect of the plaint schedule rooms?
 - i. Whether the plaintiff is entitled to possession of the plaint schedule rooms?
 - ii. Whether the plaintiff is entitled to damages as prayed for?
 - iii. To what relief?
- g. During trial, PWs.1 and 2 were examined and Exs.A.1 to A.25 were marked on behalf of plaintiff. DWs.1 to 4 were examined and Exs.B.1 to B.108 were marked on behalf of D.1.
- h. On appreciation of the facts and evidence, the trial Court observed that though there was no written deed transferring the plaint schedule premises by D.2 to plaintiff nor a resolution passed by D.2 to that effect, still the record showed that D.1 was paying rents to the plaintiff after 1954 and also enhancing rents at the instance of plaintiff. Further, when the plaintiff filed R.C.C. Nos.22/1988 to 27/1988, D.1 filed his counter but did not deny the landlord-ship of the plaintiff. Similarly, in O.S.No.957 of 1972 filed by the plaintiff against D.1, he did not dispute the ownership of the plaintiff. The trial Court observed that there was no record to show that at any point of time D.1 raised objection for payment

of rents to the plaintiff or enhancement of the rent made by the plaintiff. Further, the D.1 admittedly surrendered 2 shop rooms to the plaintiff committee by giving Ex.A.21—letter. Thus the documentary evidence and conduct of the D.1 showed that from 1954 onwards D.1 never denied the ownership of plaintiff committee. The trial Court thus held that there was landlord and tenant relationship existed between plaintiff and D.1. It accordingly decreed the suit for eviction and also for damages @ Rs.10,000/- p.m from February, 1993.

- i. Aggrieved, the D.1 filed A.S.No.32 of 1998 before Additional Senior Civil Judge, Tenali challenging the judgment of the trial Court.
- j. On hearing both sides, the first appellate Court observed that there was no document to show that D.2 transferred his rights in the suit schedule property to the plaintiff and hence there was much force in the contention of the appellant/D.1 that the plaintiff had no *locus standi* to file the suit. It further observed that D.2 colluded with the plaintiff and supported its case. It also observed that Exs.A.10 to A.16, Exs.B.7 to B.94, B.100 to B.108 were all rent receipts for the period 1972 onwards and those documents go to show that D.1 paid rents to plaintiff at the request of D.2 for the benefit and maintenance of Arya Vysya students. It had further observed that there was force in the contention of the appellant/D.1 that the acceptance of the rents by the landlord from the tenant for the period subsequent to the quit notice amounts to waiver of the quit notice. On all these observations, the first appellate court held that the plaintiff had no *locus standi* to file the suit and in view of it, there was no

necessity to go into the other arguments of the parties. It ultimately reversed the judgment and decree passed by the trial Court and dismissed the suit.

Hence, the second appeal at the instance of the aggrieved plaintiff.

3) It is to be noted that pending appeal, Respondent No.1/Defendant No.1 died and respondent Nos.3 to 8 are brought on record as his legal heirs in two spells as per orders in CMP No.2021/2005 dt:09.09.2005 and CMP No.2072/2005 dt:31.01.2006. While so, pending appeal the respondent No.3 died and a memo is filed to the effect that respondent Nos.4 to 8 are her L.Rs who are already on record.

4) The parties in this appeal are referred as they are arrayed before the trial Court.

5) Heard arguments of Sri V.K. Naidu, learned counsel for appellant and Sri V.L.N.Gopala Krishna Murthy, learned Senior Counsel for respondent Nos.4 to 8.

6) Severely criticizing the judgment in A.S.No.32 of 1998, learned counsel for appellant/plaintiff argued that D.1 by his conduct having admitted the title of the plaintiff in respect of the plaint schedule premises and attorned to it, now estopped from denying its title under Sec.116 of Indian Evidence Act and such denial itself is a ground for eviction. He argued that in previous round of litigation either in batch of RCCs or in O.S.No.957 of 1972, D.1 never challenged the title of the plaintiff and on the other hand, he obliged the decree in O.S.No.957 of 1972. Further, the D.1 has been paying rents to plaintiff all these years and not questioned when the plaintiff enhanced the rents. Not only that D.1 surrendered two shop rooms to the plaintiff. In view of the past conduct of D.1, he is estopped from denying the title of the plaintiff. Above all, D.2 who is the original owner of the suit schedule property itself has not challenged the title of the plaintiff and on the other hand it categorically admitted that it

has transferred the suit property in favour of plaintiff. In this back drop, the first appellate Court ought not to have probed the title of the plaintiff which is immaterial in a suit for ejection of a tenant. He relied upon the following decisions of the Apex Court to buttress his contention that a tenant is estopped from questioning landlord's title so long as he does not surrender possession:

- i. ***Dr. Ranbir Singh vs. Asharfi Lal***
- ii. ***State of Andhra Pradesh and others vs. D.Raghukul Pershad (dead) by LRs and others***

He thus argued that the first appellate Court committed a grave error in holding that since there was no written transfer deed in favour of the plaintiff, it has no *locus standi* to file the suit for ejection of the D.1. He reiterated his argument to the effect that unlike in a suit for declaration of title and recovery of possession, the decision on title of the plaintiff is immaterial in a suit for ejectment of the tenant.

a) Next, he argued that the first appellate Court committed another error in its observation that since the plaintiff accepted rent subsequent to its issuing quit notice without any reservations, such acceptance would amount to waiver of quit notice. He contended that the first appellate Court has not properly appreciated the facts and evidence in this regard. In expatiation, he would argue that the plaintiff issued Ex.A.23—quit notice on 08.01.1993 with a clear mentioning therein that the tenancy was monthly tenancy and he wanted to terminate the same with the end of January, 1993 and instructed D.1 to vacate the plaintiff schedule premises at the end of January, 1993 and warned that if he failed to vacate, the plaintiff would treat him as trespasser from 1st February, 1993 and he would be liable to pay damages @ Rs.10,000/- p.m. Learned counsel argued that as per Ex.A.23, the plaintiff treated the D.1 as his tenant till the end of January, 1993 and that was the reason why when D.1 through Ex.A.25—reply notice dt: 11.02.1993 sent the cheque towards the rent for the month of January, 1993 accepted the same

because the rent was for the month of January, 1993 only. Immediately in the month of March, 1993 he filed the suit for eviction. Hence, plaintiff's receiving the rent for the January, 1993 cannot be treated as waiving the quit notice because admittedly the plaintiff treated D.1 as his tenant till the end of January, 1993. Learned counsel argued that the intention of the plaintiff should be taken into consideration before branding him as waived the quit notice. As stated earlier, since the amount sent under Ex.A.25 was for the month of January, 1993, there was nothing wrong on the part of plaintiff to accept the same. Such acceptance would not amount to waiver. He relied upon the decision reported in ***Purohit Lakshmanchandji vs. Venkata Sree Ramachandra Murty*** to buttress his contention that the intention of the landlord should be considered.

He thus prayed to allow the appeal by setting aside the judgment of the first appellate Court and restoring the judgment of the trial Court.

7) Per contra, while supporting the judgment of the first appellate Court learned Senior Counsel for respondents 4 to 8 argued that the plaintiff and D.2 are two different and distinct entities and as such, for effecting transfer of the plaint schedule property, they must enter into a registered instrument which is sourly absent in the instant case and therefore, the plaintiff cannot harp that he obtained the plaint schedule property by way of oral transfer which is unknown to law. He contended that in that view of the matter, the first appellate Court rightly observed that the plaintiff had no *locus standi* to file the suit against D.1 for eviction. He submitted that all these years, D.1 used to pay rents to plaintiff not by admitting his title and attorning as his tenant but by following the instructions of the D.2. Therefore, such mere payment of rents cannot be treated as its admission of plaintiff's title to the suit property.

a) Nextly, learned counsel argued that plaintiff by receiving the rent after issuing quit notice, waived the said notice and on that ground also it cannot maintain the suit. He thus prayed to dismiss the appeal.

8) In the light of above rival argument, the following substantial questions of law arise for consideration in this second appeal:

- i. Whether D.1 by his past conduct did not challenge the ownership of plaintiff over the plaint schedule property in earlier round of litigation and if so is he estopped from denying the title of the plaintiff in present litigation?
- ii. Whether plaintiff has waived the quit notice issued terminating the lease of the D.1 in the circumstances of the case?
- iii. To what relief?

9) **POINT No.1**: The admitted facts are that D.2, who was the original owner of the plaint schedule shop rooms, leased it to D.1 under Ex.B.5—registered lease deed dt:11.11.1951. Then the crux of the plaintiff's case is that in or around 1954, D.2 transferred the plaint schedule property to plaintiff and D.1 attorned to plaintiff as tenant and paying rents and also the enhanced rents, as and when enhanced by the plaintiff and most importantly D.1 never disputed ownership of the plaintiff in the previous round of litigation. D.1 denied these allegations. According to him, plaintiff was not at all the owner of the plaint schedule property and he never attorned to plaintiff but he used to pay rents to plaintiff only on the instructions of D.2 and hence plaintiff has no right to evict him.

a) Admittedly, no registered instrument or resolution of D.2 committee was produced before the trial Court to show that the plaint schedule premises was transferred by D.2 in favour of plaintiff. However, it is pertinent to note that D.2 in its brief written statement in toto admitted plaintiff's case to the effect that plaint schedule property was transferred by it to the plaintiff committee and it has been managing the said property and D.1 has to pay rent to the plaintiff committee. As rightly contended by learned counsel for appellant, the suit under appeal is only a suit for ejectment of the tenant but not a suit for

declaration of title and eviction of a rival claimant or a trespasser. Therefore, if since inception, D.1 by his conduct did not challenge the ownership of plaintiff and paid rents to him as a gesture of attornment to it, the discussion and decision on the title of the plaintiff over the plaint schedule property in the present case is of no consequence. Precisely, the title of the plaintiff however defective may be is not a matter of discussion and determination in view of admission on the part of the original owner i.e, D.2 itself. So what is pertinent here is whether D.1 by his conduct admitted the title of the plaintiff in the past and if so whether he is now precluded from questioning its title in the present litigation.

10) In the above context, a perusal of the evidence shows that Ex.A.1 is the petition copy in RCC No.24 of 1988 whereunder plaintiff filed an eviction petition to evict the present D.1 from one of the shop rooms on the plea that the present D.1 is its tenant and he was sub-leasing the said shop room and other shops without having any right. Ex.A.2 is the counter filed by present D.1 which would show that though he mentioned that he took on lease the petition mentioned shop room and other shop rooms for 5 years in the year 1951 from Sri Vasavi Kanyaka Parameswari Devasthanam Committee and continuing as such, he did not challenge the ownership of present plaintiff over the plaint schedule property. He did not make an emphatic allegation that he was not the tenant under the present plaintiff. On the other hand, he alleged that he was sending the rents to the present plaintiff by Bankers Cheque and insisted for receipts. Then Ex.A.3 is the common judgment in RCC No.24 of 1988 and batch filed by the plaintiff. It shows, D.1 incidentally argued therein that plaintiff was only a beneficiary and not the owner but that aspect was not given much weight because D.1 in its counter in the batch of RCCs did not challenge the ownership of the plaintiff therein. On the other hand, in that judgment it was held that though it was argued that petitioner failed to show its ownership over the petition schedule building, the respondent is estopped from questioning the right of the petitioner having paid rents to him as an owner and not as an agent of the

owner and the said point does not need any elaborate discussion. In the said judgment it was mainly discussed whether D.1 had a right to sublease the shops and it was held that his right to sub-lease the premises was lost w.e.f 10.11.1956 i.e, after expiry of the 5 years lease period. However, the batch of RCCs were dismissed on technical ground that all the 6 RCCs constitute a single unit of tenancy and there were no independent 6 tenancies between the parties and the monthly rent for all the 6 shop rooms being Rs.1030/-, in view of Sec.32(b) of A.P. Rent Control Act, r/w G.O.Ms.No.636 (General Administration) dt:29.12.1983 the issue of sublease was beyond the purview of the Rent Control Act. So from Ex.A.3 also it can be inferred that D.1 has not seriously challenged the ownership of the plaintiff in the earlier litigation and though he made a slight insinuation that the plaintiff was only a beneficiary, that was not considered and held that D.1 was estopped from questioning the right of the plaintiff having paid the rents to him as owner. Then Ex.A.4 is purported to be a reply notice sent by D.1 to plaintiff's counsel against the rents claimed by the plaintiff. In that reply, D.1 did not question the ownership of the plaintiff but only asked for the particulars of the amounts paid by him from time to time to clear off the dues if any. So Ex.A.4 also would show that previously D.1 did not challenge the ownership of plaintiff. Ex.A.5 is the letter addressed by plaintiff to D.1 showing the particulars of the rents paid by him between 09.08.1976 and 28.03.1978. Thus Ex.A.5 would show that D.1 was paying rents to plaintiff.

11) Apart from RCCs, it appears present plaintiff filed O.S.No.957 of 1972 against D.1 alleging that in the shop rooms, the names of the donors were engraved on the plates and embedded on the walls and the defendant willfully caused damage to the building and also broke the eastern wall and removed the name plates and demolished the partition walls between the shop rooms and thus sought for an injunction restraining him from causing damage to the property and also for a mandatory injunction to restore the walls and pay compensation. The present D.1 filed written statement under Ex.A.6

denying the allegations of waste and damage but he did not contend therein that the plaintiff was not the owner of the shop rooms. On the other hand, the matter was compromised between the parties vide Ex.A.7—compromise deed and D.1 agreed to pay Rs.600/- to the plaintiff towards costs and damages. So Exs.A.6 and A.7 would further establish that D.1 did not challenge the ownership of plaintiff in the earlier round of litigation. Then Exs.A.10 to A.16 are the rent receipts issued by the plaintiff to D.1 when he paid rents from time to time. Exs.A.21 and A.22 are letters sent by the plaintiff to D.1 and others stating that the plaintiff committee was enhancing the rents and sought for cooperation of the tenants in that regard. D.1 and others signed on the said letters as a mark of their approval.

12) Then Exs.B.8 to B.94 are the rent receipts and postal acknowledgments showing the rents paid by the D.1 to plaintiff. Though D.1 contended that only on the instructions of D.2 he paid rents to plaintiff but not recognizing it as owner there is no such mentioning in the above documents.

a) So a perusal of above documentary evidence would clearly show that in the previous round of litigation, D.1 did not strongly challenge the ownership of plaintiff and on the other hand, he paid rents to plaintiff and also obliged when plaintiff enhanced the rents. The rent receipts do not contain any endorsement that the rents were paid to plaintiff only on the instruction of D.2. Further, there were no written instructions from D.2 to D.1 to pay rents to plaintiff, as contended by D.1. Above all, D.2 himself admitted that it transferred the property to plaintiff. From all these, it can be safely concluded that irrespective of absence of a registered transfer deed, D.1 by his conduct admitted the ownership of plaintiff and attorned to him and continued as its tenant till quit notice was issued by the plaintiff.

13) In this backdrop, the pertinent question is having admitted title of the plaintiff by his past conduct, whether D.1 can challenge the title of the plaintiff in the present litigation. Sec. 116 of Indian Evidence Act

imposes an estoppel against the tenant and it reads thus:

“Sec.116: Estoppel of tenant and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

The doctrine of estoppel which is propounded under Section 116 envisages that a person who has been inducted into an immovable property as a tenant admitting the title of the landlord cannot deny the title of his landlord during the continuance of tenancy. “During continuance of tenancy” mentioned in Section 116 means during the continuation of possession that was received under the tenancy in question. This doctrine is a statutory recognition of equitable principle that it is unjust for a person to approbate and reprobate. This principle is reiterated by the Apex Court in ***D.Raghukul Pershad's*** case (2 supra) cited by the appellant. In that case, the facts were that the respondent filed a suit for ejectment of the appellants from the suit land on the contention that the appellants took the suit property on lease from their ancestor and failed to pay rents from 1986 onwards. The plea of appellants was that in fact they were the owners of the property but by mistake they executed lease deed in favour of the ancestor of the respondents. The said plea was not found favour with the successive courts and eviction was ordered. The tenant went up to Supreme Court. Referring its earlier decision in ***D. Satyanarayana vs. P. Jagadish***, the Apex Court observed thus:

“Para 7: xx xx... the tenant who has been let into possession by the landlord cannot deny the landlord's title however defective it may be, so long as he has not openly surrendered possession by surrender to his landlord. Although, there are some exceptions to this general rule, none of the exceptions have been established by the appellants in this case. Hence, the appellants who were the tenants of the respondents will have to surrender possession to the respondents before they can challenge the title of the respondents.”

In **Dr. Ranbir Singh's** case (1 supra) also, the Apex Court reiterated the same principle.

c) Hence, in view of the above precedential jurisprudence on the doctrine of estoppel, the D.1 is estopped from denying the title of the plaintiff irrespective of lack of a registered transfer deed in its favour. In view of the categorical admission of D.2 about the transfer and subsequent conduct of D.1 admitting the title of the plaintiff, it cannot now challenge the same in the present proceedings. It must be said that the first appellate Court unnecessarily probed into the title of the plaintiff which is unwarranted in the present set of circumstances. Hence, its finding that the plaintiff has no *locus standi* to file the suit cannot be countenanced. In view of denial of plaintiff's title and subletting the property against the wish of the plaintiff, D.1 is liable to be evicted. Accordingly, this point is answered in favour of the appellant/plaintiff.

14) **POINT No.2:** This point is concerned, the argument of the appellant is convincing and hence can be approved. It should be noted that though plaintiff issued Ex.B.1—quit notice dt:13.11.1992, but he issued final quit notice under Ex.A.23 dt: 08.01.1993 wherein he mentioned that the tenancy is a monthly tenancy which would be ended by the end of January, 1993 and demanded D.1 to vacate the premises by the end of January, 1993 failing which he would treat D.1 as a trespasser from 01.02.1993 and file suit for eviction and also recovery of damages @ Rs.10,000/- p.m. So it is clear that under Ex.A.23, the plaintiff treated D.1 as his tenant till the end of January, 1993 and that was the reason why when D.1 sent the cheque towards the rent for the month of January, 1993 through his reply letter under Ex.A.25, he accepted the same. Immediately, thereafter he filed the suit for eviction on 15.03.1993. So from these events, plaintiff's acceptance of rent for the month of January, 1993 cannot be treated as a waiver of the quit notice issued by him. This point is answered accordingly in favour of the appellant/ plaintiff.

15) **POINT No.3:** In view of the findings in points 1 and 2, the

judgment of the first appellate Court is liable to be set aside. So far as the judgment of the trial Court is concerned, though its direction to the 1st defendant to deliver vacant possession of the plaint schedule premises to the plaintiff is approved, its further direction to pay damages @ Rs.10,000/- p.m from February, 1993 onwards cannot be approbated. No doubt, the trial Court rightly held that from 01.02.1993 onwards the 1st defendant shall be treated as trespasser in respect of plaint schedule property. However, quantum of damages is concerned, it appears, the trial Court placed implicit reliance on plaintiff's evidence and fixed damages @ Rs.10,000/- p.m though there is no cogent evidence in this regard. Except the own assertion of PW.1 that the suit premises would fetch Rs.10,000/- to Rs.15,000/- p.m, there is no reliable evidence in this regard. Even the evidence of PW.2 is also not much helpful because though he claims that he leased out his shop which is situated two shops away from the plaint schedule premises for Rs.3,000/-, he did not produce rent deed or rent receipts in support of his evidence. Similarly, the evidence of defendants side is also not much useful in this regard as it was a self-serving one. Therefore, the damages should be fixed by conducting independent enquiry.

16) In the result, this appeal filed by the appellant/plaintiff is allowed by setting aside the judgment and decree dt:18.02.1999 in A.S.No.32 of 1998 on the file of Additional Senior Civil Judge, Tenali and O.S.No.45 of 1993 on the file of Principal Munsiff Magistrate, Tenali is decreed and ordered as follows:

- i. The respondents 4 to 8 herein are directed to vacate the plaint schedule premises and deliver vacant possession of the same within one month from the date of this judgment,
- ii. The plaintiff is entitled to the damages against the respondent Nos.4 to 8 from 01.02.1993 till recovery of possession of the plaint schedule premises and it

shall apply for damages by filing a separate application before the trial Court for fixation of the quantum of damages.

- iii. Respondent Nos.4 to 8 shall pay costs of the litigation to the plaintiff throughout.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Dt: 13.11.2015

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