

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

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SECOND APPEAL No.523 of 2005

Date:09.04.2015

Between:

A. Taher Basha and another.

... Appellants.

AND

S. Noor Pasha

...Respondent.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

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SECOND APPEAL No.523 of 2005

JUDGMENT:

This appeal is preferred against judgment dated 01-04-2005 in A.S.No.32/2003 on the file of Senior Civil Judge, Adoni whereunder judgment dated 23-07-2003 in O.S.No.163/2000 on the file of Principal Junior Civil Judge, Adoni is confirmed.

2. Brief facts leading to filing of this appeal are as follows:-

Appellants herein are defendants and respondent herein is plaintiff before the trial Court and they are hereinafter referred to as plaintiff and defendants as arrayed in O.S.No.163/2000.

3. Plaintiff filed the above suit contending that he is absolute owner of property bearing Door No.890 in Ward No.12 of Adoni Town and defendants are his tenants, who took the plaint schedule property for a period of three years commencing from 01-01-1997 and the lease deed was reduced into writing as per which, defendants have to pay a monthly rent of Rs.1,500/- on or before 5th of every month besides an advance of Rs.25,000/-, which is refundable, after expiry of the lease period. According to plaintiff, defendants committed default in payment of rent and they are in due from January, 2000.

4. Defendants contested the suit and according to them, they have not committed any default and the rents were sent to plaintiff by registered post and plaintiff refused to receive them. According to defendants, plaintiff deliberately evaded and there is an implied contract between plaintiff and defendants to continue the lease even after expiry and that there is no cause of action for plaintiff to file the suit and that the suit is not maintainable.

5. On these contentions, trial Court examined two witnesses and marked six documents on behalf of plaintiff and examined one

witness and marked one document on behalf of defendants and on a over all consideration of oral and documentary evidence decreed the suit directing the defendants to deliver vacant possession. Defendants preferred appeal against judgment of the trial Court and the appellate Court, on a reappraisal of oral and documentary evidence, dismissed the appeal confirming trial Court judgment. Now aggrieved by the concurrent findings of both the Courts, present appeal is preferred contending that the following are the substantial question of law:-

“Whether the simple suit for eviction is maintainable under Section 40 when there is no valid lease by virtue of the operation of Section 17 of the Registration Act as amended with effect from 01-04-1999?

Whether the suit is maintainable when the possession is sought for under Section 40 of the A.P. Court Fees and Suits Valuation Act without resorting to the proceedings under Section 29 of the A.P. Court Fees and Suits Valuation Act 1956?

Whether the Courts below are right in ordering eviction in relying upon a later judgment which is only a per incuriam?

Whether the Courts below have rightly understand the settle distinction as per the ratio of the judgment reported in 2001 (5) Supreme page 371 pertaining to tenant holding over and tenant at sufferance?

Whether the Courts below are right in coming to the conclusion that no notice is necessary terminating the tenancy under Transfer of Property Act?

Whether a lease deed expired by efflux of time if impounded will ensure of renew the lease and can be relied upon?”

6. This Court admitted the appeal treating the above grounds as substantial question of law.

7. Heard both sides.

8. Advocate for appellants submitted that though as many as six grounds are taken as substantial question of law, only two of them can be considered, which are ground Nos.6 & 7. Advocate for appellants submitted that the lease deed is not admissible in evidence for want of registration under Section 17 of the Registration Act, but both the Courts ignoring the provisions of Registration Act, admitted that document and therefore, the findings of the trial Court and appellate Court are illegal. He further submitted that even if that lease deed is taken into consideration, the lease is expired by the end of December, 1999, therefore, thereafter, defendants cannot be treated as tenants for that reason, Court Fee paid by the plaintiff under Section 40 of the Andhra Pradesh Court Fees & Suits Valuation Act, 1956 (for short 'Act, 1956') is not correct and plaintiff has to pay Court Fee under Section 29 of Act, 1956 as the suit is filed for recovery of possession. He further contended that the suit is also not maintainable without termination of tenancy for all these grounds, the findings of trial Court upheld by appellate Court have to be set aside. On the other hand, Advocate for respondent/plaintiff submitted that the defendants having admitted the jural relationship of landlord and tenant cannot be permitted to contend now, that there is no such jural relationship to invoke Section 40 of Act, 1956. He submitted that once relationship is admitted, Section 29 of Act, 1956 has no application. He further submitted that once the document is marked and admitted in evidence, it is not open to the defendants to question about the admissibility having not taken any objection at the time of marking of the document. He further submitted that these two objections were already considered by the appellate Court with cogent and convincing reasons and there are no grounds to interfere

with the concurrent findings of the Courts below.

9. Now the point that would arise for my consideration in this second appeal is whether the objections raised by the appellants as substantial question of law are tenable or not?

10. **Point:-** As already referred, the suit is filed for eviction and both trial Court and appellate Court ordered for eviction of the appellants herein. It is the contention of the appellants that eviction suit is not maintainable and plaintiff has to file suit for possession by paying Court Fee under Section 29 of Act, 1956. As seen from the evidence and pleadings, relationship of landlord and tenant was not in dispute and tenancy is admitted. As per Section 40 of Act, 1956 when the dispute is between landlord and tenant, Court Fee has to be paid on yearly rental value. Now the dispute in the suit is according to plaintiff, defendants have to be evicted and according to defendants, they are not liable for eviction. So as rightly pointed out by Advocate for respondent/plaintiff, when the jural relationship of landlord and tenant is not in dispute, Court Fee paid under Section 40 of the Act, 1956 is absolutely right and the objection of the defendants on this score is not tenable. As seen from the record, the very same objection is also raised before the appellate Court and the learned Senior Civil Judge, by considering entire evidence on record and also on consideration of the citations relied on by defendants herein, held that Court Fee paid under Section 40 of Act, 1956 is correct. I do not find any wrong application of provision of law by the Appellate Court nor any incorrect findings in the judgment while appreciating evidence on record.

11. The other objection of the appellants is that the trial Court admitted document, which is not admissible as per the provisions of the Registration Act and that finding is confirmed by the appellate Court, therefore, both the trial Court and Appellate Court have

committed illegality. As per the evidence on record, there is a lease deed between the parties and the same is marked as Ex.A6 before marking the document, trial Court impounded the said document and the appellants have not raised any objection at the time of marking. Further, as seen from the record, this document is marked during the cross-examination of defendants, who is examined as D.W.1 and as rightly pointed out by Advocate for respondent/plaintiff once document is marked without any objection with regard to its admissibility, the same cannot be raised in the appeal. Even otherwise, as seen from the judgment of the appellate Court, the very same objection is raised before the Appellate Court and the appellate Judge discarded the said objection on the ground that it cannot be questioned in appeal and so also on the ground that admissibility with regard to unregistered documents is brought into statute books by way of amendment and that amendment came into force on 01-04-1999, whereas Ex.A6-document was executed on 31-12-1996. So on a scrutiny of the material, I am of the view that the findings of the appellate Court with regard to admissibility of the document is absolutely correct and the appellate Court has not committed any error in negating the objection of the defendants.

12. The other objection of the defendants is that the suit is not maintainable as tenancy is not terminated by issuing a notice as contemplated under Section 106 of Transfer of Property Act (for short 'T.P Act'). This objection was also raised before the appellate Court and the appellate Judge discarded this objection on the ground that when tenancy is expired by efflux of time, notice under Section 106 of T.P Act is not necessary by relying on a decision cited before him on behalf of the plaintiff. On a scrutiny of the material, I do not find any wrong in the findings of the appellate Court in respect of notice under Section 106 of T.P Act as the tenancy came to an end by efflux of time under Ex.A6, therefore, the appellate Court rightly negated the contention of the defendants as to the maintainability of the suit and it has not committed any illegality.

13. Advocate for appellants contended that there is a difference between judicial possession and lawful possession and as the possession of defendants is lawful without termination of tenancy, plaintiff cannot initiate eviction proceedings. In support of his argument, he placed reliance on judgment of Hon'ble Supreme Court in **Kewal Chand Mimani vs. S.K. Sem & Others**. In that case, the Hon'ble Supreme Court observed as follows:-

“A person whose lease has expired is still entitled to maintain possessory right so long as and until he be evicted by due process of law.”

14. That proposition is not disputed by other side, but contended that the very suit for eviction is a due process of law and therefore that decision would no way help the appellants. I find force in the submission of the learned counsel for the respondent/plaintiff, because it is not a case of forcible eviction, on the other hand, plaintiff filed suit for eviction, which is vehemently contested and both trial Court and appellate Court passed a decree for eviction, therefore, the above decision would no way help the appellants.

15. On a scrutiny of the entire material on record and for the reasons stated above, I am of the considered view that no substantial question of law is involved in this appeal to interfere with the concurrent findings of the Courts below.

16. For these reasons, Second appeal is dismissed as devoid of merits with costs and appellants are granted two months time to deliver vacant possession.

17. As a sequel, miscellaneous petitions, if any, pending in this Second Appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:09.04.2015

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