

HON'BLE SRI JUSTICE R. SUBHASH REDDY

SECOND APPEAL No.748 of 2015

JUDGMENT:

Heard learned counsel for appellant as well as for caveator.

Respondent herein is plaintiff in the suit in O.S.No.594 of 2012 on the file of XI-Junior Civil Judge, City Civil Court, Secunderabad, which was filed for eviction of appellant herein from the suit schedule property and also for mesne profits.

As averred in the plaint, it is the allegation of plaintiff that the suit schedule shop was given on rent to the defendant on a monthly rent of Rs.5,050/- and the tenancy was oral and on month-to-month basis. Plaintiff got issued quit notice, dated 21.08.2012, as contemplated under Section 106 of the Transfer of Property Act, asking the defendant to vacate the premises. As the defendant did not vacate, suit is filed for his eviction. The case of the defendant before the trial Court is that even after issuing the quit notice, the plaintiff has enhanced the rent to Rs.6,685/- per month and was receiving such rent with effect from 01.11.2012, as such, the quit notice which was issued prior to such enhancement, is not valid.

Before the trial Court, plaintiff himself was examined as PW-1 and documentary evidence is marked under Exs.A-1 to A-3. No oral evidence is let-in on behalf of defendant, but receipt, dated 31.03.2003, is marked as Ex.B-1.

After considering the oral and documentary evidence on record, the trial Court has held that the quit notice issued under Ex.A-1 is

valid and accordingly allowed the suit in part, ordering eviction of defendant. But the claim with regard to mesne profits is not granted and granted liberty to the plaintiff to file separate application for determination of mesne profits. As against the same, appeal is filed by the defendant before the lower appellate Court in A.S.No.17 of 2014, which is dismissed by judgment, dated 11.08.2015. Hence, this Second Appeal.

In this Second Appeal, the only contention advanced by the learned counsel for appellant is that he was not given proper opportunity to lead evidence.

In view of the various findings recorded by the trial Court as confirmed by the 1st appellate Court, the argument of learned counsel for appellant that he was not given proper opportunity, cannot be accepted. Further, in the absence of any written lease, as the lease is only on month-to-month basis, the same is rightly sought to be terminated by issuing quit notice under Section 106 of the Transfer of Property Act. Mere acceptance of rent subsequent to issuance of quit notice does not amount to waiver of the right of plaintiff to seek eviction. This Court is of the view that the findings recorded by the trial Court as well as the 1st appellate Court are in conformity with the evidence on record and in view of such concurrent findings, in the absence of any question of law, there is no need to entertain this appeal. The second appeal is accordingly dismissed at the stage of admission.

However, six months time is granted to the appellant-tenant to vacate the premises subject to filing an undertaking before the Registry of this Court within a period of two weeks from the date of receipt of this judgment, by serving a copy on other side, stating that he will vacate the premises before expiry of six months and also will

not sub-lease or induct any third party into possession. If no such undertaking is filed, it is open to the respondent to execute the decree of eviction.

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

R. SUBHASH REDDY, J

4th November 2015

ajr