

HON'BLE SRI JUSTICE R. SUBHASH REDDY

SECOND APPEAL No.632 of 2015

ORDER:

This Second appeal, under Section 100 CPC, is filed by the defendant in O.S.No.1189 of 2008 on the file of the I Senior Civil Judge, City Civil Court, Hyderabad, aggrieved by the judgment and decree dated 31.01.2011, as confirmed by the IX Additional Chief Judge, City Civil Court, Hyderabad, by judgment dated 12.06.2015 passed in A.S.No.103 of 2011.

2. The respondent-plaintiff herein filed O.S.No.1189 of 2008 for eviction of the appellant-defendant from the *mulgi* bearing No.5-9-108 & 109, Megacity No.25, admeasuring 377.34 sq. ft., situated at public Garden Road, Nampally, Hyderabad and also for grant of mesne profits at Rs.30,000/- per month from 01.08.2008 till delivery of possession and for grant of interest on the decretal amount from the date of filing of the suit. The suit is filed by the respondent-plaintiff in the year 2008 with claim that, on 30.04.2002 appellant obtained the suit premises on lease for a period of three years commencing from 01.06.2002 for the purpose of dealing in arms and ammunition, security equipments, sports and fishing accessories on a monthly rent of Rs.12,500/-, i.e. Rs.9,000/- and Rs.3,500/- towards hire charges. He also paid Rs.4,00,000/- as interest free deposit refundable at the time of vacating the premises. It is alleged that appellant-defendant has contravened clauses 1 and 3 of lease deed dated 30.04.2002 by not paying water charges and not enhancing the rent @ 10% every year from 01.06.2002. It is stated that original lease expired by 30.04.2005 and thereafter tenancy became month to month. After issuing termination notice dated 24.06.2008, suit is filed for vacating the premises and also claiming mesne profits at Rs.30,000/- per month. In the suit, appellant-defendant has filed written statement. While denying the various allegations made by the appellant-defendant, it is pleaded that monthly rent is Rs.9,000/- excluding electricity, water charges and municipal tax. He disputed payment of additional amount of

Rs.3,500/- per month towards hire charges for the interiors of the premises. It is further pleaded by him that only after filing of the suit he agreed to pay Rs.3,850/- towards hire charges in cash; thereafter, he started paying the said amount. Denying receipt of termination notice dated 24.06.2008, it is pleaded that the lease deed dated 30.04.2002 is a perpetual lease until termination by due process of law. Stating so, he prayed for dismissal of the suit.

3. On behalf of the respondent-plaintiff, GPA Holder of the respondent-plaintiff was examined as P.W.1 and Exs.A.1 to A.7 were marked. On behalf of the appellant-defendant he himself was examined as D.W.1 and Exs.B1 to B.26 were marked.

4. The trial court, appreciating the oral and documentary evidence on record, decreed the suit by recording a finding that the tenancy of the appellant-defendant is terminated as contemplated under Section 106 of the Transfer of Property Act and further recorded a finding that the tenancy claim by the appellant-defendant stood determined by the end of July, 2008 and ordered eviction by judgment and decree dated 31.01.2011 and ordered an inquiry with regard to mesne profits on a separate application. As against the same, the appellant-defendant carried the matter in appeal before the IX Additional Chief Judge, City Civil Court, Hyderabad, who, by judgment and decree dated 12.06.2015, dismissed the appeal and confirmed the judgment and decree dated 31.01.2011 of the trial court.

5. Heard learned counsel for the parties and perused the material on record.

6. It is contended by the learned counsel for the appellant that inasmuch as three months' prior notice is not issued in terms of clause 10 of the lease deed dated 30.04.2002, termination notice is bad in law, as such, the same constitutes substantial question of law. It is further contended that as Ex.A.7 is not executed voluntarily, the same is also a ground to consider under Section 100 CPC.

7. On the other hand, it is contended by the learned counsel for the

respondent-plaintiff that as much as lease was not extended in view of expiry of the lease term itself, it is not necessary to issue fresh notice. It is further contended that Ex.A.7 is declaration on oath signed by the appellant-defendant, agreeing to pay Rs.3,500/- per month towards hire charges along with rent.

8. It is to be noted that no evidence is adduced to plead that such document is not executed voluntarily. In any event, it is a finding of fact based on the evidence on record. Even with regard to other ground, viz., in terms of clause 10 of the lease deed dated 30.04.2012, three months notice is also not given also cannot be considered as substantial question of law as much as lease itself is for a period of three years, which expired by 30.04.2005. After the expiry of the tenancy has become month to month and therefore the notice issued under Section 106 of the Act terminating the tenancy is in accordance with law. As this Court is of the view that the aforesaid questions raised by the counsel for the appellant are not substantial questions of law at all and, further, in view of the concurrent findings recorded by both the Courts below, this Court is of the view that no case is made out for interference in this Second Appeal in exercise of jurisdiction under Section 100 CPC.

9. The Second Appeal is accordingly dismissed. However, appellant has filed a memo undertaking to vacate the schedule premises within a period of one year and, further, for deduction of arrears or rent from the security deposit of Rs.4,00,000/-. As the appellant has to secure alternative accommodation, he is granted six months from today to vacate the premises as against the time of one year sought for vacating the schedule premises. It is made clear that it is open to the respondent to deduct arrears of rent from the security deposit of Rs.4,00,000/- and respondents shall refund the balance amount after deducting the arrears of the rent and also the rent till vacating the premises. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the Civil Revision Petitions stand closed.

R. SUBHASH REDDY, J

29th September, 2015

MRR