

HON'BLE SRI JUSTICE R. SUBHASH REDDY

SECOND APPEAL No.379 of 2015

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JUDGMENT:

This appeal is filed under Section 100 CPC by the defendant in O.S.No.1963 of 2012 on the file of the XIX Junior Civil Judge, City Civil Court, Hyderabad, aggrieved by the judgment and eviction decree dated 04.11.2013, as confirmed by the XXIV Addl. Chief Judge, City Civil Court, Hyderabad, by judgment and decree dated 24.04.2015 passed in A.S.No.402 of 2013.

For the sake of convenience, the parties are referred to, as arrayed before the trial court.

The plaintiff has filed O.S.No.1963 of 2012 alleging that he is the absolute owner and possessor of the commercial mulgi bearing municipal No.16-2-836/5/C/4, Saidabad Main Road, Hyderabad and the same was let out to the defendant on 01.02.2006 for the purpose of running photo studio in the name and style of 'Image Photo Studio' on a rent of Rs.3,900/- per month payable on or before 5th of each English Calendar month in advance. It is further alleged by the plaintiff that the defendant has not paid property tax for the year 2011-12 and the defendant has filed O.S.No.2256 of 2011 seeking perpetual injunction alleging falsely that plaintiff has interfered with his possession and further made a false statement that he paid a sum of Rs.1.00 lakh to the

plaintiff. Accordingly, after issuing quit notice under Section 106 of the Transfer of Property Act and by issuing further suit notice to the respondent, plaintiff sought for eviction.

In the said suit, plaintiff has claimed that the present rent of the premises is Rs.7,000/- per month and accordingly claimed damages at Rs.7,000/- per month from the defendant.

The defendant contested the suit mainly on the ground that he never received termination notice as claimed by the plaintiff and no reasons are stated for termination of tenancy. The defendant, further pleading that the suit filed by him in O.S.No.2256 of 2011 is decreed, and that he has been regular in paying rent, prayed for dismissal of the suit.

In the suit, the following issues were framed:

1. Whether the plaintiff is entitled for eviction of defendant from suit schedule property?
2. Whether the plaintiff is entitled for arrears of damages for Rs.19,321/- @ Rs.7,000/- P.M. from February, 2012 till 07.08.2012 and Rs.7,000/- P.M. from the date of suit, till the date of eviction?
3. If so to what relief?

The plaintiff was examined as P.W.1. On his behalf, Ex.A.1 – office copy of the legal notice dated 05.01.2012, Ex.A.2 – Postal Receipt and Ex.A.3 – letter dated 16.05.2012 were filed. The defendant was examined as

D.W.1 and copy of the judgment and decree in O.S.No.2256 of 2011 was marked as Ex.B.1 and B.2.

The trial court, by judgment and decree dated 04.11.2013, decreed the suit with costs and ordered eviction of the defendant from the suit schedule property within a period of two months from the date of the judgment and permitted the plaintiff to file separate application under Order XX Rule 12 for damages and mesne profits. As against the said judgment and decree of the trial court, the defendant carried the matter in appeal vide A.S.No.402 of 2012. The first appellate court, by judgment and decree dated 24.04.2015, dismissed the appeal.

In this appeal, it is contended by the learned counsel for the appellant-defendant that no valid notice is issued under Section 106 of the Transfer of Property Act and without considering the evidence on record, the trial court allowed the suit filed by the respondent-plaintiff, which is erroneously confirmed by the first appellate court.

Supporting the grounds of appeal, learned counsel for the appellant-defendant has mainly raised question of law with regard to service of notice under Section 106 of the Transfer of Property Act and submitted that in the absence of any valid reasons, the trial court has decreed the suit erroneously.

It is to be noticed that Ex.A.1 – notice is sent through post under Ex.A.2 – postal receipt and Ex.A3 is letter

which clearly states that legal notice sent to the defendant is returned as 'unclaimed'. Except the bare denial of the defendant as D.W.1, that no notice has been served, there is no other evidence on record from the side of the defendant. There is no reason to disbelieve the documentary evidence, viz., Exs.A.1 to A.3, coupled with the oral evidence of P.W.1, which shows that the notice sent to the appellant-defendant is returned as 'unclaimed'. It is fairly well settled that if notice is sent and the same is unclaimed and is returned by the Postal authorities with such endorsement, it amounts to service of notice. The trial court rightly placed reliance on the judgment of this court in **K. Sajjan Raj v. Gopisetty Chandra Mouli**^[1]. With regard to service of notice, the trial court and the first appellate court have recorded findings. Whether notice is served or not is a matter which is to be considered with reference to the facts of the case and evidence on record. In view of the concurrent findings on such aspect, the same is not a question of law at all so as to admit this Second Appeal.

As no other grounds are urged, this Second Appeal is dismissed at the admission stage. However, the appellant-defendant is granted three months' time from today to vacate the premises subject to filing an undertaking before the Registry of this Court within a period of two weeks from today, undertaking to vacate the premises by the end of September, 2015. No order as to

costs.

As a sequel, miscellaneous petitions if any pending
in the appeal stand closed.

R. SUBHASH REDDY, J

26th June, 2015
MRR

[\[1\]](#) AIR 2011 (NOC) 411 (A.P.)