

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.563 OF 2014

Dated 30-4-2015

Between:

Mettela Peda Guravaiah.

..Appellant.

And:

Tanguturi Murali Krishna.

..Respondent.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.563 OF 2014

JUDGMENT:

This appeal is preferred against judgment dated 12-6-2014 on the file of XIII Additional District Judge, Fast Track Court, Vijayawada whereunder judgment dated 12-12-2011 in O.S.No.1197 of 2006 on the file of I Additional Senior Civil Judge, Vijayawada is confirmed.

Appellant herein is defendant and respondent herein is plaintiff in the above referred O.S.No.1197 of 2006 and they are hereinafter referred to as 'plaintiff' and 'defendant' for convenience sake.

Plaintiff filed above suit contending that he is the owner of plaintiff schedule property and the same was leased out to defendant on a monthly rent of Rs.5,740/- on 24-7-2005 and that the plaintiff received an advance of Rs.20,000/-. It is further contended that tenancy is from month to month and wife of defendant took another premises belonging to plaintiff on a monthly rent of Rs.11,828/- but they are very irregular in payment of rent since October, 2005. While so, defendant addressed a letter to plaintiff on 8-11-2005 seeking ten days time for payment of rent and thereafter, he sent cheque for Rs.28,700/- and when it was presented, it was bounced and thereafter, he issued a legal notice and filed C.C.No.375 of 2006

under Negotiable Instruments Act. It is further contended that plaintiff terminated their tenancy by issuing quit notice on 3-11-2006 and as defendant failed to deliver vacant possession, the suit is filed.

Defendant filed written statement disputing the plaint averments and the main contention of defendant was that quit notice said to have been issued by plaintiff is not received by him and that he never sent any letter agreeing to pay rent and that there is no landlord and tenant relationship between them.

On these allegations, trial court framed appropriate issues and examined one witness and marked five documents on behalf of plaintiff and examined two witnesses and marked four documents on behalf of defendant and on an overall consideration of oral and documentary evidence, ordered eviction of the defendant and also ordered him to pay arrears of rent giving liberty to plaintiff to file separate application for future damages/mesne profits. Aggrieved by the same, defendant preferred appeal to the District Court and III Additional District Judge, on a reappraisal of oral and documentary evidence, dismissed the suit confirming judgment of the trial court. Aggrieved by the same, present appeal is preferred.

This court admitted the appeal treating the following as substantial questions of law.

- a. *Whether the suit in O.S.No.1197 of 2006, filed for eviction of the appellant from the suit schedule property is maintainable in the absence of service of a valid notice under Section 106 of the Transfer of Property Act, on the appellant?*
- b. *Whether not casting burden on the Respondent to prove service of quit notice (Ex.A.1) on the appellant by the Court below, more so when the appellant expressly denied receipt of the said notice and his alleged signature on the postal acknowledgment (Ex.A.2), both in his written statement as well as in his oral evidence (chief and cross examination) is contrary to Sections 101 and 102 of the Evidence Act.?*
- c. *Whether the Court below committed substantial error in rendering the finding to the effect that the quit notice (Ex.A.1) was served on the appellant even though the appellant categorically denied service of the said notice, both in his written statement as well as oral*

evidence (chief and Cross Examinations), and the respondent failed to adduce any rebuttal evidence to the contrary and admitted in his cross-examination that the appellant always sings in Telugu and that he does not know whether the signature on the quit notice (Ex.A.1) belongs to the appellant or not?

- d. *Whether the respondent failed to discharge his onus to prove service of the quit notice (Ex.A.1) on the appellant even though the appellant categorically denied the service of the said notice, both in his written statement as well as oral evidence (Chief and Cross Examinations), and the presumption available in favour of the respondent under Section 114 of the Evidence Act is not available?*
- e. *Whether the judgments of the Courts below are not vitiated in as much as they misread, misinterpreted and misunderstood both the oral and documentary evidence on record?*
- f. *Whether the judgments of the Courts below are vitiated in as much as they based their findings on surmises and conjectures?*

While admitting the appeal, this court also granted interim stay as prayed for in S.A.M.P.No.1601 of 2014.

Plaintiff filed S.A.M.P.No.1792 of 2014 for vacating the interim stay order dated 5-9-2014 and when that application has come up for hearing, both side advocates requested this court to hear the main appeal itself as the point involved in the second appeal and in the stay vacate petition are one and the same. That is how, this appeal is taken up and heard though Second Appeal is of the year 2014.

Heard both sides.

Advocate for defendant mainly contended that there is no valid quit notice terminating the tenancy but both the trial court and appellate court lost sight of this aspect and acceded to the request of plaintiff and decreed the suit. He further submitted that as per law laid down by this court and the Honourable Supreme Court quit notice is a must for terminating tenancy and when there is no such notice, suit filed for eviction of a tenant is not maintainable. He also submitted that the findings of the courts below have to be treated as perverse since they

are contrary to the material on record and a second appeal can be maintained treating such perverse findings as substantial question of law. He cited some rulings in support of his submission.

On the other hand, advocate for plaintiff submitted that objection with regard to valid quit notice was very much taken care by both the courts and the said objection was negated while considering the evidence on record and findings of both the courts are based on sound reasoning and that there are no grounds to interfere. He further submitted that there is evidence on record that quit notice was sent through registered post with acknowledgment to the address of the defendant. As per the provisions of General Clauses Act and also as per settled law, presumption can be drawn for deemed service and in this case, there is ample evidence to show that valid quit notice was given and therefore, objection of the defendant is not tenable. He also cited some rulings in support of his submission and finally concluded that no substantial question of law is involved in this appeal and hence, appeal is liable to be dismissed.

Now the point that would arise for my consideration in this appeal is whether there is valid quit notice and the objection of appellant is tenable?

POINT:

Though several objections are raised in the written statement, like maintainability of the suit and dispute with regard to the relationship of land lord and tenant etc., the main focus is on the point of valid quit notice.

It is the contention of the learned counsel for the appellant that a notice under Section 106 of Transfer of Property Act is a must for termination of tenancy. To support his argument, he placed reliance on the following decisions.

1. *NAMALA RAMACHANDRA RAO v. KAKILETI BHASKARA RAMA MURTHY AND OTHERS* ().
2. *PUWADA VENKATESWARA RAO v. CHIDAMANA VENKATA RAMANA* ().
3. *SATISH CHAND MAKHAN AND OTHERS v. GOVARDHAN DAS BYAS AND OTHERS* ().
4. *V.DHANAPAL CHETTIAR v. YESODAI AMMAL* ().
5. *SHIV DUTT SINGH v. RAM DASS* ().

In all the above decisions, the principle formulated is notice under Section 106 of Transfer of Property Act is a must and in the absence of such notice, suit for ejectment is not maintainable. This principle is not disputed by either side but according to him, there is a valid quit notice in this case and therefore, those decisions have no bearing.

I have perused material including evidence of both parties. As already referred above, defendant mainly resisted the suit on the ground that he did not receive quit notice. As seen from the material and evidence, one of the contentions of the defendant is that original of Ex.A.1 notice was not addressed to the address of schedule property and therefore, there is no valid service. This aspect was examined by trial court and appellate court and on evidence, it was found that this notice was addressed to the residential address of the defendant. In the plaint, the very same address was given and defendant received summons from the court at the very same address. He has not raised any objection in the written statement that the address given in the plaint was incorrect. As seen from record defendant herein filed caveat and a copy of which is marked as Ex.A.3 and in that caveat, he has shown the very same address.

Another contention of defendant is that signature on postal acknowledgment on Ex.A.2 does not belong to him but both trial court and appellate court on scrutiny of evidence, held that this objection is not sustainable. As seen from the material, defendant except taking a plea that the signature on Ex.A.2 is not that of him, he has not proved it with any cogent and convincing evidence.

Considering all these aspects, both trial court and appellate court held that Ex.A.1 is a valid quit notice and as the defendant has not responded to it, the same was accepted and eviction was ordered.

Learned advocate for plaintiff has cited the following rulings for the proposition that notice sent to the party to correct address through registered post with acknowledgment due is a sufficient service.

I n *C.VEEERAPPA v. CHIEF COMMISSIONER, LAND ADMINISTRATION, HYDERABAD AND ANOTHER* (), a Division Bench of this court held that if a notice is sent to correct address through registered post with acknowledgment due, it is a deemed service as per Section 27 of the General Clauses Act. Here as seen from the record, notice was sent with acknowledgement due and postal receipt was also filed along with Ex.A.1 notice, though it is not marked, it can be considered as it is pinned to A.1 notice and the appellant has not questioned postal receipt. So considering the same, both trial court and appellate court have not accepted the objection of the defendant with regard to service of notice.

On a scrutiny of the evidence, I feel that both trial court and appellate court have not committed any error in appreciating material on record or in applying law with regard to quit notice required under Section 106 of Transfer of Property Act.

Learned counsel for the appellant contended that the findings of both trial court and appellate court are perverse as they have not properly considered material on record. According to him, it is the specific contention of defendant that he always puts his signature in Telugu but the postal acknowledgment Ex.A.2 contained English signature and this aspect is not considered by both the courts.

As seen from the judgment, P.W.1 assertively stated that defendant received Ex.A.1 notice, under Ex.A.2 postal acknowledgement. Further, it is also clear from the record that the notice was sent to the same address that was referred in the plaint and also in the caveat filed by the defendant himself. So, when registered notice was sent to the defendant's address, postal acknowledgement is received back for such notice, the burden is on the defendant to prove that Ex.A.2 does not bear his signature but here except relying on self serving testimony, he has not produced any material. When legal presumption is in favour of the plaintiff, burden is on the defendant to rebut the same but defendant has miserably failed in rebutting the legal presumption and having failed, he cannot be permitted to blame the courts below for putting the burden on him to prove that signature on Ex.A.2. On a thorough scrutiny of material, I am of the considered view that both trial court and appellate court have rightly accepted that there is a valid quit notice required under Section 106 of the Transfer of Property Act and both courts have not committed any illegality in applying law, as such, there is no substantial question of law to be determined by this court.

For these reasons, this Second Appeal is dismissed as devoid of merits. No costs.

Appellant is granted three months time to vacate the premises.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 30-4-2015.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dated 30-4-2015

Dvs
