

HON'BLE SRI JUSTICE G. CHANDRAIAH

Second Appeal No. 852 of 2014

Dated: 24.02.2015

Between:

The Andhra Pradesh State Handloom Weavers
Cooperative Society Ltd., weaver's Bhavan,
Narayanaguda, Hyderabad & another

... Appellants

Vs.

Sri Ragathi Rama Raju, Visakhapatnam

... Respondent

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HON'BLE SRI JUSTICE G. CHANDRAIAH

Second Appeal No. 852 of 2014

JUDGMENT:

This second appeal is filed by the appellants/defendants aggrieved by the Judgment and decree passed by the XII Additional District Judge, Visakhapatnam, dismissing the appeal i.e., A.S.No.57 of 2011, dt.31.07.2014, confirming the judgment and decree passed in O.S.No.697 of 2008, dt. 10.03.2011 by the Principal Senior Civil Judge, Visakhapatnam.

2. The said suit was filed by the respondent/plaintiff seeking eviction of the appellants from the suit schedule premises and for delivery of vacant possession by awarding damages for the use and occupancy of the premises at the rate of Rs.20,000/- per month, and also Rs.400/- p.m., towards water consumption charges, from 01.05.2008 till the date of delivery of possession to the plaintiff. The case of the plaintiff was that the suit premises was given on lease to the defendants for a period of 20 years with effect from 01.05.1988, which was expired by 30.04.2008, and before the said expiration of the lease period, the plaintiff informed the defendants to vacate the premises. Since the defendants have not vacated as agreed, the plaintiff filed the suit for eviction.

3. On the other hand, the contention of the defendants was that it is a Cooperative Society, and therefore before filing the suit, the plaintiff has to issue a mandatory statutory notice under Section 126 of the A.P. Cooperative Societies Act, and as the said provision is not complied with, the suit is not maintainable. The plaintiff is not entitled to issue a notice for eviction, and the quit notices issued are not in accordance with the provisions of Section 106 of the Transfer of Property Act. Apart from that, the defendant/Society is paying the agreed rents regularly till date and therefore the plaintiff is not entitled for any damages.

4. Basing on the above pleadings, the trial Court framed appropriate issues and conducted trial. During the course of trial, PWs.1 and 2 were examined, and Exs.A.1 to A.10 were marked on behalf of the plaintiff. On behalf of the defendants, DWs.1 and 2 were examined, but no documents were marked.

5. After hearing both sides and considering the entire material on record, the learned trial Judge held all the four issues in favour of the plaintiff and decreed the suit, directing the defendants to vacate the suit premises within one month from the date of decree i.e., 10.03.2011. Aggrieved by the same, the defendants preferred the first appeal in A.S.No.57 of 2011 on the file of the XII Additional District Judge, Visakhapatnam. On re-appreciation of the material on record, the learned appellate Judge also dismissed the appeal with costs and confirmed the decree and judgment of the trial Court, but, however, granted one month's time for vacating the premises. Questioning the same, the defendants preferred the present second appeal.

6. When the matter came up for admission on 18.02.2015, as the

respondent/plaintiff filed a caveat, this Court directed the parties to maintain status quo as on date for a period of one week.

7. The learned counsel appearing for the appellants vehemently sought to contend that under Section 126 of the A.P. Cooperative Societies Act, a statutory notice is to be given for vacating the premises, which was not done. Both the lower Courts have overlooked the said issue and did not give any clear finding to that effect, which is a substantial question of law to consider the matter in second appeal.

8. On the other hand, the learned counsel appearing for the respondent/landlord submits that both the Courts have recorded categorical findings with regard to the relationship of the parties as landlord and tenant, period of lease and the intention of the plaintiff seeking vacation of the premises under Exs.A.2 and A.4, which are valid as per law. Therefore, the learned counsel sought for dismissal of the present appeal.

9. Heard both the learned counsel and considered the entire material on record. Admittedly, the lease was expired by 30.04.2008. The trial Court categorically held that the legal notices issued under Exs.A.2 and A.4 are valid, even according to Section 106 of the Transfer of Property Act, and held that the plaintiff is entitled to seek the eviction of the defendants from the suit schedule property and recover vacant possession, which was upheld by the appellate Court. Both the Courts have dealt the issues involved elaborately and concurrently held that the stand taken by the appellant/tenant is not tenable, and accordingly decreed the suit by directing the defendants to vacate the suit premises. I see no reason to say that the impugned judgment suffers from any legal infirmity. Apart from that, the questions of law raised pertains to facts, and I do not find any question of law substantial for interference of this Court under Section 100 CPC. Therefore, the second appeal fails and is liable to be dismissed.

10. The learned counsel for the appellants submitted that the appellant is Cooperative Society and is running business in the suit premises for the last 20 years, and, therefore, on instructions, submits that one year time is required to vacate the premises to re-locate the business premises, and otherwise it will be difficult to the appellants to establish their business at a new place. The learned counsel appearing for the respondent/landlord, on the other hand,

submits that both the Courts below have granted sufficient time to the appellants and the appellants failed to utilize the same to vacate the premises. Further, the appellants have already put up a notice in the premises that no sales or transactions are taking place, and packed their material in the premises for shifting, but, however, because of the order of *status quo* granted in this appeal, they have not shifted the material to the new premises. On that, the learned counsel for the appellants submits that at least four months time may be granted for shifting the material from the suit premises, for which the learned counsel for the respondent/plaintiff submits that two months time may be granted, which is more than sufficient for vacating the premises. In view of the above submissions, three months time from today is granted to the appellants to vacate the premises, and to that effect the appellants are directed to file an affidavit before the trial Court undertaking to vacate the premises within the time stipulated now.

11. Accordingly, the second appeal is dismissed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed accordingly. No costs.

G. Chandraiah, J.

Dt.24.02.2015

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HON'BLE SRI JUSTICE G. CHANDRAIAH

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