

HON'BLE SRI JUSTICE R. SUBHASH REDDY

SECOND APPEAL No.563 of 2015

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JUDGMENT :

This Second Appeal is filed under Section 100 of C.P.C., by the defendants in the suit in O.S.No.255 of 2012 on the file of XI-Junior Civil Judge, City Civil Courts, Secunderabad, aggrieved by the judgment and decree, dated 06.11.2013, passed in the said suit, as confirmed by the XXVII-Additional Chief Judge, City Civil Courts, Secunderabad, by judgment and decree dated 04.06.2015, passed in A.S.No.46 of 2014. For the purpose of disposal of this appeal, parties are referred to as arrayed in the original suit.

2. The aforesaid suit is filed for recovery of possession of suit schedule property by evicting the defendants. It is not in dispute that the respondent herein is the owner of the suit schedule property and defendants are legal heirs of original tenant. On the application filed by the plaintiff, rent for the premises in question is fixed at the rate of Rs.2,400/- per month by the Rent Controller and the same is confirmed by the appellate Court. As the premises in question is within the Secunderabad Cantonment area and as the rent is fixed at the rate of Rs.2,400/- per month, by issuing notice under Section 106 of the Transfer of Property Act, suit for eviction is filed.

3. The Appellant-defendants, while denying the landlord-tenant relationship, stated that originally, their father by name

Mohd. Gafoor was inducted into suit schedule premises as tenant by the father of plaintiff Late Shankaraiah and the rent was enhanced from time to time. While denying the non-payment of rents regularly and pleading that notice under Section 106 of Transfer of Property Act is not binding on them, contested the suit.

4. Before the trial Court, plaintiff was examined as PW-1 and documentary evidence was marked in Exs.A-1 to A-14. On behalf of defendants, DW-1 was examined and no documentary evidence was filed. The trial Court, by appreciating the oral and documentary evidence on record, has decreed the suit by judgment and decree dated 06.11.2013, by recording a finding that the notice issued under Section 106 of the Transfer of Property Act is valid and as much as the rent fixed for the premises is Rs.2,400/- per month and as the premises fall within the Cantonment area, the plea of defendants with regard to jurisdiction cannot be accepted.

5. Almost on similar grounds, the appeal filed in A.S.No.46 of 2014 is dismissed, confirming the judgment and decree of the trial Court.

6. Even in this Second Appeal, it is submitted by the learned counsel for appellants that as much as the rent is Rs.2,400/- per month, the Civil Court had no jurisdiction and the same will constitute substantial question of law.

7. In this Second Appeal, it is to be noticed that defendants are pleading that they are the heirs of the original tenant and the premises in question was taken on rent from Late Shankaraiah, who is none other than the father of respondent-plaintiff. As much as the premises is not within the Municipal area and is undisputedly located in the Cantonment area, and further, as the rent fixed is Rs.2,400/- per month, the plea of appellants that the civil Court has no jurisdiction, cannot be accepted. In view of the concurrent findings recorded by the trial Court as well as the lower appellate Court on the issue of jurisdiction, this Court is of the view that there is no question of law within the meaning of Section 100 of C.P.C.

8. However, as it is pleaded that the appellants are using the premises for business purpose, four months time is granted to them to vacate the premises, subject to filing an undertaking before the Registry of this Court to the effect that they will vacate the premises within four months from today. The undertaking should be filed within a period of two weeks from the date of receipt of this judgment.

9. Subject to the above directions, this Second Appeal is dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

24th August 2015

ajr