

## **THE HON'BLE SRI JUSTICE K.C. BHANU**

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### **SECOND APPEAL No.219 OF 2015**

#### **JUDGMENT:**

The Second Appeal, under Section 100 of the Code of Civil Procedure, 1908 (for short, 'CPC'), is filed challenging the judgment and decree, dated 19.01.2015, in Appeal Suit No.36 of 2013 passed by the Judge, Family Court-cum-XII Additional District Judge, Guntur, whereunder and whereby, the judgment and decree, dated 03.09.2012, in Original Suit No.684 of 2011 passed by the I Additional Junior Civil Judge, Guntur, were confirmed.

2. Plaintiffs in the Original Suit are the respondents herein, whereas the defendant in the Original Suit is the appellant herein. For better appreciation of facts, parties are hereinafter referred to, as they are arrayed before the trial Court.

3. Brief averments that are necessary for disposal of the present Second Appeal may be stated as follows:

The plaint schedule property originally belongs to Pagallu Sambasiva Rao, who is husband of the 1<sup>st</sup> plaintiff and father of the 2<sup>nd</sup> plaintiff, who acquired the same in partition with his brothers, which consists of residential, non-residential portions and also vacant site in some extent. After the death of said Sambasiva Rao, the plaint schedule property devolved upon the plaintiffs with absolute rights. During the life time of said Sambasiva Rao, the defendant approached him in the year, 2002 and took the plaint schedule property on lease agreeing to pay rent at the rate of Rs.5,000/- per month payable on or before 5<sup>th</sup> of every succeeding month. The tenancy was from month to month. After the death of said Sambasiva Rao also, the defendant continued as a tenant on the same terms and conditions and the rent had been enhanced from time to time. Even though the vacant site is not the part of the lease, the defendant occupied the same and creating nuisance to neighbours. When the plaintiffs demanded the

defendant to vacate the plaint schedule property for their personal occupation as the landlord of the plaintiffs, where they have been residing on rent, the defendant filed a false suit vide O.S.No.924 of 2010 before the III Additional Junior Civil Judge, Guntur, for permanent injunction and when the plaintiffs got issued legal notice, dated 04.07.2011 under Section 106 of the Transfer of Property Act, 1882 (for short, 'the Act') terminating the tenancy of the defendant with effect from 01.08.2011 and calling upon him to vacate the schedule property by 01.08.2011, the defendant got returned the same. Hence, the plaintiffs filed the suit for eviction of the defendant and claiming damages of Rs.30,000/- per month from 01.08.2011.

4. The defendant filed written statement denying most of the averments in the plaint and stated that he took the plaint schedule property on lease from Sambasiva @ Sambasiva Rao on a monthly rent of Rs.5,000/- for a continuous period of 25 years commencing from 01.12.2002 to 30.11.2027. He agreed to pay rent at the rate of Rs.5,000/- per month for a period of three years and then with enhancement by 10% on the existing rent for every three years and he also paid Rs.5,000/- towards advance deposit. Accordingly, the defendant paid Rs.5,000/- per month from 01.12.2002 to 31.03.2006 and later enhanced the rent by 10% from 01.04.2006 to 31.01.2008 and paid Rs.5,500/- per month. Subsequently, on a demand made by said Sambasiva Rao, rent was enhanced by 12% from 01.02.2008 and he paid the same at the rate of Rs.6,250/- till 30.11.2009. While so, the said Sambasiva Rao died intestate on 03.04.2009 and thereafter, the defendant used to pay the rents to the 1<sup>st</sup> plaintiff. Subsequently, on demand made by the 1<sup>st</sup> plaintiff again the rent was enhanced by 12% from 01.12.2008 and accordingly, he paid the same at the rate of Rs.7,000/- per month. Apart from receiving the rent, the 1<sup>st</sup> plaintiff also received an amount of Rs.1,42,900/- on various dates agreeing to repay the same with interest at the rate of 18% per annum, for the purpose of digging bore well and fixing motor. While so, when the plaintiffs started proclaiming that they will forcibly evict him from the schedule property, he filed a suit vide O.S.No.924 of 2010 before the III Additional Junior Civil Judge, Guntur, for permanent injunction. The plaintiffs in retaliation to the said suit, filed the present suit only to harass him and thereby to cause wrongful loss to him. As

per the lease agreement, he is entitled to continue in the premises till 30.11.2027. Hence he prayed to dismiss the suit.

5. Basing on the above pleadings, the following issues have been framed by the trial Court for trial:

1. “Whether the Plaintiff is entitled for the relief of eviction of defendant from the plaint schedule property?
2. Whether the Plaintiff is entitled for future damages for use and occupation at Rs.30,000/- per month from the date of suit till the date of realisation?
3. To what relief?”

6. On behalf the plaintiffs, PW.1 was examined and Exs.A.1 and A.2 were got marked. On behalf of the defendant, DW.1 was examined and Exs.B.1 to B.3 were got marked.

7. The trial Court, after considering the material available on record, partly decreed the suit with proportionate costs holding that the quit notice is correct and therefore, the defendant is bound to vacate the schedule property. Challenging the same, an appeal was preferred and the appellate Court dismissed the appeal confirming the trial Court’s judgment. Challenging the same, the present Second Appeal is filed.

8. Heard both sides.

9. A landlord is entitled to eject a tenant after notice to quit, unless tenant can prove that he has a right to remain on the premises in question and the onus is on the tenant to prove that he is entitled to continue in the premises. Section 106 of the Act *inter alia*, provides that the lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, which may be terminated either by the lessor or the lessee by six months notice expiring with the end of the year of the tenancy and a lease of

the immovable property for any other purpose shall be deemed to be a lease from month to month, which may be terminated either by the lessor or lessee by fifteen days' notice expiring by the end of the month of the tenancy. Both the Courts below recorded concurrent findings. No substantial question of law is involved in this Second Appeal. In view of the fact that the evidence of PW.1 would go to show that the valid quit notice was given, the defendant is bound to vacate the schedule property. None of the findings of the Court below is shown to be perverse or contrary to law. As seen from the material on record coupled with the evidence adduced by the parties, it is clear that the findings are based upon proper appreciation of evidence on record. Therefore, there is absolutely no ground to interfere with the concurrent findings of both the Courts below. Therefore, the appeal is liable to be dismissed.

10. Learned counsel for the appellant contended that since the appellant/defendant has been in possession of the schedule property since 2002, he seeks six (06) months time so as to enable the defendant to secure an alternative accommodation for continuation of his business.

11. On the other hand, learned counsel appearing for the respondents opposed the same on the ground that there is no justification for asking long time to vacate the premises.

12. In view of the fact that the defendant has been in possession of the property for the last 12 years and doing business, reasonable time can be granted for securing an alternative accommodation.

13. Therefore, in the facts and circumstances of the case, six (06) months time is granted to the defendant to vacate the premises in question making it clear that the defendant is liable to pay the agreed rent without fail on or before 10<sup>th</sup> of every succeeding month for use and occupation of the premises. However, if the defendant fails to pay a month's rent, grant of six (06) months time to vacate the premises in question shall stand cancelled and the liberty is given to

the plaintiffs to execute the decree. Further, it is also made clear that the defendant shall not make any application seeking 'extension of time' or 'for being mentioned' in this regard and the Registry is directed not to entertain any such application.

14. Accordingly, the Second Appeal is disposed of. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

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**JUSTICE K.C. BHANU**

Date:01.05.2015

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