

**HON'BLE SRI JUSTICE R. SUBHASH REDDY**

**SECOND APPEAL No.373 of 2015**

**JUDGMENT:**

This appeal is filed under Section 100 CPC by the defendant in O.S.No.1392 of 2012, aggrieved by the judgment and decree dated 18.02.2014 passed by the II Senior Civil Judge, City Civil Court, Hyderabad, as confirmed in A.S.No.104 of 2014 by judgment and decree dated 30.04.2015 by the X Additional Chief Judge, City Civil Court, Hyderabad.

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

3. The plaintiff filed O.S.No.1392 of 2012 for eviction of the defendant from the suit schedule property, for future damages and to award costs of the suit.

4. It is the case of the plaintiff that he is the absolute owner of the property bearing H.No.6-3-788/32, Durganagar Colony, Ameerpet, Hyderabad and the third floor of the building is leased to the defendant in the year 1993 on a monthly rent of Rs.7,500/- for a period of nine years and the lease deed was registered before the District Registrar, Hyderabad. It is stated that the defendant has established medical services on the schedule property in the name and style of M/s. Diana Medical Services Pvt. Ltd., and in spite of his demand to

vacate the premises after expiry of the lease period, as the defendant has not vacated, by issuing notice covered under Ex.A.2, he has filed the suit for eviction and damages.

5. The suit is contested by the defendant mainly on the ground that as per the registered lease deed dated 19.05.1993 bearing document No.1171/1993, the lease is for a period of 18 years but not 9 years. He also denied to pay damages/mesne profits and contested the suit by filing written statement.

6. Before the trial court, the plaintiff was examined as P.W.1. On his behalf, Exs.A.1 to A.3 were filed as documentary evidence. On behalf of the defendant, D.W.1 was examined and no documentary evidence was filed.

7. While considering the oral and documentary evidence on record, the trial court has recorded a finding that as per the lease deed lease is for a period of only 9 years and in the absence of any further lease, as per clause 2 of the lease deed, defendant cannot claim that the lease period is 18 years. It is further held that as the defendant continued in possession after expiry of the lease period, plaintiff is entitled for mesne profits and demand for mesne profits can be made on filing petition under Order 20 Rule 12 CPC. Against the judgment and decree of the trial court, the defendant carried the matter

in appeal vide A.S.No.104 of 2014 before the first appellate court and the first appellate court by judgment and decree dated 30.04.2015, confirming the findings of the trial court, granted two months time to the defendant to vacate the premises. As against the same, this Second Appeal is filed.

8. In this appeal, the only question of law urged is that though the lease deed provides for lease of 18 years, the trial court as well as the first appellate court have misconstrued the evidence on record and ordered eviction of the defendant.

9. As evident from the material on record, it is clear that lease is granted to the defendant, by the plaintiff, vide registered sale deed dated 19.05.1993. Clause 2 of the said lease deed recites as follows:

“The lease shall be for a period of 9 years commencing from 19.05.1993 with an option to the lessee to renew the same for a further period of one more term of 9 years on mutual consent on same terms.”

10. From a perusal of the said lease deed, it is clear that initial lease is only for a period of 9 years and there is an option for renewal of lease with mutual consent of the parties as per clause 2 of the lease deed. However, there is no renewal of lease. Hence, in the absence of any lease beyond the period of 9 years, plaintiff terminated the lease by issuing Ex.A.2 – notice under Ex.A.3 – postal acknowledgement and filed suit for eviction.

11. This Court is of the view that no substantial question of law arises in view of the concurrent finding of fact within the meaning of Section 100 CPC so as to admit this Second Appeal.

12. The Second Appeal is accordingly dismissed. However, as it is stated that the defendant is running medical services in the premises, three months time is granted to him to vacate the premises subject to filing an undertaking before the Registry of the Court within a period of two weeks from today, undertaking to vacate the premises by the end of September, 2015. It is needless to observe that even for the said three months period, the defendant shall pay the rent without any default. No order as to costs.

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

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R. SUBHASH REDDY, J

26<sup>th</sup> June, 2015  
MRR