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THE HON'BLE SRI JUSTICE K.C. BHANU

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SECOND APPEAL No.929 OF 2014

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JUDGMENT:

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908 (for short, 'CPC'), is directed against the judgment and decree, dated 21.03.2014, in Appeal Suit No.206 of 2011 passed by the Judge, Family Court-cum-XII Additional District Judge, Guntur, whereunder and whereby, the judgment and decree, dated 10.08.2011, in Original Suit No.920 of 2009 passed by the I Additional Junior Civil Judge, Guntur, were confirmed.

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

3. The brief facts that are necessary for disposal of the appeal may be stated as follows:

Suit was filed for eviction of the defendant from the plaint schedule premises and for damages. The 1st plaintiff is wife, and plaintiff Nos.2 to 5 are the daughters, of late Akula Bhavannarayana. On the demise of Bhavannarayana, the plaint schedule premises devolved upon plaintiff Nos.2 to 5. During the life time of Bhavannarayana, he leased out the schedule premises to the defendant on a monthly rent of Rs.4,000/- . As the defendant committed default in payment of monthly rent, they filed suit for eviction.

4. Defendant filed written statement stating that Akula Bhavannarayana executed a rent-cum-sale agreement and the same was in force till 25.11.2015 by taking Rs.2,00,000/- in advance; that the

defendant is paying the rent regularly and hence, he prayed to dismiss the suit.

5. On the basis of the above pleadings, the following issues have been settled by the trial Court for trial:

“1. Whether the plaintiff is entitled for the relief of eviction of the defendant from the plaint schedule property?

2. whether the plaintiff is entitled for future damages @ Rs.8,000/- p.m. from the date of suit till defendant is evicted?

3. To what relief?”

6. During trial, on behalf of the plaintiffs, P.W.1 was examined and Exs.A.1 to A.3 were got marked and on behalf of the defendant, DWs.1 and 2 were examined and Exs.B.1 to B.31 were got marked.

7. The trial Court, upon considering the evidence on record, came to the conclusion that the defendant is liable for eviction from the suit schedule premises as per Ex.A.1-quit notice, dated 06.08.2009, and accordingly, decreed the suit. On appeal, the said judgment and decree were confirmed by the first appellate Court. Challenging the same, the present Second Appeal is filed.

8. The Second Appeal is sought to be admitted on the following suggested substantial questions of law:

“a) Whether the findings of the lower Appellate Court are not vitiated by improper construction of the terms of Ex.B31;

b) Whether the finding of the lower Appellate Court that Ex.B31 was not executed by late Bhavannarayana are legally sustainable?”

9. According to the learned counsel for the appellant, Ex.B.31-Lease Agreement, dated 26.11.2005, has not been properly appreciated by both the Courts below. As seen from Ex.B.1-certified copy of promissory note, it is clear that the defendant failed to prove about payment of Rs.2,00,000/- to late Akula Bhavannarayana out of the total consideration of Rs.15,00,000/-. Even otherwise the said lease agreement has not been transformed into a regular sale deed. Therefore, the defendant cannot contend that he is entitled to continue in the premises as a lease-holder. Ex.A1-Quit notice, dated 06.08.2009, was issued as per Section 106 of the Transfer of Property Act, 1882. In the absence of any proof, the defendant cannot continue in the premises. In terms of Ex.A.1, the defendant is bound to vacate the premises. Therefore, none of the findings is shown to be perverse or contrary to law. The findings of the courts below are based upon proper appreciation of evidence on record. The suggested substantial questions of law are not the real substantial questions of law so as to admit the Second Appeal.

10. However, learned counsel for the defendant sought for ten (10) months' time to vacate the schedule premises for securing a suitable accommodation for doing glass business. On the other hand, learned counsel for the plaintiffs states that three (3) months' may be granted to vacate the premises.

11. Considering the fact that the defendant will not get any suitable accommodation for doing glass business immediately, reasonable time can be granted to him. Therefore, six (6) months' time is granted from today to enable the defendant to secure alternative accommodation, and within six (6) months from today he shall vacate the premises and handover physical possession of the plaint schedule premises to the plaintiffs. The defendant is directed to pay arrears of rent, if any, and continue to pay the same on or before 10th of every succeeding month. If the defendant fails to fulfil any one of the

conditions as mentioned above, the plaintiffs are at liberty to execute decree by filing Execution Petition for eviction of the defendant from the schedule premises or for recovery of rents due.

12. With the above observation, the Second Appeal is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, shall stand closed.

K.C.BHANU. J

FEBRUARY 20, 2015

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THE HON'BLE SRI JUSTICE K.C.BHANU

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DATED: 20.02.2015

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