

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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SECOND APPEAL No.88 of 2015

JUDGMENT:

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This is an appeal under Section 100 of the Code of Civil Procedure, 1908 by the plaintiff/tenant assailing the decree and judgment dated 14.11.2014 of the learned VII Additional District Judge (Judge, Fast Track Court), Visakhapatnam in AS.No.63 of 2013 whereby the learned Additional District Judge had confirmed the decree and judgment dated 22.02.2013 of the learned Principal Junior Civil Judge, Visakhapatnam in OS.No.691 of 2010 filed by the plaintiff/tenant for a perpetual injunction against the defendant/ landlord *inter alia* alleging that the defendant/landlord cannot evict him from the property except in accordance with the procedure established by law.

2. I have heard the submissions of the learned counsel for both the sides. I have perused the material record. The parties shall hereinafter be referred to as 'the plaintiff' and 'the defendant'.

3. The learned counsel for the plaintiff would submit that there is no dispute that the plaintiff is a tenant of the defendant in the schedule property and that as on today no notice under Section 106 of the Transfer of Property Act was issued by the defendant to the plaintiff terminating the tenancy and that the plaintiff is admittedly in possession of the property and that when the defendant/landlord tried to forcefully evict the plaintiff/tenant without following the procedure established by law, the plaintiff/tenant was constrained to file the suit for perpetual injunction and that the Courts below have failed to take note of the fact that even a tenant holding over whose term of lease has come to an end is also entitled to continue in possession and that his possession is

lawful and that, therefore, the Courts below had committed a serious error in dismissing the suit for perpetual injunction filed by the tenant by not properly appreciating the facts and the law.

4. On the other hand, the learned counsel for the defendant/landlord would submit that though the tenancy is admitted, the fact is that the landlord who was of 74 years of age at the relevant time was laid up with paralysis and was not in a position to move without the assistance of other persons and that the said fact would indicate that the alleged threat of forceful dispossession is false and invented and that to rebut the evidence of the plaintiff, the defendant and a supporting witness were examined as DWs1 and 2 and that the said witnesses were not cross examined on behalf of the plaintiff despite sufficient opportunity that was granted by the trial Court and that, therefore, their evidence had remained unchallenged and hence, the Courts below have rightly held that there was no cause of action and that the cause of action alleging that such an aged man suffering with paralysis tried to forcefully evict the plaintiff is false and that the Courts below have rightly dismissed the suit of the plaintiff and that there is no merit in the second appeal and that no question of law much less substantial question of law is involved.

5. On a careful examination of the material record, it is evident that there is no dispute about the landlord and tenant relationship between the defendant and the plaintiff and that the plaintiff is in possession of the subject property as a tenant. The learned counsel for the defendant/landlord had fairly conceded that as on today no suit is instituted for eviction of the plaintiff/tenant but, had maintained the stand that no forceful attempt was ever made to evict the plaintiff/tenant from the property and that the suit is filed with false allegations and on invented cause of action. The law is well settled that a tenant holding over is entitled to continue in possession of the property subject to

payment of rents till he is lawfully evicted from the property and he cannot be forcefully evicted without following the procedure established by law. However, mere right to continue in possession as a tenant holding over or a tenant at sufferance till his eviction does not automatically entitle the tenant to a perpetual injunction. The tenant would be entitled to a perpetual injunction not only on establishing his right to continue in possession as a tenant holding over or a tenant at sufferance but on establishing the pleaded overt acts in regard to the forceful dispossession. In the case on hand, the evidence brought on record would show that the plaintiff had failed to prove the overt acts i.e., the cause of action in regard to forceful dispossession alleged in the plaint. As rightly noted by the court below, the evidence brought on record would show that the defendant/landlord was more than 70 years of age as on the date of the alleged cause of action and was laid up with paralysis and was unable to move from the house without assistance of others. As already pointed out by the learned counsel for the defendant/landlord, the defendant/landlord was examined as DW1 and a supporting witness was examined as DW2 and in their evidence it was asserted that there was never any attempt of forceful dispossession by the landlord/defendant and that there is no cause of action for the suit. The said witnesses were not cross examined and therefore, their evidence had remained unchallenged. During the course of arguments it is also stated that the plaintiff was advised to take up appropriate steps for eviction of the plaintiff/tenant by following the procedure established by law.

6. Viewed thus, this Court finds that the concurrent findings of facts recorded by the courts below on accurate consideration of the facts and proper appreciation of the evidence do not call for any interference and that there are no questions of law much less substantial questions of law involved either to admit the appeal or allow the appeal.

7. In the result, the Second Appeal is dismissed at the stage of admission. No costs.

Miscellaneous petitions, pending if any, in this second appeal shall stand closed.

JUSTICE M. SEETHARAMA MURTI

30th June,, 2015

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