

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Second Appeal No. 247 of 2016

Order:

The appellant herein is the defendant in OS No.306 of 2011 on the file of the Principal Junior Civil Judge, Ongole. The respondent herein filed the said suit seeking eviction of the appellant from the suit schedule property. The suit was decreed by judgment and decree dated 10.10.2014. Against the said judgment and decree the appellant herein preferred AS No.166 of 2014 before the District Judge, Prakasam at Ongole. The learned District Judge confirmed the judgment and decree passed by the trial Court dated 10.10.2014 by his judgment and decree dated 25.01.2016. Against the said judgment and decree passed in AS No.166 of 2014, dated 25.01.2016, the present Second Appeal is filed.

2. The suit was filed by the plaintiff claiming that the plaintiff schedule shop is her absolute property. She gave it on lease for a period of five years from 01.04.2006 to 31.03.2011 on a monthly rent of Rs.2900/-. The defendant agreed to vacate the same on 30.03.2011. At the time of leasing the property, the plaintiff was residing at Tangutur and subsequently she shifted to Hyderabad along with her family. She wanted to set up rice business at Ongole. When she came to Tangutur in the month of December 2010 and requested the defendant to vacate the property he promised to vacate by 30.03.2011. On 01.04.2011 when the plaintiff and her husband came to the shop and requested the defendant to vacate on the ground that the original lease had expired, they came to know that the defendant filed OS No.148 of 2011 against the plaintiff challenging his eviction. In those circumstances, the plaintiff filed OS No.306 of 2011 seeking his eviction.

3. The defendant filed written statement denying the averments in the plaint and stated that from April 2011 onwards the plaintiff is not receiving any rents and he has been depositing the rents in karur

Vysya Bank, Ongole, in the account of one Ravi Suresh. The defendant claimed that he is in legal possession and enjoyment of the shop.

4. The trial court framed the following issues.

- “1. Whether the plaintiff is entitled for eviction of defendant from suit schedule property and for possession?
- 2 .Whether the plaintiff is entitled for future damages and damages for April, May 2011 with interest and subsequent interest at 18% p.a., from the date of suit till delivery of suit schedule property as prayed for?
3. To what relief?”

5. After considering the oral and documentary evidence, the trial Court held that the defendant is liable to be evicted. It was also held that the defendant is liable to pay damages at Rs.5,000/- per month for the months of April 2011 and May 2011 and he was also directed to pay damages @ Rs.5,000/- per month till the date of eviction with interest at 18% p.a. from the date of suit till the date of judgment and thereafter at 6% p.a., from the date of judgment till the date of realization.

6. The said judgment and decree was confirmed by the lower appellate Court on 25.01.2016, but the appellate Court modified the damages for use and occupation from Rs.5,000/- per month to Rs.4,000/- per month. The decree of the trial Court in all other respects was confirmed.

7. In spite of confirming the decree of the trial Court by the appellate Court, the appellant did not vacate the premises, but filed the present Second Appeal.

8. In view of the concurrent findings of fact arrived at by both the Courts below and the failure of the appellant to show any error in such findings, this Court is not inclined to admit the present Second Appeal.

9. The Second Appeal is, accordingly, dismissed at the stage of admission itself. However, the appellant is given time till 30.09.2016 to vacate the premises subject to payment of the arrears of damages as fixed by the trial Court and modified by the appellate Court within a period of two (2) months from the date of receipt of a copy of this order. There shall be no order as to costs.

10. As a sequel thereto, the miscellaneous applications, if any, pending in this Second Appeal shall stand closed.

A.
Date: 01.07.2016
Nsr

RAMALINGESWARA RAO, J