

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

C.C.C.A. No.34 of 2004

JUDGMENT:

The unsuccessful defendants in the Court below preferred the instant appeal aggrieved by the decree and judgment dated 13.08.2003 in O.S.No.210 of 1998 on the file of V Senior Civil Judge, City Civil Court, Hyderabad whereby and whereunder the learned Judge decreed the suit filed by plaintiff for recovery of Rs.7,00,000/- with costs and interests at the rate of 12% per annum from the date of suit till realization.

2) Factual matrix of the case is thus:

a) The case of the plaintiff is that he is the absolute owner of the premises bearing No.6-6-10, Vadrevuvari Street, T.Nagar, Rajahmundry having inherited the same from his ancestors. It is stated that he constructed the said building as per the specifications required by the first defendant and the second defendant occupied the said premises on 01.02.1980 covering an area of 2,300 sq. ft. and running UCO bank since then. It is stated that defendants have given a letter of lease dated 12.05.1977 (vide Ex.A1) for a period of 10 years. It is further stated that second defendant joined as a tenant in the said premises on a monthly rent of Rs.2,645/- agreeing to enhance the same by 15% after six years and accordingly after six years,

the second defendant paid an amount of Rs.3,041.75 ps. per month. It is further stated that as per the agreement the second defendant has to vacate the suit premises by the end of 10 years i.e. 31.01.1990 and as such, he issued a notice on 01.10.1989 asking the second defendant to handover the vacant possession on 31.01.1990, but the second defendant without vacating the premises orally promised the plaintiff to enhance the rate of rent at the rate of Rs.3/- per sq. yard from 01.02.1990 and assured that they would obtain necessary sanction from the fourth defendant and continued in possession of the suit premises. As such, the plaintiff issued a letter dated 13.08.1991 (vide Ex.A2) with his proposal to extend the lease on enhanced rent and other terms which was acknowledged by the second defendant. It is further stated that in the year 1992 when he insisted the defendants to vacate the suit premises, they promised to enhance the rent at the rate of Rs.4.50 per sq. yard with effect from 01.02.1990 after approval by the fourth defendant and as such he deferred legal action. In spite of several reminders by the plaintiff from time to time, the defendants dragged on the issue on the ground that they are waiting for approval of their higher authorities. At last, the plaintiff got issued a quit notice dated 08.08.1993 (vide Ex.A3) demanding to vacate the suit premises by 30.10.1993 and further demanded to enhance the rent at the rate of Rs.4.50 ps. per sq. yard from 01.02.1990 and to pay damages at the rate of Rs.8/- per square foot in view of

prevailing rents in the locality.

b) The further case of the plaintiff was that in spite of receiving quit notice, the defendants failed to comply with the demand of vacating or enhancing the rent. Therefore, the plaintiff's son who is his GPA holder, sent a letter dated 03.11.1993 (vide Ex.A8) which was received by the second defendant on 05.11.1993, but there was no response.

After receiving the legal notice at last the second defendant vacated the suit premises on 31.05.1997.

c) The plaintiff's further case is that in spite of clear admission made by second defendant, the defendants willfully and deliberately avoided to pay the arrears of enhanced rent and damages. Thus, he issued legal notice dated 02.09.1997 and followed by another notice 09.09.1997 (vide Exs.A9 and A14), but the defendants failed to comply with the same.

Hence, the suit.

3a) Defendants filed a detailed written statement opposing the suit and contended that second defendant was the tenant in the suit premises till 31.05.1997 and one S.Krishna used to transact with the second defendant for the purpose of tenancy and second defendant always treated him as landlord and in fact the said Krishna opened an account with their bank and the rents were being transferred to his account every month as landlord and he used to withdraw the said amount from time to time without

any protest towards the payment of monthly rents.

The defendants denied that suit premises was constructed in accordance with the satisfaction of the second defendant and plaintiff demanded second defendant to vacate the suit premises before 1992. They also denied the period of lease for only 10 years. They admitted that the plaintiff issued a quit notice in August, 1993 but claimed that the same has been withdrawn by him as he accepted the rents without any protest in spite of the said notice by way of waiving his rights.

b) The further contention of defendants was that since the plaintiff himself permitted the defendants to continue the tenancy in the suit premises, the quit notice issued in 1993 has no validity but the plaintiff is claiming the suit amount basing on the said quit notice to suit his convenience. They denied that the plaintiff was treating the rents deposited in the account towards damages and also denied that second defendant vacated the suit premises voluntarily on 31.05.1997 as claimed, but contended that plaintiff with a view to get higher rents closed the windows and ventilators of the suit premises and as such, the second defendant had faced much inconvenience. They also contended that by the acts of plaintiff the staff of the second defendant could not sit in the bank and attend to their duties due to lack of proper ventilation and air and as such the second defendant also got issued a legal notice to that effect to the plaintiff.

They claimed that they had to appoint a water boy, as there is no water facility in the suit premises. They also claimed that as a result of the restaurant kitchen being set up adjacent to the bank hall, hot air used to come into the bank making impossible for the staff and the visitors to transact their business in the suit premises. They denied that the suit premises is located in a busy commercial area as claimed by the plaintiff. They contended that the plaintiff is not entitled for any damages as he has withdrawn the amenities of lighting, air etc. by making illegal constructions abutting the suit premises and thus the second defendant had to vacate the suit premises and incur much expense in the said process.

c) The further case of the defendants is that second defendant vacated the suit premises on 31.05.1997 itself, but the plaintiff demanded the rents upto the end of month with a view to get wrongful gain. They denied that they are liable to pay damages to the plaintiff from 1991. They submitted that they have been paying rents regularly without any default and the same were withdrawn by the plaintiff without any protest. Therefore, the plaintiff has waived his right to lodge any claim basing on the quit notice. They admitted that they have agreed to enhance the rent by 15% after 6 years of tenancy and accordingly paid the same at the enhanced rate i.e. Rs.3,041.75 ps. per month and continued to pay the same till 31.05.1997. They contended that the damages as claimed by the plaintiff are beyond the

limitation period of three years and hence not maintainable. The suit property is located at Rajahmundry and therefore, the Court at Hyderabad has no jurisdiction to try the suit. Thus, they prayed for dismissal of the suit.

4) Basing on the above pleadings, the following issues were framed for trial:

- 1) *Whether the plaintiff is entitled to the suit amount with interest at 24% p.a. and for costs?*
- 2) *Whether the suit claim is within the period of limitation?*
- 3) *Whether this Court has got territorial jurisdiction to try the suit?*
- 4) *Whether the court fee paid is sufficient?*
- 5) *To what relief?*

5) During trial, PWs.1 and 2 were examined and Exs.A1 to A17 were marked and Exs.X1 to X9 were exhibited on behalf of plaintiff. DW1 was examined and Exs.B1 to B7 were marked on behalf of defendants.

6) After full-fledged trial and upon hearing both sides the trial Court decreed the plaintiff's suit as stated in para-1 of this judgment.

Hence, the appeal by defendants.

7) Heard argument of Sri E.Sambasiva Pratap, learned counsel for appellants and Sri Eranki Phani Kumar, learned counsel for respondent.

8) The parties in the appeal are referred as they were arrayed before the trial Court.

9a) Criticizing the judgment, learned counsel for appellants/defendants firstly argued that trial Court grossly erred in awarding damages to the plaintiff as prayed for. In expatiation, he argued that admittedly the second defendant conducted its banking business in the premises of plaintiff from 01.02.1980 till 31.05.1997 initially on a monthly rent of Rs.2,465/- for six years and later at the rate of Rs.3,041.75 ps. The defendants particularly the second defendant, never agreed to further enhance the rents and so, the defendants are not liable to pay either the enhanced rent or the damages to the plaintiff. When the plaintiff has not put-forth any cogent evidence as to how he is entitled to claim damages at the rate of Rs.8/- per square foot for the premises; the lease period was not for 10 years as claimed by the plaintiff and further, the second defendant has not vacated the premises voluntarily, rather plaintiff by cutting short the amenities made the second defendant to quit the premises forcibly on 31.05.1997, as such the plaintiff is not entitled to claim any damages. He nextly argued that plaintiff is not entitled to interest at the rate of 24% as claimed.

b) Secondly, he argued that when the building let out to second defendant is situated at Rajahmundry and the entire suit transaction took place at Rajahmundry, the Court at Hyderabad will have no territorial jurisdiction and on that

ground the suit is liable to be dismissed. In this regard, he relied upon a number of citations. He thus prayed to allow the appeal and set aside the judgment of the trial Court.

10a) Per contra, while supporting the judgment, learned counsel for respondent/plaintiff firstly argued that lease of the bank premises was for 10 years as is evident from Ex.A1 with an understanding to increase the rent after six years and second defendant accordingly paid the enhanced rent after six years, but failed to vacate the suit premises after 10 years and further, the second defendant failed to respond to the proposal of the plaintiff under Ex.A2 to pay the enhanced rate of rent and it also failed to vacate the suit premises following series of notices issued by the plaintiff. The plaintiff was ultimately forced to issue Ex.A3—quit notice stating that if the second defendant failed to pay the enhanced rate of rent and vacate the premises by 31.10.1993, second defendant would be treated as trespasser and liable to pay damages at the rate of Rs.8/- per square foot. In spite of this clear notice, the second defendant neither vacated the suit premises nor paid the enhanced rent and it only leisurely vacated the premises on 31.05.1997 and thereby rendered itself liable to pay damages. Learned counsel argued that damages claimed by the plaintiff at the rate of Rs.8/- per square foot is very much reasonable as that rate was prevailing in that area. The trial Court considering all these aspects has rightly decreed the suit.

b) Next, on the aspect of jurisdiction of the trial Court, he submitted that though the suit premises is no doubt situated at Rajahmundry, it is not a suit for eviction and recovery of immovable property but it is a suit for recovery of damages against all the defendants and therefore, the suit is maintainable at Hyderabad. Further, the first defendant is the administrative authority over the second defendant who occupied the suit premises and first defendant's office is located at Hyderabad and therefore, suit is maintainable at Hyderabad. That apart, correspondence between the plaintiff and defendants was entertained by the first defendant at Hyderabad. Therefore, on that ground also suit is maintainable at Hyderabad. Above all, part of the negotiations regarding rent fixation etc. took place at Hyderabad between the plaintiff and defendants and therefore, part of the cause of action has arisen at Hyderabad. For all these reasons, the suit is maintainable at Hyderabad. He thus prayed to dismiss the appeal.

11) In reply, learned counsel for appellants/defendants argued that after issuing quit notice the plaintiff calmly received the rents and as such, he waived his right to proceed against the defendants and therefore, suit is not maintainable.

12) In reply, learned counsel for respondent/plaintiff argued that after issuing quit notice, plaintiff received the

rents only under protest as per Ex.A8—notice and therefore, his action do not amount to waiver of any of his rights.

13) In the light of above rival arguments, the points for determination in this appeal are:

1. Whether the plaintiff is entitled to damages from the defendants and if so at what rate?

2. Whether the trial Court has territorial jurisdiction to try the suit?

3. To what relief?

14a) **POINT No.1:** As can be seen, the admitted facts are that the suit premises belong to the plaintiff and it was let out to the defendants for running bank by the second defendant in Vadrevuvari Street, Rajahmundry and the second defendant was inducted as tenant on 01.02.1980. The rent stipulated initially was at the rate of Rs.2,465/- per month and it was agreed after expiry of six years of lease the same would be enhanced to Rs.3,041.75 ps. The suit premises was vacated by the second defendant on 31.05.1997.

b) Now, coming to the bone of contention between the parties, the claim of the plaintiff is that as per Ex.A1 terms, initially rent was fixed at Rs.2,465/- for six years and later the same was to be enhanced by 15% per annum and most importantly, the lease period was only for 10 years as per Ex.A1. As such, on expiry of six years period from 01.02.1980 to 01.02.1986, the rent was enhanced from Rs.2,465/- to Rs.3,041.75 ps. and second defendant paid

the same. However, after expiry of 10 years period of lease by 01.02.1990, since the second defendant has not vacated the suit premises, the plaintiff demanded the second defendant to vacate the suit premises and issued lease termination notice on 01.10.1989 requesting the defendants to vacate the suit premises and hand over the vacant possession of the same by 31.01.1990. It is the further contention of the plaintiff that in spite of notice, the defendants not only failed to vacate the suit premises but continued in occupation of the same and when the plaintiff was approaching the second defendant with request to vacate the premises, the second defendant used to promise to enhance the rent at Rs.3/- per square foot from 01.02.1990 after approval from the defendants 1, 3 and 4 who are its administrative heads. However, the second defendant neither paid the enhanced rent as promised nor vacated the suit premises. Hence, the plaintiff was constrained to send Ex.A2—letter dated 13.08.1991 stating that lease period was over by 01.02.1990 and it can be extended with retrospective effect with certain terms like the new rent rate should be at Rs.3/- per square foot for a period of 5 years i.e. from 01.02.1990 to 31.01.1995 and after 5 years the lease can be extended for another three years with 15% increase i.e. at Rs.4.50 ps. upto 31.01.1998 and with some other proposals. The further contention of the plaintiff is that the second defendant received Ex.A2—letter and orally promised to the plaintiff to pay rent at the rate of

Rs.4.50 per square foot with effect from 01.02.1990 after approval from the authorities, but failed to pay the enhanced rent vacate the suit premises. Having vexed with the attitude of the defendants, the plaintiff ultimately issued Ex.A3—quit notice dated 08.08.1993 demanding the defendants to pay the rent at the rate of Rs.4.50 ps. from 01.02.1990 till 31.03.1993 and vacate the suit premises by 31.10.1993, failing which the plaintiff would treat the defendants as trespassers from 01.11.1993 and claim damages against them at the rate of Rs.8/- per square foot per month. In spite of said notice, the defendants neither vacated the suit premises nor enhanced the rent but the second defendant continued in the suit premises by paying the old rate of rent. Therefore, the plaintiff issued Ex.A8—notice dated 03.11.1993 stating that second defendant was depositing the rents in his account at the old rate and the plaintiff would be receiving the said amount under protest as part of the damages claimed in his Ex.A3—notice with a right to recover the arrears of damages through Court of law. It is the further contention of the plaintiff that the defendants vacated the suit premises on 31.05.1997 without giving any intimation to the plaintiff. Therefore, the plaintiff issued Ex.A9—notice dated 02.09.1997 stating that the defendants are liable to pay difference of rent and damages at the rate of Rs.8/- per square foot from 01.10.1994 to 31.05.1997 which comes to Rs.7 lakhs with interest at 24% per annum. The plaintiff claimed that damages at Rs.8/- was reasonable as

the said rate of rent was prevailing in that area.

c) On the other hand, the contention of the defendants is that tenancy was not restricted to 10 years. The defendants admitted that after six years it enhanced the rent by 15% from Rs.2,465/- to Rs.3,041.75 ps. The further contention of the defendants is that after the initial enhancement, the defendants neither proposed nor agreed for further enhancement of the rent. The defendants admitted that plaintiff got issued Ex.A3—quit notice but contended that though the plaintiff issued quit notice and also sought for the enhanced rate of rent, still he accepted the rent at old rate and thus withdrew the quit notice. It is also the contention of the defendants that second defendant never voluntarily vacated the premises but on the other hand, the plaintiff with a view to get higher rent by leasing out the premises to restaurant, withdrew the amenities and harassed the second defendant and its staff and customers by closing the windows and ventilators and also letting out the adjacent premises to the restaurant which opened the kitchen abutting to the main hall of the bank and thereby the hot air used to come into the bank premises and ultimately second defendant was forced to vacate the premises on 31.05.1997. In those circumstances, the defendants are not liable to pay any enhanced rate of rent and damages as claimed by the plaintiff. The defendants in their Ex.B6—letter has clearly mentioned all these facts.

15) When the respective pleas and evidence of the parties are perused, the point that come up for discussion is whether the tenancy is limited to a period of 10 years from 01.02.1990 to 01.02.1990 as claimed by the plaintiff or it was for unlimited period.

a) To resolve this issue, the trial Court relied upon Ex.A1 —letter addressed by the defendants i.e. United Commercial Bank, Vijayawada branch to the plaintiff. DW1 in his evidence admitted that the said letter was issued by their bank at Vijayawada which contains the seal of the Vijayawada branch. Basing on Ex.A1 the trial Court held that Ex.A1 is a sort of lease agreement entered into by the parties which would show that tenancy as per the said document is for a period of 10 years. A perusal of the evidence shows that, as held by the trial Court, DW1 did not dispute Ex.A1. It is a letter dated 12.05.1977 addressed by the defendants from its Vijayawada branch to the plaintiff. In that letter it was mentioned that the defendants were conveying their acceptance to the offer of the plaintiff of his premises which was proposed to be constructed and pending such construction they agreed to take the existing premises temporarily on lease. Certain stipulations are mentioned in the said letter. Stipulation No.5 was to the effect that the lease is to be initially for a period of six years with an option in favour of the bank for its renewal for a further period of four years at a rent on renewal mutually

agreeable both to the bank and landlord subject to the revision being not more than 15% and other terms and conditions remaining the same. Thus, as rightly observed by the trial Court, as per the terms of Ex.A1—agreement, the lease was for a period of 10 years and rent as per the said agreement has to be enhanced after six years. Therefore, the contention of the defendants that lease was not for a period of 10 years cannot be countenanced. As the lease is for 10 years, it has now to be seen whether the defendants overstayed in the premises without any plausible cause and failed to vacate the premises and also failed to pay enhanced rate of rent.

16) In this context, a perusal of Ex.A2—letter would show that after expiry of 10 years period on 01.02.1990, the plaintiff sent a letter dated 13.08.1991 with certain proposals i.e. expressing his intention to enhance the term of lease period on the condition of enhancement of rent at the rate of Rs.3/- per square foot for five years i.e. from 01.02.1990 to 31.01.1995 and later at the rate of Rs.4.50 ps. upto 31.01.1998 and with other stipulations. Ex.A2 clearly shows that the plaintiff made a clean breast of his case by stating that it was agreeable for him to enhance the period of lease on enhanced rate of rent. However, the defendants having received the same failed to respond to Ex.A2—letter and they have neither enhanced the rent as proposed by the plaintiff nor put-forth their own proposal but continued in the premises by paying the same old rent of Rs.3,041.75 ps.

with a promise to enhance the rent as and when approved by their higher authorities. It appears, having vexed with the attitude of the defendants, the plaintiff issued Ex.A3—notice dated 08.08.1993 demanding the defendants to pay the enhanced rate of rent at Rs.4.50 ps. per square foot from 01.02.1990 till 31.10.1993 and then vacate the suit premises by that date as otherwise, the plaintiff would treat the defendants as trespassers from 01.11.1993 and claim damages at Rs.8/- per square foot. Exs.A4 to A7—acknowledgements would show that defendants have received the notice but they have not responded in the manner they stood. On the other hand, it appears the defendants used to deposit the rent in the account of the plaintiff's GPA hold at the old rate. Hence, it appears the plaintiff was constrained to issue Ex.A8—notice on 03.11.1993 stating that amounts deposited by them were received under protest towards part of damages claimed by him. Therefore, Ex.A8 clearly nullifies the contention of the defendants that the plaintiff having issued Ex.A3—quit notice later waived the same by receiving the rents paid by them at the old rate. On the other hand, Ex.A8 clearly shows that the plaintiff made a clear case to the effect that he was receiving the rents only under protest without prejudice to his right to recover the damages through court of law. Subsequently it appears the defendants vacated the premises on 31.05.1997. They claimed that they have not voluntarily vacated the premises but the plaintiff cut short

certain amenities and hence they were forced to vacate the premises. Be that it may, the evidence on record would show that lease was for a period of only 10 years which was determined by 01.02.1990 and defendants overstayed in the premises for about 7 years till 31.05.1997 without any plausible cause. When the conduct of both parties is scrutinized, after the initial period of 10 years the plaintiff through Ex.A2—letter sent his proposal for enhancement of the term of the lease on the condition of defendants paying enhanced rent at the rate of Rs.3/- per square foot for 5 years and later at the rate of Rs.4.50 ps. per square foot for three years. However, the defendants did not respond positively but used to pay rent at the old rate. Thereafter, the plaintiff issued quit notice and asked the defendants to pay the enhanced rate and vacate the premises by 30.10.1993, as otherwise they would be treated as trespassers from 01.11.1993 onwards. For this letter also there was no response from the defendants. On the other hand, they used to pay the rents at the old rate and hence the plaintiff was constrained to issue another notice under Ex.A8 stating that amounts deposited by the defendants would be accepted under protest with a right to recover the damages through court of law. So, in the process, the plaintiff cannot be found fault rather the second defendant being a banking institution has not acted prudently.

a) In the light of Ex.A8, the act of plaintiff in receiving the rents under protest cannot be treated as waiving his right.

Hence, in these circumstances, the plaintiff is entitled to claim damages for a period of 32 months from 01.10.1994 till 31.05.1997.

17) Coming to the rate of damages, the plaintiff claimed at the rate of Rs.8/- per square foot. In my considered view, though in his notice the plaintiff claimed the said rate, the same has no legal basis. The plaintiff has not adduced any plausible evidence as to how he is entitled at that rate. Neither the evidence of PW1 nor the evidence of PW2 will support such rate. On the other hand, in Ex.A2 itself the plaintiff made a proposal that from 01.02.1995 onwards he was agreeable to let out his premises on an enhanced rate i.e. at the rate of Rs.4.50 ps. per square foot upto 31.01.1998. The said period mentioned in Ex.A2 squarely falls within the period of damages claimed by the plaintiff from 01.10.1994 till 31.05.1997. So, taking the proposal of plaintiff into consideration and other probabilities, damages at the rate of Rs.5/- per square foot can be held as reasonable amount. So, the plaintiff will be entitled to damages at the rate of Rs.5/- per square foot for 2,300 sq. ft. of premises less the rent paid at the rate of Rs.3,041/- per square foot which works out to Rs.8,458.25 ps. (Rs.11,500/- (Rs.2,300/- x 5) minus Rs.3,041.75 ps.). The total damages from 01.10.1994 to 31.05.1997 (for 32 months) comes to Rs.2,70,664/- (Rs.8,458.25 ps. x 32).

This point is answered accordingly.

18a) **POINT No.2:** This point is concerned, the contention of the appellants/defendants is that the suit property is situated in Rajahmundry and the entire transaction took place at Rajahmundry and therefore, the Court at Hyderabad will have no territorial jurisdiction. His contention is that since no part of cause of action has arisen at Hyderabad, the trial Court had no territorial jurisdiction. He relied upon the following decisions.

1. South East Asia Shipping Company Limited v. Nav

Bharath Enterprises Pvt. Ltd. ^[1]

2. Aligarh Muslim University v. Vinay Engineering

Enterprises (P) Ltd. ^[2]

3. New Mega Transport Company v. United India

Insurance Company Ltd. ^[3]

4. Harshad Chiman Lal Modi v. DLF Universal Ltd. ^[4]

b) Per contra, the contention of respondent/plaintiff is that though the suit property is situated in Rajahmundry the suit filed by the plaintiff is not for eviction and recovery of suit property, but it is only a simple suit for damages against all the defendants and since all the defendants represent the bank and they are liable to pay damages to the plaintiff and the personal obedience of the decree by the defendants is sufficient, as per the proviso to Section 16 CPC the suit can be instituted within the local limits of whose jurisdiction the defendant is/defendants are residing. The further contention of the plaintiff is that apart from the above, the first defendant is the administrative head of the second defendant and at the instance of defendants, the plaintiff visited Hyderabad

for negotiations on number of occasions to finalize the rent deal and therefore, part of the cause of the action has arisen in Hyderabad also and on that ground also the suit is maintainable at Hyderabad.

19a) On perusal of respective contentions, I find force in the contention of respondent/plaintiff. In the plaint, with regard to jurisdiction the plaintiff mentioned that first defendant's office is situated at Himayatnagar, Hyderabad and that the defendants made the plaintiff to come to Hyderabad for negotiations on number of occasions and to finalize and approve the rent claimed by the plaintiff and that the first defendant is the immediate superior authority of the second defendant who occupied the premises at Rajahmundry and therefore, the Court at Hyderabad had jurisdiction. These averments in the plaint to the effect that negotiations regarding rent were held at Hyderabad were not disputed by the defendants in their written statement. They only disputed that the address of the plaintiff is at Rajahmundry and the address of the second defendant is also at Rajahmundry and the second defendant was the tenant of the plaintiff and the disputed property is situated at Rajahmundry and therefore, the Court at Rajahmundry alone is competent to try the suit. Except that defendants did not dispute plaint averments that the rent negotiations took place at Hyderabad and the plaintiff visited the first defendant at Hyderabad on number of occasions. Therefore, it can be accepted that part of the cause of action

has arisen at Hyderabad as the negotiations have taken place in the office of the first defendant at Hyderabad.

b) Further, as rightly argued by the plaintiff, it is not a suit for recovery of any immovable property but it is a suit for recovery of damages against all the defendants. Since the personal obedience of the decree by the defendants is sufficient, their place of residence will give jurisdiction to try the suit. In this regard, Section 16 CPC reads thus:

“16.Suits to be instituted where subject matter situate.-

Subject to the pecuniary or other limitations prescribed by any law, suits-

- (a) for the recovery of immovable property with or without rent or profits,
- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) for the determination of any other right to or interest in immovable property,
- (e) for compensation for wrong to immovable property,
- (f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.”

c) As per proviso to Section 16, since the personal obedience of the decree by the defendants is sufficient, the Court within whose jurisdiction the suit property is situated or in the Court within whose jurisdiction the defendant/defendants actually and voluntarily resides or carries business or personally works for gain will have jurisdiction. Therefore, I find no force in the contention of appellants/defendants. The cited decisions will not help their

cause.

This point is answered accordingly.

20) In the result, in view of findings in point Nos.1 and 2, the appeal is partly allowed and judgment and decree in O.S.No.210 of 1998 on the file of V Senior Civil Judge, City Civil Court, Hyderabad is modified as follows:

The defendants are directed to pay the plaintiff damages to a tune of Rs.2,70,664/- with interest @ 12% per annum from the date of suit till the date of decree and @ 6% per annum from the decree till realisation with costs through out.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 07.01.2016

Murthy

[\[1\]](#) 1996 (3) SCC 443

[\[2\]](#) AIR 1992 SC 1514

[\[3\]](#) (2004) 4 SCC 677

[\[4\]](#) (2005) 7 SCC 791