

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

SECOND APPEAL No.591 of 2016

JUDGMENT:

This second appeal arises out of concurrent judgments of eviction passed against the appellants/tenants.

2. Heard Mr. K. Sarvabhuma Rao, learned counsel for the appellants and Mr. S. Srirama Chandra Murthy, learned counsel for the respondent.

3. The respondent herein filed a suit in O.S.No.888 of 2010 on the file of the Principal Senior Civil Judge, Vijayawada, for the ejection of the appellants therein from the tenanted premises. The respondent also sought recovery of arrears of monthly rentals to the tune of Rs.1,83,000/- at the rate of Rs.22,000/- per month and also for grant of Rs.44,000/- per month towards damages from 01.07.2010, the month of presentation of the plaint.

4. By a judgment and decree dated 25.07.2013, the trial Court directed the appellants to vacate and handover the vacant possession within one month. The trial Court also directed the appellants to pay Rs.1,83,000/- towards arrears of rent up to the date of filing of the suit and damages of Rs.22,000/- per month from the date of the suit till the date of delivery of possession.

5. As against the said judgment and decree, the appellants filed a regular appeal in A.S.No.202 of 2013 on the file of the II Additional District Judge, Vijayawada. The appeal was dismissed by the first appellate Court, by a judgment and decree dated

01.06.2016. Aggrieved by these concurrent judgments and decrees, the tenants have come up with the present second appeal.

6. At the time when the second appeal came up for orders as to admission, this Court framed a question of law and also granted a conditional order of interim stay. It will be useful to extract the order passed on 08.07.2016, as follows:

“When admittedly the premises was leased out to the defendants for the purpose of a students’ hostel and the students have a tenure of an academic year, can the lease period be construed as a lease from month to month? Particularly when there is a usage in the cities that the inmates in such hostel cannot be thrown out abruptly in the currency of a year?”

The decree passed by both the Courts below is not only for eviction but also for payment of arrears of rent calculated at the rate of Rs.22,000/- p.m., as claimed by the respondent/plaintiff. While the admitted rent as claimed by the landlord was Rs.22,000/- p.m., the admitted rent, according to the appellants, was Rs.2,500/-. On the finding that the rent was Rs.22,000/- per month, no substantial question of law arises.

Therefore, an interim stay of execution of the decree is granted on condition that the appellants directly pay to the respondent, a sum of Rs.12,63,000/-, calculated on the following basis, within four weeks from the date of receipt of a copy of this order;

1. The amount payable as per
Clause 3 of the decree = Rs. 1,83,000/-
2. Arrears of rent from the date
of filing of the suit, viz.,
12.07.2010, up to date calculated,
roughly after adjusting the
amounts said to have been paid. = Rs.10,80,000/-

= Rs.12,63,000/-

7. The appellants could not comply with the conditional order passed on 8.07.2016. Therefore, the interim order of stay automatically got vacated. However, the learned counsel for the appellants requested permission to argue the main appeal itself and submitted that if this Court did not agree with him on the substantial question of law, the appellants may at least be granted time up to

31.12.2016 to vacate and handover the possession. The appellants also filed an affidavit of undertaking, paragraph 4 of which reads as follows:

“I further submit that in view of the above stated circumstances, I am deposing to this affidavit giving a clear and unconditional undertaking to vacate the said premises by 31.12.2016 and to give vacant possession thereof to the plaintiff paying the admitted rental from the date of the disposal of the first appeal before the appellate Court below till 31.12.2016. In view of this undertaking, I pray this Hon’ble Court to extend the stay granted earlier on 08.07.2016 till 31.12.2016.”

8. In any case, I heard the arguments of the learned counsel for the appellants even on merits. As pointed out earlier, the suit was one for ejectment, recovery of arrears of rent as well as damages for use and occupation for the future. The plaint averments proceeded on the basis that the tenancy was on month to month basis and was for the non-residential purposes of running a hostel. The plaintiff claimed that the appellants committed default in payment of rent and also started running a ladies hostel, leading to wastage.

9. In the written statement, the appellants admitted the tenancy to be on a month to month basis. But they denied that they were in arrears of rent. Even the quantum of rent was disputed by the appellants.

10. The trial Court framed three issues for consideration. The respondent/plaintiff examined himself as PW.1. Another co-tenant was examined as PW.2, and 28 documents were marked on the side of the plaintiff. The 1st appellant herein examined himself as DW.1. An independent witness was examined as DW.2, but no documents were filed.

11. After careful consideration and analysis of the pleadings and evidence, the trial Court came to the conclusion that the appellants were in arrears of monthly rent. Therefore, the trial Court granted a decree as prayed for.

12. Before the first appellate Court, the appellants raised a contention that the deposits made by them into the Court, pursuant to an order in I.A.No.1737 of 2011, had not been taken into consideration. They also raised a plea that the monthly rent was only Rs.2,500/- and that therefore, the plaintiff ought to have approached the Rent Control Court. But all those contentions were negated by the first appellate Court and the appeal came to be dismissed.

13. In the second appeal, the appellants sought to raise a contention that since the premises was leased out for the purpose of running the students hostel, the lease cannot be construed as a month to month lease, but could be construed only as a year to year lease. Therefore I framed a question of law on 08.07.2016, which I have extracted earlier.

14. The question of law raised by the appellants actually goes contrary to their own pleadings. In the written statement filed by them, they admitted two things, viz., that the tenancy was created in 2005, for residential purposes on monthly rent of Rs.1,000/-, payable by the first day of every calendar month; and that in 2008, even the first floor was let out for non-residential purposes on a monthly rent of Rs.2,500/-. Once it is admitted that the rent was payable every month, the appellants cannot go back of their own pleadings that the tenancy was on year to year basis. As a matter of fact, the

appellants had earlier approached the Rent Control Court and filed a petition for depositing the monthly rents before the Rent Controller. After having taken such a positive step, it is not open to the appellants to raise a question of law relating to a fact on which the appellants never had a dispute. Hence the question of law has to be answered against the appellants and in favour of the respondent. As a consequence, the Second Appeal is liable to be dismissed. Accordingly it is dismissed.

15. But since the appellants have filed an affidavit of undertaking, the same is taken on record and the appellants are granted time up to 31.12.2016 for vacating and handing over the vacant possession. If the appellants failed to do so, the Executing Court can proceed further in accordance with law for enforcing the decree. There shall be no order as to costs.

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

27th August, 2016
Js

V. RAMASUBRAMANIAN, J

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

SECOND APPEAL No.591 of 2016



Date: 27-08-2016

Js.