

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL NO. 1506 OF 2011

JUDGMENT:

The plaintiff in O.S.No. 1012 of 2001 on the file of Principal Junior Civil Judge at Eluru, appellant in A.S.No. 184 of 2006 on the file of District Judge, West Godavari District at Eluru, preferred the present Second Appeal under Section 100 of CPC challenging the concurrent findings recorded by both the trial Court and appellate Court in suit and appeal.

2. For the sake of convenience, the parties to the appeal are referred to as they ranked in suit, hereinafter, throughout the judgment.

3. Plaintiff filed the suit for recovery of suit schedule property and for recovery of arrears of rent and damages contending that she is the absolute owner of Ac. 0.05 cents of site and shed therein in R.S.No. 41, Plot No. 16 of Mattevarigudem H/o Nagulapalli of Dwarakatirumala Mandal in the year 1969. She filed O.S.No. 59 of 1969 against three members for recovery of possession of the suit schedule property and the Court was pleased to decree the suit and delivery was obtained through process of Court by filing execution petition. In the said suit, the title of the plaintiff was upheld.

4. After evicting three persons, the plaintiff was inducted into possession of the property in O.S.No. 59 of 1969 and a fresh agreement of lease was entered into with the defendant No. 1 on monthly rent of Rs. 200/- to run a School which is under the control of defendant Nos. 2 & 3. Since the defendants fail to pay rent, plaintiff got issued a notice to defendants on 4.9.2001 under Section 80 of Civil Procedure Code and under Section 116 of Transfer of Property Act, terminating the tenancy with effect from mid night of 30.09.2001. Though notice was received, defendants did not vacate the premises and they continued in possession and enjoyment of the property. Hence, the possession of the defendants is only a possession of tenant and prayed to pass a decree in their favour.

5. The second defendant filed written statement contending that the plaintiff was not the owner of the land and the land was classified as village gram kankam, thereby, she is not entitled for recovery of possession and arrears of rent and damages. Defendants also denied the alleged lease agreement with the plaintiff while contending that the delivery proceedings in O.S.No. 59 of 1969 were not actually affected and it was only a paper delivery and that the claim of the plaintiff is barred by limitation and prayed for dismissal of suit.

6. Basing on the above pleadings, the trial Court framed the following three issues:

- (1) Whether the plaintiff is entitled for recovery of possession as prayed for?
- (2) Whether the plaintiff is entitled to arrears of rent and damages as prayed for?
- (3) To what relief?

7. To substantiate the case of the plaintiff PWs 1 to 3 were examined and Exs A1 to A5 were marked and on behalf of defendants DWs 1 to 3 were examined and Exs. B1 to B8 were marked.

8. Upon hearing argument of both the counsel, the trial Court dismissed the suit disbelieving the relationship of 'landlord' 'tenant' between the plaintiff and defendants.

9. Aggrieved by the decree and judgment of the trial Court, the unsuccessful plaintiff preferred A.S.No. 184 of 2006 on the file of District Judge, West Godavari District at Eluru, which ended in dismissal on 19.12.2007, confirming the judgment and decree of the trial Court and recorded concurrent finding regarding jural relationship of landlord and tenant.

10. Aggrieved by the concurrent findings recorded by both the trial Court and first appellate Court, the Second Appeal is preferred under Section 100 of CPC raising several contentions formulated three substantial questions of law, out of them question No. 2 is the only substantial question of law and that the other two questions are either questions of fact or questions of law but not substantial questions of law.

11. At the stage of admission, heard the learned counsel appearing for appellant Sri P. R. Prasad, none appeared for respondents 1 to 5 and there is no representation on their behalf though notices were served.

12. This Second Appeal is filed in the year 2011 and it is still at the stage of admission and therefore, there is no point in admitting the appeal with a direction to list the matter for final hearing. Therefore, heard the learned counsel appearing for appellant on the substantial question of law.

13. The following is the substantial question of law:

“Whether the plaintiff is entitled to set up a plea of perfection of title by adverse possession having suffered decree in O.S.No. 59 of 1969 on the file of Principal Junior Civil Judge at Eluru and whether there is no jural relationship of landlord tenant between plaintiff and defendants, if so, liable for eviction on the ground of default in payment of rent. “

14. The basis for claiming relief is oral agreement of lease between the plaintiff and defendant No. 1 to run a school on monthly rent of Rs. 200/-. To substantiate the contentions of the plaintiff, the plaintiff relied on Exs. A1 and A2, decree copy in O.S.No. 59 of 1969 and execution petition filed in O.S No. 59 of 1969 to establish that the property originally belongs to the plaintiff and defendant No. 1 and two others were evicted by way of decree and judgment of the suit and execution petition was filed in the said suit. The defendant denied the actual delivery of property while contending that it is only a paper delivery. No evidence was adduced to prove actual delivery of property. However, based on the delivery recorded by the executing Court, the delivery has to be accepted. Assuming for a moment, the property was delivered to the plaintiff in the year 1971 allowing the defendants to continue in possession of the property without any fresh agreement of lease does not amount to a tenancy by holding over. But it is only tenancy at sufferance as the first defendant came into possession of land by lawful title, but holds it wrongfully after termination or even after ordering eviction in a tenant at sufferance by fiction and his possession though distinguishable with possession of trespasser in the property, after eviction.

15. Though the plaintiff contended that there was relationship of land lady and tenant between them, no iota of evidence brought on record to establish the same and no piece of evidence is produced evidencing payment of rent at the rate of Rs. 200/- per month to the plaintiff by the defendants. In the absence of any proof it is difficult to believe the subsisting jural relationship of landlady and tenant between the plaintiff and defendants. When the plaintiff failed to establish jural relationship of landlady and tenant, the trial Court and Appellate Court cannot order eviction of the defendants on the basis of oral agreement of tenancy. Therefore, the trial Court and Appellate Court rightly declined to grant a decree for eviction of the respondents, in the absence of proof of jural relationship of landlady and tenant. At best, the remedy open to the plaintiff is to take appropriate steps to seek relief of recovery of possession under the provisions of Specific Relief Act but not by terminating the tenancy by issuing the notice under Section 106 of Transfer of Property Act.

16. One of the major contentions before me is that the defendant cannot set up adverse possession after he was duly evicted from the schedule property. The second defendant is a Government, admittedly, continuing in possession from 1971 onwards and even after recording the alleged delivery without paying any amount of rent without consent of landlord. In such case, the defendants are entitled to set up the plea of adverse possession since the possession of the tenant after delivery of possession is only a possession of trespasser, however, it is always subject to proof of requirements to claim adverse possession. Hence, I hold that the defendants are entitled to set up a plea of adverse possession subject to proof of requirements to establish the claim based on prescriptive title and that they are not liable to be evicted from the schedule property based on the oral tenancy which is not established either before the trial Court or before the Appellate Court.

17. Accordingly, the point is answered.

18. In the result, the Second Appeal is dismissed at the stage of admission itself. As a sequel thereto, miscellaneous petitions, pending if any, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Date: 04.06.2015
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