

HON'BLE SRI JUSTICE G. CHANDRAIAH

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S.A. No. 5 of 2016

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DATE: 28.04.2016

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Between:

Pushpa Devi

.. Appellant/
Defendant

And

Varsha Sanghi

.. Respondent/
Plaintiff

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JUDGMENT:-

This Second Appeal is directed against the judgment dated 30.11.2015 delivered in A.S.No. 6 of 2015 by XXV Additional Chief Judge, City Civil Court, Hyderabad, whereby the Appeal Suit filed by the defendant against the judgment dated 17.12.2014 delivered in O.S.No. 219 of 2013 on the file of III Junior Civil Judge, City Civil Court, Hyderabad, was dismissed.

The brief facts of the case are that the plaintiff is the sole and absolute owner and landlord of the suit schedule property. On oral agreement between the plaintiff and the defendant, the plaintiff delivered the vacant peaceful physical possession of the property to the defendant in the year 2009 for running business in wholesale ready-made garments on condition that the existing monthly rent of Rs.4,235/- shall be payable on the 5th of every succeeding month and the same has to be enhanced @ 10% per annum and the monthly rent is exclusive of electricity consumption charges and municipal taxes. The defendant specifically agreed that apart from the payment of monthly rents, the defendant shall be liable to pay MCH

taxes. The defendant lastly paid rent for the month of March, 2012 @ Rs.3,850/- and deliberately evaded payment of rents from the month of April, 2012 to July, 2012 i.e. @ Rs.4,235/- per month. The plaintiff, in spite of getting issued legal notice dated 10.08.2012 to the defendant demanding her to vacate the schedule property and pay arrears of rent, failing which, she will be liable to pay mesne profits/damages of Rs.30,000/- per month for illegal possession by the date of delivery of actual possession of the suit schedule property, the defendant committed willful default not only in payment of monthly rents from April, 2012 to December, 2012 but also in payment of municipal taxes from 2009-2010 onwards, as such, the plaintiff was forced to pay municipal taxes for the years 2009-2010, 2010-2011, 2011-2012 @ Rs.6,824/- p.m. amounting to Rs.20,472/- under the receipts issued by GHMC. Further, the defendant, in violation of oral tenancy, constructed one step in front of the entrance of the schedule property which blocks the lane leading to other shops and causing nuisance to the neighbours, and also changed the single phase electricity connection into three phase electricity connection one year back without the permission of the plaintiff and further installed two sets of split conditioner unit attached to the parapet wall in August, 2011. Hence, the plaintiff filed O.S.No. 219 of 2013 on the file of III Junior Civil Judge, City Civil Court, Hyderabad for eviction of the defendant or anybody

claiming under or through her and also her relatives, legal heirs, agents, assignees, administrators, executors, GPA, etc. from the suit schedule property and for handing over the actual physical possession of the suit schedule property to the plaintiff; and to direct her to pay the arrears of rent @ Rs.4,235/- per month from April, 2012 to December, 2012 amounting to Rs.38,115/- and also mesne profits/damages @ Rs.30,000/- per month to the plaintiff from the date of filing the suit to the date of delivery of vacant peaceful possession of the suit schedule property. The trial Court, having regard to the pleadings taken by both the parties, framed the following issue:

“Whether the plaintiff is entitled to ejectment, recovery of arrears of rent and mesne profits as prayed for?”

On behalf of the plaintiff, PW1 was examined and Exs.A1 to A20 were marked. On behalf of the defendant, DW1 was examined and Exs.B1 to 53 were marked. CW1 was examined as Court witness and Exs.X1 to X7 were marked. After considering the pleadings of the parties and also examining the evidence on record, the trial Court, by judgment dated 17.12.2014, partly decreed the suit directing the defendant to deliver vacant physical possession of the suit schedule property to the plaintiff within two months from the date of judgment, failing which, the plaintiff is entitled to get the same by due process of law. The defendant was further directed to pay arrears of rent @ Rs.4,235/- per month from April, 2012 to

December, 2012 amounting to Rs.38,115/- and dismissed the claim for mesne profits/damages. Being aggrieved by this judgment, the defendant filed A.S.No. 6 of 2015, and the learned XXV Additional Chief Judge, City Civil Court, Hyderabad, considering the rival contentions raised by both the parties, framed the following points for consideration:

- i) Whether the plaintiff is the absolute owner of the suit schedule property and whether the plaintiff is entitled to the relief of eviction of the defendant from the suit schedule property?
- ii) Whether the plaintiff is entitled to the relief of recovery of arrears of Rs.38,115/- towards monthly rents from April, 2012 to December, 2012?
- iii) Whether the plaintiff is entitled to mesne profits/damages from the date of filing of the suit till the date of delivery of possession of the suit schedule property at the rate of Rs.30,000/- per month, as prayed for?
- iv) Whether the decree and judgment dated 17.12.2014 passed by the trial Court in O.S.No. 219/2013 warrant any interference in this appeal?

The lower appellate Court, after re-appreciating the evidence on record, dismissed the Appeal Suit while confirming the judgment and decree of the trial Court vide judgment dated 30.11.2015. Challenging the judgment of the lower appellate Court, the defendant has preferred the Second Appeal.

This Court, by order dated 19.02.2016, directed both the parties to maintain *Status Quo* obtaining as on that day. Again, on 11.03.2016, this Court, after hearing the learned counsel for both the parties, was inclined to direct

the appellant to vacate the premises in question, and thereby, granted sometime to the learned counsel for the appellant enabling him to get instructions from his client with regard to vacation of the scheduled premises. Subsequently, On 06.04.2016, the learned counsel for the appellant sought one more year's time for vacating the scheduled premises on the ground that the appellant purchased a site and started construction therein and once it is completed she will shift her business to the new place, and in spite of the objection raised by the learned counsel for the respondent for grant of further time to the appellant, this Court felt that considerable time is required to complete the construction and adjourned the matter. Today, when the matter is taken up for hearing, the learned counsel for the appellant has submitted that the construction work is still going on and sometime may be granted for shifting the cloth business to the new place.

Having heard the learned counsel for the appellant and perused the material placed on record, I find no reason whatsoever to interfere with the concurrent findings of fact recorded by the Courts below in its judgments under appeal, nor is there any question of law, much less substantial question of law involved in the Second Appeal, warranting interference by this Court, in exercise of its jurisdiction under Section 100 CPC.

In the result, the Second Appeal is dismissed. However, having regard to the facts and circumstances of

the case and in view of the submission made by the learned counsel for the appellant-defendant, six month's time is granted to the appellant-defendant from the date of receipt of a copy of this judgment for vacating the schedule premises and handing over the possession of the property to the plaintiff. No order as to costs.

As a sequel to the dismissal of the Second Appeal, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. CHANDRAIAH, J

28.04.2016

bcj