

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

Second Appeal No.670 of 2016

JUDGMENT:

The second appeal arises out of a decree for possession passed by the trial Court and confirmed by the First Appellate Court.

2. Heard Sri M.S.V.S. Sudha Rani, learned counsel for the appellant and Sri V. Subramanyam, learned counsel for the respondent/caveator.

3. The respondent filed a suit in O.S.No.221 of 2012 for eviction. The plaint proceeded on the basis that the suit schedule property was let out on a monthly rent to the appellant herein on 25-12-2006; that the monthly rent was enhanced from Rs.3,200/- to Rs.4,200/- in December, 2008 and to Rs.5,200/- from December 2010; that the appellant herein committed default in payment of monthly rents from January, 2011, forcing the respondent to terminate the tenancy by a notice dated 07-11-2011 and that therefore, the appellant became liable to be evicted.

4. The appellant filed a written statement denying all the allegations including the allegation of default in payment of rents. The appellant claimed in the written statement that the General Power of Attorney Holder of the respondent/landlord refused to receive the rent from June, 2011 onwards, but demanded an additional advance with an enhanced rent. The appellant/defendant also claimed that when he refused to pay additional advance, the G.P.A. holder of the respondent attempted to evict him forcibly, compelling him to file a suit for bare injunction in O.S.No.889 of

2011. Therefore, in essence, it was contended by the appellant/tenant that he was not in default and that he was not liable to be evicted.

5. The General Power of Attorney holder of the plaintiff was examined as PW.1. The eviction notice dated 07-11-2011, the acknowledgement card, the reply notice dated 19-11-2011, the General Power of Attorney, the legal notice dated 06-03-2012 and the postal acknowledgement were all filed as Exs.A.1 to A.6.

6. The appellant examined himself as DW.1. He also examined one G. Prakash Kiran as DW.2. The appellant filed four documents as Exs.B.1 to B.4.

7. After analyzing the oral and documentary evidence, the trial Court came to the conclusion that the appellant/tenant was not in arrears of rent from January, 2011. This was despite the fact that even as per the tenant's own document filed as Ex.B.4, he had sent a cheque for Rs.19,000/- representing the rent for several months.

8. But the trial Court came to the conclusion that the tenancy was validly terminated by the quit notice issued under Section 106 of the Transfer of Property Act, 1882. Therefore, the trial Court decreed the suit and directed possession to be handed over within two months.

9. The First Appellate Court focused attention on the quit notice and came to the conclusion that the opinion of the trial Court with regard to the validity of notice under Section 106 of Transfer of Property Act was correct. In that view of the matter, the First Appellate Court dismissed the appeal.

10. Aggrieved by the concurrent judgments and decrees, the tenant has come up with the above appeal raising the following substantial questions of law.

- 1) Whether the suit for eviction was maintainable, without taking recourse to the provisions of the Rent Control Act?
- 2) Whether the General Power of Attorney holder was entitled to prosecute the suit? and
- 3) Whether the quit notice was valid or not?

11. The answer to the first substantial question of law is not very difficult to be found. Even as per the written statement of the defendant, he agreed to have the rent enhanced to Rs.3,800/- per month. Therefore, the appellant ceased to be a protected tenant under the Rent Control Act. Hence, the suit for eviction alone was the remedy available to the landlord. Accordingly, the first substantial question of law is answered against the appellant.

12. On the third substantial question of law, both the Courts of below have concurrently found that the lease was a month to month basis. Therefore, the lease was terminable by a notice of duration of 15 days. On facts both the Courts have found that a notice of duration of 15 days has clearly been given. Therefore, the third substantial question of law is also to be answered against the appellant.

13. Coming to the second substantial question of law, it is seen from the judgments of both the Courts below that the appellant never raised the issue of the landlord being represented by a G.P.A.

holder. Therefore, he is not entitled today to object to the representation of the landlord by his G.P.A. holder. More over, even according to the appellant/defendant, he had approached only the G.P.A. holder to accept the rent. Therefore, he filed a suit as against them. Hence, it is not open to the appellant now to turn around and contend that the G.P.A. holder was not entitled to represent the landlord. Therefore, the second appeal is liable to be dismissed.

14. But on 27-08-2016 when I expressed the view that the substantial question of law raised by the appellant are liable to be answered against him, the learned counsel for the appellant took time and later came up with an affidavit seeking six months time to vacate the premises. This request was opposed by the learned counsel for the caveator.

15. However, taking into account the facts and circumstances, the appellant is granted time, even while dismissing the appeal, up to 31-12-2016 for vacating and delivering vacant possession of the suit schedule property. This is subject to condition that the appellant shall continue to pay the monthly rent duly and promptly. As otherwise, the benefit of extending of stay will not be available to the appellant.

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

V. RAMASUBRAMANIAN, J

Date: 09-09-2016

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