

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

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THURSDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND SIXTEEN

-
PRESENT

-
THE HON'BLE SMT. JUSTICE ANIS

-
SECOND APPEAL No. 730 OF 2015

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Between :

Amirbhai Jamalbhai and
another

... APPELLANTS

A N D

A.Srivachalam (died) and four others

...
RESPONDENTS

This Court made the following:

THE HON'BLE SMT. JUSTICE ANIS

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SECOND APPEAL No. 730 OF 2015

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JUDGMENT:

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908 (for short, 'CPC'), is directed against the judgment and decree, dated 25.06.2015, passed in A.S.No.171 of 2011 on the file of the XIII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad, whereunder and whereby, the judgment and decree, dated 25.04.2011 passed in O.S.No.634 of 2009 on the file of the XX Junior Civil Judge, City Civil Court, Hyderabad, were confirmed.

2. The appellants are the defendants and the respondent No.1 (died) is the plaintiff before the trial Court. For better appreciation of facts, the parties are hereinafter will be referred to, as they are arrayed before the trial court.

3. The plaintiff filed the suit for recovery of possession of suit schedule property i.e., non-residential mulgi bearing No.

6-3-803/1/8, Shop No.8, situated at Elephant House Complex, Ameerpet Circle, Hyderabad and for damages of Rs.24,000/- for unauthorized occupation for the months of September and October, 2008 and also for mesne profits @ Rs.12,000/- per month from the date of suit till the delivery of vacant physical possession, on the ground that the defendants obtained the suit schedule property on a monthly rent of Rs.6,000/- for a period of three years only and the tenancy was commencing from 30.08.2005. Accordingly, the plaintiff executed a registered Lease deed on the same day and the lease period expires at the end of 29.08.2008. After expiration of the lease period, the

plaintiff issued notice under Section 106 of Transfer of Property Act, 1882 and the same was received by the defendants.

4. The main contention of the defendants is that the plaintiff has no right to terminate the tenancy and he has to renew the lease period as it is a perpetual one.

5. The trial Court, after considering the evidence of the plaintiff and the defendants and the documentary evidence Exs.A.1 to A.9 and Exs.B.1 and B.2, held that the plaintiff is entitled for eviction of the defendants from the suit premises and granted two months' time to vacate the premises and awarded damages @ Rs.24,000/- for the months of September and October, 2008, and also granted damages @ Rs.12,000/- per month from the date of suit till the date of eviction.

6. Aggrieved by the judgment of the trial Court, the defendants filed A.S.No.171 of 2011 on the file of the XIII Additional Chief Judge (Fast Track Court), City Civil Court at Hyderabad. The first appellate Court, on careful examination of the evidence on record, held that the appellants enjoyed the property beyond the required period and there is no necessity to continue the litigation beyond the required period and dismissed the appeal by confirming the judgment of the trial Court. Challenging the same, the present Second Appeal is preferred.

7. The appellants in the grounds of appeal formulated the following substantial questions of law:

- a) Whether the suit filed by the respondents/plaintiffs in O.S.No.634 of 2009 for eviction of the petitioners-appellants from the suit schedule mulgi, is maintainable by virtue of Clauses 10, 12 and 13 of Ex.A.1, the registered Lease deed dated 30.08.2005?
- b) Whether the judgment and decree passed in O.S.No.634 of 2009 for eviction of the petitionrs/appellants from the suit

schedule mulgi without determining the scope of Clauses 10, 12 and 13 of the registered Lease deed dated 30.08.2005, is valid under law?

- c) Whether the suit for eviction is maintainable without issuing notice under Section 106 of the Transfer of Property Act, 1882 to the petitioners-appellants?
- d) Whether the Clauses 10, 12 and 13 of the registered Lease deed dated 30.08.2005 is perpetual under the provisions of the Transfer of Property Act, 1882?

8. The learned counsel for the respondents/plaintiffs contended that there are no substantial questions of law involved in this appeal and whatever pleas raised by the appellants/defendants are already answered by both the Courts below. It is further contended that the appellants filed I.A.No.256 of 2012 in A.S.No.353 of 2010 for amendment of the plaint and the lower appellate Court dismissed the said I.A. and challenging the said order, C.R.P.No.2960 of 2012 was moved, wherein this Court held that the lease period for which the appellants sought renewal was expired and O.S.No.3088 of 2008 has become infructuous and question of amending the plaint in such a suit does not arise, and accordingly dismissed the C.R.P., and therefore, in the present appeal, no substantial question of law has been involved. It is further argued that whatever pleas pleaded by the appellants are basing on the factual aspects, and therefore, prayed the Court to dismiss the appeal. The learned counsel relied on a case-law reported in *Indian Oil Corporation Ltd., Secunderabad Vs. Epuri Prithvisen Reddy*^[1], wherein this Court held at Paras 20, 21 and 22 as follows:

“Both the learned Courts below made an observation that the term of the lease agreement that the lease would be renewed automatically on every 5 years on the same terms and conditions at the option of the defendant was written in

handwriting and seems to have been inserted and it was not explained whether the said words were incorporated while entering into the lease agreement or at the time of obtaining the signatures of the parties. Admittedly, the mother of the plaintiff is an illiterate woman, hailing from agricultural community. In any event, the lease period was expired by 16.8.1992 as per the terms of the lease agreement. The respondent/plaintiff or his mother did not agree for the renewal of the lease. No steps have been taken by the appellant Corporation to get the lease renewed. In the absence of any fresh agreement of renewal, it cannot be said that the lease has automatically been renewed. The appellant Corporation addressed a letter under Ex.A6 dated 12.1.1993 stating therein that the lease expired on 7.8.1992 and they would like to renew the lease for a further period as per the terms of the original lease agreement, but the mother of the plaintiff did not accept for the renewal of the lease. After the expiry of the lease, the appellant Corporation is under a duty to vacate the premises and handover the vacant possession of the same to the respondent.

The lease was for a period of 20 years and it was expired on 16.8.1992, thereafter without any renewal, the appellant Corporation continued in possession of the premises for a period of 21 years. As there can be no automatic renewal of lease as such in law, the appellant Corporation is liable for ejection and the learned Courts below rightly ordered eviction of the appellant from the schedule premises.

For the foregoing reasons, I see no legal error or infirmity in the findings of the learned Courts below warranting interference. Accordingly, the second appeal is dismissed. However, the appellant/defendant is directed to vacate the premises in question and deliver vacant possession to the respondent/plaintiff within a period of 3 (three) months from the date of receipt of a copy of this judgment. There shall be no order as to costs.”

The learned counsel further relied on a case-law reported in *Andhra Stainless Steels and Wire Products, Hyderabad Vs. Kanahayal Jhavar*^[2], wherein this Court held at Para 14 as follows:

“Coming to the second aspect, there is some strength in what is pleaded by the appellant. The respondent, no doubt, prayed for a decree for mesne profits. Normally, in suits of this nature, the exercise of determining the arrears of rents must be relegated to separate proceedings, though in the same suit. There is no bar for a Court to determine the arrears also in the same decree in

which eviction is ordered. However, there must be clinching evidence in this behalf. It has already been mentioned that except the respondent, no other witness has deposed nor any documentary evidence touching on the question of determination of rent after the termination of lease.”

The learned counsel also relied on a case-law reported in *Narayanan Rajendran and another Vs. Lekshmy Sarojini and others*^[3], wherein the Hon’ble Supreme Court held at Paras 22 and 23 as follows:

“In the case of *Ram Gopal v. Shakshaton* [(1893) ILR 20 Calcutta 93 (P.C.)], the court emphasized that a court of second appeal is not competent to entertain questions as to the soundness of a finding of facts by the courts below.

The same principle has been reiterated in *Rudr Prasad v. Baij Nath* [(1893) ILR 15 Allahabad 367]. The court observed that a Judge to whom a memorandum of second appeal is presented for admission is entitled to consider whether any of the grounds specified in this section exist and apply to the case, and if they do not, to reject the appeal summarily.”

The learned counsel further relied on a case-law reported in *Mungamuru Srinivasulu Reddy Vs. Sowdagar Ifjanullah Khan*^[4], this Court held at Para 19 as follows:

“Whether what had been leased out originally was only a vacant site or along with certain superstructures? so as to decide the question whether a civil suit is maintainable or not, this is predominantly a question of fact to be decided on the strength of oral evidence and also the documentary evidence available on record. Both the Courts recorded concurrent findings to the effect that a civil suit is perfectly maintainable, since what had been leased out was only a vacant site. In the light of the concurrent findings recorded by both the Court of first instance and also the appellate Court, it being a finding of fact, this Court is not inclined to disturb such findings.”

The learned counsel also relied on a case-law reported in *Nammi Venkata Swamy and others Vs. Nodagala Sanyasi and others*^[5], wherein this Court held at Para 21 as follows:

“..... . As far as granting of the relief of perpetual injunction is concerned, in the light of the concurrent findings recorded on the factum of possession by both the Court of first instance and also the appellate Court, there cannot be any doubt whatsoever that such concurrent findings relating a question of fact normally not to be disturbed in a second appeal and hence the relief of perpetual injunction granted by the Courts below cannot be found fault in any way by this Court in the present second appeal.”

The learned counsel also relied on a case-law reported in *Bandi Thavitinaidu and others Vs. Jeeru Thatha*^[6], this Court held at Para 9 as follows:

“This Court can exercise jurisdiction to entertain a second appeal only when a substantial question of law arises for consideration. It is not within its purview to re-appreciate the evidence on record or to come to a conclusion different from that of the Court below on the evidence being re-appreciated. It is only if the findings recorded by the Court below are perverse or are based on no evidence, would this Court be justified in entertaining a second appeal. It cannot be said that the Courts below have recorded a perverse finding or that the findings recorded by them are based on no evidence.”

9. Now, the point that would arise for my consideration in this appeal is whether there is any substantial question of law involved in this appeal.

10. **POINT:**

After hearing both sides and a perusal of the record shows that the first respondent filed O.S.No.634 of 2009 on the file of the XX Junior Civil Judge, City Civil Court, Hyderabad a suit for recovery of possession of mulgi bearing No.6-3-803/1/8, Shop No.8, situated at Elephant House Complex, Ameerpet Circle, Hyderabad and also for grant of mesne profits. After full-fledged trial and after perusing the oral and documentary evidence, the trial Court decreed the suit as prayed

for, granting two months' time to the appellants herein to vacate the premises. It is also an admitted fact that the appellants/defendants filed A.S.No.171 of 2011 before the XIII Additional Chief Judge, City Civil Court at Hyderabad. The file appellate Court, after considering the evidence on record, dismissed the appeal by holding that the plaintiff is entitled to vacate the defendants from the suit schedule property. Aggrieved by the concurrent findings of both the Courts below, the defendants moved the present second appeal.

11. The learned counsel for the appellants vehemently argued that the agreement of lease dated 30.08.2005 and its clauses clearly shows that it is a perpetual lease and therefore suit for eviction is not maintainable. It is also argued that the trial Court erred in awarding Rs.12,000/- per month as mesne profits without there being any enquiry. However, it is an admitted fact that the appellants filed O.S.No.3088 of 2008 before the V Additional Junior Civil Judge, City Civil Court at Hyderabad for specific performance of renewal of lease agreement. Ex.A.9 is the certified copy of the Lease deed. There is no dispute that the plaintiff executed the registered Lease deed on 30.08.2005 commencing the tenancy with effect from 30.08.2005 and expires on 29.08.2008. The said suit was dismissed on 29.06.2010. Aggrieved by the judgment and decree in O.S.No.3088 of 2008, the appellants preferred A.S.No.353 of 2010 before the XII Additional Chief Judge (Fast Track Court), Hyderabad. During pendency of the appeal, the appellants filed I.A.No.256 of 2012 under Order VI Rule 17 C.P.C. to permit them to amend the plaint as they wanted to incorporate the prayer for renewal of lease by another three years from 01.09.2011 to 30.08.2014. The first appellate Court dismissed the said I.A. on 11.04.2012. Aggrieved by the said orders, the appellants preferred C.R.P.No.2960 of 2012, wherein this Court after hearing both sides held as under:

“In every suit, the plaintiff has to mention the cause of action. The

relief claimed in the plaint would depend upon the nature of cause of action. The cause of action in the present suit was alleged the denial of the respondents to refuse the renewal of the lease up to 30.08.2011. Not only the suit was dismissed, but also the period for which the petitioners sought renewal has expired. With that, the suit either has become infructuous or has worked itself out. The question of amending the plaint, in such a suit, does not arise. The lower Appellate Court has taken correct view of the matter.

The C.R.P. is accordingly dismissed. The lower Appellate Court shall take note of cessation of cause of action and pass final orders in the appeal forthwith. There shall be no order as to costs.”

12. After filing O.S.No.634 of 2009, the defendants filed O.S.No.3088 of 2008 for the relief of specific performance of renewal of lease agreement. The claim of the appellants was negated by the trial Court in O.S.No.3088 of 2008 and this Court in C.R.P.No.2960 of 2012 also observed that period for which the petitioners sought renewal has expired and the suit either has become infructuous or has worked itself out. Therefore, the contention of the appellants from time and again that Ex.A.9 registered Lease deed is a perpetual one, cannot be accepted. It is also argued by the learned counsel for appellants that without there being any enquiry for mesne profits, the trial Court granted Rs.12,000/- per month as damages. In this regard, the learned counsel for respondents stated that they already filed a memo withdrawing the relief of future damages. Therefore, in any view of the matter, the appellants failed to establish that there is a substantial question of law involved in this appeal.

13. Accordingly, the Second Appeal is dismissed at the stage of admission. No costs. Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

ANIS, J

APRIL 21, 2016.

Anr

THE HON'BLE SMT.JUSTICE ANIS

SECOND APPEAL No. 730 OF 2015

21.04.2016

Anr

[\[1\]](#) 2015(1) ALD 653

[\[2\]](#) 2015(1) ALD 403

[\[3\]](#) 2009 AIR SCW 2357

[\[4\]](#) 2008(5) ALD 444

[\[5\]](#) 2008(5) ALD 143

[\[6\]](#) 2011(2) ALD 422