

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.C.C.A. No.67 OF 1999

JUDGMENT:

The present appeal is preferred by the defendant in O.S. No.1781 of 1987 on the file of the V Senior Civil Judge, City Civil Court, Hyderabad, aggrieved over a portion of the judgment and decree dated 16.11.1998 granting Rs.29,350/- with interest at 12% per annum while dismissing the main relief for recovery of vacant possession of flat bearing No.1-1-724/2/4 (South-East), Ground Floor, Padmaja Apartments, Gandhinagar, New Bakaram, Hyderabad.

2. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Court below in the original suit.

3. The fact-situation occurring in the instant appeal is not in dispute at all. The controversy in the present appeal is only to a limited extent of granting decree for Rs.29,350/- in favour of the plaintiff, though, no claim at all was made and no relief at all was prayed therefor.

4. Heard Sri A.K.Narasimha Rao, learned counsel for the appellant-defendant, and Smt. G.Rama Manoja, learned counsel for the respondent-plaintiff.

5. There was an agreement between the parties entered into for purchase of the flat by the defendant for a total consideration of Rs.2,17,350/- in 12 equal monthly instalments commencing from 20.07.1985. A total sum of Rs.1,88,000/- was paid by the defendant. Thereafter, it appears there were disputes between the parties that resulted in filing the aforesaid suit with a prayer to recover the delivery of possession of the flat which is in occupation of the defendant.

6. A perusal of the plaint would show that in paragraph No.8, in fact, the plaintiff elaborated his entitlement for damages for use and occupation at the rate of Rs.1,500/- per month from 12.10.1986, but when the relief portion contained in paragraph No.12 is seen, the plaintiff, except seeking a decree directing the defendant to hand over vacant possession of the flat, no relief was claimed and even the Court fee was paid only for the relief of recovery of possession, thus, somehow, the plaintiff did not seek any damages for use and occupation in the relief portion by paying necessary Court fee.

7. The said claim was resisted by the defendant by filing an elaborate written statement.

8. The Court below framed three issues which are thus:

"1. Whether the plaintiff is entitled for vacant possession of suit premises as prayed for?

2. Whether the plaint has not been properly valued and court fee paid is not sufficient?

3. To what relief?"

9. The parties entered into trial by examining themselves as P.W.1 and D.W.1 respectively, and marking documents Exs.A.1 to A.5 and Exs.B.1 to B.5 on their behalf, respectively.

10. Strangely, the Court below, while rejecting the relief of recovery of possession, somehow, granted decree in favour of the plaintiff for recovery of Rs.29,350/- with interest at 12% per annum from the defendant towards damages.

11. During the course of arguments, the main attack of the learned counsel for the appellant-defendant is against granting of amount of Rs.29,350/-, though, there has been no prayer at all made by the plaintiff. Whereas, learned counsel for the respondent-plaintiff fairly concedes that such a prayer was not made in the plaint and the only prayer made is for recovery of the vacant possession of the plaint schedule property.

12. In fact, no appeal is preferred by the plaintiff challenging the portion of the judgment which went against him for the relief of recovery of possession. Therefore, what remains for adjudication is, whether the Court below was right in granting decree for recovery of Rs.29,350/- towards damages.

13. It is needless to say that when a prayer is not made for the said relief and no Court fee was paid and, in fact, no issue was settled for trial by the Court below, as could be seen from the issues settled for trial extracted in the above, certainly, the Court below was not right in granting such relief, which is wholly unsustainable warranting interference.

14. Therefore, the appeal has to be allowed and, accordingly, allowed setting aside the judgment and decree challenged herein. There shall be no order as to costs.

15. As a sequel thereto, miscellaneous petitions, if any pending in the instant appeal, stand closed.

17th August, 2016

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A. SHANKAR NARAYANA, J

