

THE HONOURABLE SRI JUSTICE RAJA ELANGO

SECOND APPEAL NO.407 OF 2016

JUDGMENT:

Defendant filed the Second Appeal against the judgment and decree dated 4.4.2016 passed in A.S.No.36 of 2005 on the file of IV Additional District Judge, Kakinada confirming the judgment and decree dated 24.1.2015 passed in O.S.No.505 of 2012 on the file of II Additional Junior Civil Judge, Kakinada in decreeing the suit and directing the defendant to evict from the plaint schedule property.

For the sake of convenience, the parties herein are referred to as per their array in the suit before the trial Court.

The plaintiff is the owner of the suit schedule property and she leased out southern side room in the ground floor to the defendant on a monthly rent of Rs.2,800/- under lease deed- Ex.A.1 and the lease period is from 20.9.2008 to 19.9.2009. As per the terms of the lease deed, after expiry of the lease period, the plaintiff is entitled to take delivery of possession without any further notice. The plaintiff got issued legal notice to the defendant on 16.6.2009 giving three months time to vacate the premises on or before 19.9.2009. The defendant without vacating the premises filed the suit in O.S.NO.766 of 2009 for permanent injunction on the file of Principal Junior Civil Judge, Kakinada. The defendant committed default in payment of rents for the months of May to July, 2009 at the rate of Rs.2,800/- and thereafter he committed default for the months of July to October,

2012. Resisting the suit, the defendant filed a written statement denying the allegations in the plaint. According to the defendant, the lease deed was only for the purpose of income tax and he signed on the deed believing the plaintiff. The defendant is running a cycle shop in the premises and that he has not committed any default as alleged in the plaint. When the plaintiff attempted to eject him from the suit schedule premises, he filed O.S.No.766 of 2009 for injunction and the same is pending. The plaintiff is not entitled to eject the defendant from the suit schedule property.

On behalf of the plaintiff, her husband was examined as P.W.1 and Exs.A.1 to A.6 were marked. The defendant himself got examined as D.W.1 and marked Exs.B.1 to B.5.

The trial Court holding that after termination of lease, the defendant has no right to continue in the suit schedule property, decreed the suit directing the defendant to evict himself from the suit schedule property within three months. On appeal preferred by the defendant, the lower appellate Court, on re-appreciation of evidence brought on record, dismissed the appeal confirming the judgment and decree of the trial Court. Hence, the Second Appeal by the defendant.

The main contention raised by the learned counsel for the appellant-defendant is that the civil Court has no jurisdiction in view of provisions under the Municipalities Act and therefore, the suit itself is not maintainable before the trial Court.

As seen from the written statement of the defendant and judgment of the trial Court, the appellant-defendant has not raised the point of jurisdiction even though the suit was pending from 2012 till his arguments. The trial Court as well as the lower appellate Court rejected the said contention of lack of jurisdiction on the ground that once a person is submitted himself to the jurisdiction of the Court without taking the plea of lack of jurisdiction at the earliest point of time, he cannot be permitted to take such a ground at a later point of time. In this regard, both the Courts relied on the decisions of this Court and also the Apex Court.

In the similar circumstances, the Apex Court in **Bahreini Petroleum Co. Ltd., vs. P.J.Pappu and another** (AIR 1966 SC 634) held that “if the defendant allows the trial Court to proceed to judgment without raising the objection as to the place of suing and takes the chance of a verdict in his favour, he clearly waives the objection, and will not be subsequently permitted to raise it.”

In the present case, admittedly, during the filing of written statement, the appellant-defendant has not taken the stand that the trial Court is not having jurisdiction to try the suit. This Court is of the view that the defendant remained silent and submitted himself to the jurisdiction of the civil Court and since he has not taken the plea of lack of jurisdiction at the earliest opportunity, he cannot raise the said plea at a later point. Since no other ground or any substantial question of law arises for consideration, the Second Appeal is liable to be dismissed at the admission stage and the same is accordingly dismissed.

It is represented that the appellant needs reasonable time for securing alternative premises and to shift his cycle shop. The respondent-plaintiff opposes the plea. Having regard to the facts and circumstances of the case, the appellant is granted time till 15th January, 2017 and the respondent is directed not to claim any arrears of rent and also the rents till 15.01.2017. In case, the appellant continues in possession of the premises beyond 15.01.2017, apart from being liable to be evicted through the execution proceedings, he shall be liable to pay damages, at the rate of Rs.10,000/- per month, commencing from 16.01.2017.

There shall be no order as to costs.

28th September, 2016
Tsr

RAJA ELANGO, J

