

THE HON'BLE SRI JUSTICE SANJAY KUMAR

SECOND APPEAL NO.845 OF 2016

J U D G M E N T

This Second Appeal arises out of the judgment dated 29.04.2016 passed by the learned IV Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, in A.S.No.71 of 2015, confirming the common judgment and decree dated 27.03.2014 passed by the learned VII Additional Senior Civil Judge, Ranga Reddy District, in O.S.No.389 of 2011. The appellant/defendant is the tenant in occupation of the suit schedule property admeasuring 1614 square yards situated at IDA, Phase-1, Jeedimetla, Ranga Reddy District.

O.S.No.389 of 2011 was filed by the respondent/landlord seeking a direction to the appellant/tenant to vacate the suit schedule property and hand over the same to him and also for arrears of rent and mesne profits. By a lengthy and well reasoned judgment, the trial Court dismissed O.S.No.1993 of 2010 filed by the appellant/tenant for a perpetual injunction restraining the respondent/landlord from dispossessing it from the suit schedule property without following the due process of law and decreed O.S.No.389 of 2011, granting time up to 02.06.2014 to vacate the suit schedule property.

Having filed A.S.No.71 of 2015 aggrieved by the decretal of O.S.No.389 of 2011, the appellant/tenant remained in possession till date.

Perusal of the judgments of the Courts below reflects that the appellant/tenant failed to pay rents from April, 2010. Therefore, the

appellate Court rightly confirmed the judgment and decree of the trial Court and dismissed the appeal.

The present second appeal purports to raise the following questions of law—

‘(a) Whether non challenge of a statement in cross examination can dilute the rigor of burden of proof within the meaning of section of 104 of Indian Evidence Act.

(b) That admittedly the suit premises is non-residential premises in which a Saw Mill is running on such a notice a time of 6 months should have ground. In Ex.A1 one month time is granted and therefore there is noncompliance of section 106 of the transfer of Property Act.’

However, this Court finds that the second question referred to *supra* relates to an issue which was not raised before either of the Courts below. The same cannot therefore be permitted to be raised at this belated stage, all the more so as it constitutes a mixed question of fact and law. The first question also does not merit consideration on facts. This Court therefore finds no reason to entertain this second appeal inasmuch as no question of law, much less a substantial question of law, arises for consideration.

When this Court was at the stage of dismissing the appeal, Sri Vijay B.Paropkari, learned counsel for the appellant/tenant, stated that as his client has been in possession of the suit schedule property for over two decades, sufficient time may be given to it to make alternate arrangements and vacate the suit schedule property.

As this Court finds this prayer to be reasonable, the appellant/tenant is given four months time from today to vacate the suit schedule property and deliver peaceful, physical and vacant possession thereof to the respondent/landlord. The appellant/tenant shall file an undertaking to this effect before the learned VII

Additional Senior Civil Judge, Ranga Reddy District, in O.S.No.389 of 2011, after serving a copy thereof to the respondent/landlord, within one week from today. Upon such an undertaking being filed, the respondent/landlord shall permit the appellant/tenant to remain in possession for four months i.e. up to 30.04.2016. The appellant/tenant shall deliver vacant physical possession to the respondent/landlord on or before 01.05.2016.

Subject to the above directions, the second appeal is dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

30th DECEMBER, 2016

Svv

SANJAY KUMAR, J

