

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE
STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

FRIDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND SIXTEEN

PRESENT

THE HON'BLE SMT. JUSTICE ANIS

SECOND APPEAL No. 509 OF 2000

Between :

Gheera Kishore Kumar

... APPELLANT

A N D

K.Karan Babu Goud

....RESPONDENT



This Court made the following:

THE HON'BLE SMT. JUSTICE ANIS**SECOND APPEAL No. 509 OF 2000****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 07.04.2000, passed in A.S.No.218 of 1996 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad, whereunder and whereby, the judgment and decree, dated 03.04.1996 passed in O.S.No.1505 of 1990 on the file of the XIII Assistant Judge-cum-I Additional Rent Controller, Hyderabad, were set aside by allowing the appeal.

2. The appellant is the sole defendant and the respondent 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 a decree of eviction against the defendant from the suit mulgi and for possession of the same, and for recovery of arrears of rent of Rs.15,050/- besides costs.

4. It is stated in the plaint that the defendant is the tenant in the suit mulgi bearing M.No.1-3-183/39/17/8 situated at Tellabasti, Kavadiguda, Hyderabad on a monthly rent of Rs.300/- exclusive of electricity charges under a rental deed

dated 01.04.1983 for a period of 11 months and after expiry of 11 months, the tenancy continued orally on a monthly rent of Rs.350/- from 01.06.1986 exclusive of electricity charges. The defendant stopped payment of rents from 01.06.1986 onwards in spite of the repeated requests of the plaintiff. The plaintiff issued a legal notice, dated 02.03.1990, terminating the tenancy of the defendant and called upon the defendant to vacate the suit mulgi and also demanded to pay the arrears of rent to a tune of Rs.15,400/-. The defendant, having received the notice, gave a reply notice, but he neither vacated the suit mulgi nor paid the arrears of rent. Thus, the defendant contravened the terms of tenancy. Therefore, the defendant is liable to vacate the suit mulgi and also liable to pay the arrears of rent. Hence, the suit.

5. The defendant filed Written Statement by admitting that he is the tenant of the plaintiff under an agreement executed in the month of December, 1983, on a monthly rent of Rs.300/- and from May, 1986, the monthly rent was enhanced from Rs.300/- to Rs.350/-. The defendant also admitted that the plaintiff got issued notice of eviction for which he gave reply, but denied the allegation that he stopped payment of rent from 01.06.1986 amounting to Rs.15,750/-. The defendant specifically denied that the Court has jurisdiction to entertain the suit and stated that he deposited Rs.5,000/- with the plaintiff at the time of inception of tenancy and in July, 1989, the plaintiff demanded the

defendant to enhance the monthly rent from Rs.350/- to Rs.700/- and further advance of Rs.10,000/-, for which he did not agree as it was huge, but he agreed to enhance the rent from Rs.350/- to Rs.400/- per month. Then, the plaintiff agreed that a fresh rental agreement should be executed before enhancement of rent. At that time, the defendant and other tenants insisted to pass rent receipts, for which the plaintiff has agreed. The defendant denied that the suit mulgi was first assessed on 02.02.1984. After January, 1990, he started remitting the rent through Money Orders which were avoided by the plaintiff, and finally prayed the Court to dismiss the suit with costs.

6. Basing on the above pleadings, the following issues have been settled by the trial Court:

1. Whether plaintiff is entitled for possession and eviction of the defendant from the suit premises and arrears of rent from July 1986 to March 1990 amounting to Rs.15,050/- as prayed for?
2. Whether this Court has no jurisdiction to try the suit as contended by the defendant?
3. To what relief?

7. To substantiate the case of the plaintiff, PWs 1 and 2 were examined and Exs.A.1 to A.17 were got marked. On

behalf of the defendant, DWs 1 and 2 were examined and Exs.B.1 to B.39 were got marked.

8. The trial Court, after considering the evidence on record, held that the Civil Court has no jurisdiction to trial the case. It is also held that the quit notice under Ex.A.15 is not valid and there is no legal termination of the contractual tenancy, and dismissed the suit *in limine* with costs.

9. Aggrieved by the judgment and decree of the trial Court, the plaintiff filed A.S.No.218 of 1996 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad, wherein the first appellate Court, after considering the evidence on record, held that the Civil Court has jurisdiction to try the case and also held that the plaintiff is entitled to evict the defendant from the suit mulgi as the defendant committed default in payment of rents, and allowed the appeal.

10. Aggrieved by the judgment of the first appellate Court, the defendant preferred the present Second Appeal.

11. On 05.07.2000, this Court passed the following order:

“The only substantial question of law that arises in this second appeal is about the maintainability of the suit i.e. the first question framed in the memo of second appeal. Hence, this second appeal is admitted.”

12. The learned counsel for the appellant argued that the plaintiff in the plaint has not whispered as to when the construction of the suit premises was completed or on which date the same was reported to the local authority or the date on which the premises was actually occupied for the first time. It is also argued that Exs.A.17 filed by the plaintiff failed to prove the date on which the first assessment was made. It is further argued that the first appellate Court failed to appreciate the evidence on record and also the implications of G.O.Ms.No.636, dated 29.12.1983 and erred in holding that the provisions of Andhra Pradesh (Lease, Rent and Eviction) Control Act, 1960 (for short 'Rent Control Act') has no application to the suit premises, and prayed the Court to allow the appeal.

The learned counsel in support of his contention relied on a case-law reported in *M.Sreeramulu Vs. Tahera Yousuf Kadri*¹, wherein the Full Bench of this Court held at Paras 20 and 21 as follows:

“The State, in view of the judgment of the Supreme Court, keeping in view the observations made categorically indicating and referring that the State, in exercise of powers under Section 26 of the Act can exempt any class of building, came forward to fill the gap or the void created because of declaration of Section 32(b) as *ultra vires*, granted the exemption for a period of ten years, from the applicability of the Act on 26-10-1983, to all new buildings constructed. Thus, from a reading of the notification in its totality, while keeping in view above referred principles of interpretation, it emerges *that exemption from the applicability of the Act to the buildings for a period of ten years from the date on which their construction was completed was granted on 26-10-1983*. Thus, implicitly it is discernible that all new buildings are exempted from the operation of the Act, irrespective of

¹ 2000(3) ALD 173 (FB)

the fact that the exemption was granted on 26-10-1983. Exemption operates retrospectively and prospectively.

We are constrained to observe that if the meaning given by the learned Counsel for the appellant to the words “on and from 26-10-1983” is to be given that only two classes of buildings i.e., the buildings constructed prior to 26-10-1983 and the buildings construed from 26-10-1983 for ten years would be exempt leads to anomalous interpretation and renders the very object of the notification to fill up the void created by the declaration of Section 32(b) as *ultra vires* by granting exemption to the buildings constructed for a period of ten years nugatory. The tenor, text and the emphasis laid for granting exemption of the building from operation of the Act is the time factor i.e., the building would be exempt from operation of the Act for a period of ten years. Thus, *terminus quo* for exemption of the buildings from the operation of the Act would not be the date of granting the exemption, but is the date on which their construction is completed. In our considered view, granting of exemption on 26-10-1983 from the operation of the Act would mean that all buildings constructed after the enactment of 1960 Act for a period of ten years would be exempted from the operation of the Act. The interpretation put by us obliterates the vice of indefinite period suffered by Section 32(b). It also obviously means the object of granting incentive not only for the new constructions in future but also provides relief to the persons who constructed buildings by employing their financial resources under a pious hope that the buildings would not be subject to any restriction imposed by the Act and they would be able to meet their financial liabilities by leasing out for a specified period, which is the object of issuance of G.O.Ms.No.636, dated 29-12-1983.”

13. On the other hand, the learned counsel for the respondent/plaintiff argued that there is no dispute with regard to the tenancy and the building was constructed within ten years of the period under the said G.O.Ms.No.636 and the trial Court misapplied the cardinal principles on the ground that the document filed by him was an amended notice of the tax without looking into the document and without appreciating the same, but the first appellate Court elaborately considered all the aspects. It is further argued that the plaintiff in the plaint clearly mentioned that the Civil Court got jurisdiction to entertain the suit and the provisions of the Rent Control Act are not applicable. It is further

argued that the first appellate Court rightly held that the suit building is an old building and the provisions of the Rent Control Act will not be applicable and the said finding of the first appellate Court needs no interference. It is also argued that the appellant has not made out any substantial question of law to maintain the Second Appeal, and finally prayed the Court to dismiss the Second Appeal.

14. Now, the point that would arise for my consideration in this appeal is whether the substantial question of law framed by this Court on 05.07.2000 has been substantiated or not?

15. **POINT:**

A perusal of the evidence on record, it is evident that there is no dispute with regard to landlord and tenant relationship between the parties. The premises let out under Ex.A.1 on a monthly rent of Rs.300/- was for 11 months initially. Thereafter, it was enhanced to Rs.350/- per month. From July 1986, the defendant failed to pay the rents. Under Ex.A.15, the plaintiff got issued a notice terminating the tenancy of the defendant in the suit mulgi. The defendant filed a petition before the Rent Controller and the same was dismissed. The building was first assessed by the Municipal Corporation of Hyderabad on 02.02.1984.

16. The claim of the appellant is that as the plaintiff has not taken plea in the plaint with regard to the construction of the

building, he cannot adduce evidence that it was constructed within ten years of the period. But, the contention of the defendant is not proved as the plaintiff in the plaint has categorically stated that the Civil Court has got jurisdiction to entertain the suit and also the Rent Control Act has no application.

17. G.O.Ms.No.636 General Administration (Accommodation A) reads as follows:

“All buildings for a period of 10 years from the date on which their construction is completed and buildings the monthly rent of which exceeds rupees one thousand...

are exempted from the operation of the provisions of the Rent Control Act.

“Explanation:-

For the purpose of clause (a) the construction of a building shall be deemed to have been completed on the date on which the completion therefore is reported to or otherwise recorded by the local authority having jurisdiction, and in the absence of any such report or record the date on which it is actually occupied (not including occupation merely the purpose of supervising the construction or guarding the building under construction) for the first time.”

As per this, it is very clear that the construction of a building shall be deemed to have been completed on the date when the completion is reported or recorded by the local authority having jurisdiction and in the absence of any such

report or record the date on which it is actually occupied for the first time.

18. Admittedly, there is no evidence with regard to the occupation as well as reporting of the completion of construction to the authorities. Ex.A.17 is a special notice of house tax with a heading of "New Assessment-amendment" dated 04.02.1984. If really, Ex.A.17 is taken into consideration, it would have mentioned the earlier tax, amended tax, amended rental value, etc. But, it shows that the rental value was fixed for the first time and assessment was made by the Municipal Corporation for the first time. Therefore, the explanation to G.O.Ms.No.636 is applicable to the facts of the present case. The first appellate Court, after considering this aspect, held that the suit mulgi is not an old building and Rent Control Act has no application. There is no evidence to disprove this fact. Therefore, the first appellate Court rightly held that the Civil Court has jurisdiction to file the suit by the plaintiff and directed the defendant to vacate the premises. This finding of the first appellate Court needs no interference.

19. For these reasons, the substantial question of law urged on behalf of the appellant is not and all the submissions are based on the factual aspects. Hence, the Second Appeal is devoid of merit and is liable to be dismissed.

20. Accordingly, the Second Appeal is dismissed. The appellant/defendant is hereby directed to vacate the suit schedule premises within fifteen (15) days from the date of this judgment. No costs.

21. Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

SEPTEMBER 23, 2016.

Anr

ANIS, J



THE HON'BLE SMT.JUSTICE ANIS



SECOND APPEAL No. 509 OF 2000

23.09.2016

Anr