

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.C.C.A No.4 OF 2015

JUDGMENT:

The plaintiffs are the appellants. The defendant is the sole respondent. The plaintiffs maintained the suit for eviction of the tenant and for amenities provided and towards use and occupation of the premises by the defendant as tenant by sufferance after quit notice issued under Section 106 of the Transfer of Property Act, 1882 (for short 'the T.P Act') for 12 months claimed Rs.18,00,000/- in O.S. No.238 of 2011 on the file of XIII Additional Chief Judge, Fast Track Court, City Civil Court, Hyderabad. The trial Court, in fact, dismissed the suit on the ground of sufficiency of notice. In fact once stipulated time expires, there is no further notice is required, unless, he is continued as tenant holding over and thereupon even in the absence of any written lease, as tenant from month to month. It is since then the respondent herein is paying Rs.1,50,000/- per month.

2) In fact, the trial Court went wrong in dismissing the suit for eviction and past profits for use and occupation instead of decreeing the claim, mainly for eviction pursuant to amendment to Section 106 of T.P Act amended by Act 3 of 2003. So far as the claim of profits from date of quit notice is concerned, there is no any amount due as arrears as on the date of suit for any entitlement to the subsisting cause of action. Needless to say for future mesne profits, the appellants have no accrued cause of action by the date of suit and even no prayer sought in the main suit, there is no ground

to refuse future profits from date of suit to order for determining by separate enquiry to pay court fee on amount so arrived as per the settled law from the expression of the Apex Court in

Gopalakrishna Pillai vs Meenakshi Ayal^[1].

3) Having regard to the above, so far as the profits from the date of suit concerned, it is left open to decide on separate enquiry from filing of plaintiffs application as contemplated by Order XX Rule 12 C.P.C till date of delivery of possession. So far as eviction from the property concerned, from the understanding infact arrived between respondent/ defendant and appellants/ plaintiffs, one year time as fixed is granted w.e.f., 01.02.2016 to vacate on or before 01.02.2017. It is made clear therefrom that the time for eviction granted of one year by 01.02.2017 does not confer any right to respondent/ defendant but for to vacate else execution of this decree for eviction by appellants/ plaintiffs, if respondent-defendant failed to vacate by 31.01.2017. There is no order as to costs.

4) Accordingly, the appeal is partly allowed. No order as to costs.

5) Consequently, miscellaneous petitions, if any pending in this Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

29.01.2016
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