

HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.1153 of 2013

JUDGMENT:

This second appeal is preferred challenging judgment and decree dated 07.08.2013 in A.S.No.254 of 2012 on the file of Chief Judge, City Civil Court, Hyderabad, whereunder judgment and decree dated 27.06.2012 in O.S.No.2099 of 2010 on the file of IV Senior Civil Judge, City Civil Court, Hyderabad, is confirmed.

2. Appellant herein is defendant in O.S.No.2099 of 2010, which is filed for eviction after termination of lease by invoking provisions of Section 106 of Transfer of Property Act. Trial Court on a consideration of oral and documentary evidence of both parties held that plaintiff is entitled for eviction and recovery of possession and directed defendant to handover vacant possession of the suit property within three months time. Aggrieved by the same, defendant preferred appeal to the District Court and Chief Judge, City Civil Court, Hyderabad, on a reconsideration of oral and documentary evidence confirmed the findings of trial Court and dismissed the appeal and granted four months time to vacate the premises. Aggrieved by the concurrent findings of the Courts below, present second appeal is preferred contending that the following are the substantial questions of law.

I. Whether in a case if a lease has been subsisting for

the last more than 29 years without any further renewal can be terminated by issuing Notice under Sec.106 of T.P.Act?

- II. Whether the provisions of Sec.106 of T.P.Act are applicable to the case of the appellant herein?
- III. Whether the respondent herein has lost her right to invoke the provisions of Transfer of Property Act in view of her conduct in allowing the appellant herein to continue as a Tenant and thereby accepting the enhanced rents time to time without any protest whether such a lease is not perpetual?

3. Heard arguments.

4. Learned counsel for appellant/defendant submitted that plaintiff having continued the defendant as tenant has waived her right for termination of the tenancy and both the Courts without looking into this aspect ordered eviction and that is the substantial question of law involved in this second appeal. In support of his arguments, he placed reliance on a Full Bench judgment of this Court in **Adapa Abbayi v. Reddipantulu Choultry and others**^[1].

Learned counsel for appellant has drawn my attention to paragraphs 12, 15, 20, 22 to 26 and 32 and submitted that when the parties continued the transaction even after expiry of the terms of lease that are incorporated in an unregistered lease deed, the conduct of plaintiff would attract plea of waiver and in that context the Full Bench decision of this Court would apply and that has to be considered by this Court in the second appeal.

5. I have perused the material papers including the judgments of trial Court and appellate Court and the

decision relied on by learned counsel for appellant. Admittedly, plaintiff is owner of the plaint schedule property and defendant is running a institution in the schedule property as a tenant from 1984. Plaintiff terminated the tenancy through quit notice dated 29.07.2010 and that quit notice was questioned by defendant contending that the conduct of the parties would amount to perpetual tenancy and that plaintiff has no right to terminate tenancy. Both the Courts have not accepted the plea of perpetual tenancy and by considering the quit notice ordered for eviction. Now, learned counsel for appellant contended that when respondent/plaintiff continued the appellant as tenant in the property ever after the expiry of terms recorded in the unregistered lease deed that would amount to waiver and that aspect has to be considered by this Court. But, as seen from the pleadings, there is no plea of waiver and only plea is perpetual tenancy and now at the stage of second appeal a new plea cannot be permitted to be taken, therefore, the decision relied on by the learned counsel for appellant has no application to the case on hand. On a scrutiny of the material on record, I am of the view that there is no question of law involved in this second appeal leave alone substantial question of law and that there are no grounds to admit second appeal.

6. For these reasons, second appeal is dismissed at admission stage.

7. Learned counsel for appellant submitted that

reasonable time may be given to appellant to secure alternative accommodation as interest of several students is involved. Admittedly, appellant is running a educational institution in the schedule premises, which is recognized by Central Board of Secondary Education.

8. Considering the same, I am of the view that four months time would be just and reasonable. Therefore, appellant is granted four months to vacate the premises subject to payment of rents without default.

9. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

3rd February 2016.

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[\[1\]](#) AIR 1974 AP 139