

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

-
WEDNESDAY, THE TWENTY SEVENTH DAY OF APRIL
TWO THOUSAND AND SIXTEEN

-
PRESENT

-
THE HON'BLE SMT. JUSTICE ANIS

-
SECOND APPEAL No. 862 OF 2014

-
Between :

M.Anand

-
... APPELLANT

A N D

A.N.Umesh Kumar

...RESPONDENT

This Court made the following:

THE HON'BLE SMT. JUSTICE ANIS

SECOND APPEAL No. 862 OF 2014

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 16.10.2014, passed in A.S.No.42 of 2014 on the file of the XXVII Additional Chief Judge, City Civil Court, Secunderabad, whereunder and whereby, the judgment and decree, dated 10.03.2014 passed in O.S.No.324 of 2012 on the file of the XI Junior Civil Judge, City Civil Court, Secunderabad, were confirmed.

2. The appellant is the 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 eviction of the defendant from the suit schedule shop and for grant of arrears of rent for the months from November, 2011 to June, 2012 amounting to Rs.44,000/- and also for enhancement of fair rent as per prevailing market value to Rs.16,800/- per month.

4. According to the plaintiff, he is the owner of the suit schedule property i.e., Shop No.2/A situated at Lalitha Nagar Colony, Main Road, Marredpally, Secunderabad. The defendant approached the plaintiff with a proposal of tenancy in respect of the suit schedule mulgi. After negotiations, the plaintiff let out the suit schedule property on a monthly rent of Rs.5,000/- excluding electricity and other amenities and chargers. The lease agreement was executed on 15.10.2009 for a period of two years and the same was expired on 15.10.2011. Further, according to the plaintiff, the defendant agreed to vacate the premises, but in spite of several representations and several requests, the defendant failed to vacate the same. After completion of the agreement period of two years, the defendant requested the plaintiff to wait two more months on the ground that he had to search for another mulgi to shift the shop, but he filed O.S.No.697 of 2011

for perpetual injunction. The plaintiff stated that earlier he used to run electrical shop in the suit schedule property and in the year 2007 he suddenly fell sick. In that backdrop, he leased out the suit mulgi to a medical shop and later to the defendant. Now, the plaintiff is recovered from his ill-health and he wanted the suit mulgi for his personal purpose. As such, he got issued a legal notice dated 26.03.2012 terminating the tenancy and the said notice was received by the defendant on 29.03.2012. The defendant issued reply notice dated 14.04.2012 denying the averments in the legal notice, but he failed to vacate the suit mulgi. Hence, the plaintiff filed the suit for eviction and for recovery of arrears of rent.

5. In the Written Statement, the defendant admitted the tenancy and also admitted the execution of the lease agreement dated 15.10.2009. The defendant further admitted that the initial monthly rent was Rs.5,000/- and Clause No.10 of the lease agreement clearly mentioned that if the lessee is desirous of continuing to occupy the mulgi after expiry of the period under the lease agreement, he shall be entitled to do so subject to enhancement of rent by 10% on the then rents. According to the defendant, after completion of the agreement period of two years, the plaintiff came to the suit schedule property on 22.10.2011 and again on 29.10.2011 and demanded the defendant to vacate the suit mulgi. When the defendant refused to do so, the plaintiff and his men attempted to throw away the articles of the defendant on road. As such, the defendant constrained to file O.S.No.697 of 2011 for grant of an injunction. According to the defendant, the plaintiff is running Qualis vehicle in between Secunderabad and ECIL and he earns Rs.2,000/- to Rs.3,000/- per day, as such the question of his requiring the suit mulgi does not arise. Further, the defendant paid rent upto November, 2011 and after receipt of suit summons in O.S.No.697 of 2011, the plaintiff stopped receiving the rents from the defendant. The defendant is ready to pay the rent @ Rs.5,000/- from December, 2011 onwards and the question of paying rent @ Rs.5,500/- does not arise. The defendant denied the allegation that he is a chronic defaulter.

The defendant also filed additional Written Statement, wherein he pleaded that the lease agreement dated 15.10.2009 was executed in favour

of M/s.Sri M.Anand Tiffin and Meals Centre, represented by its Proprietor M.Anand. Further, there is no procedure contemplated in the Code of Civil Procedure, 1908 for determination of fair rent and the mesne profits will have to be decided only after completion of the main case, and finally, prayed to dismiss the suit.

6. The trial Court, basing on the pleadings, framed three issues and one additional issue. During the course of trial, the plaintiff himself was examined as PW1 and got marked Exs.A.1 to A.12. On behalf of the defendant, he himself examined as DW1 and no documentary evidence got marked.

7. The trial Court, after considering the oral and the documentary evidence, partly decreed the suit and directed the defendant to vacate the suit premises and handover the vacant possession of the same to the plaintiff within three months from the date of judgment. The defendant is further directed to pay a sum of Rs.4,000/- being the arrears of differential amount of rent @ Rs.500/- per month for the period prior to the filing of the suit i.e., from November 2011 to June 2012 (8 months) to the plaintiff. The defendant is further directed to pay a sum of Rs.9,500/- being the differential amount of rent @ Rs.500/- per month from July 2012 upto February 2014 (19 months) to the plaintiff. The defendant is also directed to pay the future rents @ Rs.5,500/- per month to the plaintiff from the date of judgment until he vacated the suit schedule shop.

8. Aggrieved by the judgment of the trial Court, the defendant filed A.S.No.42 of 2014 on the file of the XXVII Additional Chief Judge, City Civil Court at Secunderabad. The first appellate Court, after hearing both sides and on considering the grounds raised by the appellant and after perusing the oral and documentary evidence, held that the plaintiff issued legal notice Ex.A.1 terminating the tenancy of the defendant and the same was served on the defendant and the defendant gave a reply under Ex.A.4 and did not choose to vacate the premises; that undoubtedly there is no 15 days prior notice of termination of tenancy, but as rightly appreciated by the trial Court, the plaintiff waited for two months after issuing notice to file the suit for eviction, and therefore, the relief of eviction was considered as of right

since the defendant had ample opportunity and adequate time to vacate the premises. It is also observed by the appellate Court that the defendant is a sole proprietor of Anand Tiffins and for all practical purposes, himself and the said Tiffin centre is one and the same, and dismissed the appeal by confirming the judgment and decree of the trial Court. Challenging the same, the present Second Appeal is preferred.

9. The appellant in the grounds of appeal formulated the following substantial questions of law:

- a) Whether the facts and circumstances of the case that the Court below not committed an error of law in passing a decree for eviction and whether the findings of Court below are not perverted and against the evidence on record?
- b) Whether the Court below not committed an error of law as the notice for eviction issued under Ex.A.1 is defective and hit by Section 106 of the Transfer of Property Act, 1882?
- c) Whether the learned Additional Chief Judge right in ordering the eviction under facts and circumstances of the case, when admittedly there is a Clause of continuation of lease in the agreement of lease deed at the option of the tenant, which was executed by the tenant?

10. The learned counsel for the appellant argued that the notice which was given by the plaintiff under Ex.A.1 is not valid and it is a defective notice and that 15 days eviction notice is not given by the plaintiff. It is further argued that the appellant is paying rents regularly and he is not a defaulter and notice under Section 106 of the Transfer of Property Act, 1882 is defective and bad in law, and finally, prayed the Court to allow the second appeal.

11. On the other hand, the learned counsel for the respondent argued that the notice issued by the respondent/plaintiff is valid and binding on the defendant and relied on a case-law reported in *Koratala Leela Satya Sai Vs. Ghanta Dharma Rao*^[1], wherein this Court held as follows:

“Coming to the form of notice, the plea raised by the appellant is about the period, within which, he was required to vacate the premises. Once it emerged that the lease was from month to month, the period mentioned in Ex.A.1 is adequate. Sub-Section 2 of Section 106 of the Act makes such defect, if any, inconsequential. Even if the period mentioned in a quit notice is short of one stipulated under law, the shortfall stands condoned, if it is established that the suit was filed within the period stipulated in law. No effort was made by the appellant to establish that the notice is defective, despite the facility under Section 106(2) of the Act.”

It is further argued that the notice issued by the plaintiff under Section 106 of the Transfer of Property Act, 1882 is valid and therefore both the Courts gave concurrent finding and the said finding needs no interference. It is also argued that the appellant failed to show any substantial question of law raised in the grounds of appeal and whatever arguments advanced by the learned counsel for appellant are based on factual aspects, and finally, prayed the Court to dismiss the second appeal.

12. Now, the point that would arise for my consideration in this appeal is whether there is any substantial question of law involved in this appeal.

13. **POINT:**

A perusal of the record shows that the plaintiff is the landlord and owner of mulgi and the defendant is the tenant in the said mulgi on a monthly rent of Rs.5,000/- excluding electricity and other charges right from the beginning of the tenancy. It is also an admitted fact that the tenancy commenced from 15.10.2009 and the plaintiff executed a lease agreement on the same day for a lease period of two years. It is also an admitted fact that the lease was expired by 15.10.2011. It is also an admitted fact that after expiration of the lease period, the plaintiff got issued legal notice under Ex.A.1 demanding the defendant to vacate the said premises and handover the possession of the suit schedule shop, but the defendant failed to vacate the premises and got issued Ex.A.4 legal notice.

14. In the present case on hand, the main contention of the appellant is that the notice under Section 106 of the Transfer of Property Act, 1882 is a defective one as 15 days period was not given as contemplated under the said Act. On the other hand, the learned counsel for the respondent

contended that Ex.A.1 notice was not a defective and though the notice prescribes two days time, the plaintiff filed the suit two months after issuing the notice. These factual aspects are rightly discussed by both the Courts below. Further, it is also settled by this Court in *Koratala Leela Satya Sai's* case (1 supra) that even if the period mentioned in a quit notice is short of the one stipulated under law, the shortfall stands condoned, if it is established that the suit was filed within the period stipulated in law. In the present case also, though the plaintiff issued notice under Ex.A.1 mentioning the stipulated period as two days, he filed the suit two months thereafter. Thus, the plaintiff filed the suit, long after the statutory period of 15 days and notice under Ex.A.1 cannot be treated as a defective one. Therefore, by relying on the above principles enunciated by this Court in *Koratala Leela Satya Sai's* case (1 supra), the appellant has not made out any case to interfere with the concurrent findings of both the Courts below.

15. For the reasons stated above, the substantial questions of law urged on behalf of the appellant/defendant are not tenable and in fact there is no substantial question of law involved in this case and all the submissions are based on the factual aspects and on the oral and documentary evidence. Hence, the Second Appeal is devoid of merit and is liable to be dismissed, as no substantial question of law involved in this case.

16. Accordingly, the Second Appeal is dismissed at the stage of admission. No costs. Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

ANIS, J

APRIL 27, 2016.

Anr

THE HON'BLE SMT.JUSTICE ANIS

SECOND APPEAL No. 862 OF 2014

27.04.2016

Anr

[\[1\]](#) (2014)4 ALT 157