

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL NO. 401 OF 2016

JUDGMENT:

The defendant in O.S.No. 1279 of 2012 on the file of XVII Additional Senior Civil Judge, City Civil Court, Hyderabad and the appellant in A.S.No. 15 of 2016 on the file of III Additional Chief Judge, City Civil Court, Hyderabad, preferred the present Second Appeal under Section 100 of CPC challenging the concurrent findings recorded by both the trial Court and appellate Court in suit and appeal holding that the appellant/defendant is the tenant in occupation of the premises bearing D.No. 10-3-293/3/A3, Markaz Castle (A Block), Vijayanagar Colony, PS Nagar, Hyderabad, which is described as schedule property, ordering eviction of defendant from the schedule premises.

2. For the sake of convenience, the parties to the appeal are referred to as they ranked in suit, hereinafter, throughout the judgment.

3. Plaintiff filed the suit for ejectment of the defendant as a tenant alleging that in the month of April 2011, the premises was let out to defendant by the plaintiff on agreed rent of Rs. 8,000/- per month excluding electricity and water consumption charges and the defendant himself prepared rental agreement on 1.5.2011 and thus the defendant was inducted into possession as tenant in pursuance of the rent agreement for a period of 12 months commencing from 1.5.2011 and the defendant paid Rs. 16,000/- as advance towards two months rent as per the terms and conditions, as agreed, under the rent agreement. Thereafter, the defendant did not pay rent and later the plaintiff issued a notice terminating the rental agreement, marked as Ex. A-5 dated 21.2.2012. The defendant filed written statement denying jural relationship of landlord and tenant while contending that the plaintiff approached the Court suppressing real facts i.e., execution of an agreement of sale of premises in his favour, which is the subject matter of the suit in O.S.No. 1834 of 2011, which is pending for trial and that the plaintiff is not entitled to evict the defendant from the suit schedule property, who is in possession of the property in pursuance of the agreement of sale.

4. Basing on the above pleadings, the trial Court framed the following three issues:

- (1) Whether there is landlord and tenant relationship between the plaintiff and defendant?
- (2) Whether the plaintiff is entitled for the relief of eviction against the defendant as prayed for?
- (3) Whether the plaintiff is entitled for recovery of arrears of rent from the defendant as prayed for?

5. To substantiate the case of the plaintiff, plaintiff herself examined as PW 1 and Exs. A1 to A12 were marked and on behalf of defendant, defendant himself examined as DW 1 and Exs. B1 to B4 were marked.

6. Upon hearing argument of both the counsel, the trial Court decreed the suit against the defendant directing the defendant to vacate the suit schedule premises within a specified time.

7. Aggrieved by the decree and judgment of the trial Court, the unsuccessful defendant preferred A.S.No. 15 of 2016 on the file of II Additional Chief Judge, City Civil Court, Hyderabad, which is ended in dismissal by judgment dated 28.4.2016 confirming the decree and judgment of the trial Court. The present Second Appeal is filed under Section 100 of CPC. The powers of this Court are limited to substantial questions of law under Section 100

CPC. In *Union of India Vs. Ibrahim Uddin and another*^[1], the Supreme Court held that the Second Appeal can be admitted and entertained only on the substantial question of law and the Second Appeal does not admit on the question of fact and the law. In *State Bank of India and Ors v. S. N. Goyal*^[2], the Apex Court explained the term 'substantial question of law' and observed that the word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties...any question of law which affects the final decision in a case is a substantial

question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law. There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case. But it depends upon the facts of each case.

8. In the present case, the main contention of the appellant is that he purchased the property under an agreement of sale and there is no jural relationship of landlord and tenant. But the jural relationship is purely a question of fact and not substantial question of law. The trial Court and the Appellate Court concurrently held that there was jural relationship subsisting between the plaintiff and the defendant and such a question cannot be said to be a substantial question of law within the ambit of Section 100 of CPC.

9. The other contention of the counsel for the appellant is that the appellant having purchased the property and he is in possession and enjoyment of the property, filed suit for specific performance of an agreement of sale. Curiously, the said agreement of sale was not brought on record by marking as an exhibit on his behalf for consideration by the Courts below. Even to claim benefit under Section 53-A of Transfer of Property Act, (for short 'the Act') it is the duty of the appellant who set up an agreement of sale in his favour has to establish that there is an agreement of sale in writing and that the possession is delivered in pursuance of the agreement or continuing in possession of the property, he has done something in furtherance of the agreement and that he is always ready and willing to perform his part of obligation under the agreement of sale. The appellant neither pleaded nor proved the four requirements to claim benefit under Section 53-A of the Act. In the absence of production of agreement of sale before the trial Court or appellate Court, it is difficult to accept the contention of the appellant that the appellant is entitled protection under Section 53-A of the Act to defend the eviction suit or suit for recovery of possession as a shield. As the appellant failed to plead and prove the requirements under Section 53-A of the Act, he is not entitled to claim protection even as a shield in a suit for ejectment. Even otherwise, it is purely a question of fact, which is required to be proved by adducing evidence. But the trial Court and Appellate Court disbelieved and did not extend the benefit of Section 53-A of the Act to the appellant for the above reasons.

10. Hence, I find no question of law much less a substantial question of law to admit the appeal and the appeal is dismissed at the stage of admission itself, but without costs.

11. At this stage, the counsel appearing for appellant filed an affidavit agreeing to vacate the premises after three months from today. But the counsel appearing for the defendant Sri Sanghi opposed it. However, taking into consideration the nature of property, long occupation and also pendency of alleged other litigations, this Court feels it appropriate to grant three months time for eviction, which would expire by 11.11.2016. The observations made herein will have no bearing to the suit, pending if any, while disposing of the same. As a sequel thereto, miscellaneous petitions, pending if any, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Date: 11.08.2015
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^[1] (2012) 8 SCC 148
^[2] AIR 2008 SC 2594