

HON'BLE SRI JUSTICE R. KANTHA RAO
Civil Revision Petition Nos.2103 & 2104 of 2010

COMMON ORDER:

i) CRP No.2103 of 2010 is directed against the order dated 26.04.2010 in EP No.73 of 2010 in OS No.81 of 2003 passed by the Principal Junior Civil Judge, Avanigadda.

ii) CRP No.2104 of 2010 is directed against the order dated 26.04.2010 in EP No.74 of 2010 in OS No.89 of 2003 passed by the Principal Junior Civil Judge, Avanigadda.

Since common issues arise for consideration in both the civil revision petitions, they are disposed of by a common order.

2. Heard Sri N. Vijay, learned counsel appearing for the revision petitioner and Sri Srinivasa Rao Bodduluri, learned counsel appearing for the respondent, in both the revision petitions. Perused the material on record.

3. The respondents herein filed OS Nos.81 and 89 of 2003 against the revision petitioner/1st defendant for arrears of rents, for damages and for eviction from the suit schedule property before the Principal Junior Civil Judge, Avanigadda. After considering the evidence adduced by both parties, the trial court partly allowed both the suits granting arrears of rents, enhancement of rents, but held that the plaintiffs are not entitled for eviction of the defendants up to 31.03.2010. Aggrieved by the said common judgment, dated 31.01.2008 passed by the Principal Junior Civil Judge, Avanigadda in OS Nos.81 and 89 of 2003, both the plaintiffs and 1st defendant preferred appeals before the first appellate court i.e., AS Nos.12 and 13 of 2008 were filed by the respondent/plaintiff, AS Nos.16 and 17 of 2008 were filed by the revision petitioner/1st defendant. The first

appellate court after reappraisal of the evidence and considering the material on record dismissed all the appeals confirming the common judgment passed by the trial court.

4. Learned counsel for the revision petitioner submits that since there is no direction in the decree to evict the 1st defendant from the schedule mentioned property, the decree is in-executable. On the other hand, learned counsel for the respondent submits that in the decree, it is mentioned that the plaintiffs are not entitled to evict the 1st defendant up to 31.03.2010 and it means, after 31.03.2010, the 1st defendant is liable to be evicted from the premises.

5. In view of the rival contentions, it is relevant to extract the decree passed by the trial court.

In OS No.89 of 2003, the trial court passed the following decree, which reads as under:

“i) that the 1st defendant do pay to the plaintiff a sum of Rs.3,300/- towards arrears of rentals along with interest at the rate of 12% p.a., from the date of filing of the suit, till the date of realisation;

ii) that the 1st defendant do pay to the plaintiff, balance of arrears of rentals at the rate of Rs.500/- p.m., from 01.02.2002 to 31.01.2005; rent at the rate of Rs.600/- p.m., from 01.02.2005 to 31.01.2007; rent at the rate of Rs.700/- p.m., from 01.02.2007 onwards along with interest at the rate of 12% p.a. from the date of filing of the suit, after deducting the undisputed rent paid by the 1st defendant (arriving amount as on 14.02.2003 i.e., date of filing of the suit);

iii) **that the 1st defendant be and the same should not be evicted from the plaint schedule property up to 31.03.2010 by the plaintiff.**

iv) that the suit against the 2nd defendant be and the same is hereby dismissed, and;

v) that the 1st defendant do pay to the plaintiff a sum of Rs.7,363.50 p.s., towards costs of this suit and the 1st defendant do bear his own costs of Rs.Nil (cost memo not filed by the 1st defendant).”

In OS No.81 of 2003, the trial court passed the following decree, which reads as under:

“i) that the 1st defendant do pay to the plaintiff a sum of Rs.5,800/- towards arrears of rentals along with interest at the rate of 12% p.a., from the date of filing of the suit, till the date of realisation;

ii) that the 1st defendant do pay to the plaintiff, balance of arrears of rentals at the rate of Rs.500/- p.m., from 01.02.2002 to 31.01.2005; rent at the rate of Rs.600/- p.m., from 01.02.2005 to 31.01.2007; rent at the rate of Rs.700/- p.m., from 01.02.2007 onwards along with interest at the rate of 12% p.a. from the date of filing of the suit, after deducting the undisputed rent paid by the 1st defendant (arriving amount as on 14.02.2003 i.e., date of filing of the suit);

iii) **that the 1st defendant be and the same should not be evicted from the plaint schedule property up to 31.03.2010 by the plaintiff:**

iv) that the suit against the 2nd defendant be and the same is hereby dismissed, and;

v) that the 1st defendant do pay to the plaintiff a sum of Rs.7,606/- towards costs of this suit and the 1st defendant do bear his own costs of Rs.Nil (cost memo not filed by the 1st defendant).”

6. A perusal of the decree, shows that the 1st defendant should not be evicted from the plaint schedule property up to 31.03.2010 by the plaintiff, which means the 1st defendant can be evicted from the schedule property after 31.03.2010 by the plaintiff and it can be clearly understood from the judgment passed by the trial court. Therefore, I am not in acceptance with the contention of the learned counsel appearing for the revision petitioner that the decree is in-executable. While interpreting the terms of the decree, the judgment and decree have to be read together. Virtually, the trial court passed a common judgment, which was confirmed by the first appellate court. Merely because, there is no direction in the decree to evict the 1st defendant after 31.03.2010 by the plaintiff, it cannot be said that the decree is in-executable. In the opinion of this court, there is no ambiguity in the decree passed by the

trial court and therefore, it can be executable. I see no merit in both the civil revision petitions and consequently, both the civil revision petitions are dismissed. The revision petitioner-1st defendant is directed to vacate the schedule property within two months from the date of receipt of the order. No order as to costs. Miscellaneous petitions, pending if any in these revision petitions, shall stand closed.

R. KANTHA RAO, J

Date: 15.03.2016
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HON'BLE SRI JUSTICE R. KANTHA RAO

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Date: 15.03.2016

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