

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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SECOND APPEAL NO.347 OF 2016

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JUDGMENT:

This second appeal under Section 100 of C.P.C is filed by the defendant in O.S.No.2540 of 2008 on the file of the Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court, Hyderabad, and the appellant in A.S.No.103 of 2014 on the file of the X Additional Chief Judge, City Civil Court at Hyderabad, challenging the concurrent finding recorded by the Trial Court ordering eviction of the defendant in the suit.

For the sake of convenience, the ranks given to the parties before the Trial Court will be adopted throughout the judgment.

The plaintiff filed suit O.S.No.2540 of 2008 for eviction of the defendant from a commercial mulgi bearing Shop No.8-3-903/3/A3, Omega Apartment, situated at Yellareddyguda, Ameerpet, Hyderabad, alleging that the tenancy was initially for a period of 11 months commencing from 12.09.1999 and it is based on an unregistered rent deed. The tenant committed default in payment of rent as agreed earlier and thereafter, the lease was terminated by issuing notice dated 09.11.2008, marked as Ex.A-1, under Section 106 of Transfer of Property Act (henceforth the 'Act') terminating the tenancy.

The defendant while admitting the relationship of landlord and tenant, contended that the plaintiff is not entitled to evict the defendant, as he received an amount of Rs.1,00,000/-. Further the petitioner is running a Photostat machine in the schedule premises and therefore, the alleged requirement of the petitioner for his occupation to run a

clinic is false, besides raising several other contentions.

One of the main contentions is that, he was not served with any notice terminating the tenancy strictly adhering to Section 106 of the Act and prayed for dismissal of the suit.

Based on the above pleadings, the Trial Court framed as many as three issues, tried the suit along with other suit O.S.No.1803 of 2008 filed for perpetual injunction and decreed the suit filed by the appellant and dismissed the other suit O.S.No.2540 of 2008 filed by the defendant filed for perpetual injunction, recording its own reasons and ordered eviction of the defendant from the schedule premises.

Aggrieved by the decree and judgment passed by the Trial Court, the defendant approached the Appellate Court by filing A.S.No.103 of 2014 on the file of the X Additional Chief Judge, City Civil Court at Hyderabad which ended in dismissal, confirming the decree and judgment passed by the Trial Court.

The present second appeal is preferred challenging the decree and judgment of the Appellate Court confirming the decree and judgment passed by the Trial Court on the sole ground that the notice under Section 106 of Transfer of Property Act was not served terminating the tenancy and in the absence of any such notice, eviction cannot be ordered.

At the stage of admission, heard learned counsel for the appellant and learned counsel for the respondent at length.

The only contention urged before this Court was that notice under Section 106 of Transfer of Property Act was not served on the petitioner and thereby the eviction order passed by the Trial Court and confirmed by the Appellate Court is illegal. In fact, the Trial Court recorded a finding specifically at page No.10 of the judgment that the address mentioned in the notice and postal receipts is one and the

same and it is the correct address of the defendant. By drawing a presumption under Section 27 of the General Clauses Act, the Trial Court concluded that service of notice when addressed to the correct address of the defendant, a presumption under Section 27 would arise and based on the same, the Trial Court accepted service of notice. The same is accepted by the Appellate Court also.

When a presumption is in favour of the plaintiff, by virtue of Section 27 of the General Clauses Act, it is for the defendant to dispel the presumption or rebut the presumption by adducing satisfactory evidence, more particularly, to show that the address in Ex.A-1 & A-2 is not the correct address of the defendant. More curiously, in the evidence of D.W.1, he admitted that the address mentioned in Ex.A-2 is the correct address of the defendant and he also admitted that he has no idea whether he issued a reply to the notice. That itself indicates that he received a notice, but he has no idea about issue of reply to such notice. Therefore, the admissions in the evidence of D.W.1 are self contradictory, suffice to conclude that the address mentioned in Exs.1 & 2 is the correct address of the defendant and the defendant failed to rebut the presumption under Section 27 of the General Clauses Act.

One of the contentions of the defendant is that, the plaintiff himself admitted that no notice was issued to avoid litigation. But, as seen from the 4th paragraph of the affidavit filed under Order 18 Rule 4 C.P.C, the plaintiff asserted that he after issuing notice, terminating the tenancy, an injunction suit in O.S.No.1803 of 2008 was filed by the defendant against the plaintiff in the suit. Mere, making a stray and vague admission in cross-examination is not sufficient when the plaintiff specifically asserted from the beginning that a notice under Section 106 of Transfer of Property Act i.e.Ex.A-1 was issued to the

defendant, the same is the case even in the pleadings and in the examination in chief. Therefore, such vague admission about the notice given by the petitioner to the defendant under Section 106 of the Transfer of Property Act would not be helpful to him to reverse a decree of ejectment of the defendant from the suit schedule premises.

This Court being the Second Appellate Court is having limited jurisdiction to decide the substantial question of law. But, service of notice on the defendant is purely a question of fact, but not a question of law, in view of the judgment rendered in **Union of India vs. Ibrahim Uddin**^[1]. Therefore, the question urged before this Court is not a substantial question of law inviting a decision on such question. Hence, I find no ground to interfere with the concurrent findings recorded by both the Trial Court and the Appellate Court and confirmed the eviction decree passed by the Trial Court which is confirmed by the Appellate Court.

At this stage, learned counsel for the defendant requested to grant four months time, but the learned counsel for the plaintiff did not raise any substantial ground to deny granting four months time, though opposed.

Taking into consideration, the nature of the business being carried on by the defendant, I find that it is appropriate to grant four months time from today to vacate the premises and deliver vacant possession of the property to the plaintiff. In the event the defendant fails to vacate the premises, the plaintiff is at liberty to execute the decree and recover possession through process of the Court.

In the result, the appeal is dismissed at the stage of admission while granting four months time to the defendant to vacate the premises.

Consequently, miscellaneous applications pending if any, shall

also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:12.08.2016

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[\[1\]](#) 2012 (8) SCC 148