

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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SECOND APPEAL NO.560 OF 2016

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JUDGMENT:

This second appeal is filed by the defendant under Section 100 of the Civil Procedure Code challenging the decree passed in A.S.No.319 of 2013 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad, whereby, the defendant was ordered to vacate the premises and deliver vacant possession to the petitioner within the specified time.

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

The plaintiff in O.S.No.3 of 2009 filed the suit for eviction of the defendant from the suit schedule premises and for recovery of Rs.35,000/- towards arrears of rent payable from August 2008 to December, 2008 and also to direct the defendant to pay mesne profits @ Rs.10,000/- per month from January 2009 till delivery of possession. It is the case of the plaintiff that he is the owner of the property bearing Residential Apartment No.110 bearing H.No.3-5-906/1, Mithila Apartments situated at Himayathnagar, Hyderabad. The plaintiff let out the premises to the defendant on lease under a rental deed dated 01.04.2001, whereby, the defendant agreed to pay monthly rent promptly, but committed default in payment of rent. Thereupon, the plaintiff got issued a notice vide Ex.A.13 to the defendant on 26.11.2008 calling upon the defendant to deliver possession of the premises within 15 days from the date of receipt of the said notice. Though a reply was issued by the defendant to the legal notice on 21.12.2008 which is marked as Ex.A.12, the defendant did not vacate the premises and he is continuing in possession and enjoyment of the property. Therefore, continuation in possession of the premises by the defendant is illegal, wrongful and thereby the defendant is liable to pay

damages @ Rs.10,000/- per month and prayed for eviction of the defendant from the suit schedule premises.

The defendant filed written argument in O.S.No.3 of 2009 raising several contentions admitting obtaining the premises on lease under Ex.A-1 and further contended that after expiry of the original lease period, he requested the plaintiff to execute fresh rental agreement. But, the plaintiff protracted the execution of rent deed afresh and that he was paying monthly rent @ Rs.7,000/- regularly and prayed for dismissal of the suit.

Based on the above pleadings, the Trial Court framed the following issues:

1. Whether the plaintiff is entitled for eviction of the defendant from the suit schedule premises?
2. Whether the plaintiff is entitled for Rs.35,000/- towards rent from August 2008 to December 2008?
3. Whether the plaintiff is entitled for mesne profits claimed in the plaint?
4. To what relief?

Upon hearing the argument of both the counsel, the Trial Court dismissed the suit. Aggrieved by the decree and judgment passed by the Trial Court, the plaintiff being unsuccessful, preferred an appeal before the III Additional Chief Judge, City Civil Court, Hyderabad, who in-turn allowed the appeal and decreed the suit for eviction of the defendant directing the defendant to vacate the suit premises within a period of three months, giving liberty to the appellant to file separate application for mesne profits under Order 20 Rule 12 C.P.C.

The present appeal is filed raising several contentions and during hearing learned counsel for the appellant herein, it is contended that notice under Section 106 of Transfer of Property Act was not served under law and on the sole ground, the appeal is liable to be allowed, setting aside the decree and judgment passed by the Trial

Court, restoring the judgment of the Trial Court.

As seen from the material available on record, notice under Section 106 of Transfer of Property Act was served and it is strictly in compliance of Section 106 of the Act. The defendant also acknowledged receipt of the same under Ex.A-14 and got issued a reply to the notice on 21.12.2008 which is marked as Ex.A-12. But, after termination of tenancy, the defendant is still continuing in possession of the property without the consent of the plaintiff, thereby he is liable to be evicted, since his possession is wrongful. The Appellate Court, after appreciation of evidence on record, rightly concluded that Ex.A-13 notice issued is in compliance and strict adherence to Section 106 of the Act. When the defendant is continuing in possession after termination of the tenancy, he is liable to be evicted from the suit schedule property. Therefore, the Appellate Court rightly held that the notice issued under Section 106 of the Act is valid and it is in accordance with law and ordered eviction rightly. The findings of the Appellate Court are free from any illegality and do not warrant interference of this Court.

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, muchless, substantial 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, the findings of the Appellate Court are confirmed holding that the notice under Section 106 of the Transfer of Property Act is valid and the decree and judgment passed in A.S.No.319 of 2013 by the III Additional Chief Judge, City Civil Court, Hyderabad on 19.02.2016 is upheld.

In the result, the second appeal is dismissed at the stage of

admission, but, without costs.

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