

**HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO**

**S.A. No.383 OF 2016**

**JUDGMENT**

The Second Appeal is maintained against the decree and judgment passed on 29.10.2015 in A.S. No.24 of 2014 on the file of Principal District Judge, Nizamabad reversing the orders dated 22.07.2014 in I.A. No.532 of 2013 in O.S. No.140 of 2012 on the file of Principal Junior Civil Judge, Nizamabad.

2) Heard learned counsel for appellant and learned counsel for respondents. Perused the material on record.

3) The appellant herein is the defendant and respondents herein are the plaintiffs, who maintained the suit O.S. No.140 of 2012 on the file of Principal Junior Civil Judge, Nizamabad for eviction under Transfer of Property Act, 1882 (for short 'T.P. Act') against defendant/ tenant. The vendor of the plaintiffs was the original owner. It is by virtue of the transfer in favour of the plaintiffs, pending lis, there is a statutory attornment of oral tenancy rights under the T.P Act of the suit lis in favour of plaintiffs against the defendant—tenant.

4) The defendant in the written statement unambiguously admitted within the meaning of Order VIII Rule 3 to 5 C.P.C and Section 17 read with Section 58 of Indian Evidence Act of the jural relationship what was pleaded is earlier paid Rs.1,00,000/- to the original landlord as security deposit, that is being entitled and contended, however, that there is an oral contract for sale pending the lis with the plaintiffs entered by the defendant and entitled to continue thereby from merger of the oral tenancy into the oral contract for sale and thus he is not liable to

be evicted from the said changes circumstances. So far as the profits are concerned, for the claim of past profits and entitlement of future profits negated the claim by disputing the entitlement. It is further pleaded by defendant that she availed the loan for the business purpose for running kirana and paying out of the business earnings and surviving and thereby if evicted, she will be on the streets. From these pleadings, there was an application filed by the plaintiffs under Order XII Rule 6 to pass decree for eviction based on the said admission of the jural relationship of landlord and tenant orally since the quit notice already given. Leave about the validity of the quit notice, not a ground to disallow the plaintiffs as per the Amended Section 106 of T.P Act by virtue of landlord claiming the tenant to vacate having issued statutory 15 days quit notice; Practically, the defendant is a tenant by sufferance and once that admitted relationship is there and receiving of quit notice also therefrom, what was sought to pass the decree for eviction on admission, since dismissed by the trial Court, the plaintiffs maintained the appeal against the same and the lower Court reversed the same. It is against the reversal judgment, the defendant maintained the second appeal stating that there is no unequivocal admission and the contest is not entitled to the suit relief and in view of the complicated questions of fact involved from the pleadings, it is not a fit case to grant eviction on admission by passing any decree on admission and mainly placed reliance on the expression of Three Judge Bench of the Apex Court in **S.M.Asif vs Virender Kumar Bajaj**<sup>1</sup>.

---

<sup>1</sup> (2015) 9 SCC 287

5) Whereas it is the submission of the learned counsel for the respondents that the trial Court went wrong in dismissing the petition for decree on admission and thereby the appellate Court rightly reversed the judgment and there is no question of law involved in the Second Appeal.

6) It is at this stage of hearing both parties came to a conscious and understanding to continue the defendant for one year in the premises and to vacate after expiry of one year by confirming the order of the lower Court passing the eviction by only extending the time to execute. The said oral undertaking of the tenant before the Court is thus recorded.

7) Having regard to the above and in the result, the Second Appeal is disposed of, while confirming the eviction order passed by the lower appellate Court against the tenant, however, by extending the time to vacate till end of 15.11.2017. The appellant in the meantime shall pay at Rs.7,000/- per month towards use and occupation charges, which is made clear of without prejudice to the profits claim of the plaintiffs to be determined on own merits.

8) Consequently, pending miscellaneous petitions, if any, shall stand dismissed. No order as to costs.

---

**Dr.JUSTICE B. SIVA SANKARA RAO**

Dt.16.11.2016  
knl

**HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO**

**S.A. No.383 OF 2016**



Date:16.11.2016

knl

