

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

SECOND APPEAL No.479 of 2016

ORDER:

This Appeal is filed by the appellants – defendants. Respondents - plaintiffs filed the suit for eviction. The said suit was dismissed vide judgment dated 29.06.2015. Respondents – plaintiffs, being aggrieved, filed the appeal in A.S.No.180 of 2015 which was allowed vide judgment dated 21.04.2016.

Respondents and appellant No.3 are the absolute owners of the suit properties. Item Nos. 1 and 2 of the suit properties were leased out to appellant No.1 under a registered lease agreement; and item No.3 was leased out to run a school therein. Lease was obtained by appellant No.2, on behalf of appellant No.1, in the capacity of correspondent. Later, respondents came to know that appellants Nos.2 and 3, colluded together without running appellant No.1 – Society, have been running school in the suit property in violation of conditions of lease. Appellant No.3, without permission from respondents - plaintiffs or from government, has been running a school in the suit premises illegally and unlawfully. As per clause 4 of the lease agreement, appellant No.1 was not authorized to sublet suit premises to third parties. Therefore, appellant Nos.1 and 2, by allowing appellant No.3 to run school in the suit premises, violated the conditions of lease

agreement. On 27.05.2014, appellant No.2 issued notice to the respondents for which reply dated 09.06.2016 was given to appellant Nos.1 and 2 to quit the suit premises. Despite notice, appellant Nos.1 and 2 failed to evict the suit premises. Accordingly, respondents – plaintiffs were constrained to file suit.

In his written statement, appellant No.2 stated that that she obtained suit properties on lease from the respondents and appellant No.3 on 28.09.2009 for a period of 10 years on a monthly rent of Rs.1,500/- p.m; lease in respect of item Nos.1 and 2 of the suit property was a registered one, whereas lease in respect of item No.3 was an oral one; and respondents are being paid rents regularly in respect of the suit premises.

It is further stated that appellant No.2 established City Public School in the suit premises. Since the said school has been flourishing, it caused eyesore to respondents and never cooperated with appellant No.2 to run school in the suit premises. Appellant No.2 state that, she being old, has been taking assistance of others to run school, including appellant No.3. She denies the averment that suit premises was sublet to appellant No.3. Respondents filed the suit against appellant Nos.1 and 2 to evict them from the suit premises.

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

1. *Whether the plaintiffs are entitled for eviction of the defendants from the plaint schedule properties?*
2. *To what relief?*

Respondents – plaintiffs, on their behalf, examined plaintiffs Nos.1 and 2 as PWs.1 and 2 and filed Exs.A.1 to A.9.

Appellants – defendants, in support of their defence, examined defendants Nos.2 and 3 as DWs.1 and 2 and filed Exs.B.1 to B.5.

On a perusal of the oral and documentary evidence, the Trial Court dismissed the suit.

Being aggrieved, respondents – plaintiffs challenged dismissal of the suit by the Trial Court on various grounds:

1. *The judgment of court below is contrary to law, weight of evidence and probabilities of the case.*
2. *The court below failed to appreciate the evidence on record in proper perspective and failed to arrive at a correct decision.*
3. *The Court below failed to consider the evidentiary value of admissions made by defendants and their effect.*
4. *The Court below failed to appreciate the significance of Ex.A.6 to Ex.A.8, as under Ex.A.8, respondent No.3 – defendant No.3 is shown as proprietor of the school.*
5. *The Court below failed to notice, defendant No.3 has been running school in suit properties as proprietor.*
6. *The court below was unable to appreciate the admissions made by defendant No.2/DW.1.*

7. *The court below failed to notice the lease for suit properties was validly and legally determined by the plaintiffs under Ex.A.4 notice.*
8. *The Court below ought not to have observed simply because the defendant No.3 is co-owner of suit property can have unbrittled power to take over the school and run as its proprietor in the suit property.*
9. *The court below ought to have believed the case of plaintiffs and directed the defendants to vacate the suit properties.*

Counsel for the respondents – plaintiffs argued before the appellate Court that lease in favour of appellant No.1 was terminated under Ex.A.4 and the Trial Court failed to consider the same. It was further argued that, Ex.A.8 proved appellant No.3 to be proprietor of school run in the suit premises and it would also establish that appellant No.1 had sublet the suit property to appellant No.3. Thus, the Trial Court committed error in dismissing the suit.

Learned counsel for appellants – defendant Nos.1 to 3, while supporting the judgment and decree of the Trial Court, contended that lease in respect of item Nos.1 and 2 of suit property exists till 2019 and respondents failed to prove subletting of suit property to appellant No.3. Thus, the Trial Court rightly dismissed the suit and prayed for dismissal of the appeal.

The issue, before the Appellate Court for consideration, was whether the decree and judgment made

in O.S.No.497 of 2014 on the file of I Additional Junior Civil Judge, Guntur dated 29.06.2015, is sustainable in law?

As noted by the Appellate Court, the undisputed facts in the case are that the respondents – plaintiffs and appellant No.3 were the absolute owners of suit property. It consists of three items. Appellant No.1, being a registered Society, represented by appellant No.2 and appellant No.3 is the son of appellant No.2. Items 1 and 2 were leased out to appellant No.1 on 29.08.2009 for a period of ten years under Exs.A.1 and A.2; and item No.3 was orally leased to appellant No.1 for a period of ten years on a monthly rent of Rs.1,500/-.

Learned Counsel appearing on behalf of appellants submits that respondents – plaintiffs are joint owners and possessors of the property in question. The appellants contend that, if the property is possessed jointly, one of the possessor cannot file suit for his share or eviction from the property. In support of his submission, he relied on **Sk.Sattar Sk.Mohd. Choudhari v. Gundappa Amabadas Bukate**¹, wherein it was held that the basic principle of the Transfer of Property Act is that where a premise was let out by several co-owners or joint owners or co-lessors, any one of them cannot sue the tenant either for his share of rent or for partial eviction on the ground that he being the co-owner had a right not only to collect his share of rent but

¹ AIR 1997 SC 998

also to evict the tenant from his portion of the premises. The unity of estate is undoubtedly, indivisible but the indivisibility is not perpetual. In order to remove the obsession with which the High Court suffered, it is necessary to look to various provisions of the Transfer of Property Act.

As submitted by the counsel for the appellants, respondents – plaintiffs are interfering with day to day affairs of school. Therefore, appellants – defendants sent notice dated 27.05.2014 (Ex.A.3), to which respondents – plaintiffs replied vide notice dated 09.06.2014 (Ex.A.4). In the said notice, respondents – plaintiffs terminated rent agreement, whereas they ought to have issued 15 days notice as per Section 106 of the Transfer of Property Act.

As recorded by the appellate Court that PWs.1 and 2 and DWs.1 and 2, in their respective evidences, that, in the suit premises, school was run in the name and style of ‘City Public School’. According to respondents, City Public School was of appellant No.3 and the suit premises was sublet to appellant No.1 and lease, in respect of suit properties, was terminated under Ex.A.4. As per recitals in Ex.A.1, admittedly, the suit premises was leased out to appellant No.1, a registered society viz. Koundinya Education and Welfare Society, which is not being run in the suit premises and school by name ‘City Public School’

was run in the suit premises. Undisputably, under Exs.A.1 and A.2, lease was made in favour of appellant No.1 to run school of their society.

It is important to note that respondents – plaintiffs, in proof of subletting the suit premises to appellant No.3, relied on Ex.A.8 – Income Tax Returns, filed by appellant No.3, on behalf of City Public School for the assessment year 2013-2014, and there was no controversy from the side of appellant No.3 that the income tax returns in Ex.A.8 were filed by him on behalf of City Public School before the income tax authorities. During the evidence of DW.2, Ex.A.8 was confronted to the witness wherein he admitted that it was filed on behalf of City Public School.

It is not in dispute that appellant No.2, on behalf of appellant No.1, sublet the suit premises to appellant No.3. Appellant No.2 is the mother of appellant No.3. In view of the relationship, subletting suit premises to appellant No.3 would be between them. Even if any document is executed between appellant No.2 and appellant No.3, certainly it would be in their custody. Even otherwise, defendant Nos.2 and 3, being mother and son respectively, can orally enter into lease without evidencing lease deed. Hence, insisting direct evidence from the respondents - plaintiffs, in proof of lease between appellant No.2 and appellant No.3, is unnecessary and uncalled for. In view of the entries in

Ex.A.8, Income Tax returns, which are admitted by appellant Nos.2 and 3, in their evidence, it overwhelmingly establishes that appellant No.3 is the proprietor of City Pubic School.

From the facts recorded above, it is established that school was sublet contrary to the terms of rent agreement.

The scope, of Section 106 of the Transfer of Property Act, 1882 (for short 'the Act'), is where lease deed is not registered, it is legally open for the tenants to terminate the tenancy on fifteen days notice and vacate the premises. In the instant case, lease was admittedly registered. Thus, Section 106 of the Act does not help the appellants.

The appellants framed the following substantial questions of law which are as under:

- i. *Whether on the basis of Ex.A.8, Income Tax Return, submitted by 3rd defendant in his individual capacity it can be held that there was contract of sub-lease between D.2 and A.3.*
- ii. *Whether the lease under Exs.A.1 and A.2 lease agreements which expires by 28.08.2019, could be determined even before the expiry of the lease by invoking Section 111(g) of the T.P. Act in the absence of any forfeiture clause in the lease agreements.*
- iii. *Whether the plaintiffs being the joint lessors could unilaterally take decision to determine the lease without the knowledge and consent of the other joint lessor (D3).*
- iv. *Whether reply notice under Ex.A.6, dated 09.06.2014, is valid quit notice under Section 106 of the T.P. Act when in that notice it is not specifically mentioned about the fact that the*

lease was terminated and the date by which the lease was determined and also the period of 15 days notice.

- v. Whether D3 who is the co-owner and joint lessor of the schedule premises can be held as sub-lessee on the basis of Ex.A.8, Income Tax Returns, submitted by him.*
- vi. Whether there is valid determination of the lease.*
- vii. Whether the plaintiffs are entitled to seek eviction even before the expiry of the period of lease under Exs.A.1 and A.2 and in the absence of clinching proof of the alleged sub-lease.*
- viii. The appellants crave the leave of the Court to submit other points at the time of hearing of the appeal.*

During arguments, learned counsel for the appellants confined to question Nos.iv and v. Both the questions do not substantiate the arguments made by the counsel for the appellants. This do not have the shelter of Section 106 of the Transfer of Property Act.

Therefore, no substantial question of law arises for consideration in the present second appeal.

At this stage, learned counsel appearing on behalf of the appellants seeks time to vacate the suit premises within six months. He submits that, academic session has since began and 700 students are being imparted education therein with 39 staff members, appellants need some time to find out new premises and shift the school building.

Appeal filed by the respondents – plaintiffs was allowed vide judgment in A.S.No.180 of 2015 dated

21.04.2016. By the aforesaid judgment, appellants were directed to vacate the suit premises within six months. The said period of six months would be expired in October, 2016.

As requested by the counsel for the appellants, appellants want to continue in the same premises for another seven months i.e. upto April, 2017.

As per lease dated 29.08.2009, rent amount was Rs.4,500/-. Seven years elapsed since the date of lease agreement. Appellant No.1 – school is presently situate in Guntur District. Appellant No.1 would be unauthorized occupant after October, 2016. Therefore, permission is granted to school to vacate in April, 2017. However, rent is fixed at Rs.50,000/-. If appellant No.1 feels that the rent fixed is excessive, two months remained and the school can be shifted to some other building which suits them.

The Second Appeal is, accordingly, dismissed.

Miscellaneous Petition pending, if any, shall also stand disposed of. However, in the circumstances, without costs.

SURESH KUMAR KAIT, J

Dt:12.09.2016
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