

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

WEDNESDAY THE TWENTYSECOND DAY OF JUNE
TWO THOUSAND AND SIXTEEN

PRESENT
HONOURABLE SRI JUSTICE SURESH KUMAR KAIT

APPEAL SUIT NO. 460 OF 2016

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Between:

Hindustan Petroleum Corporation Limited,
A company incorporated under Indian Companies Act
Regional Office at 130/1, Sebastian Street,
Secunderabad,
Represented by its Chief Regional Manager
Ch. Srinivas ... Appellant/Defendant No.2

Vs.

T. Pradeep Kumar & Ors. ... Respondents/Plaintiffs

Counsel for the Appellant: Sri Thoom Srinivas

Counsel for the Respondents: Sri S. Sridhar

The Court made the following: [Judgment follows]

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT

APPEAL SUIT NO. 460 OF 2016

JUDGMENT :

Aggrieved by the judgment and decree dated 04/04/2016 passed in O.S.No. 1173 of 2013 by XVI Additional District and Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge-cum-III-Additional Family Judge, Ranga Reddy, decreeing the suit filed by the respondents 1 to 3/plaintiffs under Section 26 Order-VII Rule 1 and 2 of CPC with costs against defendant No.1 and directed defendants 1 and 2 to hand over vacant possession of the suit property to the plaintiffs, within a period of 30 days from the date of judgment, failing which the plaintiffs are entitled for recovery of possession of suit property through process of the court and decreed the suit for Rs.15,00,000/- against defendant No.1 with costs and with future interest @ 6% per annum from the date of filing of suit till the date of realization of amount and further directed the defendant No.1 to pay damages @ Rs.30,000/- per month to the plaintiffs from the

date of filing of suit till the date of delivery of vacant possession of suit property to the plaintiffs, this first appeal is filed by defendant No.2.

2. With the consent of learned counsel for the parties, this appeal is taken up for final disposal.

3. The case of the plaintiffs 1 to 3 before the trial court are that they are the joint owners of the property bearing Municipal No. old 28/1, new 41-1, admeasuring 1100 sq.yards situate at Moulali village, Malkajgiri Municipality, Ranga Reddy district, hereinafter called as "suit property". The plaintiffs let out the suit property to the defendant No.1 under a registered sale deed dated 7/2/2003 on a monthly rent of Rs.30,000/- per month. The defendant No.1 was also permitted to sublet the suit premises to the defendant No.2 subject to not exceeding the existing conditions in lease deed. The defendant No.1 failed to pay rent from the month of September, 2010. The plaintiffs demanded the defendant to pay the rents and vacate the suit premises. The plaintiffs got issued a legal notice in the month of July, 2013 calling upon the defendants to vacate the premises and the plaintiffs also terminated the tenancy by 31/7/2013. The defendants received the said notice and failed to

issue any reply.

4. The defendant No.1 remained ex-parte. The defendant No.2 filed the written statement alleging that the plaintiffs are the joint owners of the suit property and the defendant No.1 entered into a registered lease agreement on 7/2/2003 with the plaintiffs for running retail outlet in the name and style of M/s. Krishna Service Station. The defendant No.2 advised the defendant No.1 on various occasions to pay the rent to the plaintiffs. The defendant No.2 is regularly paying the rents to the defendant No.1 as per sub-lease deed dated 18/3/2003.

5. Learned counsel appearing on behalf of the appellant submits that the suit is not maintainable against defendant No.1. Consequently, the defendant No.2 is not liable to pay damages to the plaintiffs, as there is no direct agreement between the plaintiffs and the defendant No.2.

6. On the basis of the above pleadings, the trial court framed the following issues for trial:

i) whether the plaintiffs are entitled for vacant possession of the suit schedule property from the defendants ?

ii) whether the plaintiffs are entitled for Rs.15,00,000/0 towards the arrears from September 2010 to August 2013?

iii) whether the plaintiffs are entitled for mesne profits at the rate of Rs.80,000/- per month from the date of suit till realization.

iv) To what relief ?

7. To substantiate their case, the plaintiffs got examined PWs.1 and 2 and marked Exs.A-1 to A-9. Ex.A-1 is lease deed, Ex.A-2 is sub-lease deed, Ex.A-3 is legal notice, Ex.A-4 is legal notice dated 6/8/2011, Ex.A-5 is legal notice dated 16/1/2013, Ex.A6 is reply notice dated 6/4/2011, Ex.A7 is legal notice dated 2/7/2013m, Ex.A8 is postal receipts (2 in no.), Ex.A9 is postal acknowledgements (2 in number). On behalf of defendant No.2, Chief Regional Manager is examined as DW-1 and marked Ex.B-1 copy of power of attorney.

8. On appreciation of oral and documentary evidence placed on record, the learned trial Judge decreed the suit filed by the plaintiffs as stated supra in para No.1.

9. Aggrieved by the same, the defendant No.2 filed the present appeal.

10. In the grounds of appeal, the appellant/defendant No.2 contended that the trial judge ought to have considered the fact that the plaintiffs and first defendant in the suit are relatives and

the suit was filed at the behest of first defendant only to evict the appellant from the suit schedule property. It is further contended that the trial judge failed to consider the fact that the appellant/defendant no.2 on many occasions advised the first defendant to pay the rents without default for operating the retail outlet and in that background the learned trial judge ought to have been dismissed the suit on the ground that as per sub-lease deed between the appellant and the first defendant, the appellant was regularly paying rents to the first defendant and as such, the suit ought to have dismissed. Further the trial judge ought to have considered that the first defendant has not contested the suit and remained ex-parte and as such the trial judge ought to have given an opportunity to the appellant/defendant no.2 to pay rents directly to the plaintiffs and ought to have dismissed the suit. Further the trial judge ought to have dismissed the suit on the ground that the suit filed by the plaintiffs is collusive one as it was filed in collusion with the first defendant only to vacate the appellant/defendant no.2 from the suit schedule property.

11. Counsel for the appellant further contended that the trial judge erred in directing the appellant to vacate the suit schedule

property within thirty days from the date of judgment and decree, even though the appellant is in continuous possession of the suit schedule property for more than thirteen years and a large number of equipment was installed over the suit schedule property. Further the trial Judge ought to have considered the fact that for the voluntary mistake of first defendant, the appellant cannot be penalized on the ground that first defendant has defaulted to pay the rents.

12. Heard the learned counsel appearing on behalf of appellant/defendant No.2 and the learned counsel appearing for respondents 1 to 3/plaintiffs.

13. It is an admitted fact that respondents 1 to 3/plaintiffs are the joint owners of the suit schedule property. It is not in dispute that respondents 1 to 3/plaintiffs leased out the suit schedule property to defendant No.1/respondent No.4 under Ex.A1 registered lease deed. Subsequently defendant No.1/respondent No.4 sub-let the suit property to the appellant/defendant No.2 for running a retail outlet under the name and style of M/s. Krishna Service Station. Admittedly, the defendant No.1 is due arrears of rent as stated in the plaint. From the evidence of PWs. 1 and 2

and from Ex.A7 legal notice, it is established that the plaintiffs terminated the lease and asked for recovery of suit schedule property. Since the lease is terminated, the defendants are not entitled to continue in the suit schedule property and they are bound to hand over vacant possession of the suit schedule property to the plaintiffs. Accordingly, the learned trial Judge opined that the plaintiffs are entitled to recovery of possession of suit schedule property and the plaintiffs are also entitled for recovery of arrears of rent amounting to Rs.15,00,000/- from defendant No.1/respondent No.4. It is also an admitted fact that defendant No.1 is continued in possession of the suit schedule property even after termination of the lease and as such, the plaintiffs are entitled for damages. Accordingly by considering the facts and circumstances of the case, the learned trial Judge directed the respondent No.4/defendant No.1 to pay damages @ Rs.30,000/0 per month to the plaintiffs from the date of filing of the suit till date of recovery of possession of the suit schedule property.

14. Accordingly, the appellant/defendant No.2 and respondent No.4/defendant No.1 respectively are directed to hand

over vacant possession of the suit schedule property to the plaintiffs within a period of thirty days from the date of the judgment and decree, failing which the plaintiffs are entitled for recovery of possession of suit schedule property through process of the court.

15. In view of the judgment and decree passed by the trial court, the appellant/defendant No.2, who is in possession of the suit schedule property was supposed to vacate the suit schedule property within thirty days i.e., by 5th May, 2016 instead the appellant/defendant No.2 preferred the present appeal and challenged the judgment and decree passed by the trial court.

16. Above facts have been recorded after hearing the learned counsel appearing for the parties. In view of above, I am of the considered opinion, the appellant/defendant No.2 failed to establish its case whereby this Court reverse the findings of the trial court on any one of the grounds. Therefore, I see no merit in the instant appeal and the appeal is accordingly dismissed.

17. Admittedly, the appellant/defendant No.2 is in unauthorized possession since 5th May, 2016 and the counsel for the appellant/defendant No.2 seeks one month time to vacate the

suit schedule premises. The appellant/defendant No.2 is directed to vacate the suit schedule premises within fifteen days from the date of receipt of copy of this judgment, failing which the appellant/defendant No.2 shall pay an amount of Rs.1,00,000/- [Rs. One lakh only] per month to the respondents 1 to 3/plaintiffs till the date of vacation of the suit schedule premises.

18. In view of above directions, the appeal is hereby dismissed without costs.

19. As a sequel, miscellaneous petitions if any, pending in this appeal shall stand closed.

KAIT.

JUSTICE SURESH KUMAR

22/06/2016
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*N B : Furnish CC tomorrow

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT

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Court Master: I s L