

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

SECOND APPEAL No.157 of 2017

03.03.2017

Between:

Bayiseti Kanakamahalakshmi

..Appellant

And

A.Koteswara Reddy

..Respondent

Counsel for the appellant: Mr.R.Siva Sai Awarup

Counsel for the respondent: Mrs.M.S.V.S.Sudharani

The Court made the following:



JUDGMENT:

This Second Appeal arises out of the concurrent findings of fact and also law.

2. We have heard Mr.R.Siva Sai Swarup, learned counsel for the appellant, and Mrs.M.S.V.S.Sudharani, learned counsel for the respondent.

3. The respondent gave a business premises on lease to the appellant. As the lease was oral, it was on month to month basis. It is the pleaded case of the respondent that the appellant committed default in payment of rents from June, 2015 to December, 2015. He has, therefore, filed O.S.No.1126 of 2014 for eviction of the appellant from the subject premises, for delivery of vacant possession thereof in good condition, for recovery of Rs.31,500/- towards arrears of rents from June, 2015 to December, 2015 together with subsequent interest at the rate of 24% per annum from the date of suit till the date of realization and also for payment of monthly rent at the rate of Rs.4,500/- from January, 2016 till delivery of the premises. The appellant has filed a written statement pleading that she has not committed default in payment of rents. She has raised a plea that since the lease is on month to month basis, the respondent has not terminated the same by issuing 15 days mandate quit notice under Section 106 of the Transfer of Property Act, 1882 (for short 'the Act') and that therefore, the suit is liable to be dismissed. On appreciation of the oral and documentary evidence, the trial Court has decreed the suit as prayed for. The lower appellate Court has dismissed A.S.No.96 of 2016 filed by the appellant, thereby confirming the decree of the trial Court. Feeling aggrieved by both these judgments, the unsuccessful defendant has filed this second appeal.

4. At the hearing, the learned counsel for the appellant has submitted that both the Courts below committed a serious error in holding that the appellant has committed default in payment of rents, as admittedly, quit notice under Section 106 of the Act was not issued and that therefore, the suit was not maintainable.

5. As regards the first submission of the learned counsel for the appellant, on appreciation of the oral evidence of P.Ws.1 and 2 and Ex.A-1 let in by the respondent and also the evidence of D.Ws.1 and 2 let in by the appellant, the trial Court has arrived at the finding that the appellant has committed default in payment of rents. While exercising the jurisdiction under Section 100 C.P.C., this Court will not embark upon re-appreciation of the evidence. The learned counsel for the appellant has failed to show that either the concurrent finding on default is based on no evidence or that arrival of finding in this regard by the Courts below is perverse. Therefore, this finding is not liable for interference in this second appeal.

6. As regards non-issue of quit notice, the Courts below have relied upon the judgment of the Supreme Court in D.Dhanapal Chettiar vs. Yesodai Ammal¹ in holding that in case of default in payment of rents by the tenant, it is not necessary for the landlord to issue quit notice under Section 106 of the Act. The learned counsel for the appellant has not disputed this legal position. In the light of the law laid down by the Supreme Court, the Courts below have rightly held that non-issue of quit notice under Section 106 of the Act did not affect the right of the respondent to seek eviction of the appellant.

¹ AIR 1979 SC 1745

7. For the aforementioned facts and circumstances of the case, I do not find any reason to interfere with the findings of the Courts below. The learned counsel for the appellant has requested for permission to his client to remain in possession in the subject premises for a reasonable period. Considering the fact that the appellant is running business in the subject premises, she is given four months time from today for vacating the same. She must file an affidavit before the trial Court within two weeks from today undertaking to handover possession of the subject premises on the expiry of four months from today. If such affidavit is not filed, the respondent shall be free to execute the decree for eviction.

8. Subject to the above directions, the Second Appeal is dismissed.

9. As a sequel to dismissal of the Second Appeal, S.A.M.P.No.361 of 2017 filed by the appellant for interim relief shall stand dismissed as infructuous.



C.V.NAGARJUNA REDDY, J

03rd March, 2017
GHN