

***THE HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN**

+ Second Appeal No.933 of 2017

% 01.09.2017

M/s. Padmaja Enterprises, represented by its
Proprietor A. Koteswara Rao, S/o Satyanarayana,

... Appellants

Vs.

Sri Vijayawada Gujarati Samaj, a registered society,
D.No.12-11-21, R.R. Appa Rao
Street, Vijayawada, represented by its Secretary,

... Respondents

! Counsel for petitioner: Sri K. Sai Rama Murthy

^ Counsel for respondent: Sri V. Subramanyam

< Gist:

> Head Note:

? Cases referred:



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

Hon'ble Mr. Justice V.RAMASUBRAMANIAN

Second Appeal No.933 of 2017

Between:

M/s. Padmaja Enterprises, represented by its
Proprietor A. Koteswara Rao, S/o Satyanarayana,
Hindu, aged about 52 years, Business,
R/o D.No.12-11-21, R.R. Appa Rao Street,
Vijayawada and another

... Appellants

Vs.

Sri Vijayawada Gujarati Samaj, a registered society,
D.No.12-11-21, R.R. Appa Rao
Street, Vijayawada, represented by its Secretary,
Navin S. Patel, S/o Shamji Bhai Patel,
C/o Patel Plywood, D.No.27-12-45, Ali Baig Street,
Governorpet, Vijayawada.

... Respondents

For Appellants : K. Si Rama Murthy,

For Respondent : V. Subramanyam

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN**Second Appeal No.933 of 2017****JUDGMENT:**

The defendants in a suit for possession and arrears of rent, have come up with the above second appeal raising the following substantial questions of law:

- 1) In the facts and circumstances of the case, whether the judgment and decree of the Appellate Court are not perverse and erroneous as contrary to settled legal principles regarding the burden of proof?
- 2) Whether in the facts and circumstances, the judgment and decree of the appellate Court are not liable to be set aside for wholly erroneous and perverse approach in deciding the case contrary to the settled legal propositions regarding burden of proof?
- 3) In the facts and circumstances of the case, whether the suit for eviction is not maintainable and whether the civil Court has no jurisdiction to entertain the suit?

2. Heard Mr. K. Sai Rama Murthy, learned counsel for the appellants. Mr. V. Subramanyam, learned counsel takes notice for the respondent.

3. The respondent herein filed a suit against the appellants for recovery of possession of the suit schedule shop portions and also for recovery of arrears of rent to the tune of Rs.87,680/- due up to 31-03-2008 and for damages @ Rs.14,460/- per month from 01-04-2008 till delivery of possession. In the written statement, the appellants/defendants admitted that the 2nd defendant took item-1 of

the plaint schedule property on lease on 23-10-1993; that item-2 of the plaint schedule property was taken on lease by the 1st defendant in the year 1994; that the proprietrix of the 1st defendant died in the year 2004, after which the 2nd defendant was running both the businesses; that an advance of Rs.20,000/- was paid by the 2nd defendant for item-1 and an advance of Rs.30,000/- was paid by the 1st defendant, at the time of inception of the tenancy; that the rent was enhanced periodically from time to time and as on the date of filing of the suit, the monthly rent was Rs.1,600/- for item-1 and Rs.1,900/- for item-2; that when the plaintiff demanded an additional advance of Rs.2.00 lakhs, the defendants expressed inability and the parties came to an understanding that in addition to the rent of Rs.3,500/- per month for both the shops, the defendants would pay an additional amount of Rs.3,500/-, to be treated as payment towards advance; that the actual rent for first shop was only Rs.1,600/- and the actual rent for the second shop was only Rs.1,900/- per month; that when the defendants offered the rent, the plaintiff intentionally refused to receive the rent and that since there are two different properties taken on lease by two entities, separate suits ought to have been filed in the appropriate Court.

4. On the basis of the pleadings, the trial Court framed the following issues:

- 1) Whether the plaintiff is entitled the vacant possession of the plaint schedule shop room premises?
- 2) Whether the plaintiff is entitled arrears of rent Rs.87,680/- up to 31-03-2008 from the defendants?

- 3) Whether the plaintiff is entitled for damages @ Rs.14,460/- per month from 01-04-2008 to till the date of vacation and delivery of vacant possession?
- 4) Whether the plaintiff is entitled for future damages and mesne profits?

5. The Secretary of the plaintiff, which is a society registered under the Societies Act, was examined as PW.1. He filed 9 documents as Exs.A.1 to A.9. On behalf of the defendants, the 2nd defendant examined himself as DW.1 and he examined a third party as DW.2. The rental receipts issued by the plaintiff were filed as Exs.B.1 to B.11.

6. On the basis of the evidence on record, the trial Court came to the conclusion that even admittedly there was a default in payment of rent and that the default was chronic. Therefore, the trial Court held on Issue No.1 that the plaintiff was entitled to vacant possession of the suit schedule property.

7. On issue No.2, the trial Court concluded that there was no evidence to show payment of advance money and that therefore, the arrears of rent to the extent of Rs.86,780/- stood proved. On issue No.3, the trial Court held that the plaintiff was entitled only to the agreed rent after 01-04-2008, but he will be entitled to the same only by filing a separate suit. As a consequence of the finding, the trial Court held on Issue No.4 that the plaintiff cannot recover future damages but can only recovery future rents by filing a separate suit.

8. In fine, the trial Court decreed the suit with costs directing the defendants to vacate and deliver vacant possession of the suit

properties and also to pay arrears of rent of Rs.87,680/- up to 31-03-2008. The prayer with regard to damages and future damages and mesne profits was rejected.

9. The appellants/defendants filed a regular appeal in A.S.No.150 of 2010 against the judgment and decree of the trial Court granting recovery of possession and recovery of arrears of rent. The plaintiff filed cross-objections with regard to the rejection of their claim for future damages. By a judgment and decree dated 31-01-2017, the first Appellate Court dismissed the appeal filed by the appellants herein and allowed the cross-objections filed by the plaintiff. Aggrieved by the said judgment and decree, the defendants are in second appeal.

10. Before the trial Court, the plaintiff filed four cheques issued by defendants towards rent, which were dishonoured, as Ex.A.1 series. The copy of the quit notice and the acknowledgment cards received from the defendants were filed as Exs.A.2 to A.4. The reply issued by the defendants was filed as Ex.A.7 and the rejoinder issued by the plaintiff was filed as Ex.A.8.

11. As I have pointed out earlier, the defendants filed 11 rental receipts as Exs.B.1 to B.11. The dates of these rental receipts are 22.04.2000, 22.04.2000, 03.06.2000, 03.06.2000, 10.07.2000, 10.07.2000, 31.08.2000, 31.08.2000, 17.08.2004, 17.08.2004 and 20.05.2006.

12. Therefore, the fact that the defendants were in default, was writ large on the face of the record and hence, the grant of

decree for recovery of possession was a natural corollary of the evidence on record. In such circumstances, when two Courts have come to the one and only conclusion that was possible namely that the defendants had committed default in payment of rent, the question of the findings being perverse does not arise. It must be remembered that the case did not arise under the Rent Control Act, for burdening the plaintiff with the obligation to prove supine indifference and callousness in the matter of payment of rent. It was a civil suit and the fact that the defendants were chronic defaulters, could be easily seen from the record. Hence, the first and second questions of law that the judgment and decree of the appellate Court are perverse, do not appeal to merit. Hence, they are answered against the appellants.

13. The third question of law is about the maintainability of the suit and the jurisdiction of the civil Court. The question of maintainability was raised as a very weak defence in the written statement. In the grounds of appeal, the appellants claimed that if the monthly rent of a property exceeds Rs.3,500/-, the Civil Court alone has jurisdiction. According to the appellants, the monthly rent was lesser than the said amount and hence, the plaintiff ought to have gone before the Rent Controller.

14. But the claim of the plaintiff in the suit was that the monthly rent was Rs.7,230/-. The arrears of rent was calculated only on the said basis. Therefore, the evidence on record was clear to the effect that the monthly rent exceeded the threshold limit prescribed by the

Rent Control Act, and hence, the third question of law is also to be answered against the appellants.

In view of the above, the second appeal deserves to be dismissed.

But the learned counsel for the appellants filed an affidavit pleading for a time of one year to vacate and handover the vacant possession and taking into account the objections raised by the learned counsel for the respondent, I deem it fit to grant time to the appellants up to 28-02-2018 for vacating and handing over the possession. This is subject to condition that the appellants shall pay all arrears of rent as ordered by the Court below and continue to pay the monthly rents till the date of vacation. If there is any advance paid by the appellants at the time of inception of the tenancy or thereafter and if there is a proof for the same, the same shall either be adjusted as against the arrears payable or shall be refunded/ returned at the time of vacating the premises. If the appellants commit any default in payment of monthly rents, the benefit of this order will not be available to him.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 01-09-2017

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