

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

C.C.C.A. No. 14 of 2017

JUDGMENT:

This appeal is arising out of the Judgment and Decree dated 29.09.2016 passed in O.S.No.670 of 2014 by the V Senior Civil Judge, City Civil Court, Hyderabad (for short, 'the trial Court'). The appellant herein is the plaintiff, and the respondent herein is the defendant, before the trial Court. For the sake of convenience, the parties will hereinafter be referred as they were arrayed before the trial Court.

2. The brief facts of the case are that the plaintiff-A. Dayanand filed a suit for eviction of the defendant from the premises bearing Municipal No.3-5-908/3, admeasuring 1732 sq.feet, Pooja Manor, First Floor, Block No.2 and 3, situated at Himayath Nagar Main Road, Hyderabad – 500 029, and also for past mesne profits at Rs.1,00,000/- per month from 01.05.2014 to 31.05.2014, and also future mesne profits at the same rate from the date of suit till date of delivery of vacant possession and for costs. It is averred in the plaint that the plaintiff is the owner of the suit schedule property which is given on lease to the defendant on a monthly rent of Rs.53,614/-, and the defendant is carrying on his Beauty Parlour business in the premises. The monthly rent of Rs.53,614/- is

exclusive of electricity charges, water charges and monthly maintenance charges of Rs.5,104/- payable to Pooja Manor Welfare Society. The defendant failed to pay monthly rent to the plaintiff from Feb 2014 onwards, and also failed to pay the maintenance charges to the Society from January 2013 onwards. The plaintiff issued a notice dated 07.04.2014 by registered post to the defendant terminating the tenancy and calling upon her to vacate the premises within 15 days from the date of receipt of the notice. The defendant issued a reply notice dated 16.04.2016 to the plaintiff making false allegations. Aggrieved thereby, the plaintiff filed the suit.

The defendant filed a written statement denying the averments made by the plaintiff in the plaint. The defendant contended that she had taken the plaint schedule property on lease from the brother of the plaintiff by name Venkat Rao, and the plaintiff under a Lease Deed dated 04.09.2004, and that they assured her that they would not disturb the tenancy for a period of 15 years. It is further averred by the defendant in her written statement that at the time of taking the premises on lease, the premises was a semi-finished property, and as she got assurance from the plaintiff and his brother that they would not disturb the tenancy for 15 years, she constructed internal walls, and also did plastering, laid vitrified tiles and also carried out several civil and

electrical works by spending an amount of Rs.28,00,000/-. The defendant further averred that though there are no disputes with the brother of the plaintiff, the plaintiff with the sole intention to harass the defendant started avoiding collecting monthly rent cheques to brand the defendant as a defaulter. It is also averred that if she is evicted from the premises in question, she would suffer huge loss in relocating and re-establishing the business elsewhere. Therefore, she prayed to dismiss the suit.

The trial Court has dismissed the suit mainly on the ground that the Lease Agreement executed between the plaintiff and defendant in respect of the suit schedule property was an un-registered agreement, and PW1 stated in his cross examination that there is a Clause No.5(b) at Page 4 of the Lease Deed to the effect that for termination of lease of the defendant, a notice of 365 days is necessary. It is further observed by the trial Court that in view of the admission of PW1, a notice stipulating 365 days time for termination of lease is required and as it was not complied with, the suit was not maintainable.

3. On considering the judgment of the trial Court, it is obvious that the trial Court had taken the admission made by PW1 in his cross-examination with regard to the recital in the un-registered lease deed which is not filed before the trial Court. Clause 5(b)

was referred to in the lease deed which stipulates that a notice of 365 days is to be given before termination of lease. The trial Court, basing on Clause 5(b) has arrived at the conclusion that since notice as per the terms stipulated under Clause 5(b) of the lease deed was not issued, dismissed the suit.

4. Learned counsel for the plaintiff submits that as per Section 106 of the Transfer of Property Act, a notice period of 15 days is sufficient for termination of lease in respect of the premises in question. He further submits that the trial Court has erred in placing reliance on the alleged lease deed and observed that the plaintiff has not complied with Clause (b) of the lease deed, which stipulated a notice period of 365 days for termination of lease, when the lease deed itself was not filed and marked in evidence before the trial Court.

5. Learned counsel for the defendant submits that the trial Court has rightly dismissed the suit as the plaintiff failed to comply with the condition in Clause 5(b) of the lease deed which stipulated a notice period of 365 days for termination of lease. He further submits that the defendant may be given opportunity to mark the lease deed document as exhibit and, therefore, requested the Court to remit the matter back to the trial Court to

enable him to file the written lease deed and adduce his evidence before the trial Court.

6. Learned counsel for the plaintiff states no objection to remit the matter to the trial Court to give opportunity to the respondent to file the written lease deed basing on which the suit was dismissed by the trial Court.

7. In the light of the submissions made by both the learned counsel, the matter is remitted to the trial Court with a direction to permit the defendant to adduce his evidence for marking of the lease deed. The trial Court is further directed to dispose of the suit within three months, in accordance with law, after affording fair opportunity to both sides for adducing evidence, if any. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

03rd November, 2017

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THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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