

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.371 OF 2017

JUDGMENT:

This Second Appeal is filed under Section 100 of C.P.C., by the defendant assailing the decree and judgment dated 16.02.2017 in A.S.No.63 of 2015 on the file of the Court of the XII Additional District and Sessions Judge, Vijayawada, wherein and whereby the decree and judgment dated 06.02.2015 in O.S.No.266 of 2014 on the file of the Court of the II Additional Junior Civil Judge, Vijayawada, decreeing the suit in part in favour of the plaintiff, was confirmed.

2. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

3. The facts leading to filing of the present appeal are briefly as follows: Initially the defendant took western shop for running a hotel on a monthly rent of Rs.3,600/- excluding electricity charges. The tenancy was month to month. Few days thereafter, the defendant again took the eastern side shop adjoining to the previous shop on a monthly rent of Rs.3,600/-, for the same purpose. A rental agreement was executed by both parties for both the shops and the plaintiff received security deposit of Rs.21,600/- for each shop. Later, it was converted into a digital shop by removing the wall in between two shops without obtaining prior permission from the plaintiff. At present, the defendant is carrying on business under the name and style of "Hanuman Digitals" in the suit schedule property, on a monthly rent of Rs.7,000/- excluding electricity charges. On coming to know the conversion of

business by the defendant, the plaintiff requested the defendant to vacate the suit schedule property on the ground that he violated the terms and conditions of the agreement executed between them. Then the defendant promised to vacate the same within a period of three to four months. Later, the defendant instead of vacating the suit schedule property he sent a draft for Rs.28,000/- to the plaintiff towards part payment of outstanding rent. The defendant agreed to pay Rs.7,000/- per month towards rent of the suit schedule property. The defendant committed default in payment of rent from November, 2013 onwards; therefore, the plaintiff got issued a quit notice dated 19.02.2014 by terminating the tenancy and giving 15 days time to the defendant to vacate the suit schedule property. The defendant got issued a reply notice dated 05.03.2014 with false and frivolous allegations. After issuance of quit notice, the defendant sent a Demand Draft for Rs.7,200/- on 08.03.2014 with an endorsement that the said amount is towards rent for the month of March, 2014. Hence, the suit.

4. The defendant filed written statement admitting the jural relationship of landlord and tenant between the plaintiff and him. It is further contended that he took two shops of the plaintiff on a monthly rent of Rs.3,500/- each and entered into an unregistered lease agreement on respective dates for a period of three years. The rent is being paid at Rs.3,500/- for each portion, but the plaintiff prepared the lease agreement for Rs.3,600/-. The plaintiff is accepting the rent at Rs.3,500/- excluding electricity charges and issued receipts even though the rent was mentioned at Rs.3,600/- in the agreement. The plaintiff agreed to extend the lease period for a period of ten years on the same rent and has

been received the demand drafts at Rs.7,000/- even after expiry of the lease period. The defendant has invested an amount of Rs.5,00,000/- for decoration of the shop. The subsisting rent between both parties is Rs.3,500/- per month for each shop. The plaintiff has to file two separate petitions in the Rent Controller Court. The Civil Court has no jurisdiction to entertain the suit as the prevailing rent is Rs.3,500/- per month. The notice issued under Section 106 of the Transfer of Property Act (for short, 'the Act') is not a valid one as the defendant running a manufacturing unit in the schedule property. Hence, the suit is liable to be dismissed.

5. Basing on the above pleadings, the trial Court framed the following issues:

- i) Whether the plaintiff is entitled to evict the defendant from the suit schedule property and for vacant possession of the same?
- ii) Whether the plaintiff is entitled for the arrears of rent from the defendant to a tune of Rs.14,000/-?
- iii) Whether the plaintiff is entitled for the damages for illegal use and occupation of suit schedule premises to a tune of Rs.20,000/- per month?
- iv) To what relief?

6. Before the trial Court, to substantiate the case, the plaintiff examined himself as PW.1 and got marked Exs.A.1 to A.6. To demolish the case of the plaintiff, the defendant examined himself as DW.1 besides examining DWs.2 and 3 on his behalf and got marked Exs.B.1 to B.6 to prove that the defendant was in possession of the suit schedule property.

7. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the Civil Court has got jurisdiction to entertain the suit and the notice

issued under Section 106 of the Act is a valid one. The trial Court decreed the suit in favour of the plaintiff directing the defendant to handover the vacant possession of suit schedule property to the plaintiff within three months, failing which, the plaintiff is at liberty to take steps according to law and further the defendant is directed to pay the damages at Rs.14,000 per month from the date of quit notice till the date of eviction by the defendant. So far as the arrears of rent is concerned, the trial Court dismissed the suit. Feeling aggrieved by the decree and judgment in O.S.No.266 of 2014, the defendant preferred A.S.No.63 of 2015 on the file of the Court of the XII Additional District and Sessions Judge, Vijayawada. The first appellate Court, after reappraising the oral and documentary evidence available on record, without being influenced by the findings of the trial Court, arrived at a conclusion that the Civil Court has got jurisdiction to entertain the suit and dismissed the appeal. Hence, the present second appeal.

8. Heard the learned counsel for the appellant-defendant and the learned counsel for the respondent-plaintiff.

9. Basing on the submissions made by the learned counsel for both parties, the questions of law that arise in this second appeal are as follows:

1. Whether the Civil Court has got jurisdiction to entertain the suit? and
2. Whether the notice issued under Section 106 of the Act is a valid one?

10. Point Nos.1 and 2 are interlinked with each other; hence, this Court is inclined to address both the points simultaneously in order to avoid recapitulation of facts and evidence.

11. The following admitted facts can be culled out from the pleadings of both parties: The plaintiff is the owner of two rooms with shutters in the ground floor of the building bearing Door No.26-3-19/1, situated in the corner of Rama Rao Street, Nageswara Rao Pantul Road, Gandhinagar, Vijayawada. The plaintiff let out two shops to the defendant on 03.11.2009 and 20.11.2009 respectively for a period of three years for running a hotel on a monthly rent of Rs.3,600/- for each shop under the rental agreements Exs.B.1 and B.2. After expiry of the lease period, the defendant agreed to pay rent of Rs.7,000/- per month to the plaintiff. The defendant demolished the wall in between the two shops and started printing business. The plaintiff got issued a notice dated 19.02.2014 (Ex.A.1) directing the defendant to vacate the suit schedule property. The defendant got issued a reply notice dated 05.03.2014 (Ex.A.3). In spite of the legal notice, the defendant did not vacate the suit schedule property.

12. The trial Court as well as the first appellate Court concurrently held that the defendant has taken two shops as a single tenement on a monthly rent of Rs.7,000/-. A perusal of the record reveals that the defendant paid rent at the rate of Rs.7,000/- per month. Initially, the defendant has taken the suit schedule property for the purpose of running a hotel; thereafter, he demolished the wall and made two rooms as one room and paying rent of Rs.7,000/- per month. As rightly pointed out by the learned counsel for the appellant-defendant, if the rent paid by the defendant is Rs.3,500/-, undoubtedly the Civil Court has no jurisdiction to entertain the suit. In the instant case, after expiry of the original lease period, the defendant has been paying rent of

Rs.7,000/- per month as a single tenement. It is needless to say that admitted facts need not be proved. The defendant himself in unequivocal terms admitted that he has been paying the rent of Rs.7,000/- treating both rooms as a single unit. In such circumstances, I am unable to accede to the contention of the learned counsel for the appellant that the rent for each shop is Rs.3,500/- per month. As on the date of filing of the suit, two rooms were converted into single room and paying rent of Rs.7,000/- per month. The trial Court as well as the first appellate Court, after considering the oral and documentary evidence available on record, arrived at a right conclusion that the agreed rent between the parties is Rs.7,000/- per month. The findings recorded by the Courts below are supported by oral and documentary evidence. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the appellant-defendant that the Civil Court has no jurisdiction to entertain the suit.

13. The next contention of the learned counsel for the appellant-defendant is that Ex.A.1 notice is not in accordance with law.

14. The plaintiff got issued Ex.A.1 notice on 19.02.2014 directing the defendant to vacate the premises within 15 days from the date of receipt of the notice. A perusal of Ex.A.2 postal acknowledgment reveals that the defendant received the legal notice on 21.02.2014. It is not in dispute that the plaintiff filed the suit on 19.03.2014. In order to appreciate the contention of the learned counsel for the appellant, it is not out of place to extract hereunder Sub-Section (3) of Section 106 of the Act:

106. Duration of certain leases in absence of written contract or local usage:-

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.”

15. In view of Sub-Section (3) of Section 106 of the Act, Ex.A.1 notice cannot be treated as an invalid one. Admittedly, the plaintiff filed the suit after expiry of 15 days time from the date of receipt of the notice by the defendant. The defendant has taken a plea in the written statement that the plaintiff ought to have given at least six months’ notice. As per the testimony of DW.1 (the defendant), he has not been carrying on any manufacturing unit in the suit schedule property. He himself admitted that the lease is for month to month. In such circumstances, there is no necessity for the plaintiff to give six months’ notice to the defendant. If lease is month to month, 15 days notice is sufficient as contemplated under Section 106 of the Act. The Courts below, after considering the material available on record, arrived at a conclusion that Ex.A.1 notice satisfied the ingredients of Section 106 of the Act. I am fully agreeing with the findings recorded by the Courts below on this aspect. Having regard to the facts and circumstances of the case, I am of the considered view that Ex.A.1 notice is a valid one and the same is binding on the defendant.

16. In **Municipal Committee, Hoshiarpur v. Punjab SEB**¹, while dealing with the scope of Section 100 of C.P.C., the Hon’ble apex Court held at paragraph No.16 as follows:

16. A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial

¹ (2010) 13 SCC 216

question of fact. The court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC.

17. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the questions of law urged by the learned counsel for the appellant will not fall within the ambit of Section 100 of C.P.C. There is no question of law much less substantial question of law is involved in this appeal.

18. In the result, the Second Appeal is dismissed at the stage of admission. Taking into consideration the facts and circumstances of the case, the defendant is hereby directed to vacate and handover the suit schedule property to the plaintiff within four (4) months from today. If the defendant fails to handover the property to the plaintiff within the time stipulated above, the plaintiff can proceed in accordance with law. There shall be no order as to costs. Consequently, Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

T. SUNIL CHOWDARY, J

Date: 14.11.2017
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