

**HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA**

**SECOND APPEAL No.629 OF 2017**

**JUDGMENT:**

The defendant viz., Mohd. Haneef is the appellant in the present second appeal. He suffered decree when the suit in O.S.No.634 of 2011 on the file of III Senior Civil Judge, City Civil Court, Secunderabad, was allowed on 15.09.2014 and became unsuccessful in regular first appeal in A.S. No.83 of 2014 on the file of XXVII Additional Chief Judge, City Civil Court, at Secunderabad, as it was dismissed by the judgment and decree dated 17.02.2017, confirming the judgment and decree passed by the trial Court. Aggrieved over the same, he preferred the present Second Appeal against the sole respondent - plaintiff viz., V.M. Vinod Kumar.

2. Heard Sri G. Vasantha Rayudu, learned counsel for the appellant - defendant, and Sri D. Madhava Rao, learned counsel for the respondent - plaintiff, and perused the material on record.

3. For the sake of convenience, the parties are referred to as they arrayed before the trial Court.

4. The fact-situation is that the defendant was inducted into possession of a *mulgi* situated at Sarojini Devi Road, Secunderabad, under a rental agreement dated 30.11.1998 for a period of eleven (11) months and the plaintiff issued notice under Section 106 of the Transfer of Property Act, 1882 (for short 'TP Act') on 11.11.2011

calling upon the defendant to vacate the premises by 01.12.2011 and collect interest free deposit lying with the plaintiff, but the defendant got issued a reply with incorrect allegations and the plaintiff even sought damages at Rs.200/- per square feet for use and occupation of the *mulgi* on determination of the lease. The defendant, of course, denied occupying the *mulgi* by virtue of the rental agreement dated 30.11.1998, but, according to him, the tenancy commenced from 01.10.1999, under a rental agreement which was for eleven (11) months subject to further extension and that the extent of the property was around 300 square feet and the present rent paid by him, on the date of suit, was at Rs.4,000/- per month excluding electricity charges. Thus, the defendant denied the rental agreement dated 30.11.1998, but sets up rental agreement dated 01.10.1999. His yet another stand is that the plaintiff demanded rent at the rate of Rs.75,000/- per month and expressing his incapacity to pay huge rents and also alleging that the notice under Section 106 of the TP Act issued by the plaintiff is defective, sought to dismiss the suit.

5. The trial Court framed the following four (4) issues during trial.

- “1. Whether notice issued U/Sec. 106 of Transfer of Property Act is in accordance with law ?
2. Whether the plaintiff is entitled for possession of property ?
3. Whether the plaintiff is entitled for mesne profits ?
4. To what relief?”

6. The plaintiff examined himself as PW.1 and marked Exs.A-1 to A-4, whereas the defendant examined himself as DW.1 and no documents have been marked on his behalf.

7. The learned trial Court appreciated the evidence on record and observing that by virtue of the amendment introduced to Section 17 of the Registration Act, where the rental agreement irrespective of lease is compulsorily registerable and holding that the lease, therefore, be treated as from month to month placing reliance on the ruling in **V. Sita Rama Swamy v. Allam Ugranarasimha** [1982 AP 454], found that Ex.A-1 legal notice under Section 106 of the TP Act is not defective and it is in accordance with the mandatory requirement of Section 106 of the TP Act, and, thus, while upholding the quit notice to maintain the suit for eviction and possession on the ground that the lease was duly determined and also holding that even by efflux of time as per Section 111(a) of the TP Act, the defendant has to vacate the premises and accordingly, decreed the suit, but, however, it was held that the plaintiff is entitled to damages by way of *mesne* profits from 01.12.2011 onwards till the defendant delivers possession of the leased premises and gave liberty to file a separate application for determination of *mesne* profits, postponing the same under Order XX Rule -12 of the Code of Civil Procedure, 1908.

8. The aforesaid judgment and decree were challenged in A.S. No.83 of 2014 by the defendant. The first appellate Court having referred to the grounds of appeal in paragraph No.8, formulated the

point for consideration, which is a comprehensive one, and, of course, the second point is 'to what relief' to which the defendant was entitled to?

9. The first appellate Court has taken up initially, the ground as to whether Ex.A-1 quit notice is really defective and contrary to the provisions of the TP Act as agitated by the defendant and on appreciation of evidence, observed that, though, the defendant has taken a plea that the notice is defective and not in accordance with law and he has also taken yet another plea that at the time of joining premises, the plaintiff took refundable advance of Rs.1,00,000/-, but the same was suppressed by the plaintiff and on account of material suppression, he is not under obligation to vacate, and understanding was that the lease would continue for twenty (20) years and invested huge amount in the business and, thereafter, referred to Exs.A-1 to A-4 as well as the evidence of PWs.1 and 2, observing that Ex.A-1 constitutes vital role as it contains that the lease would be determined from 30.11.2011 and since got mentioned in Ex.A-1 that he would terminate the lease on 30.11.2011 and required the defendant to vacate the premises by 01.12.2011; the learned first appellate Court held that the notice under Section 106 of the TP Act is in due compliance of the requirements for the reason that the lease has to be construed from month to month as the rental agreement is an unregistered one and, therefore, the notice under Ex.A-1 does not suffer from any defect as

sought to be projected by the defendant and thereby, dismissed the appeal confirming the judgment and decree passed by the trial Court.

10. In the present Second Appeal, the very same plea has been raised as substantial question of law in paragraph No.8 of the grounds of appeal. It reads thus:

“8. The following are the substantial questions of law that would arise for consideration before the Hon’ble Court in the above appeal.

a) Whether the courts below have appreciated the oral evidence of the witnesses to find out the truth and without considering the same the courts below can render the judgment basing on the document alone.

b) Whether the finding of the lower court that there is no need to issue a quit notice to maintain a suit for eviction under Section 106 of T.P. Act,

c) Whether the finding of the lower appellate court that the refundable amount of deposit can be adjusted as mesne profit without determination of the same is an accordance with law and appreciation of facts and law.”

11. The learned counsel for the appellant has also placed reliance on the decision of the Hon’ble Surpeme Court in **Satish Chand Makhan v. Govardhan Das Byas**<sup>1</sup> for the proposition that the lease in occupation of property after expiry of lease is tenant

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<sup>1</sup> AIR 1984 SC 143

holding over and suit for ejectment without notice to quit under Section 106 of the TP Act.

12. It is not in dispute that the rental agreement is an unregistered one. Therefore, the tenancy assumes the character of month to month tenancy, in which case, 15 days advance notice terminating the tenancy is required. In this case, Ex.A-1 notice was issued on 04.11.2011 and the defendant was required to vacate the premises by 01.12.2011 and contents of the notice as discussed by the Court below consistently would rule out the contention of the learned counsel for the defendant that the quit notice under Section 106 of the TP Act is defective, without assigning any reason as to how it becomes defective.

13. The decision relied on by the learned counsel in **Satish Chand Makhan**<sup>2</sup> was rendered in the context of whether quit notice under Section 106 of the Act was not at all issued.

14. Such is not the fact-situation in the present case. In the present case, Ex.A-1 is specific, complying the mandatory requirement of Section 106 of the TP Act. There is no merit in the submission made by the learned counsel for the defendant that the notice to quit issued under Section 106 of the TP Act is defective.

15. The other stand taken by the defendant that there was a different rental agreement dated 01.10.1999 and it was for a period of

eleven (11) months is also without any substantiation. Nothing is forthcoming to show that such an agreement was entered into by legally acceptable evidence on record.

16. Therefore, it is difficult to hold that the findings recorded by the Courts below are patently perverse or illegal. Thus, there is no merit in the present appeal.

17. Therefore, the Second Appeal fails and is dismissed at the admission stage itself.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

**July 27, 2017.**  
**PV**

**A. SHANKAR NARAYANA, J**

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<sup>2</sup> AIR 1984 SC 143