

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.739 of 2015

JUDGMENT:

This second appeal is filed by the defendants, under Section 100 of CPC, assailing the decree and judgment dated 29.6.2015 in A.S.No.181 of 2011 on the file of the Court of XXIV Additional Chief Judge, City Civil Courts at Hyderabad, wherein and whereby the decree and judgment dated 21.4.2011 in O.S.No.884 of 2008 on the file of the Court of XX Junior Civil Judge, City Civil Court, Hyderabad decreeing the suit filed for recovery of possession of suit schedule property, was confirmed.

2. Heard the learned counsel for the appellants and the learned counsel for the respondents.

3. The appellants are the defendants and the respondents are the plaintiffs. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the trial Court.

4. The contention of the defendants is that the rent of the suit schedule property is Rs.2,000/- per month; therefore, the civil court has no jurisdiction to entertain the suit. The contention of the plaintiffs is that the rent of the suit schedule property is Rs.6,000/- per month; therefore, the civil court has got jurisdiction to entertain the suit. If the rent of the suit schedule property is Rs.2,000/- per month, the civil court has no jurisdiction to entertain the suit. On the other hand, if the rent of the suit schedule property is Rs.6,000/- per month, the civil court has got jurisdiction. Unfortunately, the quantum of rent for the suit schedule property is not decided either by the trial court or by the first appellate court. Maintainability of the suit depends upon the

quantum of rent. The trial court has not given specific finding with regard to the agreed rent between the parties. The first appellate court also has not considered this aspect and simply dismissed the appeal. Without deciding the agreed rent, it is not possible for this Court to decide whether the civil court has jurisdiction to entertain the suit or not.

5. At the time of hearing, learned counsel for both the parties, in one voice, submitted that judgment of the first appellate court may be set aside and the matter may be remanded to the first appellate court to decide the agreed rent of the suit schedule property.

6. In view of the submissions made by both the counsel, this court is of considered view that it is a fit case to remand the matter to the first appellate court to decide the above point.

7. In the result, the second appeal is allowed, setting aside the decree and judgment dated 29.6.2015 in A.S.No.181 of 2011 on the file of the Court of XXIV Additional Chief Judge, City Civil Courts at Hyderabad. The matter is remanded to the first appellate court to decide the quantum of rent for the suit schedule property basing on the oral and documentary evidence available on record. The first appellate court is further directed to decide the above point and consequently the appeal, in accordance with law, within a period of three months from the date of receipt of a copy of this order, without seeking any extension of time. Miscellaneous petitions if any pending in this second appeal shall stand closed.

T.SUNIL CHOWDARY, J

December 13, 2017.
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