

THE HONOURABLE SRI JUSTICE RAJA ELANGO

SECOND APPEAL No.232 OF 2017

JUDGMENT:

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908, is directed against the judgment and decree, dated 07.02.2017, in A.S.No.63 of 2014 on the file of the VI Additional District Judge, Kakinada whereunder and whereby, the learned District Judge dismissed the appeal filed by the defendant against the judgment and decree, dated 17.04.2014, in O.S.No.318 of 2012 on the file of the Principal Senior Civil Judge, Kakinada.

2. For better appreciation of facts, the parties will be hereinafter, referred to as they were arrayed before the trial Court.

3. The brief averments in the plaint are that the plaintiff is the admitted owner of the suit schedule property which bears D.No.28-1-2 situated at Main Road, Kakinada and the said property was leased out to the defendant on a monthly rent of Rs.6,200/-, which is payable by 5th of every succeeding month and the tenancy is month to month. The defendant is irregular in payment of rents. The defendant filed suit in O.S.No.35 of 2012 on the file of the I Additional Junior Civil Judge, Kakinada for permanent injunction not to dispossess her without following the due process of law. The plaintiff got issued a legal notice on 05.03.2012 terminating the tenancy of defendant by the end of March, 2012 and claimed damages for use and occupation at Rs.30,000/- per month. Having received the notice, the defendant issued a reply with false allegations. When the landlord and

tenant relationship was strained, the plaintiff was constrained to file the suit for eviction.

4. The defendant got filed a written statement before the trial Court denying the case of the plaintiff. The case of the defendant, in brief, as per the averments in the written statement, is that the suit is not maintainable either in law or on facts. The defendant contended that the plaint schedule property is situated in ground floor and the said premises was taken on lease by her from the year 2003 and running business of selling bags under the name and style of "M/s.Sri Venkateswara Classic Bag House" on a monthly rent of Rs.6,200/- and the said lease is oral. The defendant is paying rents regularly without committing default and when the plaintiff tried to dispossess her high handedly by interfering with the peaceful possession and enjoyment of the plaint schedule property, she has no option except to file suit in O.S.No.35 of 2012 for injunction not to dispossess her without following the due process of law. Further, it is averred that at the time of commencement of lease, defendant paid an advance of Rs.80,000/-. The plaintiff is not in the habit of passing receipts for the rents received by him to overcome income tax liability and he noted the same in the note book maintained by the defendant. The defendant used to pay property tax for the said premises on the request made by the plaintiff and adjust the same in the rents. Further, it is averred that in the first week of November, 2011, the defendant approached the plaintiff for payment of monthly rent for October, 2011 and the plaintiff demanded to enhance rent at Rs.15,000/- per month. When the defendant expressed her inability on the ground that her business is not fetching and she

has no such income, the plaintiff threatened the defendant with dire consequences that if she failed to pay the enhanced rent as demanded by him, she has to face consequences of forcible eviction from the plaint schedule property. After filing of suit in O.S.No.35 of 2012, the plaintiff got issued a notice with false allegations and she issued reply with true facts. The defendant, being lady, is running business with great difficulty and the plaintiff is causing inconvenience. It is further averred that the plaintiff is a rich person having residential and commercial buildings in and around Kakinada. When the defendant failed to pay the enhanced rents as demanded, the plaintiff got filed suit for eviction in order to let out the premises to third parties for higher rents, as such the plaintiff is not entitled for eviction and damages for use and occupation of premises and the suit is liable to be dismissed.

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

“1. Whether the plaintiff is entitled for eviction as prayed for?

2. Whether the defendants are liable to pay the damages?

3. To what relief?”

6. During trial, on behalf of the plaintiff, P.W.1 was examined and Exs.A-1 to A-4 were got marked. On behalf of the defendant, D.Ws.1 and 2 were examined and no documents were got marked.

7. The trial Court, after full trial and hearing both sides, partly decreed the suit with proportionate costs directing the defendant to vacate the plaint schedule property and deliver vacant possession of the same to the plaintiff within three months from the date of

that judgment and dismissed the claim of damages of Rs.30,000/-. Aggrieved by the said judgment, the unsuccessful defendant filed A.S.No.63 of 2014 on the file of the VI Additional District Judge, Kakinada and the same was dismissed without costs confirming the judgment and decree, dated 17.04.2014, in O.S.No.318 of 2012 on the file of the Principal Senior Civil Judge, Kakinada. Challenging the same, the defendant preferred this Second Appeal.

8. On proper appreciation of the entire evidence on record, the trial Court partly allowed the suit and the same was rightly confirmed by the first appellate Court. In view of the concurrent findings of both the Courts below, this Court is not inclined to interfere with the impugned judgment and the Second Appeal is liable to be dismissed. However, taking into consideration of the fact that the defendant is doing business of selling bags in the said premises since two decades and the learned counsel for the defendant also confined his arguments only to the extent of seeking time to the defendant to vacate the subject premises, this Court is of the view that some time may be granted to the defendant to vacate the subject premises.

9. In the result, the Second Appeal is dismissed without costs by confirming the judgment and decree, dated 07.02.2017, in A.S.No.63 of 2014 on the file of the VI Additional District Judge, Kakinada. The appellant/defendant is hereby directed to vacate the subject premises on or before 20.12.2017.

10. Miscellaneous petitions pending, if any, in this Second Appeal shall stand closed.

JUSTICE RAJA ELANGO

06.04.2017
AMD



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Date: 06.04.2017

AMD