

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

SECOND APPEAL No.710 of 2016

JUDGMENT:

The present Second Appeal is preferred under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 04.04.2016 in A.S.No.141 of 2015 on the file of the II-Additional District Judge, Vijayawada, confirming the decree and judgment dated 28.04.2015 in O.S.No.339 of 2012 on the file of the III-Additional Senior Civil Judge, Vijayawada.

The defendant in the aforesaid O.S is the appellant herein. He preferred the present appeal mainly contending that the Courts below committed error in applying the provisions of Section 106 of the Transfer of Property Act, 1882, with regard to issuance of statutory notice, as could be seen from the second ground which is now shown as the substantial question of law among other questions.

Heard Sri K.R.Sasidharan Nair, learned counsel for the appellant, and Smt. A.Anasuya, learned counsel for the respondents.

Learned counsel for the appellant would fairly submit that the appellant has no case to resist the reliefs of eviction and delivery of possession of the suit schedule property. However, in regard to the future damages awarded by the Courts below, the learned counsel intended to submit that the trial Court went wrong in recording that DW.2 made a specific admission that the prevailing rental value in the area is Rs.10/- per square feet and such admission is not at all finding

place in the cross-examination of DW.2 and, of course, he has also drawn the attention of this Court to the cross-examination of DW.2.

What has been said by the learned counsel for the appellant is true. But, however, when a probe is made whether such admission was made by DW.1 and whether the trial Court went wrong in mentioning the witness 'DW.2' instead of 'DW.1', it is to be found that DW.1, the Managing Partner of the defendant Firm, made a categorical admission in his cross-examination stating thus:

“It is true that in the above suit I deposed the rent prevailing in the said area is Rs.10/- per square feet.”

Therefore, the findings recorded by the trial Court in paragraphs '15' and '16' cannot be viewed as patently illegal. Of Course, the appellate Court has confirmed it.

Learned counsel for the appellant, however, makes yet another submission that so far as the future damages are concerned, an independent enquiry ought to be held by making an application there for by the respondents, which is disputed by the learned counsel for the respondents.

It is to be stated that when there is a definite admission by no other than DW.1, who is the Managing Partner of the defendant - appellant herein, absolutely there is nothing to go for any further probe by way of independent enquiry subjecting the parties to undergo the rigour of the procedural wrangles. Therefore, the findings recorded by the Courts below cannot be viewed as patently perverse

warranting interference. There is no question of law involved, much less substantial question of law, as sought to be projected.

Hence, the Second Appeal is dismissed at the admission stage itself.

Miscellaneous applications, if any, pending in the present Second Appeal, stand closed.

JUSTICE A.SHANKAR NARAYANA

26.07.2017
v v

