

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

SECOND APPEAL No.98 of 2013

JUDGMENT:

This Second Appeal is preferred by the appellants/defendants aggrieved by the judgment dated 21-11-2012 in A.S.No.16 of 2012 whereunder the learned II Additional District Judge, Ranga Reddy District confirmed the judgment dated 29-11-2011 in O.S.No.2124 of 2007 passed by the II Additional Senior Civil Judge, Ranga Reddy District.

Suit O.S.No.2124 of 2007 is filed by the respondents/plaintiffs seeking eviction of the appellants/defendants from the plaint schedule premises and for arrears of rent of Rs.1,08,000/- and also for mesne profits.

The plaintiffs case is that the wife of first plaintiff purchased 400 square yards of site under a registered sale deed dated 18-2-1992 and she constructed a building in the year 2000 and let out the same to 1st respondent/1st defendant in December, 2002 on a monthly rent of Rs.3,000/-. The lease was oral. On 26-5-2004, the wife of 1st plaintiff died and property was succeeded by first plaintiff, his son Balakrishna and daughter and with their consent, first plaintiff executed a registered agreement of sale-cum-GPA in favour of 2nd respondent/2nd plaintiff on 11-10-2006. It was the further case of the plaintiffs that from December, 2003, D.1 became a defaulter in payment of rents and in spite of requests, he did not pay the amount. Hence, a quit notice dated 31-7-2007 was issued to the defendants terminating the lease with effect from 31-8-2007.

Both the defendants gave separate replies with incorrect averments. Hence, the suit.

1st appellant/1st defendant filed written statement with averments that 1st appellant/1st defendant filed O.S.No.3208 of 2006 with false averments that the monthly rent was Rs.1500/- but not Rs.3,000/-; and the rent was paid upto November, 2006; thereafter, the 1st respondent/1st plaintiff refused to receive rents; at one point of time, Hymavathi offered to sell the property to 1st respondent/1st defendant and the same could not be materialized. When the respondents/plaintiffs tried to intervene with his possession, he was obliged to file suit O.S.No.3208 of 2006 for injunction.

2nd appellant/2nd defendant filed a separate written statement in the same lines as that of his father i.e., 1st appellant/1st defendant..

The trial court framed the following issues.

1. *Whether the plaintiff is entitled for the relief to direct the defendant to vacate and hand over the suit property?*
2. *Whether the plaintiff is entitled for the relief to direct the defendant to pay a sum of Rs.1,08,800/-towards the arrears?*
3. *Whether the plaintiff is entitled to claim interest @ 18% per annum from the date of suit till the date of realization on the arrears of rent?*
4. *Whether the plaintiff is entitled for the relief to direct the defendants to pay the past mesne profits of Rs.5,000/- from 1-9-2007 from the date of suit till realization?*
5. *Whether the plaintiff is entitled for the relief to direct the defendants to pay a sum of Rs.5,000/- per month as future*

mesne profits from the date of suit till the date of realization?

6. *To what relief?*

During trial, P.Ws.1 to 3 were examined and Exs.A.1 to 21 were marked on behalf of plaintiffs and D.W.1 was examined and Exs.B.1 to B.3 were marked on behalf of defendants.

As far as issue No.1 is concerned, the trial court, having regard to the oral and documentary evidence, has observed that the property admittedly belongs to Hymavathi and after her death, the respondents/plaintiffs who are her Class-I heirs succeeded the same and 1st respondent/first plaintiff with the consent of his children executed a G.P.A.-Cum-agreement of sale in favour of 2nd respondent/2nd plaintiff and the same can not be questioned by the appellants/defendants who are only tenants and they are estopped to contend the title of the respondents/plaintiffs under Section 116 of the Indian evidence Act. With regard to arguments that Civil Court has no jurisdiction and matter has to be filed before the Rent Controller, the trial court observed that I.A.No.513 of 2011 filed by D.1 for rejection of plaint under Order VII Rule 11 C.P.C. was dismissed by a reasoned order dated 20-9-2011 holding that the jurisdiction of the civil court was not barred in view of Section 32 (B) of A.P.(Lease, Rent and Eviction) Control Act, 1960, as the schedule building was constructed in the year 2000 and the provisions of the Rent Control Act have had no application for a period of 15 years from the date of construction and therefore, the

Rent Control Act had no application to the suit schedule property till the year 2015.

The trial court further observed that under Ex.A.6 quit notice dated 31-7-2007, the respondents/plaintiffs notified the appellants/defendants that tenancy in their favour should be terminated on 31-8-2007 and demanded delivery of possession of the plaint schedule property to them by 1-9-2007. Both the appellants/defendants admitted to have received the notice. Hence, a valid quit notice issued. Thus, the trial court held the first issue in favour of the plaintiffs.

Regarding issues 2 and 3, i.e., with regard to the entitlement of the plaintiffs to receive the arrears of rent and the rate of interest, the trial court observed that in the suit filed by D.1 in O.S.No.3108 of 2006 which was transferred and re-numbered as O.S.No.2590 of 2008, the defendants contended that the monthly rent was Rs.1500/- but not Rs.3,000/-. The trial court observed that admittedly, there was no written lease deed and there was no practice of passing receipts on payment of rents. In those circumstances, as there were no documents or any special circumstances to find out what was the agreed rate of rents, trial court held the monthly rent of Rs.1500/- was appropriate. It further held that as per the evidence of P.W.1, rents were due from December, 2003 and he filed the suit on 7-9-2007 and from filing of the suit i.e., 7-9-2007, the rent was due at the rate of Rs.1500/- per month. The trial court, thus, arrived at the amount of Rs.54,000/-. The trial court granted interest at 6% p.a.,

towards the arrears of rents from January, 2004. Thus, the trial court answered the issues 2 and 3 as stated supra.

So far as issues 4 and 5 are concerned, the entitlement of plaintiffs in respect of mesne profits, the trial court, having observed that the defendants were adamant and irregular in payment of rents, observed that they were entitled to mesne profits. The trial court basing on the evidence of P.W.4 coupled with the evidence of P.Ws.1 to 3 has observed that the rents prevailing in the area as exorbitant of Rs.4,900/- and considering the same fixed the mesne profits at the rate of Rs.4,000/- per month from 7.9.2007 i.e., from the date of filing of the suit, till the delivery of possession of the plaint schedule property. Thus, the trial court decreed the suit in favour of the respondents/plaintiffs.

Aggrieved by the judgment of the trial court, the appellants/defendants preferred A.S.No.16 of 2013 on the file of II Additional District Judge, Ranga Reddy and by its judgment, the appellate court confirmed the judgment of the trial court. Hence, the Second Appeal at the instance of the appellants/defendants.

Heard the arguments of the learned counsel for the appellants/defendants and the learned counsel for the respondents/plaintiffs on the matter of framing of substantial questions of law involved.

Except arguing that mesne profits awarded by the trial court and confirmed by the first appellate court as exorbitant, learned counsel for the appellants/defendants could not show any other

substantial question of law. In that view of the matter, this appeal is disposed of at the admission stage.

It is to be noted that as per the admitted facts, the suit schedule property originally belonged to the wife of first respondent/first plaintiff Hymavathi and after her death, the said property was succeeded by the 1st respondent/first plaintiff and his children who are her class I legal heirs. The first respondent/first plaintiff, with the consent of his children, executed a GPA-cum-Agreement of sale (Ex.A.4) in favour of the 2nd plaintiff. The appellants/defendants being only the tenants have no right to question the title of the first respondent/first plaintiff and his children in the suit schedule property or the right of first respondent/first plaintiff to execute an agreement of sale under Ex.A.4, as they are estopped under Section 116 of the Indian Evidence Act. The trial court and the lower appellate court observed that the appellants/defendants committed default in payment of rents since December, 2003 and a quit notice was issued by the first respondent/ plaintiff under Ex.A.6 on 31-7-2007 and admittedly, the said notice was received by the appellants/defendants. The trial court, thus, held that quit notice was validly issued.

Now coming to the rate of rent and quantum of arrears, the trial court fixed the monthly rent at the rate of Rs.1500/-. Admittedly, there was no written lease deed as the lease was only oral lease and the appellants/defendants are not challenging the rate of rents. The next aspect is with regard to the period for which the plaintiffs are entitled to the rents. The trial court having observed

that the defendants were due of the rents from December, 2003 and the suit was filed on 7-9-2007 held that the plaintiffs are entitled to the rents from December, 2003.

It appears that the defendants, as per orders in I.A.No.422 of 1999 and I.A.No.2173 of 2007, were depositing rents at the rate of Rs.1500/- per month. In that view of the matter, the fixation of rent at Rs.1500/- per month till the date of filing of the suit i.e., 7-9-2007 cannot be said to be illegal.

The next aspect raised by the appellants/defendants is with regard to the mesne profit. The trial court while holding, as stated supra, fixed the mesne profits at Rs.4,000/- per month on the premise that it fetches around Rs.4,900/- per month. It must be noted that the trial court, considering all the relevant facts already fixed rent at Rs.1500/- per month for the suit schedule building from 1-9-2007 but has enhanced it to Rs.4,000/- in the form of mesne profits. This finding appears to be higher side considering the vast variation of Rs.2500/- per month. Therefore, considering the nature of building, probability of increase in the lease, the mesne profits is fixed at Rs.3,000/-per month instead of Rs.4,000/- as fixed by the trial court. The rate of interest fixed by the trial court being reasonable one, the same is upheld.

In the result, the Second Appeal is partly allowed while confirming the judgment of both the courts below.

- 1) The appellants/defendants are directed to vacate the plaint schedule properties on or before 31-10-2017.

- 2) The appellants/defendants shall pay the arrears of rents at the rate of Rs.1500/- per month from December, 2003 till the date of suit minus the amount already deposited by them into the court with interest at 6% p.a., over the rent amount due.
- 3) The appellants/defendants shall pay the mesne profits at the rate of Rs.3,000/- per month to the respondents/plaintiffs from the date of suit i.e., 1.9.2007, till the date of delivery of vacant possession of the plaint schedule property to the respondents/plaintiffs.
- 4) The mesne profits have to be deposited before the lower court by 31-10-2017, failing which, they have to pay interest at the rate of 6% p.a.,

No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO,J

Dated 31-7-2017

Dvs

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO



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