

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

SECOND APPEAL No. 215 of 2016

JUDGMENT :

The suit in O.S.No.600 of 2003 filed by the plaintiff-A. Jagan Mohan Rao, for the eviction of the defendant, by name C.V.Nagaraju, from the suit premises bearing No.C-10/A, Cooperative Industrial Estates, Balanagar, Ranga Reddy District, together with damages at Rs.10,000/- per month from 16.01.2003 till realization. It was on contest by the defendant, the suit was decreed and impugning the decree granting eviction by directing to delivery of possession within two months from the date of judgment dated 30.03.2012 together with damages at Rs.10,000/- per month from 16.01.2003 till realization and costs of suit, having maintained unsuccessfully appeal in A.S.No.244 of 2012 on the file of the IX-Additional District and Sessions Judge (Fast Tract Court), Ranga Reddy. Impugning the concurrent finding in said dismissal judgment of the lower appellate Court confirming the decree and judgment of the trial Court with costs of the appeal on 01.12.2015, the defendant maintained the second appeal.

2. The second appeal since came for admission, heard both sides before its admission on substantial questions of law involved, if any.

3. According to learned counsel for appellant, the following are the substantial questions of law raised in the appeal grounds that require a decision of this Court by admitting the second appeal.

- a. Whether the eviction proceedings can be maintained by the lessee in the absence of authority by the lessor or not?
 - b. Whether non-considering to adverse inference against the respondent/plaintiff for non-production of admitted signatures of his father denying the execution of Ex.B.2, shifting the owners against the appellant has resulted in great miscarriage of justice or not?
 - c. Whether non-joinder of the Government of Telangana, or the Coopeative Industrial Estate, Balanagar, Hyderabad, is fatal to the suit or not?
 - d. Whether on efflux of time of lease, the respondent has lost his right over the suit schedule property w.e.f. 31.12.2015 reverting back the ownership to the Government Telangana made the decree in O.S.No.600 of 2013 on the file of III Additional Senior Civil Judge, R.R.District at L.B.nagar has become non-est or not?
 - e. Non-drawing adverse inference against the respondent by the trial court and non-framing of an issue of non-joinder of original owner as party to the proceedings has resulted in miscarriage of justice or not?
 - f. At any rate the findings of the appellate court are per-se illegal, contrary to law and are purely on surmises and conjunctures?
4. Where as, it is the submission of the counsel for the plaintiff-respondent to the second appeal that none of the above arise for consideration to formulate any substantial questions of law to admit the second appeal and hence to dismiss or reject the same at the pre-admission hearing stage.
5. Heard and perused the material. In the trial Court, from the suit claim of the plaintiff, plaintiff's father Sri A.Venkata Ramana Rao was the allottee of the premises C-10 unit on 29.12.1965 by the

Cooperative Industrial Estate Limited, Balangar - Society to run an industry and subsequently on 30.06.1970 a lease-cum-sale agreement was executed by Administrative Officer of the Cooperative Industrial Estate in favour of M/s.Venkata Ramana Industries and the industry was registered with the Industrial Department in September, 1963 and obtain certificate of registration was also obtained for manufacturing Polythene Tubing and Plastic Products and the plaintiff's father there from nominated the plaintiff herein and the same was approved by the General Manager, District Industrial Centre, on 01.05.1999 for change of proprietorship from A.Venkata Ramana Rao to the plaintiff by the proceedings dated 24.08.2001.

6. The father of the plaintiff let out a portion of the open space of the C-10 unit under a written rental agreement dated 31.08.2006 of 40 x 25 on rent of Rs.6,000/- payable by 10th of succeeding month subject to enhancement from time to time to the defendant herein and the rent was later enhanced to Rs.7,260/- for eleven months from 01.09.1996 to 31.07.1997, that was renewed from time to time till end of 31.07.2002 by mutual terms and father of the plaintiff issued a notice dated 30.04.1999 to the defendant-tenant under him to vacate and hand over the premises by 31.07.1999 since it is required as additional accommodation, for which the reply of the defendant is the tenancy will expire only by 31.07.2002 and the request to vacate the premises before that date cannot be complied with. Even for 2nd notice of the plaintiff's father dated 27.07.1999, the reply, dated

20.10.1999, of the defendant was to the same effect to settle amicably after expiry of the lease period.

7. As per plaintiff, the defendant was irregular in payment of rents and the plaintiff, who succeeded the rights after death of his father in March 2000, made a request to the defendant to vacate the premises to expand his business, since the defendant did not vacate despite the earlier notices, fresh notice dated 12.07.2002 was issued to vacate and hand over the premises within six months therefrom. Having received, the defendant failed to do so including for another notice not to make any constructions by the defendant, for which, there was no reply from the defendant. It is therefrom saying in plaint of the tenancy is terminated and the defendant is liable to be vacated and also liable to pay at Rs.10,000/- per month for use and occupation charges from 16.01.2003.

8. It is the contest by the defendant in his written statement while admitting about the tenancy saying from plaintiff's father he has taken the lease. According to him, it is a permanent lease in favour of the father of the defendant C.Hanumantha Rao and he constructed with his own funds factory shed etc., by spending Rs.6,00,000/- with loans and the defendant is running the industry from 1996 saying there is a paper evidencing the rate of rent and reimbursement of the investment made by the father of the defendant and enhancement of rents mutually and not to put an end to tenancy and the defendant made further constructions by spending of Rs.3,00,000/- because of the

permanent tenancy, and the plaintiff became a sick unit and expansion of business and to resume possession by eviction of him from the premises, thereby does not arise and the defendant is suffering from financial crises despite invested huge amount in attending the repairs taken on lease as permanent one. The further contention is plaintiff's father by apprehending that the Government may cancel the lease given to him, allowed the defendant on lease later started creating trouble by writing letters requiring the premises for additional accommodation for their self occupation. It is also pleaded saying there was an understanding that and the plaintiff should sell the premises at the rate of Rs.2,000/- per sq. yard to the defendant and agreed to regularize the very lease hold into free hold by execution of sale deed and contrary to the said agreement and letter dated 22.02.2005, the suit claim is filed and the defendant incurred huge amount and there are no dues in payment of amounts towards rents earlier.

9. The trial Court from the same ultimately held that once lease agreement Ex.A.14 and Ex.A.1 admitted and not in dispute between the parties, Ex.B.2 relied on by the defendant besides not proved, it cannot even be taken into consideration and as per the terms of the lease, the defendant is liable to vacate from the tenancy terminated and there is no material to show the defendant paid any rents to plaintiff or PWs.1 and 2, and so far as arrears concerned, I.A.No.677 of 2003 filed by the plaintiff for arrears of Rs.5,37,911/- from

November, 2002 to September, 2007 is pending and also Rs.1,02,236/- towards water consumption charges and property tax with rejoinder to pay further arrears and thereby no additional relief to be granted for that, however, the plaintiff is entitled to damages at Rs.10,000/- from 16.01.2003 till realization.

10. As lower appellate Court having confirmed said findings by disbelieving the permanent tenancy and any possession pursuant thereto under alleged part performance to enforce by setting up the alleged sale or tenancy merged with possessory sale agreement; observed that the trial Court is right on its findings and the plaintiff is entitled to damages for use and occupation at Rs.10,000/- per month concluded by the trial Court from 16.01.2003 till realization.

11. From the above, though several contentions raised from the grounds urged including so-called involvement of substantial questions of law from not believing of Ex.B.2 and from the admitted relationship under Ex.A.1 and A.14, there is nothing to say any substantial questions of law involved. Coming to alleged contract for sale with possession or permanent tenancy and even from very reply to the 1st notice received from father of the plaintiff, the defendant stated saying the tenancy subsist till 31.07.2002 from Exs.A.1 and A.14. Once Ex.B.2 held not proved rightly by concurrent findings and the original lease is expired from the above no statutory notice required even for the suit filed in 2003 on 06.01.2003 apart from notice also given by plaintiff and thereby for admitting no substantial

question of law involved even from the scope of Section 116 of the Indian Evidence Act even the property originally belonged to Government, the defendant having taken the lease from the father of the plaintiff admittedly and continued with plaintiff after his father's death, from that relationship, there is an estoppel that operates against the defendant to contend contra. Even as per his claim the paramount owner, no way a necessary party to the lis, apart from, same was not even raised in the written statement from what is discussed supra. Therefore, the second appeal is liable to be rejected for nothing to admit, however, by granting one year time to the defendant to vacate the premises on or before 31.12.2017 so as to secure meanwhile any alternative accommodation and to shift the entire material and structures or constructions put up in the suit property by him if at all. Needless to say, the arrears of decretal amount or arrears or rent, if any, not paid by the defendant, the remedy is left open to the plaintiff to execute and enforce for its recovery. The defendant, however, is directed to pay from now the use and occupation charges every month without default during his continuation till 31.12.2017 supra at the same rate of Rs.10,000/- per month and any default for 2 months, entitles the execution of the decree of the trial Court, confirmed by the lower appellate Court, by the plaintiff against the defendant to evict and if the use and occupation charges supra from now properly paid before expiry of 31.12.2017, the defendant cannot be evicted.

12. The second appeal is rejected before admission by granting one year time to vacate by 31.12.2017 and subject to payment of use and occupation charges from the time of filing the second appeal at Rs.10,000/- per month, without prejudice to the plaintiff's right to recover old arrears if any as per due process of law.

13. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

Dt:20-01-2017.

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