

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Second Appeal No.844 of 2016

Judgment:

The unsuccessful defendant against whom the concurrent judgment of eviction has been ordered by two Courts below has come up with the present second appeal.

2. Heard Mr. Ghantasala Udaya Bhaskar, learned counsel for the appellant.

3. The respondents herein filed a suit for eviction and also for recovery of arrears of rent to the tune of Rs.51,750/- for the period from April, 2012 to August, 2012 and for damages in a sum of Rs.20,700/- per month for use and occupation. Their claim was that the appellant herein paid rents up to March, 2012, but committed default thereafter.

4. The appellant herein filed a written statement disputing the rate of rent and also contending that the practice of issuing rental receipts was stopped after 2001 and that the plaintiffs took her signature on a note book and also printed blank receipts. In other words, the appellant claimed that there was no default. The appellant/defendant also contended that the respondents/plaintiffs attempted to evict her by force and that therefore she was constrained to file a suit in O.S.No.724 of 2012 for injunction.

5. The Trial Court framed the following issues for trial:

- (1) Whether the plaintiff is entitled for eviction of the defendant from the plaint schedule property and if so, the plaintiff is entitled for recovery of possession?

- (2) Whether the plaintiff is entitled for arrears of rent of Rs.51,750/-?
- (3) Whether the plaintiff is entitled for damages of Rs.20,700/- per month for use and occupation of plaint schedule property from 3.9.2012 till the delivery of possession?
- (4) Whether the defendant is very regular in payment of monthly rents? and
- (5) To what relief?

6. The respondents/plaintiffs examined the 3rd plaintiff as P.W.1 and marked 30 documents as Exts.A-1 to A-30. The appellant herein examined herself as D.W.1. She examined two of her employees as D.Ws.2 and 3 to testify to the fact that there was an attempt by forceful eviction. No documents were filed on behalf of the appellant/defendant.

7. Upon consideration of the oral and documentary evidence, the Trial Court came to the conclusion that there was a valid termination of lease under Section 106 of the Transfer of Property Act and that therefore the appellant was liable to be evicted. On the issues 2 and 4 revolving around the promptness on payment of rent, the Trial Court came to the conclusion that Exts.A-5 to A-29 probablized the case of the plaintiffs and that therefore the allegation of wilful default stood proved. In view of these findings, the Trial Court decreed the suit directing the appellant to vacate and deliver vacant possession within 3 months and also to pay Rs.51,750/- towards arrears. Insofar as the future damages

were concerned, the plaintiffs were relegated to proceedings under Order XX, Rule 12 CPC.

8. The appellant filed a regular first appeal in A.S.No.203 of 2015. The lower Appellate Court framed the following points for consideration:

- (1) Whether the respondents/plaintiffs are entitled for the relief of eviction of the defendant from the plaint schedule property and recovery of possession?
- (2) Whether the respondents are entitled for arrears of rent and damages?
- (3) Whether there are grounds to interfere with the finding of the trial Court? and
- (4) To what relief?

9. After independently analysing the evidence on record, the lower Appellate Court concluded (1) that there was valid termination of tenancy; (2) that there were arrears of rent; and (3) that therefore the appellant was liable to be evicted.

10. Therefore, I find no question of law, much less any substantial question of law, arising for consideration by this Court.

11. As a matter of fact, the appellant has framed 3 substantial questions of law in her Memorandum of Grounds of Appeal. They are as follows:

- (1) Whether the Courts below are justified in passing the decree and judgment ignoring the cardinal principles and well established law in respect of the eviction and came to conclusion on assumption and presumptions?
- (2) Whether the Courts below are justified in decreeing the suit inspite of no default in payment of rents having found that there was no merits at all? and

- (3) Whether the Courts below are justified in non-framing of the issue with regard to the plea of personal occupation pleaded by the plaintiff?

12. Questions 1 and 2 above are mere questions of fact. The 3rd question revolves around the failure of the Courts below to frame an issue with regard to the plea of personal occupation. But this question is factually wrong, since the Trial Court found that the issue was raised for the first time during cross-examination without any pleading.

13. Therefore, there are no merits in the second appeal. Hence, it is dismissed. The miscellaneous petitions, if any, pending in this second appeal shall stand closed. No costs.

27th January, 2017.
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V.RAMASUBRAMANIAN, J.

14. After orders were pronounced, the learned counsel for the appellant sought time to vacate the plaint schedule property. Therefore, a time of 2 (two) months from today is granted to the appellant for vacating the plaint schedule property.

V.RAMASUBRAMANIAN, J.

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