

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**SECOND APPEAL No.542 of 2017**

**JUDGMENT:**

This Second Appeal is preferred challenging the judgment and decree dt.27-04-2017 in A.S.No.16 of 2012 of the Senior Civil Judge, Tadepalligudem reversing the judgment and decree dt.02-04-2012 in O.S.No.461 of 2004 of the II Additional Junior Civil Judge, Tadepalligudem.

2. The appellant in the Second Appeal is defendant in the suit.
3. The said suit was filed by respondent against the appellant for eviction from the suit schedule property and also for damages for use and occupation of the said property.
4. The respondent is wife of one Madhavarao. The appellant claims to be also the wife of said Madhavarao. However, it is not in dispute that appellant and respondent are sisters.
5. The respondent/plaintiff contended that a vacant site of extent Ac.0.03 cents was allotted to her by the State Government under patta dt.30-06-2002, that she constructed a terraced house therein, which was also assessed to Municipal Tax by the Tadepalligudem Municipality, and thus, she is the absolute owner of the said property. She contended that the appellant approached her to lease out the schedule property on a monthly rental of Rs.200/- commencing from

01-02-2013. She also alleged that the terraced house constructed by her is exempted under the provisions of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 and it is covered by the Transfer of Property Act, 1882.

6. Respondent alleged that appellant destroyed the flooring of the house, latrine and bath room; she was causing nuisance by digging pits around the subject property from April, 2004; she stopped paying rents from February, 2004; that respondent wanted the house portion of the plaint schedule property for her own use; and in spite of the oral demands by respondent to vacate the house portion of the plaint schedule property, the appellant did not do so; and so she filed the suit.

7. The appellant denied the plaint averments and contended that the plaint schedule property belonged to Madhavarao, who is also the appellant's husband; that he constructed a terraced building 15 years back and appellant was residing in one portion along with her children as wife of the said Madhavarao; and that respondent was residing in another portion. She alleged that Madhavarao neglected the appellant and her children and did not provide maintenance for their livelihood and she and her children filed M.C.No.22 of 2002 before the Additional Judicial Magistrate of First Class, Tadepalligudem, which was disposed in Lok Adalat on 24-08-2004. It is alleged by the appellant that in the said settlement before the Lok Adalat,

Madhavarao agreed to pay Rs.65,000/- to the appellant in regard to the terraced building; and after receipt of the said amount, the appellant agreed to vacate the said portion; but he did not do so and got filed the suit through the respondent to evict her from the house.

8. The trial Court framed the following issues:

*“(a) Whether the plaintiff is entitled for eviction as prayed for?”*

*“(b) Whether the plaintiff is entitled for damages as prayed for?”*

*“(c) To what relief?”*

9. Before the trial Court, the respondent examined P.Ws.1 to 4 and marked Exs.A-1 to A-4 while the appellant examined D.Ws.1 and 2 and marked Ex.B-1.

10. By judgment and decree dt.02-04-2012, the trial Court dismissed the suit. It held that though the respondent claimed that appellant is her tenant, the said allegation was denied by appellant and respondent failed to prove that appellant was her tenant. It held that if the appellant was not the wife of Madhavarao, who admittedly was the respondent's husband, the respondent should have examined her husband to disprove the relationship between the appellant and Madhavarao and got truth about Ex.B-1, but she did not examine Madhavarao. It also held that respondent did not examine any neighbours to establish the existence of landlord and tenant

relationship between respondent and appellant. It held that respondent did not state when she constructed the house, that since respondent's husband was employed as Post Master in Government, it was unlikely that any patta would be given for the subject land to respondent. It also held that patta Ex.A-1 was issued in 1976 but not in 2002; that the name of respondent in the plaint was shown as 'Moppidi Saramma @ Saradha', while in Ex.A-1 it is shown as 'Sarakya'; that Ex.B-1 filed by appellant shows that Madhavarao is the husband of appellant and since respondent failed to prove her ownership as well as existence of landlord and tenant relationship between herself and appellant, the suit should be dismissed.

11. Assailing the same, the respondent filed A.S.No.16 of 2012 before the Senior Civil Judge, Tadepalligudem.

12. The lower appellate Court, by judgment and decree dt.27-04-2017, allowed the said appeal. It held that the very pleading of the respondent showed that Madhavarao is her husband, that title of respondent is established by Ex.A-1 and by the oral evidence of P.Ws.1 to 4. While agreeing with the trial Court's conclusion that there is no proof of existence of tenant and landlord relationship between respondent and appellant, it held that the appellant, who denied the title of respondent, should establish that plaint schedule property is the property of Madhavarao and does not belong to respondent, but she failed to do so. It held that except the evidence of

D.Ws.1 and 2, there is no documentary evidence to establish that Madhavarao is the owner of the property. It held that in M.C.No.22 of 2012, the respondent was not a party and if Madhavarao under Ex.B-1 award agreed to pay Rs.65,000/- to the appellant, it is an issue between the said Madhavarao and the appellant and respondent has nothing to do with it. It observed that merely because Madhavarao is the husband of respondent, he will have no right in the house constructed by respondent and that the finding of the trial Court that Ex.A-1 does not prove the title of respondent is incorrect. It however, denied the relief of damages on the ground that no material in that regard was placed on record by respondent.

13. Assailing the same, this Second Appeal is filed.

14. Sri Bankatlal Mandhani, learned counsel for the appellant contended that the lower appellate Court could not have directed eviction of appellant from the plaint schedule property after agreeing with the conclusion of the trial Court that there is no relationship of landlord and tenant between respondent and appellant.

15. A reading of the lower appellate Court judgment shows that the lower appellate Court relied upon Ex.A-1 and the evidence of P.Ws.1 to 4 to hold that respondent had title to the property and directed eviction on the basis of title of respondent to the plaint schedule property and not on the basis of existence of landlord and tenant relationship between the parties.

16. In **Bhagwati Prasad Vs. Chandramaul<sup>1</sup>**, a suit for eviction of defendant from the plaint schedule property was filed wherein the plaintiff alleged that there was landlord and tenant relationship between himself and defendant. The defendant admitted the title of plaintiff but contended that he was entitled to continue in possession of the property until the amount spent by him for its construction was returned by plaintiff. The Court held that in such circumstances, the relationship between the parties would be either that of a landlord and tenant, or that of an owner of the property and a person put into possession of it by the owner's licence and even in the absence of proof of tenancy, the plaintiff was entitled for eviction. It held that though ordinarily a plaintiff cannot be allowed to succeed on a plea not set up by him, still if his pleading is covered by an issue by implication and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. It observed that where substantial matter relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and the evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. It held that when the defendant knew what he was specifically pleading and

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<sup>1</sup> AIR 1966 SC 735

admitted the title of plaintiff in regard to the subject property and denied the plaintiff's pleaded tenancy, even if the plea of tenancy was not proved, on the basis of his title, the plaintiff can be granted relief of eviction. The Supreme Court also approved the decision of Allahabad High Court wherein a decree of ejectment was passed in favour of the plaintiff though a specific case of tenancy set up by plaintiff was not proved.

17. Learned counsel for appellant, however, contended that if defendant was a trespasser, there is a need to frame an issue that defendant was a trespasser and relied upon the decision in **Biswanath Agarwalla Vs. Sabitri Bera and others**<sup>2</sup>.

18. In para-17 in **Biswanath Agarwalla** (2 supra), the Supreme Court held that the landlord in a given case although may not be able to prove the relationship of landlord and tenant, can obtain a decree for eviction in the event he proves his general title. It approved the principle laid down in **Bhagwati Prasad** (1 supra). However, it did not apply the said principle because in that case the defendant was a trespasser and was sued as a trespasser and so the question whether the defendant was a trespasser was held by it to be necessary to be framed. It noted that the question as to whether the defendant acquired title by adverse possession was a plausible plea, that it was in fact raised in the appellate Court and the appellate Court could not

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<sup>2</sup> (2009) 15 SCC 693

have give a finding on acquisition of title by defendant by adverse possession in the absence of an issue to that effect.

19. The said decision has no application to the present case because in the present case the appellant had specifically set up a plea that the property in question belonged to Madhavarao and failed to adduce any evidence in that regard. The lower appellate Court rightly held that Ex.A-1 proves the title of respondent and that Ex.B-1, the order passed by Lok Adalat in M.C.No.22 of 2002 does not establish that Madhavarao is the owner and any agreement by Madhavarao to pay Rs.65,000/- to the appellant cannot be a ground to allow the appellant to continue in the subject property once the title of respondent is established. In this case, admittedly, there is no pleading by the appellant of adverse possession and she had only set up title in Madhavarao as a defence to the respondent's suit for eviction. Therefore, decision in **Bhagwati Prasad** (1 supra) applies in all fours and the lower appellate Court was justified in directing eviction of appellant from the property.

20. Though learned counsel for appellant also sought to contend that the finding of the trial Court about the name mentioned in Ex.A-1 was not correctly dealt with by the lower appellate Court, the said contention was verified by perusing Ex.A-1 by this Court, which clearly showed that Ex.A-1 correctly mentioned the name of

respondent and thus established the title of respondent to the property, on which the house in question was located.

21. In this view of the matter, I am of the opinion no substantial question of law arise for consideration in this Second Appeal and it is accordingly dismissed at the stage of admission. No costs.

22. As a sequel, miscellaneous petitions, if any pending, in this Second Appeal shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 14-07-2017  
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