

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

SECOND APPEAL No.560 of 2017

JUDGMENT:

This Second Appeal is preferred challenging the judgment and decree dt.14-09-2009 in A.S.No.46 of 2004 of the V Additional District Judge, West Godavari at Eluru confirming the judgment and decree dt.29-10-2003 in O.S.No.148 of 1997 of the Principal Senior Civil Judge, Eluru.

2. The appellant herein is the 1st defendant in the suit.
3. The said suit was filed by the 1st respondent for eviction of the appellant from the plaint schedule premises, for recovery of arrears of rent @ Rs.300/- p.m. from 01-11-1994 from the appellant and 2nd respondent till they vacate the plaint schedule premises, past mesne profits and also for a mandatory injunction for demolition of bath room and toilet constructed by the appellant and for removal for panchayat tap.
4. It is admitted fact that 1st respondent was the owner of Ac.0.04 cents of vacant site purchased under registered sale deed dt.12-10-1978 and that he had constructed two mangalore tiled shops in the site in 1987. Though originally, the northern shop in the premises was let out to the 2nd respondent and the southern shop to the

appellant, by 1992, both shops were in possession of the appellant as tenant admittedly.

5. Alleging that the tenant paid rent upto October, 1994 and thereafter committed default, the 1st respondent got issued a legal notice Ex.A-1 under Section 106 of the Transfer of Property Act, 1882 terminating the tenancy and asking him to vacate the southern shop. A reply notice Ex.A-2 was given on 12-12-1994 setting up a plea that there was an agreement on 09-07-1993 executed by 1st respondent in favour of appellant agreeing to sell the plaint schedule property. These contentions were denied by 1st respondent in the plaint.

6. The appellant, in the written statement, took a plea that at the time when he took southern side shop room on lease on 18-10-1991, the 1st respondent had taken Rs.7,000/- from him towards advance and subsequently northern portion shop was also let out to him on the same terms after taking additional advance of Rs.7,000/-. He stated that he constructed a bath room, lavatory and a water tap on the north-west corner and got a panchayat water tap connection at his cost with the permission and consent of 1st respondent and that the 1st respondent executed an agreement of sale on 09-07-1993 in his favour and received a sum of Rs.40,000/- thereunder.

7. The 2nd respondent filed a written statement stating that he vacated the shop and is not liable to pay any amount to 1st respondent.

8. Rejoinder was filed by the 1st respondent denying the taking of advance from the appellant, executing the agreement dt.09-07-1993 or receiving any amount there under.

9. The trial Court framed the following issues:

“1. Whether the plaintiff is entitled for possession of the plaint schedule property as prayed for?

2. Whether the plaintiff is entitled to past mesne profits as prayed for?

3. Whether the plaintiff is entitled to future profits as prayed for?

4. Whether the plaintiff is entitled for mandatory injunction as prayed for?

5. Whether the 2nd defendant is entitled for counter-claim as prayed for?

6. To what relief?”

10. Before the trial Court, the 1st respondent examined himself as P.W.1 and marked Exs.A-1 to A-6. The appellant and 2nd respondent examined themselves as D.Ws.1 and 2, but did not mark any documents.

11. By judgment and decree dt.29-10-2003, the trial Court decreed the suit against the appellant, but dismissed it against 2nd respondent on the ground that the appellant had taken over both shops in 1992 and in spite of receiving quit notice Ex.A-1, he did not vacate the same. It also held that he did not prove that he had paid Rs.40,000/- as advance to 1st respondent or any other sum under the alleged

agreement of sale dt.09-07-1993. It therefore directed eviction of appellant on payment of Rs.19,500/- towards past mense profits by appellant, but the relief of mandatory injunction was refused. It also directed the appellant to pay Rs.600/- p.m. towards future mesene profits.

12. Assailing the same, the appellant filed A.S.No.46 of 2004 before the lower appellate Court. The lower appellate Court dismissed the said appeal on 14-09-2009. It held that the appellant had not even filed the agreement of sale dt.09-07-1993 allegedly executed in his favour by 1st respondent and he also did not examine any witness to prove the said transaction. It also held that once he received the quit notice Ex.A-1 asking him to vacate by 31-12-1994, he should have vacated the premises and he cannot continue in possession thereof. It therefore confirmed the judgment and decree of the trial Court.

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

14. Heard Sri B.P.Raju, learned counsel for appellant, Sri Y.V.Ravi Prasad, learned counsel for 1st respondent and Sri Nimmagadda Satyanarayana, learned counsel for 2nd respondent.

15. Though learned counsel for appellant sought to contend that the decrees and judgments passed by the Courts below are unsustainable and that they ought to have believed the agreement of sale dt.09-07-1993 pleaded by appellant, I do not agree with the said

contention since the said agreement of sale has not been filed by the appellant before the trial Court or lower appellate Court and nobody was examined as a witness to prove its execution by 1st respondent. Both the trial Court as well as lower appellate Court correctly appreciated the evidence on record and did not accept the plea regarding the said agreement raised by the appellant. No other point was argued.

16. Therefore I do not find any substantial question of law arising in the Second Appeal warranting interference by this Court under Section 100 C.P.C.

17. The Second appeal is accordingly dismissed at the stage of admission. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 08-09-2017

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