

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

SECOND APPEAL No.133 OF 2017

JUDGMENT:

This second appeal, under Section 100 CPC, is filed challenging the judgment and decree dated 23.11.2016 passed in A.S.No.150 of 2008 on the file of the Court of the XII Additional Chief Judge, City Civil Court, Secunderabad, wherein and whereby the appellate Court confirmed the judgment and decree dated 27.06.2008 passed in O.S.No.748 of 2005 on the file of the Court of the I Junior Civil Judge, City Civil Court, Secunderabad.

2. The parties to this appeal will, hereinafter, be referred to as they are arrayed in the trail Court.

3. The learned counsel for the appellant/defendant attacked the impugned judgment on the following grounds:

1) The findings of the courts below are perverse, 2) The finding of the courts below that the monthly rent of the suit schedule property is Rs.1,200/- is not sustainable either on facts or in law, and 3) The civil Court has no jurisdiction to entertain the suit, in view of jural relationship of landlord and tenant between the plaintiff and defendant.

4. *Per contra*, the learned counsel for the respondent/plaintiff submitted that at the time of filing of the suit, the monthly rent of the suit schedule property was Rs.1,200/- and hence the civil court has jurisdiction to entertain the

suit. He further submitted that this court shall not lightly interfere with the concurrent findings of fact recorded by the courts below. He would further submit that the grounds urged by the appellant / defendant will fall within scope of Section 100 CPC, therefore, the appeal is liable to be dismissed at the admission stage.

5. The facts leading to the filing of the present appeal are briefly as follows:

The plaintiff is owner of the suit schedule property bearing No.6-5-54, New Bhoiguda, Secunderabad consisting of two mulgies, two rooms, latrine, bathroom, warandah and with amenity of water. Initially, the plaintiff let out one room of the suit schedule property to the defendant on a monthly rent of Rs.600/-. The rent is exclusive of water charges. The defendant took the suit schedule property on lease for a period of three months on a monthly rent of Rs.1,200/- and an agreement was executed on 15.12.1998. After expiry of oral lease period, the defendant failed to vacate the suit schedule property. The defendant failed to pay rents at the agreed rate of Rs.1,200/- p.m. from 15.12.1998 in spite of repeated demands. The defendant, in all, is due of an amount of Rs.1,03,200/- with effect from 15.12.1998 to 12.3.2005. The plaintiff got issued a legal notice to the defendant as contemplated under Section 106 of Transfer of Property Act, directing the defendant to vacate the suit

schedule property. The defendant, having received the said notice, neither issued reply nor vacated the suit schedule property. Hence the plaintiff was constrained to file the suit.

6. The defendant contested the suit by filing written statement. The defendant admitted the ownership of the plaintiff over the suit schedule property, *inter alia* contending that he had taken the suit schedule property on lease on a monthly rent of Rs.600/-. The defendant specifically denied the quantum of rent as pleaded by the plaintiff. The defendant filed R.C.C.No.202 of 2006 on the file of the Additional Rent Controller, Secunderabad seeking permission of the court to deposit the rent. Hence, the defendant prayed for dismissal of the suit.

7. Basing on the above pleadings, the trial Court framed the following issues for trial:

- 1) Whether the plaintiff is entitled for eviction of the defendant as prayed for?
- 2) Whether the plaintiff is entitled for arrears of rent as prayed for?
- 3) Whether the plaintiff is entitled for damages/mesne profits as prayed for?
- 4) Whether the tenancy is not governed by the Rent Control Act?

8. During the course of trial, to substantiate the case, the plaintiff himself was examined as P.W.1 and got marked Exs.A.1 to A.7. To demolish the case of the plaintiff, the defendant examined himself as D.W.1, but no documents were marked.

9. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the civil court has jurisdiction to entertain the suit and decreed the suit in favour of the plaintiff in all respects.

10. Feeling aggrieved by the decree and judgment of the trial Court dated 27.06.2008, passed in O.S.No.748 of 2005, the defendant preferred A.S.No.150 of 2008 on the file of the XII Additional Chief Judge, City Civil Court, Hyderabad.

11. The first appellate court, after reappraising the oral and documentary evidence, arrived at a conclusion that the plaintiff is entitled for the reliefs sought for and dismissed the appeal. Hence the present second appeal.

12. The second appeal cannot be admitted automatically unlike the first appeal unless there is a question of law much less substantial question of law.

13. The substantial questions of law that arise for consideration in this second appeal, as pointed out by the appellant, are as follows:

1. Whether the civil court has jurisdiction to entertain the suit or not?
2. Whether the findings of the court below are perverse and are liable to be set aside?
3. Whether the quantum of rent is Rs.1,200/- as pleaded by the plaintiff or Rs.600/- as contended by the defendant?

POINT No.1:

14. The learned counsel for the appellant strenuously submitted that the suit schedule property is situated within the municipal limits of Greater Hyderabad Municipal Corporation; hence, the provisions of the Rent Control Act are applicable to the suit schedule property. As per the finding recorded by the courts below, the rent payable to the suit schedule property is Rs.1,200/-. If the rent is Rs.1,200/- per month, whether the civil court has jurisdiction to entertain the suit or not is the point to be determined by this court.

15. It is not in dispute that as on the date of filing of the suit, if the rent of the suit schedule property is more than Rs.1,000/- the landlord has to approach the civil court. Section 32 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, was amended by A.P. Act 17 of 2005. As per the amended Act, the Rent Control Act has jurisdiction to entertain the eviction petition if the agreed rent of the petition schedule property is below Rs.3,500/-. The amended Act came into force with effect from 28.05.2005. It is not in dispute that the suit was filed on 27.04.2005, i.e. much prior to the amended Act 17 of 2005 came into force. It is not the case of the defendant that the provisions of Act 17 of 2005 are applicable with retrospective effect. The trial Court arrived at a conclusion that the civil court alone has jurisdiction to entertain the suit. The appellate Court also, after reappraising

the oral and documentary evidence, arrived at a conclusion that the civil court alone has jurisdiction to entertain the suit. The findings of the courts below on this aspect are supported by material much less legally admissible material. I am in complete agreement with the findings recorded by the courts below on this aspect.

16. Having regard to the facts and circumstances of the case, I am unable to countenance the submission made by the learned counsel for the defendant that the courts below have lack of inherent jurisdiction to entertain the suit as well as the appeal.

POINT Nos.2 & 3:

17. These two points are interrelated with each other and hence I am inclined to address these two points simultaneously in order to avoid recapitulation of pleadings and evidence.

18. It is needless to say that if the findings of the courts below are based on material, which is not legally admissible or based on no material, then those findings can be termed as perverse findings. It is a settled principle of law that the concurrent findings of fact recorded by the Courts below can be set aside if those findings are perverse.

19. Let me consider the facts of the case on hand in the light of the above legal principle. It is the case of the plaintiff

that he is the owner of the suit schedule property. The defendant is also admitting the ownership of the plaintiff over the suit schedule property. The defendant in unequivocal terms deposed that he occupied the suit schedule property as tenant on 15.12.1998. Ex.A.7 is the lease agreement. The defendant has given different versions with regard to genuineness and validity of Ex.A.7 agreement. At one stage, he categorically admitted that his father signed on execution of Ex.A.7. The defendant himself is admitting Ex.A.7. The defendant is not disputing the physical features of the suit schedule property. Ex.A.1 is the rough sketch of the suit schedule property. The material placed before the court clinchingly establishes that the suit schedule property is consisting of two mulgies, two rooms, warandah, bath-room and a latrine. Except the self-serving testimony of D.W.1, there is no other cogent and convincing evidence that he paid the rent from the year 1999 onwards. The plaintiff filed the suit for eviction as well as recovery of rent with effect from 15.5.2002 till 14.4.2005 at the rate of Rs.1,200/- p.m. which comes to Rs.40,000/-. Absolutely there is material on record to establish that the defendant paid the rent to the plaintiff. At the time of arguments, the learned counsel for the plaintiff, in all fairness, submitted that the defendant paid Rs.42,000/- towards arrears of rent to plaintiff, as directed by the appellate court, during the pendency of the appeal. There is

no material on record to establish that the defendant paid rent even during the pendency of the suit or appeal.

20. Before filing of the suit, the plaintiff got issued a legal notice dated 12.3.2005 to the defendant. Ex.A.2 is the office copy of the legal notice, Ex.A.3 and A.4 are postal receipts and Exs.A.5 and A.6 are postal acknowledgements. The oral testimony of P.W.1 coupled with Exs.A.2 to A.6 clearly establish that the plaintiff got issued the legal notice to the defendant as contemplated under Section 106 of Transfer of Property Act, directing the defendant to vacate the suit schedule property.

21. In the cross examination D.W.1 in unequivocal terms admitted that he received the legal notice. His testimony further reveals that after receipt of the legal notice, he approached the plaintiff, who in turn admitted that the agreed monthly rent of the suit schedule property is Rs.600/- and not 1,200/-.

22. This court is very much conscious that non-issuance of reply notice by itself is not a valid ground to allow the suit. The defendant came forward with a plausible explanation as if he approached the plaintiff after receiving the legal notice and the plaintiff agreed that the rent is only Rs.600/-. The possibility of taking of this type of pleas in order to over come the adverse situation by the parties to the proceedings cannot be ruled out completely. If the rent of the suit schedule

property was Rs.600/- as contended by the defendant, what prevented him to issue a befitting reply to the legal notice dated 12.3.2005 got issued by the plaintiff? The court shall not loose site of this aspect while appreciating the material available on record. Even if this aspect is excluded, still there is cogent and convincing evidence on record to establish that the rent of the suit schedule property was Rs.1,200/- but not Rs.600/- p.m. The finding recorded by the courts below with regard to the quantum of rent is supported by oral and documentary evidence. A perusal of the record clearly demonstrates that the appellate court without being influenced by the findings recorded by the trial Court, has arrived at a conclusion that the monthly rent of the suit schedule property is Rs.1,200/- but not Rs.600/- as contended by the defendant. The first appellate court is the final court so far as the finding of fact is concerned. Having regard to the facts and circumstances of the case, I am unable to countenance the submissions made by the learned counsel for the defendant that the findings of the courts below are perverse. On the other hand, I am in complete agreement with the findings recorded by the courts below.

23. For the foregoing discussion, I see no question of law, much less substantial question of law to admit the second appeal hence the same is liable to be dismissed at the stage of admission.

24. In the result, the second appeal is dismissed confirming the judgment and decree dated 23.11.2016 passed in A.S.No.150 of 2008 on the file of the Court of the XII Additional Chief Judge, City Civil Court, Secunderabad, in all respects, wherein and whereby the appellate Court confirmed the judgment and decree dated 27.06.2008 passed in O.S.No.748 of 2005 on the file of the Court of the I Junior Civil Judge, City Civil Court, Secunderabad. However, the defendant is granted time up to 15.6.2017 to vacate the suit schedule property. No costs. Consequently, miscellaneous petitions if any pending in this second appeal shall stand closed.

Date: 26th April, 2017
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T. SUNIL CHOWDARY, J

