

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.224 of 2016

JUDGMENT:

This appeal is filed challenging the judgment and decree dated 19.01.2016 in A.S.No.295 of 2012 on the file of the Court of VII Additional District and Sessions Judge, Vijayawada, wherein and whereby the judgment and decree dated 25.09.2012 in O.S.No.121 of 2011 on the file of the Court of Principal Junior Civil Judge, Vijayawada, decreeing the suit in favour of the plaintiff, was confirmed.

2. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

3. The facts leading to filing of the second appeal are briefly as follows:

The plaintiff is the owner of the building bearing D.No.8.5.69A situated at Wynchipet, Vijayawada-I. The father of the plaintiff constructed the building in the year 1999. After the death of his father, the plaintiff became absolute owner of the suit schedule building. The plaintiff let out the shop situated in the ground floor of the building, i.e. suit schedule property to the defendant in the year 2005 on a monthly rent of Rs.600/-. Later, the rent was enhanced from Rs.600/- to Rs.900/-. The tenancy is from month to month. The defendant paid the rent till 31.10.2009. The defendant is liable to pay the

rent from 01.11.2009 to 31.12.2010, i.e. for a period of 14 months amounting to Rs.12,600/-. The plaintiff got issued a notice on 29.11.2010 directing the defendant to vacate the suit schedule property and pay arrears of rent. The Rent Control Act 15 of 1960 is not applicable to this case and only general law is applicable. The father of the plaintiff constructed the building in the year 1999 and as per Section 32(b) of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 the schedule property will not come under the purview of the Act. Hence, the plaintiff filed the suit.

4. The defendant filed his written statement denying the averments made in the plaint *inter alia* contending that the defendant took the suit schedule property on lease in the year 1992. The suit schedule property is a vacant property till the date of construction of the building in the year 1999. At the request of plaintiff, the defendant entered into the plaint schedule shop as a tenant in the year 2005 on a monthly rent of Rs.300/- and the plaintiff agreed to enhance the rent for every three years @ Rs.100/-. The present rent of the plaint schedule shop is Rs.500/- per month. The defendant gave Rs.10,000/- to the plaintiff towards rent. The defendant did not commit any default in payment of rent. Due to unavoidable circumstances, the defendant could not pay the rent from April 2011 onwards to the plaintiff. The plaintiff has not issued rent receipts to the defendant. There is no cause of action to file the suit. Hence, the suit is liable to be dismissed.

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

1. Whether the defendant is liable to be evicted from the suit property?
2. Whether the plaintiff is entitled to recover Rs.12,600/- towards arrears of rent from the defendant?
3. Whether the plaintiff is entitled to claim damages @ Rs.1,800/- per month as prayed for?
4. Whether the plaintiff has no cause of action to file the suit?
5. To what relief?

6. During the course of trial, on behalf of the plaintiff, P.Ws.1 to 3 were examined and Exs.A1 to A11 were marked. On behalf of the defendant, D.W.1 was examined and Exs.B1 to B5 were marked.

7. After having a thoughtful consideration to the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the defendant is the tenant of the plaintiff and the defendant committed default in payment of rent, consequently, decreed the suit directing the defendant to vacate the suit schedule property within three months from the date of judgment. Feeling aggrieved by the judgment and decree dated 25.09.2012 in O.S.No.121 of 2011, the defendant preferred A.S.No.295 of 2012 on the file of the Court of VII Additional District and Sessions Judge, Vijayawada. The first appellate Court after reappraising the oral, documentary evidence and other material available on record, arrived at a conclusion that the defendant is liable to vacate the suit schedule property, and consequently dismissed the appeal. Hence, the defendant preferred the present second appeal.

8. Heard the learned counsel for the appellant-defendant and the learned counsel for the respondent-plaintiff and perused the material available on record.

9. The questions of law that arise for consideration in this appeal are as follows:

“1. Whether the Courts below have misconstrued Section 32-B of A.P.Buildings (lease, rent and eviction) Control Order, 1960?

2. Whether the findings recorded by the Courts below are perverse?”

10. As both points are intertwined with each other, hence this Court is inclined to answer both points simultaneously in order to avoid recapitulation of facts and evidence.

11. The following admitted facts can be culled out from the pleadings.

The plaintiff is owner of suit schedule property, who in turn let out the same to defendant in the year 2005 on monthly rent. The plaintiff got issued a legal notice Ex.A1 on 29.11.2010 directing the defendant to vacate the suit schedule property. Ex.A2 is the postal receipt. Ex.A3 is the certificate of posting. Ex.A4 is the acknowledgment. The material placed before the Court clinchingly establishes that the defendant having received legal notice did not choose to issue reply. The material further establishes that before filing of the suit, the plaintiff strictly

adhere the procedure as contemplated under Section 106 of Transfer of Property Act.

12. The defendant is disputing the quantum of rent. As per the version of the defendant, the rent of the suit schedule property is Rs.500/- per month. As per the case of the plaintiff, the monthly rent is Rs.900/-. In Ex.A1 legal notice, the plaintiff has taken a specific plea that the monthly rent of suit schedule property is Rs.900/-. If really, the defendant is paying Rs.500/- per month towards rent, what prevented him to issue a reply to Ex.A1 denying the quantum of rent mentioned in it. Except the self-served testimony of D.W.1, there is no other convincing evidence to prove that the defendant is paying rent of Rs.500/- per month. Whereas, the oral testimony of P.Ws.1 and 2 coupled with Ex.A1 clearly reveals the monthly rent of the suit schedule property is Rs.900/-. Both courts concurrently held that the rent of the suit schedule property is Rs.900/- per month. I am fully endorsing with the findings recorded by the courts below with regard to the quantum of rent, i.e. Rs.900/- per month.

13. The predominant contention of the learned counsel for the defendant is that the suit schedule property was constructed in the year 1993, therefore, the civil Court has no jurisdiction to entertain the suit in view of Section 32-B of the Rent Control Act. It is the contention of the plaintiff that the plaintiff constructed the building in the year 1999. The oral testimony of P.W.3 coupled with Exs.A7 to A9 clearly reveals that the

building was constructed in the year 1999. The suit was filed in the year 2011. In order to appreciate the contention of the defendant, it is not out of place to extract paragraph 3 of the written statement “it is submitted that the plaint schedule property is a vacant land since the date of construction i.e., 1999.” Even as per the pleadings in the written statement, the building was constructed in the year 1999. There is no averment in the written statement that the civil Court has no jurisdiction to entertain the suit. The defendant is not entitled to urge that the civil Court has no jurisdiction to entertain the suit without taking a specific plea in the written statement. As observed earlier, even as per the version put forth by the defendant, the suit schedule building was constructed in the year 1999. The suit was filed within thirteen years from the date of construction of the building.

14. In view of Section 32-B of the Rent Control Act, the provisions of the Act are not applicable to the suit schedule building. In such circumstances, the plaintiff is entitled to file a civil suit for eviction of the defendant from the suit schedule property. Basing on the oral and documentary evidence available on record, the Courts below concurrently held that the building was constructed in the year 1999, therefore, the provisions of the Rent Control Act are not applicable to the suit schedule property. The findings recorded by the Courts below are based on evidence much less legally admissible evidence. In

such circumstances, the findings recorded by the Courts below are not termed as perverse.

15. In **Municipal Committee, Hoshiarpur v. Punjab SEB**¹, while dealing with the scope of Section 100 of CPC, the Hon'ble apex Court held at paragraph No.16 as follows:

16. A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial question of fact. The court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC.

16. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that there is no question of law much less substantial question of law involved in this appeal and the appeal is liable to be dismissed.

17. At the time of arguments, learned counsel for the appellant submitted that six months time may be granted to the defendant to vacate the suit schedule property. A perusal of the record reveals that the defendant committed default in payment of rent. Taking into consideration the facts and circumstances of the case, three months time is granted to the defendant to vacate and hand over the possession of the suit schedule

¹ (2010) 13 SCC 216

property to the plaintiff. If the defendant fails to vacate the suit schedule property within the time stipulated, the plaintiff is at liberty to take appropriate steps in accordance with law.

18. With the above observation, the Second Appeal is dismissed at the admission stage. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

14th December, 2017

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