

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

SECOND APPEAL No.1156 of 2017

JUDGMENT :

This Second Appeal is preferred under Section 100 C.P.C. challenging the judgment and decree dt.29-08-2017 in A.S.No.94 of 2016 of the V Additional District and Sessions Judge, Tirupati confirming the judgment and decree dt.01-06-2016 in O.S.No.771 of 2014 of the Principal Senior Civil Judge, Tirupati.

2. Appellants herein are defendants in above suit.

3. The said suit was filed by respondent for:

(a) eviction of appellants from the plaint schedule property;

(b) for recovery of balance of arrears of rent from July, 2011 to May, 2013 @ Rs.880/- per month for 24 months i.e. Rs.21,120/-

(c) to direct the appellants to pay rent for the month of June, 2013 @ Rs.9,680/- per month, and

(d) damages from the date of termination i.e. from July, 2013 @ Rs.25,000/- p.m. till actual delivery of the plaint schedule property.

4. There is no dispute that appellants were the tenants of the respondent and that the tenancy commenced on 10.5.2006 under lease agreement initially for a period of 11 months, which was subsequently extended till 2011 for ground floor RCC plaint schedule building bearing Door No.10-8-329, Tilak Road, Tirupati. The rent agreed for the period from 01-05-2006 to 30-04-2009 was Rs.6,000/- p.m.

5. It is also not in dispute that appellants filed O.S.No.295 of 2011 against respondent for injunction restraining their eviction without following due process of law.

6. The respondent issued Ex.A-3 legal notice on 31-05-2013 to the appellants calling upon them to vacate the premises by 30-06-2013 by terminating the tenancy and also demanded handing over of vacant possession of the property.

7. The notice was received by appellants on 03-06-2013.

8. In the plaint, the respondent/plaintiff contended that appellants committed default in payment of rent from July, 2011 to May, 2013 at Rs.880/- p.m. and stopped paying rent from June, 2013 of Rs.9680/- and they are liable to pay damages from July, 2013 after termination of tenancy at Rs.25,000/- p.m.

9. In the Written Statement, the appellants took the plea that though they are tenants and were paying rents regularly, there was an attempt to disturb their possession and therefore they filed O.S.No.295 of 2011; that the 2nd appellant availed loan of Rs.8,00,000/- from the REPCO Bank by creating hypothecation of goods on an assurance given by respondent to extend the lease; and that the respondent filed the suit with ulterior motive by suppressing the facts.

10. The trial Court framed the following issues:

- “1. Whether the defendants are liable for vacating and deliver the vacant possession of the plaint schedule property to the plaintiff?*
- 2. Whether the plaintiff is entitled for receive balance of arrears of rent from July, 2011 to May, 2013 at the rate of Rs.880/- per month?*
- 3. Whether the plaintiff is entitled rent from the month of June, 2013 at the rate of Rs.9,680/- ?*
- 4. Whether the plaintiff is entitled for damages as prayed for?*
- 5. To what relief?”*

11. Before the trial Court, the respondent examined P.Ws.1 and 2 and marked Exs.A-1 to A-8. The appellants examined D.Ws.1 and 2 and marked Exs.B-1 to B-7.

12. After considering the evidence on record, the trial Court held that the lease commenced in 2006 and ended by 30-06-2011, but the appellants did not vacate the property and instead filed O.S.No.295 of 2011 for injunction, that the lease was validly terminated by Ex.A-3 legal notice w.e.f. 30-06-2013 and that the said notice was received under Ex.A-4 by appellants. It also noted that the 2nd appellant admitted in O.S.No.295 of 2011 that after expiry of lease period under Ex.A-1, he had to vacate the shop premises by taking away all the decoration articles in the shop and therefore held that the respondent is entitled to the relief of recovery of possession. It held that there is no extension of lease tenure by respondent; that there is no evidence to show that appellants availed any loan from REPCO Bank and made any improvements; and even if they did, the respondent had nothing to do with it. It however held that the rent was only Rs.8,800/- p.m. and not Rs.9,680/- as contended by respondent and so the respondent is

not entitled to rent at Rs.9,680/- from the month of June, 2013. It also held that respondent can only claim rent @ Rs.8,800/- p.m. from June, 2010 till delivery of possession and not Rs.25,000/- p.m.

13. Assailing the same, the appellants filed A.S.No.94 of 2016 before the V Addl. District and Sessions Judge, Tirupati.

14. The said appeal was dismissed on 29-08-2017. The lower appellate Court also confirmed the findings of the trial Court. It held that the appellants did not challenge Ex.A-3 quit notice issued by respondent under Section 106 of the Transfer of Property Act, 1882 (for short "the Act") and that the lease was validly terminated by Ex.A-3 quit notice and they ought to have vacated the premises by 13-06-2011. It confirmed the finding of the trial Court that there is no extension of lease orally by respondent on 13-06-2011. It also held that there was no undertaking given by respondent to the REPCO Bank of oral extension of lease and the appellants cannot claim to continue in possession of the plaint schedule property till discharge of their loan amount.

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

16. Heard Sri D. Kodandarami Reddy, learned counsel for the appellants and Sri Maheswara Rao Kuncheam, learned counsel for respondent.

17. Learned counsel for appellants contended that the Courts below were not justified in decreeing the suit solely on the basis of Ex.A-3 quit notice was not challenged.

18. This contention is without merit because once the quit notice was served on appellants, and it is not challenged and is in conformity with Section 106 of the Act, they have to vacate the premises at the end of the period mentioned in the notice, which is 30-06-2013.

19. Learned counsel for appellants also contended that Courts below could not have decreed the suit in the light of the decree in O.S.No.295 of 2011 obtained by appellants that they shall not be evicted without following due process of law.

20. Issuing notice under Section 106 of the Act by respondent and filing the present suit for eviction is process of eviction sanctioned by law. Therefore, no objection can be taken to it on the said ground.

21. Though a plea was raised that provisions of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 are applicable, no such contention was raised in the Courts below and in any event, the agreed rent was found to be more than Rs.3,500/- p.m. prescribed under the said Act. So there is no merit in the said contention either.

22. I therefore find no question of law much less substantial question of law arising in this Second Appeal and accordingly it is dismissed at the stage of admission. No costs.

23. As a sequel, miscellaneous petitions pending if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date : 19-12-2017

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