

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

**Second Appeal No.1348 of 2017**

**JUDGMENT:**

Aggrieved by a reversing judgment and decree of eviction, the tenant has come up with the above second appeal.

2. Heard Mr. V. Roopesh Kumar Reddy, learned counsel for the appellant and Mr. Karanam Ramesh, learned counsel for the respondent.

3. The respondent filed a suit in O.S.No.34 of 2014 for ejectment and also for damages for illegal use and occupation, of the plaint schedule shop. The claim of the respondent in its suit was that the suit schedule shop was taken on a monthly rent of Rs.2,000/- for non-residential purposes and that the appellant/defendant sublet the premises to a third party unauthorisedly and that the sub-lessee started running an eatery selling Non-Veg items, offending the Hindu Religious sentiments of the respondent, which is a Hindu Mutt and that therefore, they issued a notice of termination of tenancy on 05-11-2013 and came up with the suit for ejectment.

4. The appellant/defendant filed a written statement denying the creation of the sublease, and denying the sale of Non-Veg items and claimed that he had invested a sum of Rs.1,50,000/- for the purpose of fixtures and fittings in addition to an investment of Rs.1,00,000/- for running a business; that he has deposited Rs.50,000/- as security deposit and that he never committed any default in paying the rent. The petitioner/appellant also claimed that he filed a petition under Section 8 (5) of the A.P. Buildings (Lease,

Rent and Eviction) Control Act, 1960 and that therefore, the suit deserves to be dismissed.

5. Based on the above pleadings, the trial Court framed two issues.

- (1) Whether the plaintiff is entitled to evict the defendant from the plaint schedule property and
- (2) Whether the plaintiff is entitled to recover damages of Rs.2,000/- from 01-12-2013 till 31-12-2013?

6. The Power of Attorney Holder of the respondent/plaintiff was examined as PW.1. He filed the document of Power of Attorney as Ex.A.1, the notice issued under Section 106 of the Transfer of Property Act, 1882 as Ex.A.2 and the reply given by the defendant as Ex.A.3. The appellant/defendant examined himself as DW.1 and no documents were marked.

7. The trial Court held against the respondent/plaintiff both the issues, solely on the ground that there was no evidence to prove subletting and no evidence to prove default in payment of rent. Therefore, the trial Court dismissed the suit.

8. In the appeal filed by the respondent/plaintiff, the First Appellate Court found that once a notice under Section 106 is validly issued, the tenancy comes to an end and that therefore, the other things will pale into insignificance. Accordingly, the First Appellate Court allowed the appeal, set aside the judgment and decree of the trial Court and decreed the suit for eviction. It is against this judgment and decree that the defendant/tenant has come up with the above second appeal.

9. It is not the case of the appellant-tenant that the suit premises is covered by the provisions of the A.P. Buildings (Lease, Rent and Eviction) Act, 1960. The appellant/tenant did not even plead before the trial Court that the suit was not maintainable and that the respondent ought to have gone before the Rent Controller. Even in this second appeal, the appellant has not raised the question of jurisdiction and the applicability of the provisions of the Rent Control Act.

10. Therefore, it follows as a corollary that the question relating to subletting and wilful default in payment of rent, which are crucial to the determination of a petition for eviction under a Rent Control Act alone, have no bearing upon a civil suit for ejectment. In respect of a tenancy not protected by the Rent Control Act, the only question that would fall for consideration of the Civil Court is whether the quit notice under Section 106 of the T.P. Act was validly issued or not. In this case the issue of notice, the receipt of notice and the validity of such notice, are not in doubt nor in question. The tenancy was admittedly a month to month tenancy. Therefore, under Ex.A.2, the appellant was given 15 clear days notice as required by Section 106 of the T.P. Act. Not even a feeble attempt was made by the appellant to question the validity of the notice under Section 106 of the T.P. Act. Therefore, the question of law sought to be raised in the second appeal in relation to Section 106, do not at all arise for consideration.

11. In the result, I find no substantial questions of law arising for consideration in the above second appeal. Hence, the second appeal is liable to be dismissed.

12. However, the appellant filed an affidavit seeking six months time to vacate and handover the vacant possession. Therefore, taking into account the affidavit of undertaking filed and taking into account the facts and circumstances, the appellant is granted time up to 30-06-2018 to vacate and handover the vacant possession of the suit property to the respondent, subject, however, to the condition that the monthly rents shall be paid duly and promptly. If there is any default, the concession granted herein, will stand automatically withdrawn and the respondent will be entitled to execute the decree. The second appeal is dismissed with the above observations.

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

**V. RAMASUBRAMANIAN, J**

Date: 29-12-2017

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