HON'BLE SRI JUSTICE SURESH KUMAR KAIT

SECOND APPEAL No.1439 of 2017

JUDGMENT : ***(ORAL)***

Vide the present second appeal, the appellant has assailed the decree and judgment dated 13.11.2017 in A.S.No.16 of 2015 on the file of XI Additional District and Sessions Judge, Tenali, confirming the decree and judgment dated 28.11.2014 in O.S.No.5 of 2012 on the file of the Principal Junior Civil Judge, Tenali.

2. The respondent/plaintiff is the landlord of the schedule property. Originally, one Caltex India Limited Company took the plaint schedule land on lease from one Turlapati Sri Lakshmi Devi. On 18.11.1970, lease agreement was executed in between the above said Company and said Sri Lakshmi Devi for a period of 10 years. The lessee was given an option for getting it renewed for a further period of 10 years each, thus, 2 renewals in total, as per Clause 3(G) of the said agreement. The Caltex India Limited Company later merged into Hindustan Petroleum Corporation Ltd., who is the appellant before this Court. The agreement period including the two renewal periods, was availed till 18.11.2000. The rent for schedule property was Rs.465/- per month at that time.

3. Smt.Sri Lakshmi Devi, who leased out the schedule property to the appellant, is the mother of respondent/plaintiff and she passed away on 18th January 2001. During her lifetime, said Sri Lakshmi Devi executed registered Will dated 16th August 1990 in favour of respondent/plaintiff bequeathing her entire movable and immovable properties including the

plaint schedule property to the respondent. After the death of Sri Lakshmi Devi, the Will came into operation and the plaint schedule property devolved upon the respondent/plaintiff. As such, the respondent became the absolute owner of plaint schedule property. The appellant was very irregular in payment of rents and since long time, the appellant had been sending only Rs.465/- per month towards the monthly rents, whereas, the plaint schedule property fetches more rental value. During the life time of plaintiff's mother, she got issued a registered notice dated 16th August 2000 to the appellant, demanding the Corporation to vacate the plaint schedule property. Subsequently, the respondent/plaintiff sent a letter dated 13th April 2001, intimating about the death of his mother, to the appellant. The respondent wanted the schedule property for his *bonafide* personal occupation. So, he repeatedly requested the appellant to vacate the plaint schedule site and deliver the same. However, the appellant did not vacate the plaint schedule site, but postponed the same on one ground or the other. The appellant sent the cheques of rents, but the respondent/plaintiff did not encash the same, and some of them were returned. The respondent did not accept the cheques from the month of August 2000 and totally 110 cheques were not encashed by the respondent so far. The respondent got issued several notices to the appellant to vacate the schedule site. At last, on 05.08.2011, the respondent got issued a registered notice to the appellant to vacate the schedule premises within 30 days from the date of receipt of notice. The appellant received the said notice and did not give any reply. After efflux of lease period, the appellant became trespasser of the schedule site and has no right to continue in the schedule property. Accordingly, suit was filed for eviction and for payment of damages.

4. After considering the rival contentions of the parties, the learned trial Court in its judgment dated 28.11.2014, has recorded that admittedly the mother of plaintiff by name Turlapati Sri Lakshmi Devi leased out the schedule premises to the appellant-Corporation on 18.11.1970. It was not in dispute that lease period initially agreed was for 10 years on a condition to renew for further two terms of 10 years each. Undisputedly, the plaintiff's mother executed Ex.A-3/Registered Will bequeathing the suit schedule property in favour of plaintiff. The plaintiff, to substantiate his contention, got examined himself as PW-1 and on behalf of appellant-Corporation, it's Regional Manager and Senior Sales Officer were examined as DWs.1 and 2 respectively.

5. The evidence of PW-1 as well as DWs.1 and 2 reiterated their respective pleadings. During the cross-examination, PW-1 conceded that the appellant-Corporation has been sending the rent at the rate of Rs.465/- per month by way of cheques. However, he did not encash the said cheques in view of expiration of lease period; that earlier, he used to return the cheques, but later, due to postage charges, he kept the cheques intact without returning the same. On the other hand, DWs.1 and 2 deposed that the initial lease period had expired on 18th July 2000, but plaintiff's mother had extended the lease period for further 30 years orally. It is evident that from the view point of DWs.1 and 2, the rent of Rs.465/- is less, but it is their evidence that they have been making

deliberations with the plaintiff for enhancement of rent, which was denied by the plaintiff outrightly.

6. The material aspect concerning issue Nos.1 to 3 as framed by the trial Court was, whether the appellant-Corporation is in occupation of the schedule property subsequent to 18.11.2000 with the assent of the landlord or not. The defence of the appellant is that the lease agreement dated 18.11.1970 in between the appellant-Corporation and plaintiff's mother was further extended to another 30 years orally. The plaintiff has outrightly denied the said contention of the appellant-Corporation.

7. By virtue of Section 107 of the Transfer of Property Act, 1882, a lease of immovable property from year-to-year or for any term exceeding one year, can be made only by a registered instrument. A conjoint reading of Sections 106 and 107 of the Transfer of Property Act makes it clear that in the absence of a registered lease, what comes into force, is a tenancy from month-to-month or year-to-year, depending upon the purpose thereof. It does so by reason of delivery of possession, the oral agreement and the inductee's possession as a tenant being assented to by the lessor. Such a tenancy is terminated by a notice to quit under Section 106 of the Act.

8. In the case on hand, the plaintiff contended that either he or his mother during her life time, did not assent for the appellant to continue the possession in the schedule premises and never encashed cheques sent towards payment of rents. The evidence of PW-1 is no way discredited by the appellant/defendant.

9. On the other hand, the appellant-Corporation, though contended *vice versa*, there is no evidence to substantiate its contention. The testimony of both DWs.1 and 2 did not sustain the contention of appellant-Corporation. Even the conduct of plaintiff's mother did not support the version of the appellant-Corporation, which was evidenced by contents of Ex.A-1/notice of termination issued by her to the appellant-Corporation during her life time. Further, no evidence was led by the appellant-Corporation to show that subsequent to issuance of Ex.A-1/notice, the lease was extended.

10. Keeping in view the aforesaid evidence and facts, the suit filed by the respondent was decreed directing the appellant to vacate the suit schedule premises and deliver vacant possession to the plaintiff within 3 months from the date of judgment, failing which, respondent-plaintiff is at liberty to evict the appellant under due process of law.

11. Being aggrieved, the plaintiff filed appeal vide A.S.No.16 of 2015. The same was dismissed vide judgment dated 13th November 2017.

12. Two Courts below have given concurrent findings on the same issues. The present appeal is a Second Appeal, where the evidence led before the Courts below, is not to be re-appreciated.

13. It is not in dispute that the last lease between the appellant and respondent was upto 18.11.2000, and thereafter, the said lease was never extended by any document either by the respondent/plaintiff or his

mother. Therefore, I find no illegality or perversity in the findings of the two Courts below.

14. Finding no question of law in the present Second Appeal, the same is accordingly dismissed. No order as to costs.

15. At this stage, counsel appearing on behalf of the appellant seeks one year time to vacate the suit premises. Keeping in view his submission and the machinery installed on the suit premises, I hereby grant six months' time to the appellant-Corporation to vacate the suit premises, failing which, the appellant shall be liable for past and present damages for not vacating the suit schedule property.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

22nd December, 2017

ajr