

THE HONOURABLE DR.JUSTICE B.SIVA SANKARA RAO

SECOND APPEAL No.98 of 2018

JUDGMENT:

The Second Appeal before admission to formulate the substantial question of law, if any, came up for hearing.

2. Heard at length and perused the decrees and Judgments with concurrent findings by the Courts below and other material referred therein placed on record.

3. The appellant/defendant denied the jural relationship of tenant and landlord outcome of oral tenancy between himself and respondent-plaintiff. The plea of appellant/defendant is that he was tenant only under one Dr.N.K.Punjani. The plaintiff's General Power of Attorney holder was examined in the suit as P.W.1 saying said N.K.Punjani was earlier tenant of the premises, before let out to the defendant. From the evidence, more particularly with reference to the evidence of General Power of Holder of the plaintiff, as P.W.1, with reference to Exs.A.1 to A.5 and the oral evidence of the defendant as D.W.1, the trial Court by judgment, dated 28.12.2016, decreed the suit holding that there is a jural relationship of landlord and tenant and fixed the rent at Rs.6,770/- per month commencing from June, 2014 to January, 2015. It also directed the plaintiff to file a separate application for determination of mesne profits. The said judgment was confirmed by the lower appellate Court by judgment, dated 27.10.2017, which is subject matter of the present second appeal.

4. The grounds urged in the second appeal are that Courts below, in the concurrent findings, gravely erred in considering the factum of

there is no jural relationship of landlord and tenant between the plaintiff and defendant and there is no any scrap of paper filed in this regard, same cannot be considered as substantial question of law to admit the second appeal therefrom.

5. In fact, as can be seen from the material, there is no reply to Ex.A.1-notice, acknowledged by the defendant under Ex.A.2 before filing of the suit. Law is well settled from the expression of this Court in **Chapale Hanumayya v. Kavuri Venkateswarlu**¹ and the three bench expression of the Apex Court in **RANGAPPA v. SRI MOHAN**², particularly at para 15 that the only inference that can be drawn is that the person to whom the notice served, could have been replied, but for nothing to reply to the contents in the notice, for appreciation. Once the notice proved served, with no reply, coupled with the evidence even that of the General Power of Attorney holder as P.W.1 covered by Ex.A.3 in categorically deposing the facts within his knowledge also, which he is competent to depose there is nothing to admit the second appeal for not all involved any substantial question of law. Thereby disposed of the same before admission by granting nine (09) months time to vacate the premises and continue to pay the rent at the same rate fixed by the lower Court, without prejudice to the ascertaining of profits being entitled beyond that if any.

6. The defendant/appellant is not entitled any extension beyond the nine months supra to vacate meanwhile. If he failed to vacate meantime, the trial Court can execute the decree. The defendant cannot alienate and introduce any third party interest, not to cause any damage to the property in any manner. The defendant shall

¹ 1971 (1) AWR 65

² 2010 (11) SCC 441

submit before the trial Court the undertaking within fifteen (15) days with the above effect.

7. Accordingly, the Second Appeal is disposed of. Miscellaneous petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

DR.JUSTICE B.SIVA SANKARA RAO

MARCH 29, 2018

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Date:29.03.2018

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