

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

SECOND APPEAL No.4 of 2016

JUDGMENT:

This Second Appeal is preferred by the appellant/defendant aggrieved by the judgment and decree dated 09.12.2015 in A.S.No.76 of 2012 passed by the Additional District Judge, Narsapur, dismissing the appeal by confirming the judgment in O.S.No.317 of 2003 passed by the Principal Junior Civil Judge, Narsapur, decreeing the suit for eviction of plaintiff schedule property and recovery of arrears of rent.

- 2) The parties in this appeal are referred as they were arrayed before the Trial Court.
- 3) Heard Sri Dasari S.V.V.S.V.Prasad, learned counsel for appellant and Sri Rama Mohan Palanki, learned counsel for 2nd respondent regarding involvement of substantial questions of law for admission of appeal.
- 4) The following substantial questions of law are projected by the appellant:
- i) *Whether the judgment and decree of the lower appellate Court in dismissing the appeal when it found all the points in favour of the Appellant is legally sustainable?*
 - ii) *Whether the lower appellate court is legally correct in taking the cognizance of the notice under Section 106 of Transfer of Property Act?*

- iii) *Whether the lower Appellate Court as well as the trial Court taking into consideration of the waiver of notice by lesser in “terms of the Judgment reported in M/s. Golkonda Real Estates and Finance Corporation, Madras, a registered firm represented by the power of Attorney holder Smt. Madhuri V. Raju and others vs. Chavali Satya Rama Somayajulu reported in 1993 (3) ALT 140 (DB). (In the present case on hand, the respondent/plaintiff got issued notice on 18.11.2002 for that the defendant got issued reply notice on 03.01.2003 and the 1st plaintiff accepted the money order sent by the appellant herein for the month of 01.05.2003).*
- iv) *Whether the appellate Court is correct in narrating the Docket Order proceedings by underlining the due course of the proceedings in page nos.2 & 3 of the Judgment while deciding the issue before the Court of law?*
- v) *Whether the appellate Court is correct in “even by allowing the I.A.No.110/2012 in A.S.No.76/2012 dated 24.11.2015 in the petition filed by the Appellant herein under Order 6 Rule 17 r/w 151 CPC in Para no.17 of the order as follows: “ofcourse the petitioner cannot be permitted for amendment, however an opportunity by way of argument in main suit the petitioners are permitted to make arguments in the main suit. With this observation the petition is allowed. In the result, the petition is allowed. No costs.” But, contrary to the above categorically mentioned in para No.32 of the judgment in A.S.No.76/2012 that “in the absence of the pleadings and proof the defendant cannot be permitted to take a new plea and argument. The defendant has not preferred any revision or appeal against the order in I.A.no.110/2012 as such, the order has become final and not it is not open for*

the appellant/defendant to re-agitate that there is a requirement of amendment of pleading in suit it cannot be said that the other legal heirs of 1st respondent were not brought on record and the suit is bad for non-joinder of necessary parties?

- vi) *Whether the quit notice sent by the 1st respondent/1st plaintiff is consonance with the Section 106 of the Transfer of Property Act? And valid? and binding? or waiver?*
- vii) *Whether the respondent/ plaintiffs proved the case for their pleadings, evidence regarding default of payment of rents and they wanted to extend their business by construction of a new building?*
- viii) *Whether the judgment rendered by the Appellate Court is in consonance with the judgment reported in Dandapati Narayana Reddy vs. Duggireddy Venkata Satyanarayana Reddi and others regarding the genuineness of the will raised at the later point of time reported in AIR 2001 Supreme Court 3685?*
- ix) *Whether the Appellate Court is correct in keeping the petition filed under Order 6 Rule 17 from 2009 to 2015 pending for a period of 6 years and allowed on 24.11.2015 without remanding the same to the trial Court for giving an opportunity for adducing evidence?*

5) The scrutiny of the facts, issues involved in the case and findings thereon given by the Courts below are expedient to determine, whether there exists any question of law muchless substantial question of law in this appeal.

a) The 1st plaintiff's case is that he purchased plaintiff schedule shop along with its northern side shop room under sale deed dated 27.11.1961 and defendant has been a monthly tenant on a rental of Rs.1800/-. The defendant has been running the business under the name and style of "Manoharlal Ganeshmal Bankers". The defendant used to pay rents in the succeeding month and obtain signatures of the plaintiff or his son M.Ananda Lakshmana Swamy in a pocket note book maintained by the defendant. 1st plaintiff, his wife and son have been carrying on business in "Home Needs" under the name and style of "Venkat Enterprises" in a different shop room in the Court Street. The shop room which is to the north of the plaintiff schedule room was let out to Mayuri Sarala Kumari, who is running medical shop under the name and style of "Sri Venkateswara Medical Stores". Both the shop rooms are situated in an important business locality abutting to the main road, whereas the plaintiff's shop room is situated in Court Street in a by-lane.

b) The further case of 1st plaintiff was that in order to demolish both the shop rooms which were under lease and to construct a single terraced shop room for his business purpose, the plaintiff issued 15 days quit notice to the defendant requesting to vacate the shop room. However, the defendant and Sarala Kumari failed to vacate the shop room though they promised to do so. Hence the 1st plaintiff issued registered notice dated 18.11.2002 under Section 106 of T.P Act in the name of his wife calling upon the defendant to vacate the shop room for which the defendant issued reply notice dated 03.01.2003 with false allegations. Since the notice dated 18.11.2002 was issued in the name of 1st plaintiff's wife by

mistake as the 1st plaintiff was the owner, he got issued another notice dated 09.05.2003 to the defendant to vacate the shop room. The defendant got issued reply notice dated 28.06.2003. It is plaintiff's case that the provisions of A.P Buildings (Lease, Rent & Eviction) Control Act, 1960 do not apply to the plaintiff schedule shop room as the lease was on a monthly rent of Rs.1800/- and hence the parties were governed by general law and lease was terminated by issuing quit notice under Section 106 of T.P Act.

c) It is also the case of plaintiff that from the date of notice dated 18.11.2002, the defendants stopped payment of rents and committed default for the months of 01.12.2002, 01.01.2003, 01.02.2003, 01.03.2003 and 01.04.2003 i.e, for 5 months. After deducting the rent paid by the defendant for the month of May, 2003 he was still due to pay rent for 7 months from December, 2002 to July, 2003. The defendant is also liable to pay damages @ Rs.2000/- per month.

Hence the suit.

d) While admitting the tenancy, defendant's case is that it is not a monthly tenancy but a permanent lease. He would contend that originally the father of the defendant namely Ganesh mal took plaintiff schedule shop on lease in October, 1968 on a monthly rent of Rs.100/- from the plaintiff. Later in the year 1984 the defendant got divided from his father and continued as tenant in schedule shop room and carrying on business and paying rents regularly to the son of plaintiff which was being enhanced from time to time. Hence the lease between the parties does not fall under

Section 106 of T.P Act as originally the lease was taken on a monthly rent of Rs.100/- under oral lease agreement. His further case is that he paid rents upto 01.11.2000 @ Rs.1,350/- p.m. From 01.11.2000, the lease was further extended for 6 years by enhancing the rent to Rs.1800/- p.m under oral lease and the defendant is entitled to continue up to 01.11.2006 under the same terms and conditions. As per the aforesaid oral agreement, the lease could be extended to a further period of 10 years by enhancing the rent. Hence the notice issued under Sec.106 of T.P.Act is not applicable to the lease between the parties.

e) The further case of the defendant is that he was not aware whether plaintiff was in partnership with his wife and son and carrying on business in Home Needs under the name and style “Venkat Enterprises”, but the defendant knows the plaintiff’s son Ananda Lakshmana Swamy has been carrying on business in Home Needs under the said name. The defendant admitted the issuance of notice dated 18.11.2002 in the name of 1st plaintiff’s wife and his issuing reply notice and also the registered notice dated 09.05.2003 issued by the plaintiff and his giving reply dated 28.06.2003. The defendant contended that the two sons of the plaintiff carrying on their business in the premises owned by the plaintiff in Court Street which is also a center point and there is no necessity for plaintiff to shift his business to the scheduled shop room. In fact defendant has been effecting the repairs regularly and therefore there is no need to effect repairs or demolish the building. The defendant denied the default in payment of rents alleged by the plaintiff. Since there were no cordial terms, he sent the rents due in the months of January, February and

March, 2003 and obtained acknowledgment of payment of rents in the pocket note book maintained by him. For April, 2003 also he remitted the rent to the plaintiff's son and after receiving the rent, he retained the said pocket note book stating that he would return the same later. In spite of repeated requests made by defendant, he failed to return the same and later the plaintiff got issued notice with false averments. The pocket note book was retained by 2nd plaintiff with *mala fide* intention. As there was no other go, the defendant again sent the rent due on 01.05.2003 by way of Money Order and the same was received by the plaintiff. The subsequent rent due by 01.06.2003 was also sent by the defendant by M.O but the plaintiff refused to receive the same. Hence the defendant deposited the subsequent rents in Canara Bank in his SB A/c.No.3446 to show his bonafides. He thus prayed to dismiss the suit.

f) The Trial Court in deciding the issues came across two ancillary but important points to decide. They are as follows:

- a) *Whether the lease between the parties is a monthly lease or permanent lease and quit notice under Section 106 of Transfer of Property Act is valid or not?*
- b) *Whether the defendant can be called as a protected tenant and A.P Buildings (Lease, Rent & Control) Act, 1960 can only be applicable to evict the defendant from the plaint schedule shop room or not?*

The Trial Court, on the above aspects, on analysis of facts and evidence concluded that the lease between the parties is a monthly lease but not a permanent lease and therefore, the quit notice issued by the plaintiff under Section 106 of T.P. Act was a valid one. It further held that

the parties were governed by the general law i.e., T.P Act and not the A.P Buildings (Lease, Rent and eviction) Control Act, 1960 and he was not a protected tenant under the said Act. The Trial Court gave a further finding that the plaintiff sought for possession of the building because of the default committed by the defendant in payment of rents from December, 2002 to April, 2003 and also for his personal occupation to do his family business and both the grounds were established by him. The Trial Court accordingly decreed the suit. The First Appellate Court also confirmed the judgment of the Trial Court.

6) I gave my anxious consideration to the facts, evidence and concurrent findings on facts given by the Courts below to ascertain whether there arise any substantial question of law in this Second Appeal.

7) The main contentions of the appellant/defendant are:

i) The lease is a permanent lease but not monthly tenancy and therefore, general law i.e., Sec.106 of T.P Act to issue quit notice to determine the lease has no application and rather A.P Buildings (Lease, Rent and Eviction) Control Act, 1960, is applicable.

ii) The defendant has not committed any default in payment of rents.

iii) There was no personal requirement for the plaintiff to occupy the plaint schedule building as the present shop room in which he conducts his business is also in the prime locality.

8) In respect of the first contention, the Courts below observed that as per PW.1 the monthly rent payable to the schedule shop is Rs.1800/-.

Though the defendant claimed that it was a permanent lease and under an oral agreement it was proposed to be enhanced for every 6 years, the same could not be established. Further, except the oral evidence of DW.1, there was no other positive evidence to hold that it was a permanent lease. The Courts below thus observed that as per Section 106 of T.P Act, the lease can be held as monthly tenancy terminable by issuing 15 days quit notice. They also observed that the alleged oral permanent lease is not recognized by law, as under Section 107 of the T.P Act, a lease of immovable property for any term exceeding one year, can be made only by a registered instrument. Therefore, the oral permanent lease pleaded by the tenant is hit by Section 107 of T.P. Act. On these observations, the Courts below held that the lease between the parties is governed by Section 106 of T.P. Act and Ex.A.1—quit notice issued by the plaintiff is a valid one. They also observed that the A.P Buildings (Lease, Rent and Eviction) Control Act, 1960 has no application for the reason that as per Section 32(c) of the said Act, the provisions of the said Act shall not apply to any building, the rent of which as on the date of commencement of A.P Buildings (Lease, Rent & Eviction) Control (Amendment) Act, 2005 exceeds Rs.3500/- p.m in the areas covered by Municipal Corporations in the State and Rs.2000/- p.m in other areas. As per G.O.Ms.No.636 General Administration w.e.f 29.12.1983, the Building whose monthly rent exceeds Rs.1000/- is exempted from provisions of the A.P Buildings (Lease, Rent & Eviction) Control Act, 1960. The Courts below observed that since admittedly the rent was more than Rs.1000/- for the plaintiff

schedule shop room during the relevant period, the said Act had no application.

9) With regard to the second contention, the Courts below observed that though the defendant contended that he did not fell in arrears of payment of rents covered from 01.12.2002 to 01.04.2003 but he failed to establish the same. The evidence of DW.2 who is a clerk under DW.1 would not help him for the reason that there was no pleading in the written statement to the effect that DW.2 used to pay rents to the 2nd plaintiff on the instructions of the defendant. Further, DW.2 deposed in the cross-examination that plaintiff used to maintain the pocket note book regarding payment of rents which was not the case of the defendant. The Courts below further observed that though the defendant contended that he sent the rents due for January, February and March, 2003 and obtained acknowledgment of payment in the pocket note book maintained by him and while paying the rent for April, 2003, the plaintiff's son after receiving the rent retained the said pocket note book, he could not establish the said fact. The defendant did not issue any notice for recovery of the said note book. The Courts further observed that DW.1 has not properly explained, when and in whose presence he requested PW.1 to return the pocket note book. Thus the Courts concluded that the defendant failed to pay rents for the period from 01.12.2002 to 01.04.2003.

10) With regard to the third contention, the Courts below observed that the defendant cannot dictate terms and say that plaintiff has sufficient

accommodation for doing business. It is for the owner of the property to use and enjoy the property for his personal requirement.

11) A close perusal of the above findings would manifest that both the Courts gave concurrent findings on facts and they are based on sound reasonings. This Court finds no reason to disagree with them. In this case, no questions of law, much less substantial questions of law, are involved to determine in this Second Appeal. The defendant has been successfully enjoying the property of the plaintiff under the guise of litigation.

12) So on a conspectus, this Second Appeal merits dismissal at the admission stage and accordingly dismissed. No costs.

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

Date: 02.03.2018

scs

U. DURGA PRASAD RAO, J

