

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Second Appeal No.143 of 2018

Judgment:

Aggrieved by the concurrent judgments and decrees of eviction passed by both the Courts below, the defendant/tenant has come up with the above second appeal.

2. Heard Mr. P.S.P. Suresh Kumar, learned counsel for the appellant. Mr. Y.Koteswara Rao, learned counsel, takes notice for the respondent.

3. The respondent filed a suit in O.S.No.94 of 2009 for eviction and also for damages for use and occupation in a sum of Rs.4,500/- per month. The case of the respondent/plaintiff was that by virtue of a registered lease deed dated 29-01-2003, the appellant took the suit schedule property on monthly rental basis for a period of five years from 01-02-2003 to 31-01-2008; that a sum of Rs.15,000/- was paid as advance and the monthly rent was fixed at Rs.1,500/- with a clause for enhancement at the rate of 10% every year; that on 23-01-2009, the respondent/plaintiff issued a quit notice; that on 30-01-2009, the appellant received the notice, but failed to vacate the same and that therefore the plaintiff was obliged to file the suit.

4. The appellant/defendant filed a written statement admitting the execution of a registered lease deed and contending *inter alia* that since the rent was increased from time to time, the defendant could not continue; that however

the plaintiff requested the defendant to continue and hence a fresh oral agreement was entered into, fixing the monthly rent at Rs.1,650/-; that the defendant invested some money and also made several developments in the suit property; that thereafter disputes arose, leading to the plaintiff filing the suit.

5. On the basis of the above pleadings, the Trial Court framed the following issues for consideration:

1. Whether the defendant is liable to vacate the plaint schedule property and deliver possession to plaintiff?
2. Whether the plaintiff is entitled for damages as prayed for?
3. Whether this Court had jurisdiction or not to decide the suit? and
4. To what relief?

6. The plaintiff examined himself as P.W.1. He examined a third party as P.W.2, but gave up his evidence. However, he examined a person carrying on business in a building located opposite the suit schedule property, as P.W.3. The registered sale deed dated 15-3-1996 relating to the suit schedule property was marked as Ex.A-1. The registered lease deed dated 29-01-2003 was marked as Ex.A-2. The office copy of the quit notice dated 23-01-2009 was marked as Ex.A-3. The postal acknowledgement card signed by the defendant was marked as Ex.A-4.

7. The appellant/defendant examined himself as D.W.1. He also examined a third party as D.W.2, to speak to the fact that there was an oral agreement, after the expiry of the

period of lease stipulated in the registered lease deed. No documents were marked on the side of the defendant.

8. On the basis of the pleadings and the evidence on record, the Trial Court came to the conclusion that the defendant committed default in payment of rents from October, 2008 and that the plaintiff was in need of the suit property for his *bona fide* requirement. On issue Nos.1 and 2, the Court below held that the plaintiff was entitled to receive the difference between the rent of Rs.2,185/- actually payable and the rent already paid, from October, 2008 onwards, by increasing the rent at the rate of 10% per year. Accordingly, the Court below decreed the suit directing eviction and also directing payment of Rs.2,185/- per month from October, 2008 with an enhancement of 10% every year till the date of vacation.

9. Aggrieved by the judgment and decree of the Trial Court, the appellant filed a regular first appeal in A.S.No.55 of 2016. The First Appellate Court framed the following points as arising for consideration in the appeal:

1. Whether the plaintiff is entitled for the relief of eviction of the defendant from the plaint schedule property and for recovery of possession of the schedule property?

2. Whether the plea of oral lease after expiry of original lease period as taken by the defendant is true and correct?

3. Whether the plaintiff is entitled for damages @ Rs.4,500/- pm for use and occupation of the plaint schedule property from 01-10-2008 till the date of delivery of possession of the schedule property?

4. Whether the suit for eviction filed by the plaintiff is maintainable before Principal Junior Civil Judge Court, Gudivada?

5. Whether the judgment and decree dated 29-8-2016 in O.S.No.94 of 2009 on the file of the Principal Junior Civil Judge Court, Gudivada needs any interference? and

6. To what relief?

10. After independent consideration of the pleadings and evidence on record, the First Appellate Court came to the conclusion that there was a valid quit notice issued after the expiry of the period of lease stipulated in the registered lease deed and that there was no oral agreement as pleaded by the defendant.

11. It is against the aforesaid concurrent judgments and decrees that the tenant has come up with the above second appeal raising the following substantial questions of law:

1. Whether the Courts below are right in maintaining the suit for eviction in a Civil Court, when admittedly the lease amount is Rs.1,650/- and when the Rent Controller alone got jurisdiction to try the same?

2. Whether the courts below are right in entertaining the suit for eviction without giving any finding on issue No.3 which was framed about the jurisdiction of the court to try the civil suit?

3. Whether the Appellate Court is right in dismissing the appeal by observing that Act 17/2005 came into force w.e.f. 27-4-2005 and hence the Trial Court has got jurisdiction ignoring the fact that the civil suit was filed on 07-3-2009? and

4. Whether the Courts below are right in decreeing the suit for eviction and for recovery of amounts without any valid grounds of bona fide requirement, wilful default or wastage of suit premises?

12. The first question of law does not arise for consideration, in the light of the finding of fact recorded by both the Courts below that the monthly rent was Rs.2,185/-,

which was beyond the threshold limit for invoking the jurisdiction of the Rent Controller.

13. Insofar as the second question of law is concerned, the First Appellate Court considered the issue in detail under point No.4. The first appeal being a continuation of a civil suit, the appellant cannot anymore have a grievance that the Trial Court did not answer this issue.

14. Insofar as the third question of law is concerned, the First Appellate Court followed the decision of this Court in ***Ramvilas Bajaj v. Ashok Kumar*** [2007 (4) ALD 137]. Therefore, the First Appellate Court cannot be found fault with.

15. In a suit for eviction, the only question that is to be addressed is the validity of the notice under Section 106 of the Transfer of Property Act, 1882. The grounds of wilful default, *bona fide* requirement or wastage, would arise only in proceedings for eviction before the Rent Controller. Hence, the fourth substantial question of law does not arise for consideration.

16. In view of the above, I find no substantial questions of law arising for consideration in the above second appeal. Hence, it is dismissed. The applications, if any, pending in this second appeal shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

06th April, 2018.
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