

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

SECOND APPEAL No.211 OF 2018

JUDGMENT:

The second appeal of the tenant of the premises in question (under controversy as to what is leased out is also the first floor or the first floor subsequently let out as admitted by P.W.1, the second appeal respondent/plaintiff in her evidence along with her son in 2013, after filing of the suit in 2012) came for admission in raising the substantial questions of law, as per the grounds of the said appellant, as to sufficiency of service of quit notice, under Section 106 of the Transfer of Property Act and the other is once the lease premises in the very plaint is silent and the evidence of P.W.1 is inconsistent at one breath saying for ground floor suit filed, however, from perusal of the very description, the ground floor and first floor cannot be separately considered as two demised premises, but for one composite being for the first floor entry is only from the ground floor and without the one, the other is useless and what the counter affidavit averments in opposing the injunction petition in the second appeal by the plaintiff/respondent to the second appeal is as if ground and first floor are let out originally, which goes inconsistent with the very evidence of P.W.1, that itself is as referred supra inconsistent, thereby, there is ill appreciation of the evidence by the courts below, which involves substantial question of law is the contest.

2. In this regard, coming to the first question on sufficiency of notice; Undisputedly, the notice is to the premises address. What is stated to be served is on the person, who is occupying and running the premises, at that time. What is contemplated by Section 106(4) of Transfer of Property Act (amended Act 2 of 2003, w.e.f., 31.12.2002), is service either personally or on the family member or on the servant or by affixture. It is pointed out none of the said compliance is made, thereby, there is invalid quit notice. Though, there is no written lease and the tenancy is from month to month from its continuation of every month is a recurring cause of action of the tenancy holding over prior to the filing of the suit. Even for non-service of the quit notice and without quit notice, even after the said amendment to Section 106 of Transfer of Property Act, the question of eviction does not arise against a tenant holding over for not a case of any efflux of time of written lease and not a case of non-acceptance of rent and raising any objection to consider as tenant by sufferance of oral tenancy by efflux of time of one month. However, the fact remains, the person who sat in the premises allowed by the appellant herein, the tenant is deemed for all purposes either as servant or as family member for there is a service, who is authorized person and it is sufficient notice of quit and once the notice is served, there is no subsistence of tenancy for the continuation by the date of suit, as tenant by sufferance and not tenant holding over.

Thereby, the first point urged has no ground to admit as if a substantial question of law involved, even by interpretation of the said statutory provision with reference to the factual matrix supra.

3. Coming to the second question, the plaintiff's stand is not consistent admittedly. The plaint schedule is silent by putting a gap as to the description. It is not even a case of the first floor contains a different door number and ground floor contains another different door number, but for the composite door number and the plaint not confined to first floor. However, the fact remains that in the very cross examination of P.W.1, what the defendant elicited as referred supra of what she stated is only originally the ground floor let out, that is the subject matter of the eviction suit O.S.No.367 of 2012, the present one covered by the second appeal for admission. What she further stated is during pendency of the suit, she let out along with her son to the selfsame tenant, the first floor also. Even the access to the first floor is covered by the lease demised premises from the ground floor, leave about the written statement is silent in disputing as to the identity of the said description of what was let out is ground floor, though plaint not specific, once the evidence brought on record as referred supra, the eviction can be ordered to the ground floor and it cannot be accepted much less as involving a substantial question of law in admitting the second appeal. So far as eviction of the ground floor premises covered by the

original lease, that is clarified from the evidence of P.W.1 concerned, irrespective of the plaintiff tries to make out a new case in the counter to the injunction petition in the second appeal before admission as if the lease premises consists of first floor also that cannot be given weight with any credibility of said version, even on oath, apart from not evidence to appreciate, much less, to admit as evidence including under Order XIX Rules 1 and 2 of CPC.

4. Having regard to the above, the second appeal no way requires admission even so far as the first floor concerned for not subject matter.

5. Having regard to the above, now, the issue is the appellant, as a tenant, is entitled to the first floor, by virtue of the fresh lease admitted by the P.W.1 of entered in 2013, which is not the subject matter of the second appeal and even from eviction of the ground floor to the right of access is only from the first floor, the right of access is entitled as without right of access, the question of continuing the lease does not arise and meaningless. To avoid all the controversies, a consensus is arrived between the tenant and the landlord, while confirming the eviction decree of the lower appellate court by doctrine of merger to grant 20 months time from today, so that in the meantime, the tenant vacates the premises consisting of ground floor and first floor, by considering the suit claim as mentioned in the affidavit to the

injunction petition in the pending second appeal of the respondent/plaintiff of the lease is to consider for all purposes as ground and first floors. Said undertaking of the tenant present in open court, representing through counsel, is recorded on the fact to bind him and the second appeal is dismissed, by granting twenty months time, holding that the lease is composite in view of the above for ground floor and first floor together and time for eviction is granted of twenty months from today and the tenant is bound to vacate without seeking further extension of time in any manner and in the case of failure, the landlord is entitled by virtue of this, under doctrine of merger, to execute by describing the decree schedule property for all purposes as ground floor and first floor without any question of any contention of alleged ambiguity in future in this regard. So far as the payment of the amount hereafter concerned, so long as continues for the maximum period of twenty months from now concerned, it is as it is to consider as damages for use and occupation for ground and first floor together.

6. Accordingly and with the above directions, this second appeal is disposed of. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. There shall be no order as to costs.

DR.B.SIVA SANKARA RAO, J

20.03.2018
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