

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

SECOND APPEAL NOS. 126 & 133 OF 2016

COMMON JUDGMENT:-

S.A. No.126 of 2016 is filed questioning the judgment, dated 07-09-2015 passed in A.S.No.49 of 2010 by the XXVII Additional Chief Judge, City Civil Courts, Secunderbad. A.S. No.49 of 2010 in turn is filed against the decree and judgment passed in O.S.No.169 of 2004 on the file of the court of I Junior civil Judge, City Civil Court, Secunderabad.

2. S.A. No.133 of 2016 is filed questioning the judgment, dated 07-09-2015, passed in A.S.No.55 of 2010 by the XXVII Additional Chief Judge, City Civil Courts, Secunderbad. A.S. No.55 of 2010 in turn is filed against the decree and judgment passed in O.S.No.168 of 2004 on the file of the court of I Junior civil Judge, City Civil Court, Secunderabad.

3. In both the suits, the landlords are the same and tenants, however, are slightly different, but they appear to be from the same family. Therefore, both matters are taken up for hearing with the consent of both counsel as the points involved in both the appeals are common.

4. This Court has heard Sri Bajrang Singh Thakur, learned counsel for the appellants and Sri B.Vijaysen Reddy, learned counsel for the respondents. As the issues

in both the cases are common, they are being disposed of by this common judgment.

5. Originally, the suits are filed for eviction of the defendants. The lease which is entered into between both the parties in the Month of May,1992. The suits were decreed and eviction was ordered. Being aggrieved, Appeal Suits were preferred and that the Appeal Suits were also dismissed confirming the decree and judgment of the trial court.

6. The learned counsel for the appellants essentially raised an issue that the interlocutory applications filed by him under order XVI, Rule 27 CPC were not admitted and that if the same were admitted, he would have been able to prove that the landlords have no title to the property at all. The learned counsel for the appellants submits that in the year 2014, the tenants applied under the provisions of Right to Information Act,2005 and documents were given to them which would show that the property was initially leased to M/S.S.B.Gulabchand Jawarilal and that the property belongs to the Estate Officer, Secunderabad Cantonment Board, Secunderabad. The contention of the learned counsel for the appellants is that if this application is allowed, it will be proved that the plaintiffs/landlords have no title to the property and that therefore the suit and the consequential appeal itself are not at all maintainable.

The learned counsel also relies upon Section 17 of the Indian Contract Act to contend that the landlords cannot enforce a contract of tenancy.

7. In reply thereto, the learned counsel for the respondents submits that the tenants cannot deny the title of the landlords. He states that the Rule of Estoppel specified in Section 116 of the Indian Evidence Act, 1872 squarely applies to the facts of the case. In addition, the learned counsel for the respondents points out that during the pendency of the suits, the issue of lack of title was never raised as a defence and only in the appeals on the basis of some documents which are obtained under the Right to Information Act, 2005, the tenants sought to deny the title of the landlords. The learned counsel also points out that in SAMP No.376 of 2016 filed in S.A.No.133 of 2016 a sworn affidavit of the landlords was filed wherein the landlords stated on oath that the property was acquired under the document bearing No.222/89 from M/s. Uday Engineering Company for a valuable consideration. He also points out that the vendors of the M/s. Uday Engineering Company by name M/S.S.B.Gulabchand Jawarilal, represented by its partner-Jawarilal have purchased the property in a public auction conducted by the Collector, Hyderabad. He states that sale certificate No.287/20, dated 15-07-1955 was issued to his clients. Therefore, he submits

that his clients have title to the property. In conclusion, he submits that assuming it for a sake of arguments, if there is a dispute about title, it cannot be decided in the suit and it is for the State or the Cantonment Board, as the case may be, to file a case. It is an alternative submission made by the learned counsel without admitting their title. The learned counsel also points out that three questions of law which are framed as a substantial questions of law do not arise at all.

8. This court, after hearing both the learned counsel, is of the opinion that a mere fact that some documents obtained under the Right to Information Act, 2005, will not give a right to the tenants to question the landlords' title, particularly when from the year 1992 onwards they have been tenants and has been acknowledging landlords' title. Assuming a for the sake of arguments that there is a dispute with regard to title, it is for the paramount title holder, if any, to sue the landlord for recovery of eviction/possession, but the same will not give a right to the tenants to question the title of the landlords and also to raise substantial questions of law, as tried to be formulated. This court is of the opinion that a substantial question of law is very clearly defined by the Hon'ble Supreme Court of India in *Santosh Hazari vs. Purushottam Tiwari*⁽¹⁾ as a

¹ (2001) 3 SCC 179

question of law, which arise from the pleadings and has been wrongly decided. The issue raised does not go to the root of the case either. In the case on hand, these issues do not actually arise for consideration in this case. The tenants cannot deny the title of the landlords. They cannot, therefore, file a Second Appeal essentially stating that on the basis of the documents under the RTI Act, there is a dispute of title. The dispute, if any, cannot be raised by the tenants. This court, therefore, finds that there are no questions of law, let alone substantial questions of law in this case.

Accordingly, both the Second Appeals are rejected at the stage of admission. At this stage, the learned counsel for the appellant seeks three months time to vacate the suit schedule property and undertakes to file an affidavit of his clients seeking three months time for vacating the suit schedule property with all the usual undertakings to vacate; pay the rent etc., Therefore, the counsel for the appellants is permitted to file the affidavit, by way of an Interlocutory Application in both the Appeals, by 03-01-2019 without delay, demur or further procrastination. If any such application, as directed, is filed, the same should be listed on 03-01-2019.

D.V.S.S.SOMAYAJULU,J

20-12-2018
TSNR