

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

SECOND APPEAL No. 504 OF 2016

JUDGMENT:

1. The Second Appeal is directed against the Judgment and Decree dated 30.03.2016 in Appeal Suit No.198 of 2014 on the file of the XXV Additional Chief Judge, City Civil Court at Hyderabad whereby the judgment and decree dated 22.01.2014 in Original Suit No.2594 of 2010 on the file of the IV Senior Civil Judge, City Civil Court, Hyderabad decreeing the suit for recovery of possession of the suit schedule property, were confirmed.

2. The appellant herein is the defendant, and the respondent herein is the plaintiff, in the suit. For better appreciation of facts, the parties are hereinafter referred to, as they are arrayed in the trial court.

3. While admitting the Second Appeal filed by the defendant, this Court framed the following substantial questions of law.

a) Whether the protection under Section 53A of the Transfer of Property Act is not available to the Appellants, in view of the admitted investments made by the Appellants, besides the academic activities being run by the Appellants ?

b) Whether the notice under Section 106 of the Transfer of Property Act is legal and binding, when several facts relating to and concerning the lease, is suppressed, more particularly, the deposit made by the Appellants, the improvements made to make the suit schedule property inhabitable, which were admitted by the Respondent ?

c) Whether the courts are right in entertaining the grievance of the respondent when he came to the court by suppressing the material facts, wantonly evaded to get register the lease deed, which is evident from the pleadings. In fact plain reading of the pleadings establishes that without performing part of the contract

the respondent with a malafide intention filed the eviction proceedings, what is the status of the judgment and decree in the eyes of law passed by the Hon'ble Courts in these nature of cases which are against the settled principles of law ?”

4. To adjudicate the *lis*, it is necessary to refer to admitted and disputed facts.

(a) The plaintiff filed the suit stating that he is owner of premises bearing municipal No.8-1-523/255, Brindavan Colony, Tolichowki, Hyderabad consisting of Cellar and ground, first and second floors(hereinafter referred to, as 'the schedule premises'). The said property was let out to defendant for running a school vide unregistered lease deed dated 30.11.2005 and the agreed rent is Rs.31,000/- per month, exclusive of water and electricity consumption charges, payable on or before 15<sup>th</sup> of every month. The tenancy is month to month commencing from the first day of the English calendar month and ending on the last of the month. As the plaintiff was not interested to continue the tenancy, he issued a letter dated 05.10.2010 to the defendant to vacate from the schedule property. The defendant issued a reply dated 20.10.2010 with all false claims. Thereafter, the plaintiff got issued a legal notice dated 28.10.2010 terminating the tenancy with effect from 30.11.2010 and to hand over vacant possession of the property on 01.12.2010 positively. Plaintiff also claimed damages @ Rs.3,00,000/- per month. It is further stated by the plaintiff that any amounts paid subsequent issuance of the legal notice and after termination of the tenancy, would be received without prejudice to his rights and the same would be treated as damages and the defendant would be treated as a trespasser. Having received the notice, the defendant did not comply with the demand of the plaintiff, instead filed Original Suit No.2561 of 2010 for injunction. Hence, the suit.

(b) The defendant filed written statement admitting the *jural* relationship between him and the plaintiff and the monthly rent at Rs.31,000/-, but denying the other material averments in the plaint and contending *inter alia* as follows.

He paid a sum of Rs.1,00,000/- towards interest free refundable security deposit. The schedule premises was not fit for use and occupation as it did not have walls. On the request of the plaintiff, he constructed walls in the ground floor by incurring expenditure of Rs.3,50,000/-. The plaintiff promised to reimburse the same at the time of vacating the premises.

Another lease agreement dated 26.02.2007 was entered into between the defendant and wife of the plaintiff, as GPA holder, renewing the lease whereunder it was agreed to provide the lease for a period of five years from 26.02.2007. Therefore, the alleged termination of lease, terming it as month to month and after execution of renewal agreement, is illegal, null and void. The plaintiff has been avoiding to register the lease deed dated on one pretext or the other.

By way of amending written statement, the defendant pleaded that he was put in possession of the schedule property in part performance of the concluded contract of lease dated 26.02.2007 and as he has been paying rents regularly, he is entitled for protection of his possession till completion of said period under Section 53 of the Transfer of Property Act. Plaintiff has been making all efforts to evict the defendant from the schedule premises and got disconnected water supply to the premises. Suit for mesne profits is ill-conceived. Prevailing rental value of the schedule premises in the locality is not Rs.3.00 lakhs. Hence, he prayed to dismiss the suit.

(c). Plaintiff filed rejoinder reiterating the pleadings in the plaint, denying that he put the defendant into possession of the property under the alleged contract of lease and stating that the suit is not for specific performance to act upon the said contract of lease and therefore the defendant is not entitled to protection under Section 53 of the Transfer of Property Act.

5. Basing on the above pleadings, the trial Court settled the following issues for trial.

- a) Whether the plaintiff is entitled for eviction of the defendant from the suit schedule property ?
- b) Whether the plaintiff is entitled for *mesne profits* at the rate of Rs.3,00,000/- per month ?
- c) Whether the plaintiff has disconnected water supply connection to the defendant ?
- d) Whether the Section 106 T.P. Act notice is not properly issued ?
- e) To what relief ?

The following additional issues were settled.

- 1) Whether the defendant has been put in possession of the suit schedule property in part performance of the concluded contract of lease on the assurance of the defendant that he shall be entitled to occupation of the suit schedule property till he continues pay the rents agreed upon ?
- 2) Whether the defendant is entitled to the protection of possession till completion of the said period under Section 53A of the Transfer of Property Act ?

6. During trial, on behalf of the plaintiff, P.W.1 was examined and Exs.A1 to A6 were got marked, and on behalf of defendant, D.Ws.1 and 2 were examined and Exs.B1 to B.19 were got marked.

7. The trial Court, upon appreciation of the evidence on record, decreed the suit without costs, directing the defendant to vacate the schedule premises and hand over vacant possession thereof to the plaintiff within four months. As regards *mesne profits*, the trial Court directed the plaintiff to move a separate application. On appeal, the first appellate court dismissed the appeal confirming the judgment and decree of the trial Court. Challenging the same, the present Second Appeal has been preferred by the defendant.

8. Heard the learned counsel for the appellant/defendant, the learned counsel for the respondent/defendant and perused the record.

9. The schedule premises was leased to defendant under an unregistered lease deed dated 30.11.2005 for running a school. Monthly rent agreed was Rs. 31,000/-. Admittedly, there is no registered lease deed between the parties in respect of the suit schedule property. According to the defendant, Ex.B1, an unregistered lease deed dated 26.02.2007, was executed by one Smt. Kanees Fathima representing the plaintiff as General Power of Attorney, in respect of the schedule premises for a period of 5 years. Plaintiff denied its execution. That apart, the recitals of Ex.B1 cannot be looked into with regard to the terms and conditions of the lease since it is an unregistered one. Admittedly, it was marked for collateral purpose. Both the Courts below considered Sections 106 and 107 of the Transfer of Property Act, 1882. So, both the courts below held that the document is of no use to the defendant and ultimately held that Section 107 of the Act would attract and the lease between the parties is an oral lease accompanied by delivery of possession. Once it is stated as lease of immovable property for any other purpose, Section 106 of the Transfer of Property Act, 1882 comes into play and it shall be deemed that

the lease is for month to month terminable at the instance of either the lessee or lessor by 15 days' notice expiring with the month of the tenancy, as laid down in case of *Calvary Baptist Church v. Vivekananda*<sup>1</sup>. Both the courts below also examined Ex.A5-termination notice issued by the landlord (plaintiff). Ex.A3-notice was not served. However, the same notice under Ex.A5 addressed to the defendant was duly served. It was admitted by the defendant. Exs.A3/A5 legal notices categorically disclose that the plaintiff terminated the tenancy with effect from 30.11.2010, the date of legal notice terminating the tenancy being 28.10.2010. Minimum of 15 days' prescribed time was granted to the defendant to vacate the suit premises. Both the courts below held that the plaintiff complied with the provisions of Section 106 of the Transfer of Property Act, 1882 and also held that Ex.B2 reply notice given by the defendant to the plaintiff is of no use. Even under Ex.B1, there is no recital that the plaintiff agreed to register the said document. The termination of tenancy cannot be challenged on technical grounds.

10. The trial Court relied upon the decision in *E.Chitra Ramachandran v. National Remote Sensing Agency, Hyderabad* and also held that Section 110 of the Act cannot be invoked to challenge the validity of notice of termination and ultimately concluded that the notice is valid and the plaintiff is entitled for eviction of the defendant from the suit premises. With regard to validity of the notice under Section 106 of the Act, both the courts below have elaborately dealt with the issue. It is a mixed question of fact and law. The Courts below recorded clear findings on these aspects upon appreciation of the evidence on record and the legal position, in right perspective. There are no grounds to

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<sup>1</sup> 2002 (3) ALD 157

interfere with the concurrent findings of the Courts below on the aforesaid aspects.

11. Further more, originally, the defendant had not taken a specific ground that he is entitled for protection under Section 53A of the Transfer of Property Act, 1881. As far as other substantial questions of law are concerned {enumerated in paragraph 3 (b) & (c)}, those questions relate to suppression of material facts and issue of notice under Section 106 of the Transfer of Property Act, 1882 terminating the tenancy. With regard to the said questions, the defendant alleged that the plaintiff did not approach the Court with clean hands and the notices given to him under Exs.A3/A5 terminating the tenancy, are not valid. There is no evidence to prove the alleged suppression of material fact by, or *mala fide* intention on the part of, the plaintiff. These questions are also elaborately dealt with by both the Courts below. The contentions raised by the defendant are only with regard to factual aspects of the case. No question of law, much less substantial question of law, does arise for determination.

12. As regards the first substantial question of law framed, it is for the defendant to establish that there has been a concluded contract of lease that he shall be entitled for occupation of the schedule premises till he continues to pay the rent. As already stated above, there is no registered lease. The defendant failed to establish that he was put in possession of the schedule premises in part performance of the concluded contract of lease. The defendant was put in possession of the schedule premises by the plaintiff/lessor under unregistered lease deed dated 30.11.2005. The said lease was terminated by issuing a valid notice. No sanctity or value can be assigned

to an unregistered lease deed dated 26.2.2007 said to have been executed by the wife of the plaintiff/ lessor as his GPA holder, extending the lease for a period of five years. Further more, the lessor had denied execution of the said unregistered lease deed dated 26.2.2007. The trial Court relied on a decision of the Division Bench of Delhi High Court in *Singer India Ltd. v. Amita Gupta* {88 (2000) DLT 186}, Wherein it is held that the protection sought by the tenant under Section 53 A of the Transfer of Property Act, 1881 is only to the extent that the tenant can justify his possession i.e., he is not a trespasser; this salutary provision enable the tenant to press into service the terms of a document which is unregistered though required by law to be registered. With regard to the alleged investments made by the defendant in constructing compound wall, etc., the said plea is not substantiated by adducing any cogent evidence. Even if the investment made by the defendant, it would be only a question of fact. It is not required to be looked into/considered in the Second Appeal. Further, running educational institution in the subject premises would not entitle the defendant to seek protection under Section 53A of the Act. Therefore, in the instant case, the defendant is not entitled to protection under Section 53 A of the Act. In view of the circumstances of the case, the first question raised cannot be a substantial question of law.

13. Learned counsel for the appellant relied on a decision in *Vinod Kumar v. Gangadhar*<sup>2</sup> wherein while dealing with a Civil Appeal preferred against the judgment of the High Court passed in a first appeal, the Hon'ble Supreme Court held that the High Court did not decide the appeal keeping in view scope and powers conferred on it under Section 96 read with Order 41 Rule 31 CPC, and hence, set aside the said judgment and remanded the matter. In the

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<sup>2</sup> (2015) 1 Supreme Court Cases 391

case on hand, this Court is dealing with a Second Appeal. So, the decision has no application to the facts of the present case.

14. Learned counsel for the appellant also relied on a decision in *S.P. Chengalvaraya Naidu (dead) by LRs. V. Jagannath (dead) by LRs & others*<sup>3</sup>, wherein it is held thus: (para 7)

“The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax- evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

He also relied on a decision in *Arunima Baruah v. Union of India & others*<sup>4</sup>, wherein it is held thus: (para 10 )

“The court's jurisdiction to determine the lis between the parties, therefore, may be viewed from the human rights concept of access to justice. The same, however, would not mean that the court will have no jurisdiction to deny equitable relief when the complainant does not

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<sup>3</sup> (1994) 1 Supreme Court Cases 1

<sup>4</sup> 2007 (3) Supreme 920

approach the court with a pair of clean hands but to what extent such relief should be denied is the question.”

There is no dispute about the proposition of law laid down in the above cases.

15. Both the Courts below, having analysed the entire evidence on record, did not hold that there was suppression of material fact which would disentitle the plaintiff to obtain the relief of eviction. The decree passed by the trial Court as affirmed by the appellate court does not suffer from any material omissions and commissions. Both the Courts below have analysed and acted upon the admissible evidence and did not consider any inadmissible evidence. There is no infirmity or perverse findings. As held, there is no question of law, much less substantial question of law, to determine in this Second Appeal. The Second Appeal is devoid of merit and is liable to be dismissed.

16. The Second Appeal is, accordingly, dismissed confirming the judgments of the Courts below. There shall be no order as to costs of the Second Appeal.

.07.2018  
DRK

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(Dr.SA, J.)

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