

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

C.C.C.A. No.56 of 2015

JUDGMENT :

The appellant is the defendant and the respondent is the plaintiff. The appeal is filed against the decree and judgment in O.S.No.81 of 2010 passed on 31.12.2014 by the learned III Additional Chief Judge, City Civil Court, Hyderabad. The suit filed was for the reliefs of eviction of the defendant from the plaint schedule property covered by Flat No.301, bearing M.No.8-2-350/350A, A.K. Enclave, 'B' Block, Road No.3, Banjara Hills, and for arrears of rent of Rs.4,55,527/- with interest at 24% per annum till payment and also to award damages for use and occupation at Rs.50,000/- per month from 16.02.2010-the date of filing of the suit till the defendant to vacate and hand over possession of the property and for costs.

2. The averments in the plaint in nut shell are that the defendant entered Ex.A.1-lease agreement, dated 28.05.2008, (Ex.A.1 marked subject to objection that is duly impounded and certified by the trial Court, but for unregistered to consider to what extent it is admissible for collateral purpose in establishing the landlord-tenant relationship, though terms cannot be looked into), that the defendant agreed to pay the rent and hire charges for amenities, total Rs.44,226/- per month by 10th of every succeeding month besides bearing electrical consumption charges and maintenance charges to the society and having paid Rs.1,32,678/- refundable deposit amount, later failed to

vacate and deliver vacant possession after expiry of the lease period fixed nor enhanced the rent stipulated therein of 5% every year from 01.05.2009 and despite legal notice to pay arrears issued on 01.11.2009 even acknowledged besides another notice-Ex.A.6, dated 15.12.2009, to vacate, acknowledged on 23.12.2009, and thereby entitled to the reliefs.

3. The written statement of the defendant in opposing the plaintiff's suit claim is with the contest that there is no landlord-tenant relationship between them and the defendant is Managing Director of M/s.Valou Property Projects Private limited and the suit is bad for non-joinder of the said entity, the plaintiff is not absolute owner of the property, the defendant is not tenant of the premises much less entered the lease by payment of the advance refundable supra. The further defence is that plaintiff and her husband being owners of Flat No.306 of the A.K. Enclave, block 'B', entered contract for sale with the defendant, for which the defendant paid Rs.10 lakhs to the plaintiff's husband on 28.05.2008 covered by receipt towards part of sale consideration and the plaintiff and her husband promised the defendant that they would show all documents in respect of Flat No.306 and while delaying without compliance and for demands of the defendant, they projected as owners of the present Flat No.301 of the same complex and till production of the documents, for the amount paid as advance to serve as security and to adjust rents thereon

offered and led the defendant in possession of the Flat No.301 (present plaint schedule) and thereby the suit is liable to be dismissed.

4. The trial Court therefrom framed the following issues:

1. Whether there is landlord tenant relationship existing between the plaintiff and defendant?
2. Whether the defendant occupied the suit premises as tenant or as having purchased the same from the plaintiff?
3. Whether the defendant is liable to be evicted from the suit flat?
4. Whether the plaintiff is entitled to recover the arrears of rent to the tune of Rs.4,55,527/- with interest @ 24% p.a.?
5. Whether the plaintiff is entitled to special damages as prayed for?
6. To what relief?

5. In the course of trial on behalf of the plaintiff, her husband came to the witness box as PW.1 and relied on Exs.A.1 to A.14 viz., Ex.A.1 is the original lease deed, dated 28.01.2008, Ex.A.2 is the office copy of legal notice, dated 01.11.2009, Ex.A.3 is the original registry receipt, Ex.A.4 is the acknowledgment, dated 07.11.2009, Ex.A.5 is the under certificate of posting receipt, Ex.A.6 is the office copy of the legal notice, dated 15.12.2009, Ex.A.7 is the acknowledgment, dated 23.12.2009, Ex.A.8 is the Canara Bank Statement of account, dated 09.07.2010, Ex.A.9 is the C.C. of proceedings of the District Registrar, Hyderabad (South) & Collector, dated 24.02.2008, Ex.A.10 is the original sale deed, dated 23.07.2007, Ex.A.11 is the original General Power of Attorney, dated 19.05.2012,

Ex.A.12 is the office copy of the legal notice, dated 06.07.2009, Ex.A.13 is the post receipts, dated 09.07.2009, and Ex.A.14 is the original Bank Statement issued by M/s.Agrasen Bank, dated 28.08.2012. The defendant came to the witness box as DW.1 and relied on Exs.B.1 to B.3 viz., Ex.B.1 is the original cash receipt for Rs.10 lakhs issued by the plaintiff husband, Ex.B.2 is the legal notice issued by the M/s.Samrat Builders and Ex.B.3 is the Bank Statement issued by Finacil Bank and cause examined one more witness DW.2.

6. It is from said evidence, the trial Court found that the very version of the defendant of he entered contract for sale for Flat No.306 having paid Rs.10 lakhs or so without obtaining sale agreement, without verification of the original documents is not believable, that too, when he never issued any notice for that if at all there is a little truth; besides DW.1 himself admitted in his cross-examination that he executed Ex.A.1 lease agreement, dated 28.05.2008, and the rent payable is Rs.44,226/- per month and also admitted about payment of the amounts twice by account payee cheques at such rate to the plaintiff. He also admitted about Flat No.306 is owned by Samrat Builders. He claims that for the so-called Flat No.306 sale consideration was Rs.58 lakhs and there is no any documentary proof in this regard and for the so-called advance payment supra of Rs.10 lakhs no receipt even obtained and not even proved regarding the said payment. It is therefrom concluded particularly in the discussion commencing from paras 14 to 16 of the

said version of the defendant from the evidence on record is unbelievable and untrue. It is observed therefrom further that if at all he is not a tenant the question of his executing a lease deed covered by Ex.A.1-lease agreement does not arise, that too when he admittedly paid twice the amounts of rent at Rs.44,226/- p.m. pursuant to Ex.A.1. He tried to explain as if those two cheques were obtained by PW.1 on own internal affairs. However, the fact remained as admitted those bankers cheques were cleared and amount received by the plaintiff from the account of DW.1. It is by saying with all these facts, it establishes the untrue version of alleged purchase of Flat No.306 and giving of Flat No.301 as security to adjust rental value for the so-called advance amount and it establishes there is landlord tenant relationship and that was the conclusion arrived at para 17 of the judgment. Regarding the liability for eviction and recovery of the rent at Rs.44,226/- per month concerned, from the claim of the plaintiff disputed by the defendant referred supra, DW.1 in his cross-examination besides admitted who is referred supra, his very written statement version also speaks that he paid every month the rental money and if really he purchased another flat and this flat was given as security for that, the question of payment of monthly rents so to admit does not arise, so also to issue the account payee cheques for two months and its clearance referred supra, leave about the silence of DW.1/defendant if at all there is any truth without even giving any legal notice all through. In the cross-examination of DW.1 not only

the two payments, he admitted further payment of rents at such rate on 21.06.2008, 22.06.2008 and 29.06.2008 and he did not show any written agreement or even receipt of payment of any advance of Rs.10 lakhs for the flat No.306 to believe his version of entering contract for sale so also that of DW.2 as discussed supra. Further, he did not dispute the quit notice much less the earlier notice by any reply to the same with present version therein if at all true for no prudent person will keep quiet. That also belies his entire defence version and thereby the plaintiff is entitled to the arrears claimed of Rs.4,55,527/- of the rent at Rs.44,226/- per month as a tenant from the defendant. It is observed that so far as the future profits claimed at Rs.50,000/- per month concerned same is to be determined on a separate application. It was thereby the suit is decreed granting two months time to vacate and to pay the said arrears of Rs.4,55,527/- with interest at 6% per annum from the date of suit till realization and future profits to be determined on separate application and with costs. The same is impugned in the grounds of appeal.

7. The grounds of appeal vis-à-vis the oral contentions of the counsel for the appellant/defendant are as follows:

1. The impugned judgment and decree of the court below is wholly erroneous, untenable and unsustainable.
2. The impugned judgment is contrary to the pleadings, weight of evidence and led and probabilities of the case.
3. The court below failed to answer the issues framed by itself and thus erred in law in passing the impugned judgment.

4. The court below grossly ignored to look into the records and observe that the payment of Rs.10 lakhs by the Appellant to the Respondent, wherein the Respondent offered to sell Flat No.306 of the same apartment complex as not proved is contrary to the admitted evidence of PW.1 and Ex.B.1 marked in that regard.
5. The court below fell into its own refrain all through the judgment claiming that the said Rs.10 lakhs payment is not established and thus misdirected itself into the scope of enquiry.
6. The court below having had framed a specific issue whether there is a Landlord tenant relationship and whether the Appellant occupied the suit premises as tenant, has failed to answer the same and thus impugned judgment is untenable in law.
7. The court below failed to appreciate that the scope and ambit of the suit and the defense and thus having dealt with the controversy in a generalized way without looking into the specific defense, the impugned judgment is perverse in nature.
8. The court below grossly erred in casting a burden on the Appellant herein in examining the issues straight away and thus misdirected itself and pass the erroneous judgment.
9. The court below erred in casting doubt on the payment of Rs.10 lakhs and it did not specify the total sale consideration, the period with which the transaction is to be completed, when that is the specific case of the Appellant, and as admitted by PW.1 in cross-examination as well as Ex.B.2.
10. The court below erred in assuming that the “Defendant claims that with a view to recover his money he agreed to purchase Flat No.301 and said to have occupied Flat No.301” is neither spoken to by either of the parties or

witnesses and assumed for itself such possession and thus misdirected itself.

11. The entire gamut of discussion of the court below in Para 15 and 16 is contrary to record and cannot be sustained.
12. The court below grossly erred in holding that since the Appellant did not verify the documents pertaining to Flat No.306, his contentions cannot be accepted, as when an advance is paid or an agreement entered into, they are subject o verification and satisfaction of all issues.
13. The court below obviously is unaware of the transactions in immovable properties and had imposed its own notion of buying the property.
14. The court below having had accepted that the Appellant is a businessman, failed to appreciate that in business world amounts are paid in good faith.
15. The court below erred in accepting Ex.A.1 as a lease deed.
16. The court below ought to have appreciated that the contra stand of the Plaintiff and PW.1 in plaint and the evidence and ought to have disbelieved Ex.A.1.
17. The court below ought to have accepted that the defense of the Appellant in regard to Ex.A.1.
18. The court below failed to appreciate that Ex.A.1 and Ex.B.1 are on the same date, which proves the defense of the Appellant.
19. The court below failed to appreciate that the amount paid by the Appellant to the Respondent is not by way of rent and no proof of such payment has been produced.
20. The court below ought to have appreciated that the Plaintiff has not entered into the witness box and thus the entire evidence of PW.1 is liable to be rejected.
21. The court below having accepted the plea that payments by way of cheque must have been by way of security deposit, could have accepted the plea of the Appellant and that the suit schedule premises has been given to him in the

permissive possession until the amount due under Ex.B.1 is returned to him or Flat No.306 is registered in his favor.

22. The court below grossly erred in recording that PW.1 in his cross-examination “admitted that he being partner of Samrat Builders, ..Flat No.306 and issued a receipt of Rs.10 lakhs”, when it is a specific case that he is not the partner and no document has been produced to prove the same.
23. The court below grossly erred in misreading Ex.B.1 and thus erred in law.
24. The court below erred in assuming that PW.1 admitted to the arrears of rent.
25. The court below jumped to the conclusion that the Appellant is due rent to the Respondent.
26. The court below failed to appreciate that no period of default is mentioned or tenable.
27. The court below having found that the Plaintiff failed to establish the quantum of mesne profits claimed could not have given liberty to the Respondent to file a separate application.
28. The court below having found that the Respondent was not able to produce proof of claim for such amount as special damages, could not have granted a decree in that regard.
29. The court below ought to have dismissed the claim for mesne profits.
30. The court below emarked upon to decide the suit from the Respondent by Plaintiff’s perspective and failed to note the defence of the Appellant and thus erred in law.
31. Viewed from any angle, the impugned judgment and decree of the court below is untenable and unsustainable in law and liable to be set aside.
32. Such other grounds as may be urged at the time of hearing.

8. Whereas, it is the submission of the learned counsel for the respondent/plaintiff that the trial Court reasoned judgment no way

requires interference being well considered on fact and law, even for this Court while sitting in appeal merely because some other view is possible, leave about there is no other possible view from proper appreciation of facts and law and thereby the appeal is liable to the dismissed.

9. Heard both sides and perused the material on record.

10. Ex.A.1-lease agreement execution is admitted by the defendant as referred supra including from his evidence, it was marked subject to objection regarding stamp duty, registration and amount of monthly rent. No doubt, it was duly impounded by the District Registrar and certified from the endorsement thereon before the trial Court. Once it is duly stamped the only thing to be considered is want of registration as per Section 17(1) (d) of the A.P. Amended Act 4 of 1999, with effect from 01.04.1999, to the Indian Registration Act of every lease agreement is a compulsorily registerable one. In fact, the effect of non-registration is provided by Section 49 of the Registration Act.

11. Section 49 of the Registration Act reads as follows:

Effect of non-registration of documents required to be registered.—No document required by section 17 or by any provisions of the Transfer of Property Act, 1882 to be registered shall,—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a

suit for specific performance under Chapter II of the Specific Relief Act, 1877 ¹[***] or as evidence of any collateral transaction not required to be effected by registered instrument.

12. From a close scrutiny of the very wording of Section 49 supra, it is while saying no document required under Section 17 of the Registration Act or any provision of the Transfer of Property Act before registered... shall be received as evidence of any transaction effecting such property or conferring such power unless it has been registered, provided that such un-registered document may be received as evidence of any collateral transaction not required to be effected by registered document. Thus, the document for a collateral purpose can be received as evidence for such collateral transaction not required to be effected by registered instrument.

13. In this regard, the counsel for the defendant placed reliance on the expression of the Two Judge bench of the Apex Court in **K.B. Saha and Sons Pvt. Ltd. V. Development Consultant Ltd.**¹, where referring to the judgment mainly of Calcutta High Court in **Haran Chandra Chakrvarti v. Kaliprasanna Sarkar**² that was referred among another judgment of Allahabad High Court in **Ratan Lal and ors. V. Harisankar and Ors.**³ and in so far as Haran Chandra Chakrvarti concerned, it is clearly laid down the terms of the document for proving since compulsorily registerable cannot be used for same is not a collateral purpose and in Allahabad High Court

¹ (2008) 8 SCC 564

² AIR 1932 Cal 83(2)

³ AIR 1980 All 180

observed, appellant cannot extinguish the right of the respondent with the help of the unregistered tenancy, since that is not a collateral purpose and another judgment of the Apex Court in **Bajaj Auto Limited v. Behari Lal Kohli**⁴ that once the document requires registration, the terms are inadmissible and the other judgment in **Rai Chand Jain v. Chandra Kanta Khosla**⁵ reiterated the same and ultimately observed at para 21 of the judgment in K.B.Shah as follows:

From the principles laid down in the various decisions of this court and the High Courts, as referred to hereinabove, it is evident that:

1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.
2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the Registration Act.
3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.
4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in Immovable property of the value of one hundred rupees and upwards.
5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of providing an

⁴ (1989) 3 SCR 730

⁵ AIR 1991 SC 744

important clause would not be using it as a collateral purpose.

14. Even from this expression, there is nothing to say a document cannot be considered for collateral purpose. What it says is terms of the document cannot be looked into as a collateral purpose since terms are not collateral purpose. The very definition referred supra speaks that the document to be looked into for the collateral purpose is not the one not effected by registration. So far as the existence of landlord tenant relation recited in the lease deed with the property particulars concerned, the jural relation of existence of landlord-tenant for the property can definitely be looked into for no way effected for want of registration. The earlier expression of the Apex Court that is not referred in S.M.Shah, which is also a Two Judge Bench expression in **Bondar Singh and others v. Nihal Singh and others**⁶, is very clear in this regard for where it is observed that under law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, the legal position is clear that a document like sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purpose. In the present case, the collateral purpose to be seen is the nature of possession of the plaintiff over the property and the sale deed in question atleast shows for the collateral purpose of the possession of the plaintiff over the suit land is not illegal or unauthorized. Thus, the

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law is clear that so far as the jural relation of landlord-tenant for the property concerned it can be looked into, leave about what is admitted even in his evidence by the defendant as DW.1 and thereby rightly looked into by the trial Court.

15. Once there is jural relationship of landlord-tenant established between the plaintiff and defendant, what the plea raised by the defendant of the suit Flat No.301 given to realize rents and appropriate towards interest for Rs.10,00,000/- advance given under contract for sale for another Flat No.306 is not correct from the very terms of the lease no such say contained, nor it could be established otherwise much less with any scrap of paper. Suffice to say, the very admissions of DW.1 belies his so-called version propounded of a contract for sale with plaintiff and her husband for Flat No.306, much less by payment of advance of Rs.10 lakhs, much less to appropriate towards interest by occupation of Flat No.301 the rentals thereon. Once such is the case, as rightly pointed out by the trial Court, the question of letting out and execution of the lease deed covered by Ex.A.1 does not arise and that itself falsifies to reiterate by sitting in appeal, further having paid at Rs.44,226/- per month for two months by account payee cheques and allowed its encashment. It clearly shows the jural relationship, though what is rate of the rent cannot be looked into by seeing Ex.A.1 terms, said admission of the defendant of he paid rent at Rs.44,226/- per month for two months since established, leave about further admissions of DW.1 regarding the

payment in the month of June 2008 and later. Leave it apart, twice notices were issued by the plaintiff to the defendant, one is Ex.A.2, dated 01.11.2009 covered by Ex.A.4, acknowledgment on 07.11.2009 and there is no reply admittedly to it. It is for the demand to pay the rent at Rs.44,226/- per month to clear all the arrears. It is not the end all, for the reason, there is subsequent notice under Ex.A.6, dated 15.12.2009, issued by the plaintiff to the defendant to vacate the premises for the default committed in non-payment of rent of Rs.44,226/- per month by mentioning the arrears due, that is also acknowledged by Ex.A.7 on 23.12.2009. Suffice to say from the non giving of reply, for no prudent man can keep quite but for no defence and had there been any little truth of the version now propounded it could be stated by giving reply atleast once. Same is the law laid down by the expression of this Court in **Chapala Hanumaiah v. Kavuri Venkateshwarlu**⁷, reiterated by the Three Judge Bench expression of the Apex Court in **Rangappa v. Mohan**⁸ at Para 15.

16. Suffice to say the trial Court's reasoned judgment, for this court even by re-appreciation of the entire facts and law, from the entire matter at large, there is nothing to interfere, but for to confirm; however, by granting time of eight (8) months to vacate on or before 31.12.2018 and on payment of the same amount towards damages for use and occupation, which is without prejudice to the enquiry into the

⁷ 1971 (1) An.W.R. 65

⁸ AIR 2010 SC 1898

mesne profits for the actual amount of damages being determined therein. Any non-payment for two consecutive months entitles automatically execution of the decree without further reference to this Court and without need of waiting till 31.12.2018. It is also made clear that the defendant shall not create any third party interest, shall not allow any third party to enter into the premises and shall not cause any acts of waste or damages to the property. Any such acts even entitle the plaintiff in the meantime to execute without any further reference to the Court. It is also made clear that all arrears shall be paid within three months from today, failing which for recovery of the arrears, the plaintiff can execute that part of the decree, without waiting for the premises to be vacated by end of December 2018.

17. Accordingly and with these observations, the second appeal is disposed of, rather than dismissal.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

26th April 2018

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Dr. B. SIVA SANKARA RAO, J