

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.930 OF 2016

JUDGMENT:

This Second Appeal is filed, by defendant No.1, under Section 100 of C.P.C., assailing the judgment and decree dated 29.09.2016 passed in A.S.No.18 of 2016 on the file of the Court of IX Additional Chief Judge, City Civil Court, Hyderabad, wherein and whereby the judgment and decree dated 26.10.2015 passed in O.S.No.1665 of 2012 on the file of the Court of V Additional Senior Civil Judge, City Civil Court, Hyderabad, decreeing the suit filed by the plaintiff directing the defendants to vacate the suit schedule property within two months from the date of the order and further directed to pay Rs.1,96,448/- towards arrears of rents and Rs.50,000/- towards property tax, was confirmed.

2. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

3. The facts leading to filing of the second appeal, in nutshell, are as follows:

The plaintiff's mother-Suseela Devi, on behalf of joint family let out the shop bearing No.3-6-318/2 admeasuring 450 square feet situated at Hyderabad to defendants under a registered lease deed dated 14.07.2006 on a monthly rent of Rs.10,000/- exclusive of electricity, water and municipal tax. As per the terms and conditions of the lease agreement, the defendants deposited an amount of Rs.3,00,000/- towards interest free deposit returnable at the time of vacating the premises. The defendants have been

carrying on business in the suit schedule premises in the name and style of 'Swadeshi Tea and Tiffins (meals)'. Initially the lease was for a period of three years with effect from 01.08.2006 to 31.07.2009 and the lease amount to be increased by 7% per annum. The defendants had an option to renew the lease period from 01.08.2009 to 31.07.2012. The defendants have paid monthly rent of Rs.10,000/- till April, 2012. The defendants have to pay an amount of Rs.1,26,318/- towards difference of rent up to April, 2012. The mother of the plaintiff let out shop bearing No. 3-6-318/1 to the defendants on 24.06.2006. The mother of the plaintiff died on 01.01.2011. The plaintiff and her two brothers, and Harish Agarwal succeeded the joint family property. The family members of Suseela Devi have partitioned their properties under a registered partition deed dated 24.08.2012. The suit schedule property fell to the share of the plaintiff. The defendants committed default in payment of rent from May, 2012 to September, 2012 amounting to Rs.70,130/-. The defendants are also liable to pay an amount of Rs.50,000/- towards property tax. On 11.09.2012 the plaintiff got issued a notice under Section 106 of Transfer of Property Act terminating the tenancy on 30.09.2012 and directing the defendants to vacate the suit schedule premises. The defendants issued a reply notice dated 21.09.2012 with false and frivolous allegations. Hence, the suit.

4. The first defendant filed a written statement denying all the averments made in the plaint *inter alia* contending that as per the understanding, the rent has been paid at Rs.20,000/- per month. A settlement deed was executed among the defendants on

04.04.2007 and accordingly, the second defendant relinquished his rights in favour of this defendant. Subsequent to 30.04.2012 no receipts were issued by the plaintiff. The plaintiff has no right to enhance the rent. This defendant is ready to pay admitted rent before the Court with effect from 01.07.2012 as per the directions. Hence, the suit is liable to be dismissed. The second defendant filed a memo adopting the written statement of first defendant.

5. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the plaintiff is entitled to seek delivery of vacant possession of suit schedule property by evicting the defendants as prayed for?
2. Whether the defendants are liable to pay arrears of rent of Rs.1,96,448/- with interest @ 18% p.a. from the date of suit till realisation?
3. Whether the defendants are liable to pay property tax of Rs.50,000/- along with interest @ 18% p.a. from the date of suit till realisation?
4. Whether the defendants are liable to pay future damages at the rate of Rs.25,000/- p.m. from the date of filing of suit till eviction of defendants from the suit premises along with interest @ 18% p.a.?
5. Whether the plaintiff is entitled for exemplary costs?
6. To what relief?

6. Before the trial Court, on behalf of the plaintiff, PW.1 was examined and Exs.A.1 to A.9 were marked. On behalf of the defendants, no oral or documentary evidence was adduced.

7. Basing on the oral, documentary evidence and other material available on record, the trial Court decreed the suit directing the defendants to vacate the suit schedule property within two months from the date of the order and further directed to pay Rs.1,96,448/- towards arrears of rents and Rs.50,000/- towards property tax.

8. Feeling aggrieved by the judgment and decree of the trial Court, the first defendant preferred A.S.No.18 of 2016 on the file of the Court of IX Additional Chief Judge, City Civil Court, Hyderabad. The first appellate Court, after considering the material available on record, dismissed the appeal. Hence, the second appeal.

9. Heard the learned counsel for the appellant and learned counsel for the first respondent.

10. The questions of law urged by the learned counsel for the appellants are as follows:

1. Whether the suit is maintainable without impleading the other legal representatives of Suseela Devi? and
2. Whether the findings recorded by the Courts below are perverse and liable to set aside?

11. Question Nos.1 and 2 are intertwined with each other; hence, this Court is inclined to address both the questions simultaneously in order to avoid recapitulation of facts and evidence.

12. The following admitted facts can be culled out from the pleadings.

One Smt.Suseela Devi, mother of the plaintiff, let out the suit schedule property to the defendants on 14.07.2006 for a period of three years. Ex.A.1 is the lease deed. The said Suseela Devi died on 01.01.2011. After the death of Suseela Devi, joint family properties were partitioned under Ex.A.3-partition deed dated 24.08.2012. The suit schedule property fell to the share of

the plaintiff. It is needless to say that a party to the proceedings is not entitled to urge factual aspects, for the first time, in the second appeal without taking such a plea either in the plaint or written statement as the case may be. The defendants have not taken a specific plea in the written statement that the suit is not maintainable for non-impleading of the other legal representatives of late Suseela Devi. The defendants are not entitled to take such a plea, at this point of time. A perusal of the record reveals that after the death of Suseela Devi, the family properties were partitioned among them under Ex.A.3-partition deed. A perusal of Ex.A.3 reveals that the suit schedule property fell to the share of plaintiff. Having regard to the facts and circumstances of the case and also the recitals of Ex.A.3, the submission made by the learned counsel for the appellant/defendant No.1 that the suit as framed is not maintainable has no legs to stand. The plaintiff alone is entitled to file the suit for eviction.

13. During pendency of the suit, the plaintiff filed I.A.No.1050 of 2012, under Order XV-A C.P.C. to direct the defendants to deposit the arrears of rent. The trial Court, after affording a reasonable opportunity to both parties, allowed the petition on 21.01.2013. During pendency of the suit, the plaintiff also filed I.A.No.373 of 2015, under Sub-rule 2 of Order XV-A C.P.C. to strike off the defence of the defendants. The trial Court allowed the petition on merits on 04.09.2015. For one reason or other, the defendants did not choose to challenge the order passed in I.A.No.1050 of 2012 and I.A.No.373 of 2015. The orders passed by the trial Court in the above said interlocutory applications are binding on the

defendants in view of non-challenging of the same. At the stage of second appeal, the defendants are not entitled to urge that the trial Court has not considered the scope of Order XV-A C.P.C. and passed the orders on erroneous grounds. For the reasons best known, the defendants did not comply with the orders passed in I.A.No.1050 of 2012, which eventually enabled the plaintiff to file I.A.No.373 of 2015. A tenant is not entitled to squat on the suit schedule property without paying the rent. The defence of the defendants was struck off, in view of orders passed in I.A.No.373 of 2015. Practically the defendants have no defence to contest the suit. The trial Court, after considering the oral and documentary evidence available on record, arrived at a conclusion that the plaintiff is entitled for eviction of the defendants from the suit schedule property. The trial Court also arrived at a conclusion that the plaintiff is entitled to recover an amount of Rs.1,96,448/- towards arrears of rents and Rs.50,000/- towards property tax from the defendants. The first appellate Court, after reappraising the oral and documentary evidence available on record, without being influenced by the findings recorded by the trial Court, arrived at a conclusion that the appeal filed by the first defendant is liable to be dismissed. The first appellate Court dismissed the appeal while confirming the judgment and decree of the trial Court. The findings recorded by the Courts below are based on evidence much less legally admissible evidence. Therefore, I am unable to accede to the contention of the learned counsel for the appellant that the findings recorded by the Courts below are perverse.

14. In **Municipal Committee, Hoshiarpur v. Punjab SEB**¹, while dealing with the scope of Section 100 of C.P.C., the Hon'ble apex Court held at paragraph No.16 as follows:

"16. ... A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial question of fact. The court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC. ..."

15. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, this Court is of the considered view that there is no question of law much less substantial question of law involved in this appeal. Hence, the appeal is liable to be dismissed.

16. In the result, the Second Appeal is dismissed, confirming the judgment and decree dated 29.09.2016 passed in A.S.No.18 of 2016 on the file of the Court of IX Additional Chief Judge, City Civil Court, Hyderabad. The appellant-defendant No.1 is hereby directed to vacate the suit schedule property and handover the same to the plaintiff within two (2) months from today, failing which, the plaintiff is at liberty to take steps in accordance with law. There shall be no order as to costs.

17. Consequently, Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 12.11.2018
Ivd

¹ (2010) 13 SCC 216