

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.542 OF 2018

JUDGMENT:

This Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') aggrieved by the judgment and decree dated 08.01.2018 passed in A.S. No.391 of 2013 on the file of the XXV Additional Chief Judge, City Civil Court, Hyderabad (for short, 'first appellate court'), wherein the first appellate court, while dismissing the appeal, confirmed the order and decree dated 20.11.2013 passed in I.A. No.2 of 2013 in O.S. No.2237 of 2008 on the file of the Additional Judge-cum-VI Senior Civil Judge, City Civil Court, Hyderabad (for short, 'the trial court'). The respondent-plaintiff filed I.A. No.2 of 2013 in O.S. No.2237 of 2008 before the trial Court under Order XX Rule 12 C.P.C. read with Section 151 C.P.C. for the relief of mesne profits directing the appellant-defendant to pay @ Rs.500/- per day from 21.11.2008 to 07.12.2002 with interest @ 18% per annum from the date of suit till realization.

2. No representation for the appellant-defendant. Heard the learned counsel for the respondent-plaintiff and perused the material on record.

3. For the sake of convenience, the parties herein are referred to as they were arrayed before the trial Court.

4. It is contended by the defendant-appellant in the grounds of appeal that the order and decree passed by the trial Court as confirmed by the first appellate court are illegal, contrary to law, weightage of evidence and facts and circumstances of the case; both the Courts below erred in considering the evidence on record in favour of the plaintiff; and ultimately, prayed to allow the second appeal by setting aside the order and decree passed by both the Courts below. It is further contended that the following substantial questions of law would arise for determination in this second appeal:

- a) Whether the courts below are justified in arriving mesne profits without evidence?
- b) Whether the reasons given by lower appellate court are perverse?
- c) Whether the court below can rely on the exhibits without examining the witness?

5. Learned counsel for the plaintiff-respondent herein would contend that originally the suit was filed for recovery of money and the suit was decreed by the trial Court for removal of hoarding fixed by the defendant in the suit schedule property and for payment of arrears of rent in favour of the plaintiff and further giving liberty to the plaintiff to file a separate application for grant of mesne profits; the impugned I.A. was filed by the plaintiff for grant of mesne profits @ Rs.500/- per day from 21.11.2008 to 07.12.2002 with interest @ 18% per annum from the date of suit till realisation; the trial Court had rightly granted mesne profits in favour of the plaintiff and the first appellate Court also confirmed the same by assigning valid reasons; there are no circumstances to set aside the said findings of both the Courts below; and ultimately, prayed to dismiss the second appeal.

6. To adjudicate the *lis* and to answer the substantial questions of law, it is necessary to refer to the pleadings of the parties.

(a) The plaintiff filed the original suit, i.e., O.S. No.2237 of 2008, for mandatory injunction and for recovery of arrears of rents and mesne profits from the defendant. The original suit was decreed partly in favour of the plaintiff and further the plaintiff was directed to agitate with regard to the mesne profits in a separate application. So, the plaintiff filed the impugned I.A. No.2 of 2013 in O.S. No.2237 of 2008 under Order XX Rule 12 C.P.C. read with Section 151 C.P.C. seeking the relief of mesne profits @ Rs.500/- per day from 21.11.2008 to

07.12.2002 with interest @ 18% per annum from the date of suit till realisation against the defendant.

(b) The trial Court while dealing with the matter, framed the following point for consideration:

"Whether the petitioner-plaintiff is entitled to direct the respondent-defendant to pay at the rate of Rs.500/- per day from 21.01.2008 to 07.12.2012 with interest at 18% per annum from the date of the suit till date of realisation as mesne profits?"

(c) To prove the case, the plaintiff deposed as P.W.1 before the trial Court and got marked Exs.P.1 to P.3. On behalf of the defendant, D.W.1 was examined, but no documents were marked.

(d) The trial Court after considering the evidence on record, allowed the impugned I.A., *vide* order dated 20.11.2013, directing the defendant to pay a sum of Rs.2,91,400/- together with interest at 18% per annum from 21.11.2008 till date of realisation on the amount of Rs.72,000/-. Aggrieved by the same, the defendant preferred A.S. No.391 of 2013 before the first appellate court. The first appellate court, *vide* judgment dated 08.01.2018, was pleased to dismiss the appeal confirming the order passed by the trial Court. Challenging the judgment of the first appellate court, the second appeal is preferred by the defendant.

7. Now the question is, whether the findings of both the Courts below are liable to be set aside?

8. The record reveals that the impugned I.A. was filed for grant of mesne profits. To substantiate the case, the plaintiff deposed as P.W.1 and got marked Ex.P.1-office copy of legal notice along with postal receipt dated 21.07.2008, Ex.P.2-certified copy of letter addressed to the defendant dated 13.06.2007 and Ex.P.3-certified copy of letter addressed to the defendant dated

06.03.2009. On behalf of the defendant, D.W.1 was examined. The trial Court after considering the evidence on record, held that the plaintiff is entitled Rs.200/- per day towards damages and calculated the amount towards damages at Rs.72,000/- per annum and ultimately, granted Rs.2,91,400/- for the period from 21.11.2008 to 07.12.2012 with interest at the rate of Rs.18% per annum from 21.11.2008 till date of realisation on the amount of Rs.72,000/-. The trial Court recorded the said finding basing on the evidence on record. The first appellate court, after appreciating the entire evidence on record, confirmed the finding of the trial Court, holding that the trial Court rightly considered the size of the hoarding of the defendant and compared it with the hoardings of Selvel Company and granted the mesne profits at the rate of Rs.200/- per day in favour of the plaintiff. Both the Courts below have elaborately dealt with the factual aspect with regard to the payment of mesne profits to the plaintiff by the defendant and gave finding against the defendant, which is not perverse. The questions involved in the second appeal are only the questions of fact. No substantial questions of law do emerge in the second appeal for determination. The factual aspects and legal questions cannot be dealt with in the second appeal.

9. It is appropriate to state that under Section 100 of the C.P.C., the jurisdiction of the High Court to interfere with the judgment of the Courts below is confined to substantial question of law. The findings with regard to the factual aspects by the first appellate court are final and are not amenable to the jurisdiction of this Court by way of Second Appeal. More so, when there is no substantial question of law. The first appellate court had elaborately dealt with the factual aspect with regard to the mesne profits payable by the defendant to the plaintiff. In the circumstances of the case, this Court cannot re-appreciate the evidence and arrive at a different conclusion. Neither inadmissible evidence has been considered nor admissible evidence not acted upon. The findings of the Courts below are not perverse. So, no re-appreciation of entire evidence is

warranted in this Second Appeal. No substantial questions of law arise for determination. Therefore, this second appeal is devoid of merit and is liable to be dismissed at admission stage.

10. In the result, the Second Appeal is dismissed, confirming the judgment and decree dated 08.01.2018 in A.S. No.391 of 2013 on the file of the XXV Additional Chief Judge, City Civil Court, Hyderabad. The Miscellaneous Petitions pending, if any, shall stand dismissed. There shall be no order as to costs.

Date: 27.07.2018
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Dr. SHAMEEM AKTHER, J