

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

SECOND APPEAL No. 726 OF 2018

J U D G M E N T:

This Appeal has been preferred against the judgment dated 19.02.2018 in A.S. No. 10 of 2015 on the file of the II Additional District Judge at Hindupur, which, in turn, had arisen out of the judgment dated 13.03.2015 in O.S. No. 113 of 2010 on the file of the Senior Civil Judge's Court at Hindupur.

Brief facts, leading to filing the Second Appeal are as under:

The respondent - plaintiff filed the above suit for eviction of the appellant - defendant to whom the suit schedule shop room bearing D. No. 17-3-617/B1 and B2 in M.H. Shafiulla Shopping Complex, Hindupur was leased out, on a monthly rent of Rs.10,000/- for 11 months, with advance of Rs.2 lacs, *vide* unregistered lease deed dated 15.01.2009. Thereafter, the lease was not extended, despite the same, the appellant had stayed put in the leased premises. Though repeated requests were made, orally and legally, he had not vacated the premises. In the suit, the respondent pleaded that the subject premises are required for his personal use and occupation. After full-fledged trial, the suit came to be decreed. The appellant – defendant, unsuccessfully, filed the First Appeal. Both the Courts, as a matter of fact, found that the lease was only for 11 months and that the defendant overstayed in the premises and thus, violated the solemn undertaking given in the lease deed. The Courts also found that since the procedural formalities required to be followed i.e. issuance of notice under Section 105 of the Transfer of Property Act were also followed,

there is no infirmity in seeking eviction of the defendant, who is squatting on the subject property unauothorizedly.

In the Second Appeal, the following questions of law have been raised as substantial questions of law:

1. Whether the judgment and decree in A.S. No. 10 of 2015 dated 19.02.2018 on the file of the II Additional District Judge, Hindupur dismissing the Appeal and confirming the decree and judgment passed in O.S.No. 113 of 2010 dated 13.03.2015 on the file of the Senior Civil Judge, Hindupur, Anantapuramu District is correct, valid and sustainable under law?
2. Whether the trial Court below is correct in passing decree and judgment without giving opportunity of hearing to the appellant in passing judgment straightaway?
3. Whether the trial Court below failed to observe that there is no *bona fide* requirement to evict the appellant - defendant from the suit premises?
4. Whether the trial Court below failed to look into the reply notice dated 08.02.2010 in pursuance of the notice issued by the defendant/plaintiff dated 21.12.2009 in which notice the appellant - defendant denying the allegations made therein?
5. Whether the trial Court below did correct without marking of the very crucial and unregistered lease deed dated 15.01.2009 and without looking into the said document and without marking the said document and believing the evidence of D.W.1 passing decree and judgment dated 13.03.2015 allowing the suit holding that "though the suit lease deed is not marked it will affect the case of the plaintiff" in the absence of the such unregistered lease deed dated 15.01.2009 without marking the said document is sustainable under law?
6. The trial Court below erred in law without considering the evidence of D.W.1 and D.W.2 and ExsB1 to B5.
7. Whether the decree and judgment of the appellate Court dated 19.02.2018 is correct without giving any answers to the issues framed there under and passing judgment deviating the issues framed and confirming the order of the trial Court in O.S. No. 112 of 2000 dated 13.03.2015.
8. Whether the Courts below did correct without looking in the conclusive fact that after expiry of the lease agreement dated 15.01.2009, thereafter, the new lease deed was entered by the appellant by the defendant?
9. The Court below took objection at the time of straitening of the suit that "the lease period fixed in lease deed is for 11 months when the lease period is less than one year, the lease deed has required to registered vide reported judgment 2000(6) ALT page 739" ignoring the said objection and entertaining the suit is contrary to the said objection.

Heard learned counsel for the appellant Sri Kothapalli Ram Mohan Chowdary.

At the outset, it may be noted that though as many as nine questions of law have been raised as substantial questions of law arising out of the order of the Court below, no substantial questions of law in real sense have been found. Questions 1 and 2 are general in nature. So far as question No. 3 is concerned, a categorical finding of fact has been given. Though *bona fide* requirements have not been proved, the same does not have any bearing on the case on hand, as the question of considering the *bona fide* requirement would arise only in cases falling under the provisions of the Rent Control Act. Admittedly, the present case is not the one, which is controlled by the provisions of the Rent Control Act and the same is governed by the provisions of the Transfer of Property Act which principles have to be applied in deciding the *lis* between the parties.

Question Nos. 4, 6, 7 and 8 are to be dealt with on appreciation of facts and there is no contention raised in the present Appeal that there is any perversity of finding of fact. In those circumstances, the said questions cannot be called as substantial questions of law.

Question Nos. 5 and 9 relate to the alleged unregistered lease deed dated 15.01.2009. The same are also liable to be rejected for, if the lease deed is not registered, in the absence of any other document with respect thereto, lease of the property would have to be considered on month to month basis. At any rate, since marking of the document has not been objected to by the appellant at that particular time, the said issue cannot be

adjudicated now in the Second Appeal. In the circumstances, in view of the concurrent findings recorded by both the Courts below, this Court is of the view that the Second Appeal does not deserve any consideration.

Sensing the mood of the Court, at this stage, the appellant has filed an affidavit / undertaking petition dated 16.07.2018 before this Court seeking grant of four months' time for vacating the subject premises as he is yet to find an alternative premises, for conducting the business. The appellant, on the advise of his counsel, has offered to pay the enhanced rent of Rs.25,000/- as against Rs.10,000/- being paid at present.

Both the trial Court as well as the lower appellate Court had held that the appellant – defendant is required to vacate the premises and is entitled to return of the advance amount which was, admittedly, given to the landlord, after adjusting the dues if any. It is asserted by the learned counsel for the appellant that there are no rents due and his client would be paying the rents on or before 5th of every month and that he would vacate the premises in terms of the undertaking, at which point of time, the respondent landlord may be directed to return the deposited amount. From a perusal of the judgment in the First Appeal, it is clear that on vacation of the premises, the plaintiff was directed to refund the advance amount, subject to deduction of arrears of rent, if any.

In those circumstances, the Second Appeal is dismissed, however, four months' time from this month is given to the appellant to vacate the premises. It is made clear that at any rate, the appellant shall vacate the premises on or before 15.11.2018.

The appellant shall also bear-in-mind that non-adherence to the undertaking given before this Court would amount to committing contempt of this Court which would invite penal proceedings. No costs.

CHALLA KODANDA RAM, J

17th July 2018

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