

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.416 OF 2000

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 07.04.2000, rendered in A.S.No.12 of 1986 on the file of Additional Senior Civil Judge, Tirupati (for short, 'the first appellate court'), whereby and whereunder, the judgment and decree, dated 28.02.1986, rendered in O.S.No.373 of 1978 on the file of Principal District Munsif, Tirupati (for short, 'the trial court'), were confirmed.

2. Appellant No.1 herein is the defendant in the Original Suit. After his demise, appellants Nos.2 to 6 were brought on record as his legal representatives during pendency of the first appeal. The respondent herein is the plaintiff.

3. Heard learned counsel for the appellants. Even today, there is no representation for the respondent, in spite of the appeal being listed under the caption 'for orders'. Since the appeal is of the year 2000, it can be disposed of basing on the evidence available.

4. For the sake of convenience, the parties hereinafter are referred to as they were arrayed before the trial Court in the Original Suit.

5. The plaintiff (respondent herein) filed the Original Suit seeking to direct the defendant (appellant No.1 herein) to deliver vacant

possession of the property detailed in the 'A'-schedule and to pay a sum of Rs.555/- as detailed in the 'B'-schedule with interest at 6% per annum from the date of filing suit till the date of realization and also to pay future damages at the rate of Rs.50/- per month from 01.08.1979 till the date of delivery of possession of the plaint 'A'-schedule property to the plaintiff. The averments in the plaint are that the property described in 'A'-schedule absolutely belongs to the plaintiff. The defendant was a tenant continuing in possession of the suit schedule premises on a monthly rent of Rs.15/-. He failed to pay rents from 01.01.1975 to 31.12.1977. Hence, the plaintiff got issued a registered quit notice, dated 16.11.1977, terminating the tenancy of the defendant with effect from 31.12.1977 midnight calling upon him to vacate the suit schedule premises by 31.12.1977 midnight or the next day. But, the defendant evaded to receive the notice and failed to pay the rent or vacate the suit schedule premises. Hence, the plaintiff was constrained to file the Original Suit.

6. The defendant filed written statement. In the written statement, the defendant, while admitting that the suit schedule premises belongs to the plaintiff and that the same was leased to him on payment of rent of Rs.15/- per month, denied the allegations that he was irregular in paying the rents and evaded to receive quit notice. It is stated that the suit is hit by Section 106 of the Transfer of Property Act, 1882 and the subject premises is not in a good locality and does not fetch the said rent of Rs.15/-. It is also stated that the plaintiff is not entitled to

recover possession of the suit schedule premises, as he is a tenant in perpetuity.

7. Based on the above pleadings, the trial Court framed the following issues:

- “1. Whether there is valid notice u/s 106 of Transfer of Property Act?
2. Whether plaintiff is entitled to recover possession of plaint ‘A’ schedule property?
3. Whether plaintiff is entitled to recover future damages from defendant?
4. To what relief?”

8. The trial Court, after considering the oral and documentary evidence available on record, by judgment, dated 28.02.1986, decreed the suit in favour of the plaintiff directing the defendant to vacate the suit schedule premises within a period of thirty days from the date of judgment.

9. Aggrieved by the said decree and judgment, the defendant preferred A.S.No.12 of 1986 before the first appellate court. Since, the defendant died during pendency of the first appeal, appellants Nos.2 to 6 were brought on record as his legal representatives.

10. Initially, the first appellate Court, considering various aspects, by judgment, dated 31.07.1989, confirmed the judgment and decree of the trial Court by dismissing the first appeal. Aggrieved by the same, appellant Nos.2 to 6 preferred S.A.No.439 of 1989 before this Court

and the same was disposed of on 17.08.1999 remanding the appeal for fresh disposal with a direction to frame the following specific points:

“1. Whether the notice issued in this case is a valid notice within the meaning of Section 106 of Transfer of Property Act?

2. Whether the provisions of Andhra Tenancy Act are applicable in this case?”

11. The first appellate Court, after hearing both sides, framed the following points for determination:

“1. Whether the plaintiff is entitled to recover arrears of rent as claimed in the plaint?

2. Whether the notice issued in this case is a valid notice within the meaning of Section 106 of Transfer of Property Act?

3. Whether the provisions of Andhra Tenancy Act are applicable in this case?

4. To what relief?”

12. The first appellate Court, having examined the oral and documentary evidence, again dismissed the appeal by the judgment under challenge and directed the appellants to vacate the suit schedule premises and deliver possession of the vacant site to the plaintiff within one month from the date of judgment, failing which liberty was given to the plaintiff to evict the appellants through Court.

13. Learned counsel for the appellants would contend that there is no valid notice as required under Section 106 of the Transfer of

Property Act and that the notice was not served on the defendant. The first appellate Court held that there was a valid notice.

14. This Court, while admitting the Second Appeal, framed the following substantial questions of law:

“1. Whether in the absence of service of quit notice in the mode prescribed under Section 106 of the Transfer of Property Act, the endorsement made on the notice sent by registered post can be treated as proper notice as envisaged under Section 106 of the Transfer of Property Act?

2. Whether the presumption under section 114 of the Evidence Act can be drawn in respect of an endorsement made by the postal authorities without examining the person who made such endorsement?”

15. The aforesaid substantial questions of law are only in relation to the sufficiency of notice sent by registered post under Section 106 of the Transfer of Property Act. This aspect had been elaborately dealt with by the first appellate Court, while answering point No.2 therein. The quit notice terminating the tenancy was sent to the defendant to vacate the premises belonging to the plaintiff. There is no dispute with regard to the tenancy between the parties to the litigation. There is also default in payment of monthly rents to the plaintiff. As per the evidence on record, the defendant is residing in the suit schedule property. Ex.A2 – postal cover reveals that the Postman went to the given address belonging to the defendant more than once and finally, returned the postal cover stating that the defendant was evading to receive the notice. Having elaborately dealt this issue, the first

appellate Court answered that there was a valid notice. There is nothing to take a different view. The substantial questions of law are answered accordingly and the findings of the Courts below are not perverse.

16. The appeal is devoid of merit and is dismissed.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

June 21, 2018.
MD

Dr. SHAMEEM AKTHER, J

