

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.786 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 04.06.2018 passed in A.S. No.181 of 2011 on the file of the X Additional Chief Judge, City Civil Court, Hyderabad (for short, 'first appellate court'), wherein the first appellate court confirmed the judgment and decree dated 21.04.2011 passed in O.S. No.884 of 2008 on the file of the XX Junior Civil Judge, City Civil Court, Hyderabad (for short, 'the trial court'). The 1st respondent herein filed O.S. No.884 of 2008 for recovery of possession of the suit schedule property, mesne profits and for recovery of arrears of enhanced rents.

2. Heard the learned counsel for the respondents-plaintiffs and perused the material on record. There is no representation on behalf of the appellants-defendants.

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

4. It is contended by the defendants-appellants in the grounds of appeal that both the Courts below failed to appreciate the evidence on record and the following substantial questions of law would emerge for determination in this second appeal:

(a) Whether the First Appellate Court could have placed heavy reliance on Ex.A1 when the other equivalent document i.e., Ex.B14 Lease Deed dt.16-03-2002 and Lease Deed dt.12-09-2003 and how the same should be applied to be facts of the case. Keeping in view self serving testimonies (PW-2 & 3) the date of coming into a possession of the subject property and deciding the quantum of rent when there is a serious dispute as regards the quantum of rent?

(b) Whether the First Appellate Court failed to see that the Rent is Rs.2000/- and the Civil Court has no jurisdiction to try the Eviction Case and that the Trial Court and First Appellate Court could not have assumed the jurisdiction as it jurisdiction stood ousted by virtue of the order in R.C.No.119/2008 and R.A.No.108/2011 and in light of Ex.B14.?

(c) Can the First Appellate Court assumes jurisdiction to try the instant suit when the Trial Court had dismissed the plea of the Respondents/Plaintiffs for recovery of rental arrears which gives strength to my case that the rent is Rs.2,000/- per month?

5. Learned counsel for the plaintiffs-respondents herein would contend that there is concurrent finding with regard to the termination of the tenancy as well as the service of notice under Section 106 of the Transfer of Property Act, 1882; both the Courts below rightly gave findings basing on the evidence on record; there are no circumstances to set aside the 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 relevant pleadings of the parties.

(a) The plaintiff filed the original suit stating that she is the absolute owner and possessor of Shop No.R-1/A, Ground Floor Jagadish Market, H.No.5-8-518 & 5-8-519, Abids, Hyderabad. Defendants jointly obtained the suit schedule shop on lease after executing rental deed dated 16.03.2002 on a monthly rent of Rs.6,000/-. The tenancy of defendants starts from 01.03.2002 to 31.01.2003 for a period of eleven months. The monthly rent of the suit schedule shop shall be enhanced @ 15% after expiry of each and every two years, but the defendants did not pay the enhanced monthly rent to the plaintiff stating that their business is not running properly. From the month of November, 2007, the defendants stopped paying the rents to the plaintiff. The suit schedule shop is located in commercial area. The plaintiff reliably learnt that the defendants have

sublet the suit schedule shop to third parties on higher rent. The defendants' tenancy was terminated on 31.01.2003 and the plaintiff is not interested in continuing their tenancy and she terminated the tenancy from 31.01.2008 onwards and requested them to vacate and deliver vacant possession of the suit schedule shop by 29.02.2008. The plaintiff got issued a legal notice on 16.01.2008 and the defendants also gave reply notice stating that the monthly rent of the suit schedule shop is Rs.2,000/- but not Rs.6,000/-. The plaintiff got issued rejoinder on 03.02.2008 to the reply given by the defendants. The defendants again got issued false notice on 22.02.2008 stating that they have obtained the suit schedule shop under an alleged rental deed dated 12.09.2003 on a monthly rent of Rs.2,000/- and they have paid rent upto January, 2008, @ Rs.2,000/- per month.

(b) The defendants filed written statement denying all the averments made in the plaint and contended that the defendants paid rents upto January, 2008, and thereafter they remitted the rent through money order for the month of February, 2008, which was refused by the plaintiff. The defendants after complying the provisions of Section 8 of the Rent Control Act, filed R.C. No.119 of 2008 on the file of the III Additional Rent Controller, Hyderabad. The defendants have deposited the rents as per the orders passed in I.a. No.113 of 2008 dated 22.04.2008.

(c) Basing on the pleadings, the trial Court framed the following issues:

- 1) Whether the defendants 1 and 2 executed Lease deed on 16-03-2002 or on 12-09-2003?
- 2) Whether the defendant agreed to pay rent @ Rs.6,000/- per month or Rs.2,000/- per month?
- 3) Whether the defendants paid rents from November 2007 onwards?

4) Whether the defendants are liable to pay a sum of Rs.77,040/- to the plaintiff together with interest as claimed?

5) Whether the defendants are liable to pay mesne profits at the rate of Rs.20,000/- p.m.?

6) Whether the tenancy has been terminated through notice dt:16.1.2008 and the defendants are liable to be ejected from the suit premises?

7) Whether the plaintiff is entitled for recovery of possession as prayed for?

8) To what relief?

(d) Basing the evidence of P.Ws.1 to 3 and the documents Exs.A.1 to A.4 marked on behalf of the plaintiff and the evidence of D.Ws.1 to 3 and the documents Exs.B.1 to B.14 marked on behalf of the defendants, the trial Court partly decreed the suit directing the defendants to vacate the suit schedule premises within two months and hand over vacant possession of the suit schedule property to the plaintiff. The trial Court gave a finding that the mesne profits are to be determined on a separate application under Order XX Rule 12 of C.P.C. The trial Court dismissed the suit for relief of recovery of enhanced rents. Aggrieved by the said judgment and decree of the trial Court, the defendants preferred A.S. No.181 of 2011 and the first appellate court, after appreciating the evidence on record, *vide* decree and judgment dated 04.06.2018, dismissed the appeal by confirming the judgment and decree passed by the trial Court. Questioning the said judgment and decree passed by the first appellate court, the defendants filed this second appeal.

7. In view of the contentions of both sides, the only point that arises for determination is, whether the concurrent findings of both the Courts below are liable to be set aside?

8. There cannot be any dispute that, under the amended Section 100 C.P.C., a party aggrieved by the decree passed by the first appellate court has no absolute right of appeal. He can neither challenge the decree on a question of fact or on a question of law. The second appeal lies only where the High Court is satisfied that the case involves a substantial question of law. The word 'substantial' as qualifying 'question of law', means and conveys of having substance, essential, real, of sound worth, important, considerable, fairly arguable. A substantial question of law should directly and substantially affect the rights of the parties. A question of law can be said to be substantial between the parties if the decision in appeal turns one way or the other on the particular view of law. But, if the question does not affect the decision, it cannot be said to be substantial question between the parties. Recording a finding without any evidence on record; disregard or non-consideration of relevant or admissible evidence; taking into consideration irrelevant or inadmissible evidence; perverse findings are some of the questions, which involve substantial questions of law.

9. As per the evidence on record, the plaintiff got issued a notice under Section 106 of the Transfer of Property Act, 1882, calling upon the defendants to vacate and hand over the suit schedule shop by 29.02.2008, which was received by the defendants and they got issued a reply denying the date of commencement of lease and quantum of rent. The evidence on record also reveals that the plaintiff validly terminated the tenancy of the defendants over the suit schedule shop. The record reveals that both the Courts below recorded concurrent findings with regard to the termination of tenancy as well as the service of notice under Section 106 of the Transfer of Property Act, 1882. These are all factual aspects. The substantial questions of law raised in this second appeal are all with regard to the factual aspects and they cannot be taken into consideration in the second appeal.

10. 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. Those findings of facts are not amenable to the jurisdiction of this Court by way of Second Appeal. More so, when there is no substantial question of law. 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. Both the Courts below recorded concurrent findings with regard to the termination of tenancy as well as the service of notice on the defendants under Section 106 of the Transfer of Property Act, 1882. In view of the facts and circumstances of the case, the findings of the Courts below are not perverse. So, no re-appreciation of entire evidence is warranted in this Second Appeal and further, no question of law much less substantial question of law arise for determination in this Second Appeal. It is also brought to the notice of the Court that the plaintiff filed execution petition and that the possession of the suit schedule shop was delivered by the defendants. Therefore, the Second Appeal is devoid of merit and it is liable to be dismissed.

11. In the result, the Second Appeal is dismissed confirming the judgment and decree dated 04.06.2018 passed in A.S. No.181 of 2011 on the file of the X Additional Chief Judge, City Civil Court, Hyderabad. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 03.08.2018
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