

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL Nos.1071 AND 1105 OF 2018

COMMON JUDGMENT:

These two Second Appeals are filed under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') aggrieved by the common judgment and decrees dated 24.04.2018 passed in A.S. Nos.160 and 161 of 2016 along with A.S. Nos.162 and 163 of 2016 on the file of the XI Additional Chief Judge, City Civil Court, Hyderabad (for short, 'first appellate court'), wherein the first appellate court set aside the common judgment and decrees dated 16.06.2016 passed in O.S. Nos.2183 of 2012 and 726 of 2014 along with O.S. Nos.639 and 640 of 2014 on the file of the I Senior Civil Judge, City Civil Court, Hyderabad (for short, 'the trial court'). O.S. No.726 of 2014 filed by the appellant in S.A. No.1071 of 2018 for specific performance of agreement of sale was decreed and O.S. No.2183 of 2012 filed by respondent in S.A. No.1105 of 2018 for eviction and recovery of vacant possession of the schedule property was dismissed by the trial court and the same were set aside by the first appellate court.

2. Heard Sri Challa Gunaranjan, learned counsel for the appellants, and Sri M.V.S.Suresh Kumar, learned senior counsel appearing for the respondent in both the Second Appeals, apart from perusing the material on record.

3. Learned counsel for the appellants-tenants in both the Second Appeals would contend that the findings of the first appellate court are perverse and not supported by reasons; the first appellate court did not appreciate Ex.A.2/B.2, i.e., registered deed of surrender dated 21.03.2011 extending lease for a period of 10 years in favour of the appellants to retain the possession of the suit schedule premises; under Ex.A.1/B.1-registered lease agreement dated 28.09.2005, lease was obtained by the appellants for a period of five years and it is extendable at the option of the lessee (appellants) for 10 years; the first five

years lease period would expire on 31.03.2010; thereafter, under Ex.A.2/B.2, the appellants are entitled to hold the premises for another 10 years; the suit filed by the appellant in S.A. No.1071 of 2018 for specific performance of agreement of sale to register a lease deed for a period of ten years is valid and filed within the time under Article 54 of the Limitation Act, 1963; the surrender of first floor was made under Ex.A.2/B.2 by way of registered lease deed to demonstrate the extension of lease for another ten years; Ex.A.2/B.2 document indicates the renewal of lease deed for ten years; therefore, the termination of lease giving 15 days notice during the existing period of lease is bad in law; the finding of the first appellate court that the execution of Ex.A.2/B.2-deed of surrender of lease dated 21.03.2011 does not amount to renewal of lease period between the appellants and respondent and the lease period fixed initially for five years under Ex.A.1/B.1 expired on 31.03.2010 by efflux of time; such finding is untenable; and the first appellate court failed to consider the observations made by the trial court in decreeing the suit filed by the appellant in S.A. No.1071 of 2018 for specific performance of agreement of sale. He further contended that the following substantial questions of law arise in S.A. No.1701 of 2018 and S.A. No.1105 of 2018 respectively, for determination:

S.A. No.1701 of 2018:

- (1) Whether the findings of the Lower Appellate Court are perverse and contrary to law and weight of evidence?
- (2) Whether the Lower Appellate Court is right in reversing the well reasoned Judgment of the Trial Court?
- (3) Whether the Lower Appellate Court is right in dismissing the suit for specific performance of the appellant herein for execution of registered lease deed for a further period of 10 years?
- (4) Whether the Lower Appellate Court is justification in holding that the Ex.A2/B2 is not extension of lease when Ex.A2/B2 is executed

after expiry of the initial period of 5 years as specified in Ex.A1/B1 and carries all the terms and conditions agreed under Ex.A1/B1?

(5) Whether the Lower Appellate Court is right in holding that clause 4 of Ex.A1/B1 is not fulfilled when Ex.A2/B2 is a registered document and executed in continuation of Ex.A1?

(6) Whether the Lower Appellate Court is right in holding that claim of the appellant is barred under Article 54 of Limitation Act when it accepted the notice issued and filing of the suit by the respondent is basis for limitation of the proceedings by the Appellate Court herein?

(7) Whether the period of limitation starts from the date of the expiry of the lease deed or from the date of the notice for specific performance given by the Appellate Court and when such performance was refused by the defendant?

S.A. No.1105 of 2018:

(1) Whether the findings of the Lower Appellate Court are perverse and contrary to law and weight of evidence?

(2) Whether the Lower Appellate Court is right in reversing the well reasoned Judgment of the Trial Court?

(3) Whether the Lower Appellate Court is justification in holding that the Ex.A2/B2 is not extension of lease when Ex.A2/B2 is executed after expiry of the initial period of 5 years as specified in Ex.A1/B1 and carries all the terms and conditions agreed under Ex.A1/B1?

(4) Whether the Lower Appellate Court is right in holding that clause 4 of Ex.A1/B1 is not fulfilled when Ex.A2/B2 is a registered document and executed in continuation of Ex.A1?

(5) Whether the Lower Appellate Court is right in holding that tenancy of the appellant is from month to month ending by English calendar month and such tenancy can be terminated by the respondent by issuing notice to the Appellant under Section 106 of the Transfer of Property Act, when Ex.A.2 which is in force carries all terms and conditions of Ex.A.1?

(6) Whether the Lower Appellate Court has rightly considered the construction and contents of Ex.A.1 and Ex.A.2 and its effect on the entitlement of right of termination/eviction of the plaintiff?

4. In support of his learned counsel for the appellants has relied on the following decisions:

(1) State of U.P. and others v. Lalji Tandon (Dead) through L.Rs.¹

(2) Puran Singh Sahni v. Sundari Bhagwandas Kripalani (Smt) and others²

(3) Syed Jaleel Zane v. P. Venkata Murlidhar³

5. On the other hand, learned senior counsel appearing for the respondent-landlord in both the Second Appeals would contend that under Ex.A.2/B.2, there is no renewal of lease; there is only a surrender of first floor in favour of the respondent; so, the trial court erred in holding that there was an extension of lease for a period of ten years, without there being any registered lease deed; the first appellate court while appreciating the said fact, decreed the suit filed by the respondent for eviction and recovery of vacant possession of the suit schedule property; and ultimately, prayed to dismiss both the Second Appeals.

6. The record reveals that the appellant in S.A. No.1071 of 2018 filed O.S. No.726 of 2014 for relief of specific performance of agreement of sale and to direct the respondent herein to register the lease agreement dated 28.09.2005 for a period of 10 years in respect of ground floor shop admeasuring 1165 square feet in municipal No.5-9-240, situated at Abids Road, Hyderabad. The

¹ (2004) 1 SCC 1

² (1991) 2 SCC 180

³ 1980 L.S. (AP) 24

respondent in both the Second Appeals filed O.S. No.2183 of 2012 against the appellant herein for eviction of the appellant from the subject property and for recovery of vacant possession of the same and for mesne profits @ Rs.50,000/- per month from the date of suit till the date of delivery of possession. The respondent in both the Second Appeals also filed O.S. Nos.639 and 640 of 2014 with the same pleadings and sought injunction to restrain the defendants from sub-letting a part of the suit schedule property, i.e., ground floor of the said premises. The trial court clubbed all the four suits and recorded common evidence. On behalf of the appellant herein, P.W.1 was examined and Exs.A.1 to A.7 were marked and on behalf of the respondent herein, D.Ws.1 to 3 were examined and Exs.B.1 to B.7 were marked. After considering the entire evidence, the trial court decreed the suit filed by the appellant herein, i.e., O.S. No.726 of 2014 and dismissed the suits filed by the respondent herein, i.e., O.S. Nos.2183 of 2012, 639 of 2014 and 640 of 2014, vide common judgment dated 16.06.2016. Challenging the said common judgment, the respondent herein preferred A.S. Nos.160, 161, 162 and 163 of 2016 before the first appellate court. Thereafter, the first appellate court, while allowing A.S.Nos.160 and 161 of 2016 and dismissing A.S.Nos.162 and 163 of 2016, was pleased to set aside the common judgment and decrees of the trial Court in O.S. No.726 of 2014 and O.S. No.2183 of 2012 and confirmed the common judgment and decrees of the trial Court in O.S. Nos.640 of 2014 and 639 of 2014. Questioning the said common judgment of the first appellate court in A.S. Nos.160 and 161 of 2016, the Second Appeals are preferred.

7. The evidence and material on record reveals that the respondent herein is the owner of the schedule house admeasuring 1165 square feet under municipal number 5-9-240, situated at Abids Road, Hyderabad. The appellants are the tenants in respect of ground floor and first floor, having total area of 207 square yards. The alleged lease agreement deed Ex.A.1/B.1 was registered on

28.09.2005 on a monthly rent of Rs.40,000/- for the purpose of running business under the name and style of 'Fabulous'. There is specific mention in the said registered lease deed that the duration of the lease was five years and the rent was payable on or before 5th day of succeeding English calendar month. The tenancy commenced from 01.04.2005 and expired on 31.03.2010. After the expiry of three years, the appellants surrendered the first floor under Ex.A.2/B.2. On the date of filing of the suit, the appellants were in possession of ground floor only. There was also variation of rent paid. The respondent-landlord contended that Mr. Surgeel Bavani-appellant No.1 in S.A. No.1105 of 2018 violated the terms of the lease, she sublet a portion of the let out premises. Thereafter, a suit for eviction was filed by the respondent for violation of terms and conditions of the lease as well as on the ground that the tenancy expired due to efflux of time on 31.03.2010. The appellants in S.A. No.1105 of 2018 filed written statement and did not take a stand that there was an extension of ten years period of lease under Ex.A.2/B.2. Now such question cannot be determined. As per the Clause 4 of Ex.A.1/B.1 lease deed, the lease shall be renewed for a period of ten years in favour of Mr. Surgeel Bavani-appellant No.1 in S.A. No.1105 of 2018. The contention putforth before this Court that there was an extension of ten years period of lease under Ex.A.2/B.2 is without a pleading. Further, the first appellate court has thoroughly examined Ex.A.2/B.2 and came to a conclusion that there was no extension of period of lease for ten years as contended by the appellants herein. The contention in the original suit was only that there was an understanding between the parties to allow Mr. Surgeel Bavani-appellant No.1 in S.A. No.1105 of 2018 to continue for further ten years period in the let out premises, i.e., ground floor. The trial Court erroneously held that there was an extension of lease under Ex.A.2/B.2 for a period of two years. This finding is contra to the pleadings as well as Ex.A.2/B.2. These aspects were elaborately dealt with by the first appellate court and held that there was no extension of

lease for a period of ten years under Ex.A.2/B.2. It is also held by the first appellate court that the tenancy was from month to month and it is terminable with 15 days' notice. There was a valid notice, which is in tune with the provisions of Section 106 of the Transfer of Property Act, 1882, and the first appellate court rightly decreed the suit filed by the respondent for eviction and for recovery of possession of the suit schedule property. It is appropriate to state that there is no recital under Ex.A.2/B.2 that the lease between the parties was extended for ten years. Then Section 106 of the Transfer of Property Act, 1882, comes into operation.

8. It is also apt to state that while dealing with the subject matter in O.S. No.726 of 2014, the trial Court had framed the following issues:

- (1) Whether plaintiff is entitled for specific performance?
- (2) Whether the suit is barred by limitation?
- (3) Whether there is cause of action to file the suit?
- (4) To what relief?

The first appellate court, while dealing with these issues in A.S. No.160 of 2016, had set aside the finding of the trial Court and dismissed the suit holding that the suit was barred by limitation. The first appellate court, after elaborately discussing Ex.A.1/B.1-original lease deed and Ex.A.2/B.2-deed of surrender of lease relating to the first floor, held that the lease period expired on 31.03.2010 and the appellant herein should not have demanded the respondent for renewal of lease for a period of ten years by the end of the lease period, i.e., 31.03.2010 or within the period of three years from 31.03.2010 as per Article 54 of the Limitation Act, 1963. But the appellant filed the suit i.e., O.S. No.726 of 2014 for specific performance on 29.04.2014, after filing of the suit by the respondent in O.S. No.2183 of 2012 for eviction. The limitation to file the suit in O.S. No.726 of 2014, ended on 31.03.2013. The first appellate court gave a clear finding that

the suit in O.S. No.726 of 2014 filed on 29.04.2014 for specific performance is barred by limitation. The first appellate court ultimately held that the appellant is not entitled for specific performance, that the suit filed by the appellant is barred by limitation and that there is no extension of lease as contended. There is no infirmity in the said findings.

9. In **Laljit Tandon's** case (1 supra), it is observed by the Hon'ble Supreme Court that no single clause or term should be read in isolation so as to defeat the other clauses, the interpretation must be reasonable, harmonious, and be deduced from the language in the document. In the instant case, when all the clauses of the document are read, anywhere there is no mention of extension of lease as contended by the appellant, for a period of ten years. So, the above decision has no application to the instant case on hand.

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. The appellants must show the substantial questions of law involved so as to admit the appeal. The first appellate Court, though had framed points for consideration, had adverted to all the points which fell for adjudication and decided all the issues having adverted to the pleadings and the evidence, which is relevant, and had recorded reasoned findings on all the aspects involved in the matter against the appellants. 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 appellants have not made out valid and sufficient grounds calling for interference with the well considered and well reasoned findings of the first appellate court. There is no

question of law much less substantial question of law to admit the Second Appeals. Therefore, both Second Appeals are devoid of merit and they are liable to be dismissed at the stage of admission.

11. In the result, both the Second Appeals are dismissed, at the stage of admission, confirming the common judgment and decrees dated 24.04.2018 passed by the first appellate court in A.S. Nos.160 and 161 of 2016.

12. Miscellaneous Petitions pending, if any, shall stand dismissed. There shall be no order as to costs.

Date: 14.08.2018
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Dr. SHAMEEM AKTHER, J