

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.1031 OF 2017

JUDGMENT:

The present Second Appeal, under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), is directed against the judgment and decree, dated 04.07.2017, rendered in A.S.No.20 of 2013 on the file of learned Principal District Judge, Chittoor, whereby and whereunder, the learned lower appellate Judge affirmed the judgment and decree, dated 18.12.2012, rendered in O.S.No.388 of 2009 on the file of learned Principal Junior Civil Judge, Chittoor.

2. Thus, the appellant – appellant – defendant is combating with the concurrent findings recorded by the Courts below and, therefore, it is imperative on the part of the appellant to show the patent perversity in the findings recorded by the Courts below to substantiate substantial questions of law.

3. In fact, the present Second Appeal is coming up for admission.

4. Heard Sri Vedula Venkata Ramana, learned Senior Counsel representing M/s. Indus Law Firm, appearing for the appellant, and Sri O. Udaya Kumar, learned counsel appearing for the respondents.

5. Normally, the concurrent findings recorded by the Courts below do not warrant interference, unless the findings recorded are patently perverse or suffers from patent illegality.

6. A few facts are necessary to refer to before adverting to what has been canvassed by the learned Senior Counsel for the appellant, mostly on the grounds that despite express bar on the jurisdiction of the civil Court under Section 10 read with Section 32 (c) of the A.P. Buildings (Lease, Rent and Eviction) Control, Act 1960 (for short, 'the Act'), the Courts below went wrong in entertaining and decreeing the suit, overlooking the specific provision under Section 11 of the Act, ordered for recovery of arrears of rent and more so, drawing parallels between the said Act and A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987.

7. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Suit.

8. Plaintiffs filed O.S.No.388 of 2009 on the file of learned Principal Junior Civil Judge, Chittoor, seeking the relief of eviction of the defendant from the scheduled premises and also to direct her to pay the arrears of rent to a tune of Rs.36,000/- together with interest at 12% per annum. Their case is that in the year 1998, at the request of the defendant, they let the suit schedule property to the defendant on a monthly rent of Rs.1,000/- and subsequently, enhanced the rent to Rs.1,500/- per month and in the month of January, 2007, enhanced the same to Rs.2,000/- per month and the defendant paid the monthly rent of Rs.2,000/- till December, 2007 and thereafter, committed default. Even elders mediation was conveyed, but it proved abortive. The

defendant, instead of vacating the suit schedule property, filed O.S.No.317 of 2008 seeking the relief of permanent injunction. Later, on receipt of legal notice, the defendant filed R.C.C.No.3 of 2008 on the file of learned Principal Junior Civil Judge, Chittoor, seeking permission to deposit the rents, but, however, defaulted and no amounts were deposited.

9. The defendant denied the allegations made in the plaint, except admitting the tenant and landlord relationship between them and contended that she took the premises on a monthly rent of Rs.300/- about eighteen years prior to the institution of the suit and she has been paying rent of Rs.1,000/- per month and she never committed default in payment of rents.

10. During the course of trial, the learned trial Court framed the following issues:

“1). Whether the monthly rent of the suit property is Rs.2,000/- as pleaded by the plaintiffs?

2) Whether the defendant committed default in payment of monthly rent since January, 2008?

3) Whether the defendant filed O.S.No.317/2008 and also RCC.3/2008 in respect of the suit property and the same are pending?

4) Whether the plaintiff is entitled for eviction of the defendant from the suit property?

5) Whether the plaintiff is entitled for arrears of rent Rs.36,000/-?

6) To what relief?”

11. Even the trial Court framed an additional issue thus:

“1) Whether this Court has jurisdiction to entertain the suit?”

12. Before the learned trial Court, on behalf of the plaintiffs, PWs.1 to 3 were examined and Exs.A1 to A10 were marked, whereas on behalf of the defendant, DWs.1 and 2 were examined and Ex.B1 was marked.

13. On additional issue No.1, the learned trial Court observed that the defendant even filed a petition under Order VII Rule 11(d) C.P.C. to reject the plaint, but the said petition was rejected, against which, she preferred a Civil Revision Petition and the same was disposed of with a direction that the said objection can be considered during the final hearing of the suit, and referring to the arguments advanced by both the learned counsel and the decision in **Tirumala Tirupati Devasthanams, represented by its Executive Officer, Tirupati v. A.M. Eswara Mudaliar¹**, as to the jurisdiction of the civil Court to entertain a suit, wherein it was held that when only a part of the relief claimed can be granted by a tenancy Court, the civil Court had jurisdiction to entertain the suit, observing that the objection raised by the defendant at the stage of arguments that the civil Court has no jurisdiction to entertain the suit is not tenable, recorded a finding against the defendant.

14. On issue Nos.1, 2 and 3, basing on the evidence on record, believing the plaintiff's case, holding that quantum of rent was

Rs.2,000/- per month on the date of filing of the suit and observing that the defendant did not even take steps to pay atleast Rs.1,000/- per month as rent, as contended by her, disbelieved the stand taken by the defendant and recorded findings against the defendant.

15. On issue No.4, as to eviction of the defendant, held that the plea of *bona fide* requirement expressed by the plaintiffs is sustainable and accordingly, recorded a finding in favour of the plaintiffs.

16. On issue No.5, basing on the evidence recorded on other issues, held that the plaintiffs are entitled to arrears of rent at the rate of Rs.2,000/- per month from January, 2008 to June, 2009, which works out to Rs.36,000/-, and more particularly, since, the evidence of PW.3 was not impeached, thereby, held the issue in favour of the plaintiffs and consequently, decreed the suit granting 30 days' time for vacating the suit schedule premises and to pay arrears of rent of Rs.36,000/-.

17. Aggrieved over the same, when the defendant carried the matter in appeal, the learned lower appellate Court formulated the following five points for determination:

“1) Whether the civil suit filed by the respondents/plaintiffs seeking for eviction of the defendant/appellant and also for recovery of arrears of rents is maintainable?

2) Whether the defendant/appellant committed default in payment of rents from January, 2008?

¹ 2012 (1) ALT 166

3) Whether the plaintiffs require the suit schedule premises bonafide?

4) Whether the plaintiffs are entitled to seek for eviction of the defendant/appellant?

5) Whether the impugned judgment and decree in O.S.No.388 of 2009 are liable to be set aside?"

18. The learned lower appellate Court recorded findings on these points holding them in favour of the plaintiffs - respondents and against the defendant - appellant and dismissed the appeal with costs directing the defendant to vacate the suit schedule premises within a period of two months. The said judgment and decree are under challenge in the present Second Appeal by the defendant.

19. The substantial questions of law formulated by the appellant contained in paragraph No.12 read thus:

“a. Whether the courts below were right in drawing parallels between the A.P. Building (Lease, Rent and Eviction) Control Act, 1960 and A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 to conclude that the rent control court has no power to recover arrears of rent overlooking the provisions under Sec.11 of the AP Building (Lease, Rent and Eviction) Control Act, 1960.

b. Whether the courts below were right in entertaining and decreeing the present suit in the light of the express bar on the jurisdiction of the civil courts under Sec.10 R/W Sec.32 (C) of A.P. Building (Lease, Rent and Eviction) Control Act, 1960.

c. Whether the courts below were right in concluding that there is no provision in A.P. Building (Lease, Rent and Eviction) Control Act, 1960, for recovery of arrears of rent overlooking the specific provision under Sec.11 of the Act.

d. Whether the courts below were right in concluding that a comprehensive suit for eviction and recovery of arrears of rent cannot be adjudicated by the rent control court, and its only the civil court which has jurisdiction to adjudicate the same.”

20. Learned Senior Counsel for the appellant places reliance in **M/s. East India Corporation Ltd. v. Shree Meenakshi Mills Ltd.**², where the Honourable Apex Court, while observing that as per second proviso to Section 10 of Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960), where the tenant denies title of landlord or set up claim of permanent tenancy, the controller should find denial or claim to be *bona fide*, held in paragraph Nos.6 and 8 thus:

“6. Section 10 of the Act, as seen above, prohibits eviction of a tenant whether in execution of a decree or otherwise except in accordance with the provisions of that section or Ss. 14 to 16. These provisions as well as the other provisions of the Act are a self-contained code, regulating the relationship of parties, creating special rights and liabilities, and, providing for determination of such rights and liabilities by tribunals constituted under the statute and whose orders are endowed with finality. The remedies provided by the statute in such matters are adequate and complete. Although the statute contains no express bar of jurisdiction of the Civil Court, except for eviction of tenants "in execution or otherwise", the provisions of the statute are clear and complete in regard to the finality of the orders passed by the special tribunals set up under it, and their competence to administer the same remedy as the Civil Courts render in civil suits. Such tribunals having been so constituted as to act in conformity with the fundamental principles of judicial procedure, the

clear and explicit intendment of the legislature is that all questions relating to the special rights and liabilities created by the statute should be decided by the tribunals constituted under it. Although the jurisdiction of the Civil Court is not expressly barred, the provisions of the statute explicitly show that, subject to the extraordinary powers of the High Court and this Court, such jurisdiction is impliedly barred, except to the limited extent specially provided by the statute. See in this connection the principle stated by this Court in *Dhulabhai v. State of Madhya Pradesh* (1968) 3 SCR 662: (AIR 1969 SC 78). See also *Secy of State v. Mask and Co.* (1940) 67 Ind App 222 (AIR 1940 PC 105); *Releigh Investment Co. Ltd. v. Governor General in Council* (1947) 74 Ind App 50 : (AIR 1947 PC 78) and *Barraclough v. Brown*, 1897 AC 615 (HL).

7.

8. What is stated in the second proviso to S.10(1) is the sole circumstance in which the Civil Court is invested with jurisdiction in matters of eviction. But this jurisdiction cannot be invoked otherwise than as stipulated in the second proviso. This means that the condition precedent to the exercise of jurisdiction by a Civil Court is that the tenant should have denied the title of the landlord or claimed right of permanent tenancy and the Controller should, on such denial or claim by the tenant reach a decision whether such denial or claim is bona fide. Upon such decision, the Controller must record a finding to that effect. In that event, the landlord is entitled to sue for eviction of the tenant in a civil court. Where these conditions are satisfied, the Civil Court will have jurisdiction to pass a decree for eviction on any of the grounds mentioned in S.10 or Ss. 14 to 16, notwithstanding that the Court has found that the tenant's denial of the

² AIR 1991 SC 1094

landlord's title does not involve forfeiture of the lease or his claim of right of permanent tenancy is unfounded. Except to this limited extent, the jurisdiction of the civil court in matters of eviction of a tenant is completely barred and the jurisdiction in such matters is vested in the tribunals set up under the statute.”

21. The learned Senior Counsel also places reliance in **Tirumala Tirupati Devasthanam’s** case (1 supra), in relation to the civil Courts jurisdiction to entertain suits, wherein it was held that when the relief of eviction and damages are claimed, the tenancy Court can grant only a part of relief of eviction and the civil Court has jurisdiction to entertain the said suit.

22. Per contra, learned counsel for the respondents while contending that concurrent findings recorded by the Courts below do not warrant interference and the civil Court has jurisdiction, but not the Rent Controller, placed reliance in **Atma Ram Mittal v. Ishwar Singh Punia**³, **Dhulabai v. State of M.P.**⁴ and **Naveenchand and another v. Nagarjuna Travels and Hotels Private Ltd., Hyderabad**⁵.

23. As to the jurisdiction of the civil Court, the learned lower appellate Court dealt with the same under point No.1. The learned lower appellate Court, while referring to the decisions in **Deva Sahayam v. P. Savithramma**⁶, **Tirumala Tirupati Devasthanam’s**

³ (1988) 4 SCC 284

⁴ AIR 1969 SC 78

⁵ 2000 (4) ALT 56 (D.B.)

⁶ AIR 2006 SC 779

case (1 supra), **Chandrika Misir and another v. Bhaiyalal⁷**, **Most. Rev. P.M.A. Metropolitan and others etc., v. Moran Mar Marthoma and another etc.⁸**, **N.D.M.C. v. Satish Chand (deceased) by L.R. Rama Chand⁹**, arrived at the conclusion that the civil Court has jurisdiction and thereby, answered point No.1 in favour of the plaintiffs and against the defendant.

24. In the instant case, though, title is not in dispute, but when arrears of rent are claimed and the rental being Rs.2,000/- per month, as per the plaintiff's case, certainly, it cannot be said the suit is not maintainable and the Rent Controller alone has jurisdiction. The decision in **M/s. East India Corporation Ltd.**'s case (2 supra) relied on by the learned Senior Counsel for appellant, in fact, relates to a petition filed under the Rent Control Act, where the title was denied by the tenant, thus, going to the root as to the relationship of landlord and the tenant and in such a situation, the Honourable Apex Court expressed that the Rent Controller cannot adjudicate the title dispute and the civil Court has to decide the title dispute. Thus, the said decision is rendered in a different fact situation and, therefore, it would not assist the appellant to advance his case.

25. Now turning to the ground reality, the defendant totally stopped paying rents and, in fact, went to the extent of filing suit for permanent injunction and a petition before the Rent Controller to

⁷ AIR 1973 SC 2391

⁸ AIR 1995 SC 2001

⁹ AIR 2003 SC 3187

deposit rents. But, as could be seen from the record, not even a single pie was deposited and the defendant has been enjoying the premises without tendering rents at all. Thus, the concurrent findings recorded by the Courts below do not suffer from any patent illegality. Even with regard to the maintainability of the suit. Mere fact that the defendant approached the Rent Controller in R.C.C.No.3 of 2008 seeking permission to deposit rents is no ground to hold that the Rent Controller alone has jurisdiction. Certain positive admissions made by the defendant admitting that she has no intention to vacate the suit schedule premises, that she is intending to purchase the suit schedule premises and that she wants to remain in the suit schedule premises are all sufficient to hold that no substantial question of law would arise and, therefore, the present Second Appeal is liable to be dismissed.

26. Accordingly, the present Second Appeal is dismissed at the admission stage. Consequently, appellant - defendant is directed to vacate the suit schedule premises within a period of three months from today.

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

A. SHANKAR NARAYANA, J

June 28, 2018.

Note:

Furnish C.C. of judgment by 09.07.2018
(B/O.MD)