

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Second Appeal No.1383 of 2018

JUDGMENT:

This Second Appeal is preferred, under Section 100 CPC, against the judgment and decree in A.S. No.263 of 2016 dated 23.07.2018, passed by the XI Additional Chief Judge, City Civil Court, Hyderabad, confirming the judgment and decree in O.S.No.1509 of 2015 dated 18.10.2016, passed by the VIII Junior Civil Judge, City Civil Court, Hyderabad.

The respondent-plaintiff filed O.S.No.1509 of 2015, on the file of the VIII Junior Civil Judge, City Civil Court, Hyderabad, seeking ejectment of the appellant-defendant from the subject house, and to put him in vacant and physical possession of the Suit schedule property along with future mesne profits at Rs.10,000/- per month from 01.07.2015 till delivery of possession.

Before the trial Court, the respondent-plaintiff contended that he was the owner of the subject property which was in the possession of the defendant as a tenant on payment of monthly rent of Rs.4,500/-; a rental agreement dated 08.02.2011 was executed for a period of 11 months; the appellant-defendant paid Rs.10,000/- as refundable deposit; as the appellant-defendant refused to vacate, and failed to pay the rent, the respondent-plaintiff had lodged a complaint before the Chandrayangutta Police Station on 24.04.2015 and 19.05.2015 which were registered as Crime No.147 of 2015; a sum of Rs.1,03,500/- was payable from July, 2013 to May, 2015, towards arrears of rent; and a quit notice was issued, despite which the appellant-defendant failed to vacate

the subject house, besides failing to pay arrears of rent for 23 months.

In her written statement, the appellant-defendant contended that she was not a tenant; there was no jural relationship of landlord and tenant between her and the respondent-plaintiff; she did not execute any rental agreement dated 08.02.2011; the sisters of the respondent-plaintiff had mortgaged the subject property, claiming that they were the owners of the property; believing them, the appellant-defendant had paid Rs.5.00 Lakhs on 05.12.2010, and had obtained possession; and she was shocked to receive summons from the Court seeking her eviction.

The trial Court framed the following issues:

- 1) Whether the defendant is liable to be ejected from the premises as sought for by the plaintiff?
- 2) Whether the plaintiff is entitled to recover the schedule property from the defendant as prayed for?
- 3) Whether the defendant is mortgagee of the schedule premises as prayed for?
- 4) Whether the plaintiff is entitled to recover the mesne profits @ Rs.10,000/- per month from 01.07.2013 to till delivery of possession of the property as prayed for?
- 5) To what relief?

On issues 1 to 4, the trial Court observed that, during cross-examination, the defendant had admitted that she had not gone through the alleged mortgage deed when she paid Rs.5.00 Lakhs; she also admitted that she did not execute any document; Mrs.Asghari Begum (the plaintiff's sister who allegedly mortgaged the property) was examined as PW.2; she stated that she had entered into a rental agreement with the defendant under Ex.A9;

the signature of the appellant-defendant in Ex.A9 tallied with her signature on her evidence, vakalat and the written statement; the appellant-defendant admitted, in cross-examination, that she used to sign in Urdu; while she denied her signature thereupon, it was evident that Ex.A9 rental agreement contained her signature; and this supported the respondent-plaintiff's claim that the Suit schedule property was let out by PW.2 at his instance, in 2011, on a monthly rent of Rs.4,500/-.

The Trial Court held that the burden shifted to the defendant; she had contended that she was in possession of the property as a mortgagee and had paid Rs.5.00 Lakhs to Smt. Anjum Begum, the mortgage was for a period of five years, and she came to know that the respondent-plaintiff was the owner after three years of her entering into possession of the property; having admitted being aware that the respondent-plaintiff was the owner, the appellant-defendant had not issued any notice intimating the respondent-plaintiff of the alleged mortgage with Mrs. Anjum Begum; while admitting that, after she had entered into the property, she saw Mrs. Anjum Begum twice, she subsequently stated that she never saw Mrs. Anjum Begum; it was the duty of the appellant-defendant to ascertain regarding Anjum Begum with the respondent-plaintiff after his arrival in India, or atleast after receipt of the notice under Section 106 of the Transfer of Property Act; the appellant-defendant made no attempt to inform the respondent-plaintiff about the alleged mortgage; though the onus had shifted on her, the appellant-defendant had failed to discharge the burden of proving that the property was mortgaged in her

favour; and the possession of the appellant-defendant was only as a tenant, and not as a mortgagee.

The Trial Court, thereafter, held that the appellant-defendant had committed default in payment of rent for 23 months from July, 2013 to May, 2015; the notice, under Section 106 of the Transfer of Property Act, was served on her; the respondent-plaintiff had, through Ex.A1 sale deed, showed that he had purchased the property on 31.10.2007, and had mutated the same in the records; the electricity connection was in his name, and property tax was also being paid in his name; Ex.A5 was the encumbrance certificate which showed that he was the owner of the property; Exs.A1 to A5 did not reflect the alleged mortgage; and the respondent- plaintiff was entitled to recover arrears of rent from July, 2013 till recovery of possession from the appellant-defendant at Rs.4,500/- p.m. The appellant-defendant was directed to hand over the schedule premises to the respondent-plaintiff within two months.

Aggrieved thereby, the appellant herein preferred A.S.No.263 of 2016 before the XI Additional Chief Judge, City Civil Court, Hyderabad who, by his judgment dated 23.07.2018, dismissed the appeal. On Point No.1, i.e whether the appellant-defendant was in possession of the suit schedule property as a tenant under Ex.A9 or as a mortgagee by extending loan to Smt.Anjum Begum, the appellate Court held that a mortgage can be created only in compliance with the provisions of the Transfer of Property Act, the Stamp Act and the Registration Act; a Division Bench of this Court, in **Bharat Tubes & Tins Printers v. A.P. State Financial**

Corporation Ltd¹, had observed that a valid charge or a mortgage could only be created after compliance with the provisions of the Indian Stamp Act and the Indian Registration Act; the appellant's claim of an oral mortgage was not prescribed in law; and the appellant-defendant was in possession of the Suit schedule property only as a tenant and not as a mortgagee.

On Point No.2, i.e. whether the respondent-plaintiff was entitled to recover the Suit schedule property from the appellant-defendant, the appellate Court held that the respondent-plaintiff was the absolute owner of the Suit schedule property; he had issued a notice under Ex.A7 to the appellant-defendant terminating the tenancy from 01.07.2015; while the appellant had denied receipt of the notice, the respondent-plaintiff had filed the track report evidencing delivery of the notice; the address of the appellant, mentioned in Ex.A7 notice, was not disputed by the appellant-defendant; and the quit notice was served on the appellant on 15.06.2015. The Appellate Court further observed that, when the tenant denied the title of the landlord, the tenancy automatically came to an end in view of Section 111(g) of the Transfer of Property Act; and the tenancy came to be terminated through Ex.A7, and also came to an end under Section 111(g) of the Transfer of Property Act. The appeal was, therefore, dismissed.

Before this Court, Sri Syed Abdul Kareem, Learned Counsel for the appellant, would reiterate the very same contentions as were urged before the Courts below, and would claim that an oral mortgage was executed by Mrs.Anjum Begum, on behalf of the respondent-plaintiff, on a loan of Rs.5.00 Lakhs being given to her

¹ 2009 (2) APLJ 424 = 2009 (4) ALD 856 (D.B)

by the appellant-defendant; and since the respondent-plaintiff was not the appellant-defendant's landlord, the Suit for eviction was not maintainable.

As noted hereinabove, both the Courts below have concurrently held that the respondent-plaintiff was the owner of the suit schedule property under Ex.A1 sale deed; and the plea of the appellant-defendant, of a mortgage having been executed, could not be believed. It is also evident from the orders of the Court below that a quit notice, under Section 106 of the Transfer of Property Act, was served on the appellant-defendant on 15.06.2015; and the appellant-defendant failed to pay arrears of rent, at Rs.4,500/- per month, from July, 2013 till May, 2015. The plea of an oral mortgage cannot be believed in the absence of registration of the mortgage.

A Second Appeal, under Section 100 of the Civil Procedure Code, would lie only if the case involves a substantial question of law. A substantial question of law would arise, on findings of fact recorded by the Courts below, only if the said findings are either perverse or are based on no evidence. On appreciation of the evidence on record, both the Courts below have disbelieved the appellant-defendant's claim of having executed an oral mortgage, and have accepted the respondent-plaintiff's claim to be the landlord of the property in occupation of the appellant-defendant as a tenant. It is only if the conclusions arrived at by both the Appellate and the Trial Court are such that no reasonable person would arrive at such a conclusion, can it then be said that the findings arrived at by the Courts below are perverse. Likewise absence of evidence, acceptable to a reasonable man, would result

in a finding based on no evidence which would give rise to a substantial question of law. I am satisfied that the concurrent findings of fact, recorded by the Courts below, do not necessitate interference, and no case has been made out by the appellant, for the Second Appeal to be entertained under Section 100 of the Civil Procedure Code.

The Second Appeal fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand closed. No costs.

Date:20.09.2018.

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(RAMESH RANGANATHAN, J)

