

HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

Second Appeal No.1507 of 2018

JUDGMENT: (per Hon'ble Sri Justice Raghvendra Singh Chauhan)

This Second Appeal is filed against the judgment and decree dated 26.07.2018, in A.S.No.138 of 2015, passed by the XI Additional Chief Judge, City Civil Court, Hyderabad, whereby the learned First Appellate Court has dismissed the appeal filed by the appellant against the judgment and decree dated 17.04.2015, in O.S.No.2338 of 2010, passed by the VII Senior Civil Judge, City Civil Court, Hyderabad, wherein the learned Senior Civil Judge had decreed the Suit for eviction in favour of the respondent-plaintiff.

Mr.Pawan Kumar Agarwal, the learned counsel for the appellant, has pleaded that the original lessor, Mr.Ravindranath Sanghi, had borrowed an amount of Rs.10,00,000/- from the appellant. In receipt for the said amount (Ex.B1) it was clearly stated by Mr.Ravindranath Sanghi that the appellant need not pay the rent amounts till the said loan amount is repaid. Since the loan amount was not repaid by Mr.Ravindranath Sanghi, the appellant continued to enjoy the possession of the suit schedule property. Subsequently, the property was bought by the respondent. Therefore, the respondent-plaintiff having stepped into the shoes of the original lessor, was liable to continue the same condition as entered between the lessor

and the appellant. In order to buttress this contention, the Learned Counsel for the appellant has drawn the attention of this Court to Section 109 of Transfer of Property Act, 1882 (for short, “the T.P. Act”). Hence, according to the Learned Counsel for the appellant, the substantial question of law which arises in the present Second Appeal is, whether both the Courts below are justified in decreeing the Suit without discussing the provisions under Section 109 of the T.P. Act or not?

On the other hand, Mr. Pramod Kumar Kedia, the learned counsel for the respondent, submits that the substantial question of law would not even arise as the provision of Section 109 of the T.P. Act is not even applicable to the facts of the present case. According to the Learned Counsel, the T.P. Act prescribes a particular procedure to be followed before a transferee can be held to be liable to discharge the liabilities which were imposed on the lessor. Thus, according to the Learned Counsel, no substantial question of law emanated in this Second Appeal.

Heard Learned Counsel for the parties.

Section 109 of the T.P. Act reads as under:

109. Rights of lessor's transferee.- If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe

that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

A perusal of Section 109 of the T.P. Act clearly reveals that it requires that a transferee can be imposed with the liabilities of the lessor, if the lessee so elects to treat the transferee as the person liable to him. Thus, unless and until election is made by the lessee, the liability cannot be imposed upon the transferee. However, there is not an iota of evidence to show that the lessor had ever elected to treat the transferee, the plaintiff, as liable to him. Thus, the liability taken upon himself by the original lessor can not be thrust upon the transferee, the plaintiff. Hence, the Learned Counsel for the appellant is unjustified in his claiming that the provisions of Section 109 of the T.P. Act should have been considered by both the Courts below, and the benefits of the said Section should have been given to the appellant.

Besides the above contention, raised by the Learned Counsel for the appellant, no other contention has been raised by him. Therefore, this Court is of the opinion that no substantial question of law is involved in the present Second Appeal.

Considering the fact that it is a case of eviction, the First Appellate Court has granted the appellant three months time to vacate the suit schedule property. The Learned

Counsel for the appellant has pleaded that atleast six months time should be given from today, to the appellant to vacate the suit schedule property.

However, the Learned Counsel for the respondent submits that despite the direction of the First Appellate Court to the appellant to pay an amount of Rs.2,45,094/- towards arrears of rent, the same has not even been paid by the appellant. Moreover, despite the appellant continuing to occupy the suit schedule property, the appellant is not paying the monthly rent to the respondent. Therefore, the Learned Counsel for the respondent pleads that the extended period of six months should not be granted to the appellant unless and until he first clears off the arrears of rent i.e. Rs.2,45,094/- with the respondent, and continues to pay the monthly rent till the appellant vacates the suit schedule property and pays the suit costs as imposed by the Trial Court i.e. Rs.34,000/- and the suit costs imposed by the First Appellate Court i.e. Rs.44,827/-.

In rejoinder, the Learned Counsel for the appellant submits that the appellant had already deposited 50% of Rs.2,45,094/- with the learned Trial Court and he has also deposited Rs.34,000/- as suit costs granted by the trial Court.

The amounts that were deposited by the appellant shall be released forthwith to the respondent by the learned Trial Court.

The appellant is granted six months time from today to vacate the suit schedule property, provided he pays the remaining balance 50% of the Rs.2,45,094/- along with appeal suit costs of Rs.44,827/- to the respondent within a period of two weeks from today, and continues to pay the monthly rent to the respondent till the appellant vacates the suit schedule property. In case the said amount is not paid by the appellant to the respondent, the respondent shall be free to execute the decree. It is hereby clarified by way of abundant caution that this order shall not adversely affect the right of the respondent, in any way, to claim mesne profits from the appellant.

For the reasons stated above, the Second Appeal stands disposed of. The miscellaneous petitions pending, if any, shall also stand closed. No costs.

RAGHVENDRA SINGH CHAUHAN, J.

Date:27.11.2018.

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