

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.1147 OF 2017

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 13.07.2017 passed in A.S. No.64 of 2014 on the file of the XXIV Additional Chief Judge, City Civil Court, Hyderrabad (for short, 'first appellate court'), wherein the judgment and decree dated 11.12.2013 passed in O.S. No.180 of 2009 on the file of the I Senior Civil Judge, City Civil Court, Hyderabad (for short, 'the trial court'), was confirmed.

2. The appellant herein is the 1st defendant, and respondent Nos.1 and 2 herein are the plaintiff and 2nd defendant respectively, in the original suit.

3. Heard Sri Vedula Venkata Ramana, learned senior counsel representing M/s. Bharadwaj Associates, learned counsel for the appellant-1st defendant, and Sri R.A.Achuthanand, learned counsel for the 1st respondent-plaintiff, apart from perusing the material on record.

4. For the sake of convenience, the parties hereinafter are referred to as they were arrayed before the trial Court in the original suit.

5. This appeal is filed stating that the judgment and decree passed by both the Courts below are contrary to law and erroneous and the Courts below committed serious error in granting decree for eviction in favour of the plaintiff ignoring the validity of the statutory notice under Section 106 of the Transfer of Property Act, 1882, and ultimately, prayed to set aside the judgment and decree dated 11.12.2013 passed by the trial Court in O.S. No.180 of 2009, which was confirmed by the first appellate court by judgment and decree dated 13.07.2017 in A.S. No.64 of 2014. It is urged that the following substantial questions of law do arise for consideration in this Second Appeal:

3. Whether a fifteen days notice under Section 106 of the Transfer of Property Act is valid when the registered lease deed between the parties marked as Ex.A.1 has expressly provided that the notice of eviction shall be a notice of three months (para 34 of the trial court judgment)?
 4. Whether the trial Court and the appellate court have decided the validity of the quit notice marked as Ex.A.2 wherein fifteen days notice was given in accordance with the provisions contained in Section 106 of the Transfer of Property Act which clearly lays down that notice of fifteen days would be sufficient unless there is a contract to the contrary?
 5. When the registered lease deed between the parties has stipulated that the notice of eviction shall be three months, whether the quit notice marked as Ex.A.2 where notice of fifteen days is given, is valid and permissible in law?
 6. When the lease has initially commenced under a registered lease deed marked as Ex.A.1 and the lease has continued subsequently, whether the terms and conditions of the registered lease deed would not continue to bind the parties since there is no fresh lease deed between the parties, in particular the specific bilateral condition that the quit notice should be of a duration of three months?
 7. Whether the judgments of the Courts below, holding that Es.A.2 quit notice is valid, are legally sustainable or not?
6. The plaintiff filed the suit for eviction of the defendants 1 and 2 from the suit schedule shop and also claimed damages at the rate of Rs.40,000/- per month. The plaintiff averred in the suit that he is the absolute owner of the plaint schedule shop bearing No.5-8-517/22, situated at Abids Shopping Centre, Hyderabad. The plaintiff had leased out the suit shop to the 1st defendant under a registered lease deed dated 05.09.2001 on monthly rent of Rs.3,500/-. The period of lease was for 12 months. After expiry of the lease period, the 1st defendant continued in the suit premises. The monthly rent was enhanced to

Rs.6,600/-. The condition in the lease deed was that the 1st defendant shall not let out the premises to any other person. The 1st defendant violated the terms and conditions of the registered lease deed by introducing the 2nd defendant as sub-tenant and collected rent from the 2nd defendant. The 2nd defendant is carrying business in sale of cell phones and mobile accessories. The plaintiff issued notice of termination on 18.12.2008 under Section 106 of the Transfer of Property Act terminating the tenancy of the 1st defendant and calling upon the 1st defendant to vacate the premises by removing the 2nd defendant and deliver vacant possession of the suit schedule shop by 04.01.2008. The plaintiff also mentioned in the notice that an amount of Rs.40,000/- per month is payable to him towards damages. The 1st defendant gave a reply to the notice stating that a sum of Rs.90,000/- was paid to the plaintiff in cash and Rs.25,000/- by way of cheque towards deposit.

7. The 1st defendant filed written statement and contested the suit stating that there was no valid notice to evict the defendants from the suit premises. The 1st defendant admitted the lease over the suit schedule shop and contended that he paid a deposit of Rs.1,25,000/- as per the lease deed dated 05.09.2001 and that it was agreed between the parties that the 1st defendant would continue in the suit premises for 15 years. The 1st defendant denied that the lease was only for a period of 12 months and the tenancy is month-to-month basis. The 1st defendant admitted that there was enhancement of rent and he was paying Rs.6,600/- per month. The 1st defendant denied the subletting the premises in favour of the 2nd defendant. The 1st defendant admitted the issue of legal notice dated 18.12.2008 calling upon the him to vacate the suit premises by removing the 2nd defendant and to deliver vacant possession of the same on 04.01.2009.

8. Basing on the above pleadings, the trial Court framed the following issues:

- (1) Whether the plaintiff is entitled for eviction and delivery of suit property from the defendants?
- (2) Whether the plaintiff is entitled for arrears of rents?
- (3) Whether the plaintiff is entitled for future mesne profits?
- (4) To what relief?

9. The trial Court after considering the oral and documentary evidence, decreed the suit in favour of the plaintiff, directing the 1st defendant to vacate the premises within a period of three months from the date of decree. The plaintiff was given liberty to file a separate suit for mesne profits. Aggrieved by the said decree and judgment, the 1st defendant preferred A.S. No.64 of 2014 before the first appellate court. The first appellate Court while dealing with the appeal, framed the following points for consideration:

- (1) Whether the respondent No.1/plaintiff is entitled for eviction of the appellant/defendant No.1 as prayed?
- (2) Whether any interference is required in the Judgment of the lower Court?

10. The first appellate Court having examined the oral and documentary evidence, was pleased to dismiss the appeal with costs by judgment dated 13.07.2017 and the 1st defendant was directed to vacate the suit schedule premises by 13.10.2017, otherwise the plaintiff was given liberty to evict the 1st defendant by way of execution petition.

11. Sri Vedula Venkata Ramana, learned senior counsel appearing on behalf of the 1st defendant (appellant herein), would contend that the aforementioned substantial questions of law do arise to admit this Second Appeal and adjudicate the /is; and under the original lease deed, a three months' notice is required to terminate the tenancy, but the plaintiff had given only 15 days'

notice for eviction, which is untenable. In support of his contentions, he relied on the decisions of the Hon'ble Supreme Court in **Arunachala Naicker v. Ghulam Mahmood Saheb**¹ and **K.Nasir Basha and another v. Turukkan Chatram Charities**².

12. In **Arunachala Naicker's** case (1 supra), it is held that on construing the deed of lease in question, that not merely did the parties intend that the period of notice should be one month, but also that the one month's notice should be given at any time and that the fresh contract entered into between the parties only related to the rent to be paid and hence as regards notice they were governed by the original contract.

13. In **K.Nasir Basha's** case (2 supra), it is held as follows:

"In the matter of a monthly tenancy, when there is a contract governing the question of notice to terminate tenancy, the intention of parties has to be ascertained from the contract. Section 106 does not apply to it."

14. On the other hand, Sri R.A.Achuthanand, learned counsel for the plaintiff (1st respondent herein), would contend that both the Courts have recorded concurrent findings basing on the entire oral and documentary evidence; there is no need to interfere with the said findings; no substantial question of law arises for determination; the eviction notice is valid; and ultimately, prayed to dismiss the appeal. In support of his contentions, he relied on the following decisions:

(1) Bhawanji Lakhamshi and others v. Himatlal Jamnadas Dani and others³;

¹ AIR 1951 Madras 408

² AIR 1976 Madras 120

³ (1972) 1 SCC 388

(2) **Shiv Nath, minor under guardian Sahu Girdhar Lal v. Shri Ram Bharosey La**⁴;

(3) **Burmah Shell Oil Distributing now known as Bharat Petroleum Corporation Ltd., v. Khaja Midhat Noor and others**⁵;

(4) **C.Albert Morris v. K.Chandrasekharan and others**⁶;

15. In **Bhawanji Lakshamshi's** case (3 supra), it is held by the Hon'ble Supreme Court as follows:

"The act of holding over after the expiration of the term does not create a tenancy of any kind. If a tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. The former is a tenant at sufferance in English Law and the latter a tenant holding over or a tenant at will. In view of the concluding words of Section 116 of the Transfer of Property Act, a lessee holding over is in a better position than a tenant at will. The assent of the landlord to the continuance of possession after the determination of the tenancy will create a new tenancy. What the section contemplates is that on one side there should be an offer of taking a new lease evidenced by the lessee or sub-lessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise."

16. In **Shiv Nath's** case (4 supra), it is held by the Allahabad High Court as follows:

⁴ AIR 1969 Allahabad 333

⁵ AIR 1988 SC 1470

⁶ (2006) 1 SCC 228

"According to the principle of holding over discussed in Section 116 of the Transfer of Property Act, if a lessee remains in possession after the determination of the lease, and the lessor accepts rent from the lessee, the lease is, in the absence of the agreement to the contrary, renewed from month to month. It is common ground that the landlord accepted rent from Baldeo Das for several years after February 1942. The principle of holding over is, therefore, attracted. The expression "in the absence of an agreement to the contrary" appearing in Section 116 does not imply that a special term in the original lease makes the doctrine of holding over inapplicable altogether. The only effect of such a special term in the original lease is that one has to read that special term in the renewed lease. According to Ex.1, Baldeo Das was liable to ejectment in case of default in the payment of rent for any one month. We may read that very term in the renewed lease. Such a special term in the renewed lease does not alter the fact that the renewed lease was from month to month. The doctrine of holding over under Section 116 of the Transfer of Property Act is applicable in spite of the special term in Ex.1 pointed out by Mr.K.C.Saksena."

17. In **Khaja Midhat Noor's** case (5 supra), it is held by the Hon'ble Supreme Court that in case of lease of land for 10 years with permission to sub-lease, if the sub-lessee continues in possession of the land after expiry of lease period, by paying rent which was accepted by the lessor, the termination of lease by one month's notice is valid and no notice is required to be issued to sub-lessee.

18. In **C.Albert Morris's** case (6 supra), it is held by the Hon'ble Supreme Court that the lessee remaining in possession after the determination of the lease under the lessor and implies a tacit offer to take a new tenancy from the expiration of the old on the same terms and a fresh tenancy results by the implied conduct. Therefore, in the instant case, the parties are not governed by the registered lease deed.

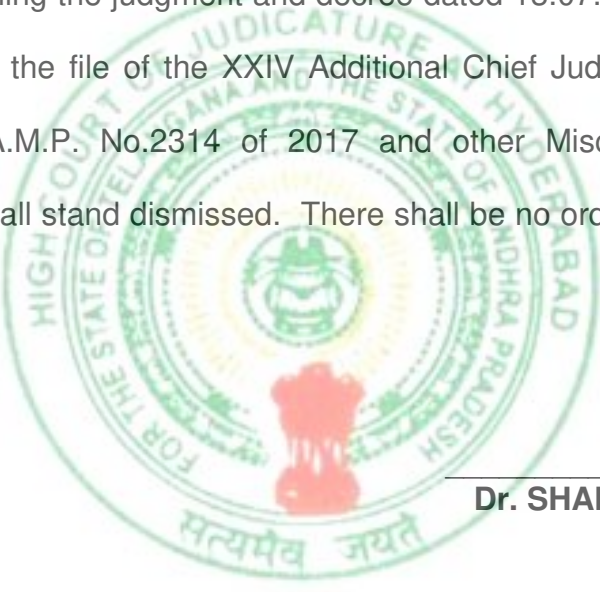
19. In the instant case, there is registered lease deed letting out the suit premises. In the lease deed there is specific mention that the tenancy is terminated on issue of three months prior notice. Ex.A.2 is the notice dated 18.12.2008. When the duration of the lease deed expires, thereafter the tenancy between the parties is month to month. Ex.A.1 is the registered lease deed, wherein it was agreed between the parties that in case of termination of the lease by either side, notice of three months shall be given. Under the said lease deed, the lease was for a period of 12 months commencing from 01.09.2001. The subject suit was filed in the year 2009. Further, Ex.A.2 legal notice dated 18.12.2008 was given calling upon the 1st defendant to vacate the premises within 15 days from the date of receipt of legal notice. As per the evidence on record, the rent was enhanced from Rs.3,500/- to Rs.6,600/- per month. Both the Courts below held that the said legal notice was valid. As it is held by both the Courts below that the lease between the parties is for month to month, no three months' notice is required to be given. 15 days' time given under Ex.A.2 is quite sufficient and it is in tune with the provisions of Section 106 of the Transfer of Property Act, 1882. This aspect of validity of notice had been elaborately dealt with by both the Courts below and a clear finding is recorded in favour of the plaintiff.

20. 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 appellant must show the substantial question of law involved so as to admit the appeal. Both the Courts below gave concurrent finding with regard to the termination of the tenancy and the compliance of Section 106 of the Transfer of Property Act. 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. 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. There is no question of law much less substantial question of law to admit the Second Appeal. Therefore, this Second Appeal is devoid of merit and it is liable to be dismissed at the stage of admission.

21. In the result, the Second Appeal is dismissed at the stage of admission, confirming the judgment and decree dated 13.07.2017 passed in A.S. No.64 of 2014 on the file of the XXIV Additional Chief Judge, City Civil Court, Hyderrabad. S.A.M.P. No.2314 of 2017 and other Miscellaneous Petitions pending, if any, shall stand dismissed. There shall be no order as to costs of the Second Appeal.

Date: 05.07.2018
siva



Dr. SHAMEEM AKTHER, J