

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.C.C.A. No.245 OF 2017

JUDGMENT:

Challenging the judgment and decree dated 31.7.2017 in O.S. No.1295 of 2015 on the file of IV-Senior Civil Judge, City Civil Court, Hyderabad, whereby and whereunder the defendant was directed to vacate the suit premises by granting two months' time and to pay Rs.50,000/- per month for six months for the period from July, 2015 to December, 2015 and thereafter, at Rs.75,000/- per month apart from the existing rent of Rs.1,20,000/- till the date of handing over possession to the plaintiff, the present Regular Appeal is filed under Section 96 of the Civil Procedure Code, 1908 (for short, 'C.P.C.').

2. Heard Sri A. Sameer Kumar, learned counsel for the appellant, and Sri Kanaparthi Krishna, learned counsel for the respondent.

3. A few facts for adjudicating upon the controversy in the present Appeal requires advertence.

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

5. The defendant was the tenant of the plaintiff, who leased out the ground floor of the housing property bearing Plot No.873/A

bearing Municipal Door No.8-2-293/82/A/873A inclusive of 800 sq. yards of open backyard totaling to an extent of 1375 sq. yards situated at Road No.45, Jubilee Hills, Hyderabad. The lease was for a period of one year. As the defendant made a request till he finds alternative accommodation he would be occupying the said premises, and, thus, at his request the plaintiff let out the said portion. The lease period was for one year commencing from 1.1.2013 at a monthly rental of Rs.95,000/-. Registered Lease Deed, dated 2.2.2013 was entered into, and the plaintiff, then, left to United States of America.

6. The case set out by the plaintiff also would reflect that the defendant demolished the front compound wall, erected a shed and for the first three months period he paid monthly rents regularly and thereafter, he became irregular. At his request, the plaintiff agreed to continue the defendant till the month of March, 2014, but the defendant failed to pay monthly lease amount. When she came back to India in the month of February, 2014, she demanded the defendant to vacate the premises by 31.03.2014, but the defendant asked her to extend the lease for one more year till 31.3.2015, and, she had agreed, but, however, on enhanced lease amount of Rs.1,20,000/- per month with effect from 1.4.2014 till the determination of the lease.

7. According to her, the defendant was enhanced the lease amount for a period of eight months and thereafter became defaulter. She send e-mails requesting him to vacate the property, but he did not vacate, and continued the possession for eight more months, and,

thus, he became due a sum of Rs.1,60,000/- as on 1.8.2015 besides Rs.15,000/- towards late payment charges and even liable to pay penalty of Rs.50,000/- per month for six months for illegal occupation and later at Rs.75,000/-, and, thus, the defendant became a trespasser according to her and the defendant even fraudulently issued nine cheques on 31.5.2015, 30.06.2015 and 31.7.2015 aggregating to Rs.8,55,000/-, but the cheques were dishonoured.

8. It is also the case of the appellant that the defendant instead of vacating the suit schedule property filed a suit in O.S. No.1596 of 2015 on the file of VII-Junior Civil Judge, City Civil Court, Hyderabad, and obtained interim injunction on 21.7.2015. The plaintiff, therefore, got issued Quit notice on 28.8.2015 under Section 106 of the Transfer of Property Act, 1882, and also directed to pay arrears both rentals as well as penalty charges, but he failed to comply, which compelled the plaintiff to file the suit.

9. The stand taken by the defendant in his written statement was to the effect that though both of them agreed to have lease for a period of five years, but agreement was executed for only one year and agreed to extend every year subject to payment of rentals. He denied that he became a defaulter. He states that though, he tendered rents, but the plaintiff was not in the habit of passing rental receipts, but, according to him, the plaintiff regularly extending lease period till 31.3.2015 and promised to extend the lease period after returning to India.

10. The vital aspect, which canvassed by the learned counsel for the appellant finds basis from the allegation mentioned in the written statement to the effect that the defendant studied only upto V- class, General Power of Attorney-holder of the plaintiff, without the consent of the defendant, incorporated certain terms in page No.7, which, according to the defendant, is against the principles of natural justice. He would contend that he never violated the terms of the Lease Deed and never became defaulter and he was not obligated to pay any additional amount. He attributes fraud to the plaintiff and since the plaintiff started demanding him to vacate the premises and even adopted illegal methods to give same premises on higher rent, thereby he approached the Civil Court and obtained injunction in O.S. No.1596 of 2015, and according to him, he sent suitable Reply notice denying the averments of the Quit notice got issued by the plaintiff. Hence, he sought to dismiss the suit.

11. The trial Court, on the basis of the pleadings put forth by the respective parties, settled the following four issues.

- “ (1) Whether the quit notice issued by the plaintiff under Section 106 of T.P. Act is valid and binding on the defendant?
 (2) Whether the plaintiff is entitled for eviction of the defendant as prayed for?
 (3) Whether the plaintiff is entitled for future mesne profits as prayed for?
 (4) To what relief? ”

12. To substantiate the case of the plaintiff, the General Power of Attorney-holder of the plaintiff was examined as P.W.1 and Exs.A1 to A3 documents were marked, and the plaintiff examined herself as P.W.2. The defendant himself examined as D.W.1 and marked Exs.B1 to B24.

13. Somehow, the learned trial Judge even formulated the point for consideration thus:

“Whether the parties established their respective contentions issue wise by all probabilities?

14. In fact, there was no need or necessity for formulating the point for consideration and, in fact, it is the Appellate Court which formulates the points as mandated by the provisions of Order 41 Rule 31 of C.P.C. However, the learned trial Court has taken up issue-wise discussion and tendered the findings.

15. On Issue No.1, dealing with, whether quit notice issued by the plaintiff under Section 106 of Transfer of Property Act was valid and binding on the defendant, the learned trial Judge referring to the payments of rentals though, irregular arrived at the finding that tenancy got determined by efflux of time by disbelieving the stand taken by the defendant that there was no agreement between them to lease out the premises for a period of five years, and, thus, recorded a finding in favour of the plaintiff holding that the quit notice got issued by the plaintiff under Section 106 of Transfer of Property Act is valid.

16. On Issue No.2, basing on the finding recorded on Issue No.1, held that the defendant was in illegal occupation by the date of quit notice and thereby recorded a finding in favour of the plaintiff and against the defendant.

17. On Issue No.3, the trial Court held that the defendant is liable to pay penalty of Rs.50,000/- for six months i.e., from July, 2015 to December, 2015, and thereafter, at Rs.75,000/- per month as per the terms of Ex.A2-Lease Deed. The learned trial Judge has made a definite observation that the defendant has admitted in the cross-examination that he was not disputing with regard to the condition of the payment of penalty of Rs.50,000/- per month for six months and Rs.75,000/- per month thereafter. Thus, the learned trial Judge recorded a finding directing the defendant to pay Rs.50,000/- for six months from July, 2015 to December, 2015 and thereafter, at Rs.75,000/- per month for the remaining period apart from rent of Rs.1,20,000/- per month, and thereby held the issue in favour of the plaintiff.

18. On Issue No.4, basing on the findings recorded on Issue Nos.1 to 3, the suit is decreed with costs.

19. The learned counsel for the appellant, Sri A. Sameer Kumar, would come out fairly that the appellant has vacated the premises and the only controversy that requires resolution in the present appeal is, whether the judgment and decree passed by the

learned trial Court directing to pay penal amount of Rs.50,000/- per month for a period of six months from July, 2015 to December, 2015 and thereafter at Rs.75,000/- till the appellant vacates the premises, on the main ground that the General Power of Attorney-holder of the plaintiff or the respondent taking undue advantage of the innocence and ignorance of the appellant that he studied upto 5th standard only got inserted or incorporated the special terms shown at page No.7 of Ex.A2- Registered Lease Deed.

20. The learned counsel would draw the attention to paragraph-13 of the written statement filed by the defendant. In paragraph-13 in reply to the allegations contained in paragraph-III(10) of the plaint while denying the said allegations, he states thus:

“That at the time of execution of Lease Deed dt. 02.02.2013 the plaintiff did not permit the defendant to show the lease deed to anybody. Moreover the defendant is only 5th class standard and he does not know the writing and reading of English. As such the plaintiff has taken advantage of defendant's standard and the plaintiff's GPA Holder has incorporated the page No.7 as unilaterally, which is against the principles of natural justice.

The respondent never violated the terms of the Lease Deed dated 02.02.2013 and regularly paying the rental amount with late payment to the GPA holder of the petitioner till today. As such the defendant never became defaulter and he need not pay any additional amount to the plaintiff. Hence the suit may be dismissed.”

21. It is, therefore, his submission that the appellant is not liable to pay the penal amount of Rs.50,000/- and Rs.75,000/- as claimed by the respondent, as ordered by the learned trial Court.

22. Learned counsel for the respondent, of course, resists the request contending that page No.7 of the Lease Deed in fact contains the signatures of the defendant and the plaintiff and it was not subsequently inserted but it was simultaneously written and thus a comprehensive Lease Deed was entered into by the parties and registered and, therefore, the stand taken by the appellant that he studied only upto 5th standard and taking undue advantage thereof the General Power of Attorney-holder of plaintiff surreptitiously incorporated the special conditions in Lease Deed at Page No.7 cannot be accepted and such a stand is taken only to get over the liability to pay penal amounts as mentioned in clause (a) thereof.

23. Thus, the scope in the present Appeal is confined to the extent, whether the defendant was absolutely unaware of the special conditions of the Lease Deed contained at page No.7 of Ex.A2?, and whether there is concrete material placed before this Court by the defendant to incorporate clauses (a) and (b) of special conditions in the Lease Deed at naught?

24. In view of the submissions made by the learned counsel for both sides, the following three points would arise for determination.

- (1) Whether the special conditions of Lease Deed contained at page No.7 in clauses (a) and (b) were incorporated without the knowledge and consent of the appellant as contended?
- (2) Whether the judgment and decree passed by the learned trial Judge under challenge is unsustainable, so far as the finding recorded to

the extent of directing to pay Rs.50,000/- for a period of six months and thereafter, at Rs.75,000/- till eviction of the premises by the appellant?

(3) To what other relief, if any?

Point No.1:

25. At the outset, it is to be stated that the submission made by the learned counsel in regard to incorporation of the special conditions of the Lease Deed at page No.7 is without any merit. It is not as though, page No.7 entirely consists of clauses (a) and (b) of Special Conditions of the Lease Deed. In fact, after mentioning clauses (a) and (b), the schedule of Leased premises follows and then only clear description of the property within specific boundaries. Thereafter only, the parties to the Lease Deed have subscribed their signatures. It appears that the stand taken by the defendant that he had studied upto V-standard and was unable to comprehend or without his consent the said clauses have been incorporated cannot be believed for the reason the entire Lease Deed is articulated in English and in fact the appellant subscribed his signature in English. It appears only to wriggle himself out of the liability to pay penal sum of Rs.50,000/- for six months from July, 2015 to December, 2015 and thereafter, at Rs.75,000/- towards penalty for not vacating the premises, he has set up such a stand. The very fact that though the learned counsel for the defendant before the Court below subjected P.Ws.1 and 2 to cross-examination, nothing is brought out to substantiate the stand taken by the defendant and this apart, the defendant as D.W.1 in his cross-

examination admitting the existence of clauses (a) and (b) in Ex.A2 in unequivocal terms and even subscribing signatures thereto sufficient to reject the submissions made by the learned counsel. Further, the circumstance that the defendant filed the suit in O.S. No.1596 of 2015 against the plaintiff and even obtained interim injunction is sufficient to hold that the defendant-appellant is not innocent but he is worldly-wise, which, in fact, cuts at the root of the stand taken by the defendant. Hence, the instant point is held against the appellant.

Point No.2:

26. Since there is no other submission made attacking the findings recorded by the Court below on other issues, perhaps for the reason the defendant has already vacated the premises, the present point is to be invariably held observing that the findings recorded by the Court below do not suffer from any legal infirmity warranting interference.

Therefore, this point is also held against the appellant.

Point No.3:

27. In view of the findings recorded on Points 1 and 2, the Appeal fails, and, consequently, dismissed with costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the Appeal shall stand closed.

A. SHANKAR NARAYANA,J

Dt.01.03.2018

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