

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

SECOND APPEAL Nos.17 OF 2019 & 21 OF 2019

COMMON ORDER:

The plaintiff in OS.No.40 of 2015 by name L.Niranjan, who maintained the suit for bare injunction against the respondents/defendants Smt.B.Anasuyamma @ Anasuya, B.Srinath Reddy & Rami Reddy. The suit in OS.No.40 of 2015 after contest ended in dismissal on 31.01.2017 covered by common judgment with OS.No.3 of 2015, a suit for eviction maintained against said L.Niranjan as sole defendant by said above referred B.Rami Reddy as sole plaintiff for the self-same premises H.No.1-362 of Ranga Rao Thota, Badepally Village, Jadcherla Mandal of Mahabubnagar District and in the common judgment, the suit for eviction in OS.No.3 of 2015 supra was decreed without costs by granting damages of Rs.20,000/- on or before 01.03.2017 and to hand over vacant possession meanwhile and in the case of failure to execute with eviction decree. It is impugning both the judgments and decrees supra, the appellant herein maintained AS.Nos.36 of 2017 & 37 of 2017 and those were ended in dismissal by common judgment, dated 22.10.2018, by the learned VII Additional District Judge, Mahabubnagar, confirming the learned Junior Civil Judge, Jadcherla, common judgment referred supra. It is impugning the same, the two appeals maintained by the unsuccessful defendant against the concurrent findings on facts.

2. The contentions raised as involving substantial questions of law in the grounds of appeal in SA.No.21 of 2019 against suit for eviction referred supra, decree confirmed in appeal referred supra in AS.No.37 of 2017 are as follows:

- “A. Whether the Courts below are correct in decreeing the suit in the absence of any evidence as to right and interest of the plaintiff over the suit scheduled property?
- B. In a suit for eviction the plaintiff has to succeed or fail on the strength of his own case and whether the courts below are right in decreeing the suit taking into consideration the weakness in the case of the defendant and without there being independent evidence adduced by the plaintiff to that effect?
- C. Whether the Courts below are correct in awarding damages in the absence of any written agreement to that effect and in the absence of evidence with regard to quantum of damages?
- D. Whether the Judgments passed by the Courts below are based on no evidence and whether the courts below decreed the suit contrary to evidence adduced and took into consideration the inadmissible evidence and discarded the admissible evidence available on record?”

3. The contentions raised as involving substantial questions of law in the grounds of appeal in SA.No.17 of 2019 in dismissal of the suit for injunction in OS.No.40 of 2019 confirmed in appeal referred supra in AS.No.36 of 2017 are as follows:

- “A. Whether the Trial Court is right in its approach in taking into consideration the Ex. A-1 to A-3 marked in another suit OS. No.03/2015 and read the same as Ex. B-1 to B-3 in the present suit and whether it does not amount to considering the inadmissible evidence and whether the 1st Appellate Court is not wrong in not considering the said legal aspect?
- B. Whether the Courts below are correct in dismissing the suit in the absence of any steps taken by the Defendant no.1/owner/landlord for eviction of the Plaintiff from the suit premises?
- C. Whether the Courts below are correct in holding the Defendant no.3 as Landlord in the absence of any evidence to that effect?”

4. From this, before admission notice ordered including to the Advocate on record from the say that execution of the eviction decree is pending for delivery and notice served on the Advocate and even Advocates by names Sri B.Yadi Reddy and Sri P.Bhaskar Reddy

respectively in both the Courts below respectively. Notices sent to the party and postal receipts filed to draw any presumption of service therefrom under Section 27 of the General Clauses Act, even acknowledgement not filed. The respondents in both the appeals did not choose to appear referred respectively.

5. Heard before admission with reference to the substantial questions of law raised in the grounds of both the second appeals supra.

6. Undisputedly, B.Anusuyamma, W/o.Narsimha Reddy, no other than brother's wife of Rami Reddy, whose son is B.Srinath Reddy, the three defendants in OS.No.40 of 2013 and said Rami Reddy was plaintiff in the eviction suit respectively concerned, came to the witness box and deposed as P.W.3 in OS.No.3 of 2015 eviction suit by repelling the contest of the said L.Niranjan, plaintiff in injunction suit and defendant in the eviction suit of he obtained the possession of the property from B.Anasuyamma from her say that it was given by Rami Reddy. Once such is the case, the concurrent findings of the Courts below of said L.Niranjan is a tenant of Rami Reddy practically no way requires interference from the proved facts for nothing shown of any perversity or illegality or impropriety, leave about the question of decreeing a suit for injunction against a true owner does not arise, but for at best to observe even in a suit for injunction not to evict except through due process of law and the relief claimed in OS.No.40 of 2013 consequently became infructuous from passing of the decree for eviction in OS.No.3 of 2015 and as referred supra in OS.No.3 of 2015 from the proved facts for nothing illegality or impropriety, there are no any substantial questions of law involved, much less to admit the second appeal and keep the matters pending, but for at this stage

from the submission of, requires a reasonable time of at least one year to secure alternative accommodation, granted only six (06) months from 01.02.2019 to vacate on or before 31.07.2019 by securing alternative accommodation and the appellant/tenant has to deposit use and occupation charges of Rs.10,000/- (Rupees ten thousand only) from 01.01.2019 onwards in the bank account of the 3rd respondent/landlord till vacating the premises by 5th of every succeeding month and by filing undertaking affidavit before the Executing Court that not to allow any third party interest, not to allow any persons into possession and not to cause any damage to the property and obey the time stipulated above without any further extension and in the event of failure, leave about the decree holder in OS.No.3 of 2015, to evict pursuant to the execution petition stated pending by suspending the operation of the further proceedings in the execution petition pending only in the meantime to revive later, also liable for contempt of Court by virtue of this Court to move by the decree holder B.Rami Reddy, plaintiff in OS.No.3 of 2015, against the said L.Niranjan and any other persons came in claiming through him in obstructing or disobeying the order supra. It is made clear that the appellant/tenant shall not alter the premises and shall not allow any third party and must vacate the premises on or before that time granted and if failed to comply any of the conditions, the appellant/tenant is liable for action to be initiated under contempt of the Court, without prejudice to the right of the appellant/tenant after afflux of time fixed supra. The security deposit, if any, shall be adjusted at the time of vacating the premises.

7. With the above directions, both the Second Appeals are disposed of.

Miscellaneous petitions pending consideration, if any, in these cases shall stand closed in consequence.

DR.B.SIVA SANKARA RAO, J

Date: 15th February, 2019

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