

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Second Appeal No.147 of 2019

JUDGMENT:

Heard the counsel for appellant. None appears for respondent.

2. This Second Appeal is filed challenging the Judgment and Decree dt.20.02.2019 passed in Appeal Suit No.22 of 2014 on the file of the Court of I Additional District Judge, Nizamabad confirming the judgment and decree dt.23.06.2014 passed in O.S.No.378 of 2010 on the file of Principal Junior Civil Judge, at Nizamabad.

3. The appellant herein is defendant in the above suit.

4. The respondent herein filed the said suit against appellant for his eviction from the suit schedule property, and for recovery of arrears of rent of Rs.20,000/-.

5. The suit schedule property is a RCC roof portion consisting of hall, one room and open place forming part of building bearing H.No.7-10-996, R.P. Road, Nizamabad of extent 440 Sq.Ft.

6. It is the contention of respondent that appellant is his tenant in the suit schedule premises; that prior to the appellant, his father was a tenant of the said property from 1973 on a monthly rent of Rs.250/-; that the father of appellant died in the year 2001, and the appellant continued in the leased premises as a tenant; that the rent was enhanced from time to time, and on the date of filing of the suit the monthly rent was fixed at Rs.4,000/- since 1st April, 2010; that the

appellant paid rents from 01.04.2010 to 31.05.2010; that there has been a default in payment of rents from 01.06.2010 till the date of filing of the suit, and that the respondent also requires *bona fidely* the suit schedule property for the business of his sons.

7. The appellant filed a Written Statement admitting that he is a lessee of respondent, but denied that the monthly rent from 01.04.2010 was Rs.4,000/- or that he paid rent from 01.04.2010 to 31.05.2010. He insisted that the monthly rent was only Rs.1,000/- per month, and also denied that the respondent *bona fidely* requires the suit schedule property for business of his sons.

8. It is admitted that respondent had issued Ex.A.1-Legal Notice dt.08.09.2010 demanding payment of rents from 01.06.2010 till 31.08.2010 at the rate of Rs.4,000/- per month, and also demanded the appellant to vacate the suit schedule property within one (01) month; and that under Ex.A.2-reply notice the appellant denied that the rent was Rs.4,000/- per month, and asserted that the rent was only Rs.1,000/- per month, and he did not commit any default. It is also contended by the appellant that respondent issued receipts to appellant in the name of his brother, Ramulu.

9. Apart from the above evidence, the respondent examined PWs.1 and 2 and marked Exs.A.3 to A.6. While the appellant examined DW.1 and did not mark any documents.

10. By Judgment and Decree dt.23.06.2014, the Principal Junior Civil Judge, Nizamabad decreed the suit with costs, directing the appellant to vacate the suit schedule property and also deposit arrears of rent of Rs.20,000/- per month, and hand over vacant physical possession to respondent within two (02) months from the date of judgment and decree.

11. After considering the evidence of PWs.1 and 2, the Trial Court noted that PW.2 had witnessed the appellant paying a sum of Rs.8,000/-, representing the rents for the months of April, 2010 and May, 2010 at the rate of Rs.4,000/- per month in the first week of June, 2010; and relying on the same, and the fact that the appellant did not produce any rental receipts allegedly issued by respondent, it accepted the contention of respondent that the monthly rent was Rs.4,000/- per month from April, 2010. It then referred to Section 106 of the Transfer of Property Act, 1882 and held that Ex.A.1-Legal Notice dt.08.09.2010, got issued by respondent, was valid. It thus decreed the suit as stated above.

12. Aggrieved thereby, the appellant filed A.S.No.22 of 2014 before the I Additional District Judge, at Nizamabad who confirmed the judgment of the Trial Court.

13. Even the lower Appellate Court relied on the evidence of PW.1 and evidence of PW.2 (an independent witness) to hold that monthly rent was Rs.4,000/- per month, and so the Civil Court would have

jurisdiction to try the suit. The lower appellate Court also held that Ex.A.1-Legal Notice dt.08.09.2010 was valid because the suit was filed on 30.10.2010, one month after the notice was issued under Section 106 of the Transfer of Property Act, 1882. It also opined that issues of willful default and *bona fide* requirement of the leased premises need not be established, because the instant case is not a case of eviction under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960.

14. Assailing the same, the present Second Appeal is filed.

15. It is the contention of appellant that the Civil Courts would not have any jurisdiction to order eviction of appellant from the suit schedule property because the monthly rent payable was only Rs.1,000/- per month as on the date of filing of suit. He also contended that the findings of both the Courts that the quantum of monthly rent is Rs.4,000/- is perverse and contrary to evidence on record.

16. The oral evidence of PWs.1 and 2 have been placed before this Court.

17. PW.1 had stated specifically in his cross-examination that from 01.04.2010 the monthly rent at Rs.4,000/-.

18. This fact was corroborated by PW.2 who stated that the appellant had paid Rs.8,000/- to respondent in the 1st week of June,

2010 representing the rents for the months of April and May, 2010, and that the monthly rent was Rs.4,000/- per month.

19. It was elicited in the cross-examination of PW.2 that PW.2 had come from Gajulpet to Nizamabad in June, 2010 for purchasing crockery items in the shop of respondent, and he witnessed the appellant paying rent of Rs.8,000/- to respondent.

20. In view of this evidence of PWs.1 and 2 and in the absence of appellant producing rental receipts which he alleged that respondent had issued to him, it cannot be said that both the Courts had committed an error of fact in fixing the quantum of rent at the rate of Rs.4,000/- per month from 01.04.2010.

21. Since the evidence of PWs.1 and 2 had been relied on by both the Courts in coming to a conclusion, in exercise of the limited jurisdiction of Section 100 of Civil Procedure Code, 1908, this Court cannot interfere with such concurrent findings of fact.

22. Once the rent is accepted as Rs.4,000/- per month from 01.04.2010 and the Legal Notice Ex.A.1 dt.08.09.2010 issued under Section 106 of the Transfer of Property Act, 1882 has been held to be valid, the judgments of the Courts below cannot be said to be erroneous warranting interference by this Court under Section 100 of Civil Procedure Code, 1908.

23. Accordingly, the Second Appeals fails and it is dismissed at the stage of admission. No order as to costs.

24. As a sequel, miscellaneous petitions pending if any in this Second Appeal, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 07.06.2019

Ndr/*

