

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

SECOND APPEAL No.186 of 2019

JUDGMENT:

The defendants in O.S.No.1689 of 2016 filed this second appeal, challenging the Judgment and Decree dated 18.12.2018 passed by the II Additional Chief Judge, City Civil Court, at Hyderabad (for short, 'the first appellate Court') in A.S.No.222 of 2016. By the impugned Judgment and Decree, the first appellate Court allowed the appeal preferred by the plaintiff; thereby set aside the Judgment and Decree dated 23.08.2016 passed by the VIII Junior Civil Judge, City Civil Court, at Hyderabad (for short, 'the trial Court') in O.S.No.1689 of 2016.

For the sake of convenience, the parties will be referred to as they were arrayed before the trial Court.

O.S.No.1689 of 2016 was filed by the plaintiff seeking eviction of the defendants from the suit schedule property, and also sought a direction to the defendants to pay the arrears of rent @ Rs.4,000/- per month from November, 2015 to July, 2016 (i.e., Rs.36,000/-), and also to pay Rs.10,000/- per month towards mesne profits from the date of filing of suit.

The defendants did not contest the suit and remained exparte.

Basing on the pleadings, the trial Court framed four issues. On behalf of the plaintiff, PW.1 was examined and the documents Exs.A1 to A5 were marked. No oral or documentary evidence was adduced on behalf of defendants.

The trial Court, by giving a finding that the plaintiff had failed to establish his case, dismissed the suit by Judgment and Decree dated

23.08.2016. Challenging the dismissal, the plaintiff filed an appeal viz., A.S.No.222 of 2016 before the first appellate Court; and the appeal came to be allowed by the impugned judgment and decree by directing the defendants to vacate the suit schedule property within two months, with a further direction to pay Rs.36,000/- towards arrears of rent from November, 2015 to July, 2016. While declaring the plaintiff entitled to future mesne profits, the first appellate Court, however, directed the plaintiff to file a separate application under Order XX Rule 12 of CPC.

Challenging the judgment and decree passed by the first appellate Court, the defendants preferred this second appeal, raising the following three questions as substantial questions of law:

- (i) Whether the respondent / plaintiff is the landlord of appeal schedule property of which he has no proof at all, or documentary evidence.
- (ii) Whether the respondent / plaintiff can be landlord without informing that through legal notice that he purchased the schedule property?
- (iii) Whether such oral plea of respondent / plaintiff can be considered to accept him as landlord?

Heard learned counsel for the appellants/defendants, and learned counsel for the plaintiff/respondent.

A perusal of the above questions would show that they are primarily questions of fact and there is no question of law.

It is to be noted that the first appellate Court has specifically framed an issue – whether the plaintiff has proved that there is jural relationship of landlord and tenant between him and the first defendant? It would be pertinent to note that in the appeal the plaintiff

filed two documents viz., Ex.A1 and Ex.A2 as evidence on his behalf. Ex.A1 is the certified copy of the plaint in O.S.No.116 of 2016; and Ex.A2 is the Judgment and Decree passed in the said suit O.S.No.116 of 2016.

O.S.No.116 of 2016 is the suit filed by the 1st defendant herein against the plaintiff herein, wherein the 1st defendant specifically pleaded that she is a tenant in the suit schedule property, and that the tenancy is an oral tenancy, which goes to show that there is jural relationship between the plaintiff and defendants. The said suit was decreed vide Ex.A2 holding that there is a jural relationship of lordlord and tenant between the plaintiff herein and the 1st defendant herein; and therefore the substantial questions of law sought to be raised, which are, in fact, questions of fact, stood answered by the discussion in the impugned judgment and decree of the first appellate Court.

It may also be noted that the defendants, having received notices in the appeal, and also in the suit, remained exparte and did not contest the suit. Though the trial Court dismissed the suit O.S.No.1689 of 2016 by giving a finding that there is no jural relationship between the plaintiff and defendants as the plaintiff had failed to adduce any evidence with respect to rate of rent or the alleged arrears of rent; however, the first appellate Court, after diligently considering the evidence adduced by the plaintiff i.e., the documents Ex.A1 (plaint in O.S.No.116 of 2016, filed by the 1st defendant against the plaintiff) and Ex.A2 (Judgment and Decree in O.S.No.116 of 2016), recorded a finding that the existence of jural relationship between the plaintiff and defendants stands established by the very pleadings in the plaint Ex.A1 filed by the 1st defendant herself. Therefore, the finding recorded by the first appellate Court with respect to existence of jural relationship between the plaintiff and the defendants is based on proper

appreciation of evidence, and therefore there is no infirmity or illegality in the impugned judgment warranting interference of this Court.

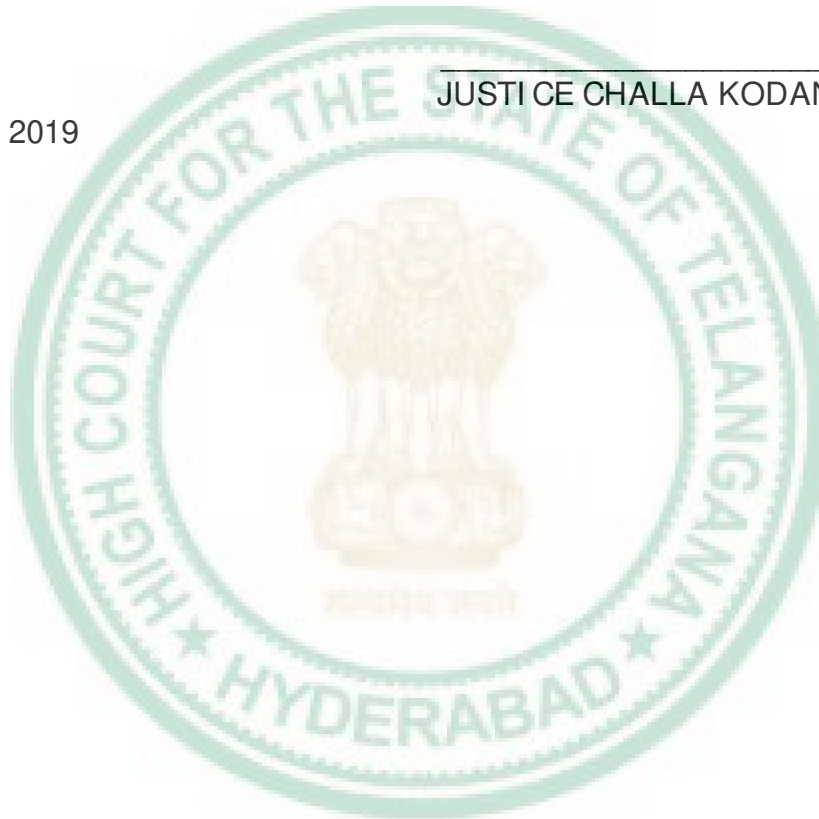
In view of the above, there is no question of law, much less a substantial question of law, to be determined in this second appeal. The appeal is devoid of merit and is liable to be dismissed.

The second appeal is, accordingly, dismissed. No costs. Miscellaneous petitions, if any pending, shall also stand dismissed.

17th July, 2019

KSM

JUSTICE CHALLA KODANDA RAM



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