

THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

SECOND APPEAL No.323 of 2018

ORDER:

The appellant is the defendant in OS.No.868/2011 filed against him by the respondent/plaintiff for eviction from the plaint schedule property. The trial Court decreed the suit by Judgment dated 22.08.2016 in directing the defendant to vacate and handover the vacant physical possession of the property within one month from there and to pay arrears of Rs.1,70,700/- within one month from there and also in observing that plaintiff is entitled to recover profits from the defendants for use and occupation from the date of suit till the date of delivery of physical possession to be quantified on separate application.

Impugning the correctness of the said trial Court decree and Judgment the defendant filed AS.No.229/2016.

During the pendency of the first appeal, there was an application to deposit the arrears and even after extension of time for non-compliance, the appeal was dismissed by the XI Additional Chief Judge, City Civil Court, Hyderabad, on 14.12.2017. It is impugning the correctness of the same the Second Appeal is filed.

Heard both sides. Before admission as to any substantial questions of law, the substantial question of law formulated in the grounds are that whether the Court below omitted to appreciate that the appellant is not bound by rental agreement dated 14.06.2000, that was executed by late Chittamma that was expired on completion of 11 months i.e. by June, 2001 and concurrent findings of the courts below there from devoid of merits.

In fact even after expiry of the so called lease if he continued as a tenant holding over, for all purposes it shall be on the same terms and not otherwise. For nothing pleaded in the written statement much less from the evidence including from any ground in the second appeal has to be different agreement orally even advised and adopted. When such is the case practically there is no any substantial question of fact involved from perusal of the trial Court Judgment vis-à-vis for non deposit of arrears in dismissal of the appeal, but for to grant time to vacate the premises by securing alternative. At this stage the plaintiff counsel submits that there are arrears to a tune of Rs.1,82,815/-.

Having regard to the above and in the result in view of the decree of the trial Court speaks of the decree on arrears and determination of future profits while granting six months time to vacate the premises by the appellant/defendant with a direction to pay the amount of rent as damages for use and occupation for whatever due and fell in arrears by now and every month regularly hereafter till vacating within six months time stipulated ending by 31.07.2018. It is made clear that the defendant shall not induct any third party and shall not create any third party rights over the property and vacate without fail before completion of six months and if he failed to comply, he is liable for Contempt of Court by virtue of this order, without prejudice to the recourse open to the respondent/plaintiff/decreed holder to enforce the trial Court decree merged with the appellate Court decree supra.

Accordingly, Second Appeal is disposed of. No order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

27.09.2017
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