

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

SECOND APPEAL No.1693 of 2018

JUDGMENT :

Sri K.Ramesh Babu, learned counsel for R.1 to R.5, who filed caveat petition before this Court, now submits, having received notice, that there are no instructions from R.1 to R.5. The same is recorded and the earlier notice given to the advocate on record, who maintained the caveat, is sufficient and no further notice on the caveat is to be given to R.1 to R.5 in view of the above facts. As from the submission of the learned counsel having received pursuant to the caveat notice, it is deemed notice to the parties, even under Order III C.P.C.

2. Heard learned counsel for the appellants/D.1 to D.9 in the second appeal came before admission and perused the plaint, written statement, preceded by Ex.A.5-office copy of notice, dated 09.09.2002, and reply of the defendants under Ex.A.1, dated 01.11.2002, and the trial Court judgment with reference to evidence of PWs.1 to 4 and Dws.1 to 4 and Ex.A.3 so-called cheque bearing No.709438, dated 01.11.2002, issued by the 2nd defendant in favour of PW.1-Rajamma and also Exs.B.1 to B.169 all the so-called account entries are relating to the period from 1978 to 1990 and the defendants did not produce any record having filed the relevant khata entries up to 1990 as to any khata entries of the account maintained from January 1990 till November 2002 as to what was the rent they paid in their khata dealings mentioned in the usual course of business as per

Section 34 of the Indian Evidence Act though that itself is not a substantive evidence at least to corroborate their version. The non-filing of the relevant account books for the period commencing from January 1990 till November 2002 leads adverse inference having maintained the accounts and filed for about 12 years among Exs.B.1 to B.169 by the defendants if at all to substantiate their claim of the rent prevailing still after several years only Rs.200/- per month to say and to non suit the plaintiff from the maintainability of the suit with the contention of only the remedy is to approach the Rent Controller under the A.P. Buildings (Lease, Rent and Eviction) Control Act. In fact, a perusal of the very Ex.A.1-reply notice running in two pages, page 2 clearly mentions about the money orders sent in 2002 was also refused for the so-called rents of July and August, 2002, as not the rent of Rs.200/- per month in its refusal and there is nothing to say any admission of rent is only Rs.200/- p.m. even by the date of quit notice and reply notice, that too when the notice given under Ex.A.5 clearly mentions the rent as Rs.1,500/- per month. Even from the evidence of PWs.1 to 4 drawn attention before the admission and hearing of the second appeal, there is no any admission about receiving of rent admittedly at Rs.200/- per month and the rent is not Rs.1,500/- per month despite the contention of them is the rent is Rs.1,500/- per month. Once such is the case, the reversal judgment of the lower appellate Court no way requires interference having fresh in mind of the facts in total appreciation of the entire material by re-

appreciation of the facts in arriving own conclusion supported by reasons.

3. Having regard to the above, there is no any substantial question of law involved to admit the second appeal. Hence, the second appeal is liable to be dismissed before admission.

4. At this stage, learned counsel for the second appellants wants four months time to vacate.

5. Having regard to the above, by recording the same, the second appeal is disposed of, instead of dismissal, before admission for no grounds to admit by granting four months time till end of April, 2019 to vacate. If failed to vacate, the decree-holders are entitled to execute the decree and also move this court for contempt. In the meantime, towards damages for use and occupation, the appellants shall pay Rs.3,000/- (Rupees three thousand only) per month from now onwards. The appellants /defendants are entitled to make any temporary arrangement but shall not make any permanent constructions for the time being.

Miscellaneous petitions pending, if any, shall stand closed.

4th January 2019

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Dr. B. SIVA SANKARA RAO, J