

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

C.C.C.A. No.459 of 2018

JUDGMENT:

This Appeal is filed challenging the judgment and decree dated 30.10.2018 passed by the II Senior Civil Judge, City Civil Courts, Hyderabad (for short, 'the trial Court') in O.S.No.49 of 2017. For the sake of convenience, the parties shall be referred to as they were arrayed before the trial Court.

Brief facts necessary for the disposal of this Appeal, as per the averments in the plaint, the written statement, and also respective rejoinders filed by the parties, are as under:

The plaintiff-Smt. A. Sarojini Devi is the owner of the property bearing No.8-3-224/3 F9 admeasuring 420 square yards, consisting of Ground floor, First floor and an Out-house situated at Madhura Nagar, Yousufguda, Hyderabad. Initially, in 2011, she let out the Ground Floor to the defendant for a monthly rent of Rs.18,000/-, and also received a deposit of Rs.54,000/-. It was an oral lease. Later, in 2013, she let out the First Floor to the defendant and the rent for the first floor was Rs.10,000/- per month. The ground floor and first floor constitute the suit schedule property, and the total rental value of the premises is Rs.29,000/-.

On the ground of *bona fide* requirement, in May 2016, the plaintiff demanded the defendant to vacate the property and deliver vacant possession of the premises. The defendant agreed to vacate the premises by the end of June, 2016, however, filed O.S.No.1123 of 2016 before the trial Court seeking permanent injunction against the plaintiff. The defendant paid the rents upto April 2016 and thereafter, stopped paying rent. The plaintiff got issued a legal notice under Section 106 of Transfer of Property Act on 06.12.2016, terminating the tenancy with effect from 31.12.2016 and demanding the defendant to quit the premises. In the said legal notice, a demand to pay

Rs.50,000/- per month as mesne profits from 01.01.2017 till vacating the premises was also made.

In response to the legal notice, the defendant issued a reply on 28.12.2016 alleging that he (defendant) being a Photographer and Videographer, was requested by the plaintiff to cover the marriage event of the grandson of the plaintiff, for which he incurred expenses of Rs.1,99,000/-, and that amount is being adjusted against the monthly rent from May 2016 onwards and requested to set-off the claim of Rs.2,32,000/- made by the plaintiff by adjusting the sum of Rs.1,99,000/- against the claim of the plaintiff.

Since the defendant did not vacate the premises by 01.01.2017, the plaintiff filed O.S.No.49 of 2017 seeking his eviction from the suit premises. As the suit filed by the plaintiff and the suit O.S.No.1123 of 2016 filed by the defendant relates to the same property, the trial Court dismissed the suit of the defendant, as not pressed, however, the pleadings and evidence adduced in O.S.No.1123 of 2016 was taken into consideration for disposal of the present suit i.e., O.S.No.49 of 2017.

In response to the plaint in O.S.No.49 of 2017, the defendant filed his written statement *inter alia* contending that he is a professional photographer and videographer and he invested huge amount of money for installing projectors, LED screens, Televisions, Video cameras etc., for running his business in the suit premises, and though he had taken the first floor on lease subsequently, i.e., in 2013, it was an oral agreement between him and the plaintiff that the lease would be for a period of ten years and that one Subramaniam is a witness to their oral agreement. It is his case that the plaintiff sent her representative on 12.11.2016 for collecting rent on her behalf and that he paid Rs.29,000/- towards rent and that the representative had signed on the voucher of the defendant, and subsequently, the rents for

December, 2016 were also sent, although under protest, without prejudice to the rights of the defendant. It is also his case that the lease for ground floor and the first floor being on separate occasions, two different causes of action arise, and therefore, the plaintiff cannot combine two separate causes of action and file a single suit. It is also his case that the plaintiff has no right to issue a legal notice terminating the tenancy; and that at the time of taking the first floor on lease in 2013, the plaintiff had agreed to execute a written lease agreement in favour of the defendant for a ten-year period, and as the plaintiff did not keep her promise, it amounted to breach and that the plaintiff received the rent after December, 2016; and further as the defendant issued a reply notice on 28.12.2016, a fresh cause of action arose and therefore, the suit filed by the plaintiff is not maintainable.

In response to the written statement of the defendant, the plaintiff filed a rejoinder stating that she never promised to execute a written lease agreement for ten years in favour of the defendant, and that she never entrusted any Videographic or Photographic work to the defendant in connection with her grandson's marriage. It is further stated that due to road widening work in connection with the Metro Rail Corridor work, about a third of her house property was likely to be affected and therefore, she shifted her residence to her son's house, with an intention to return to her house later, and the defendant approached her requesting for accommodation for a short period on a temporary basis, and that she let-out the premises in good faith, but the defendant illegally squat on the suit property in spite of her issuing legal notice terminating the tenancy. It is also alleged that the defendant damaged the water pipelines, drainage lines, flooring and made alterations to the suit premises without her permission.

In reply to the rejoinder of the plaintiff, the defendant filed additional written statement stating that there was no proposal of road widening and no

likelihood of losing part of the property of plaintiff, and that the plaintiff let-out the suit premises for commercial purpose and that the defendant never approached the plaintiff seeking accommodation for a temporary period. He further contended that at the time of letting out of first floor to him, it was a Women's Hostel, and the same was got vacated. It is his further case that his business of Photography and Videography falls within the ambit of "Manufacturing Purposes" and therefore, a minimum of six months prior notice is required to be given for vacating the premises and hence, the termination notice is not enforceable in law.

In rebuttal to the Additional Written Statement, the plaintiff filed an Additional Rejoinder alleging that the defendant took the suit premises for residential purpose, but his plea in the Written Statement that he established Photography and Videography business in the suit premises and obtained registration with the Central Board of Excise and Customs on 11.07.2011, even without there being a written lease agreement in the first place would itself show that the defendant had fabricated the lease documents to obtain permission for his business. It is also her case that the boundaries between the ground floor and first floor being common, a single quit notice is sufficient and maintainable in law.

Basing on the pleadings of both the parties, the trial Court framed the following issues:

- (i) Whether the defendant being the tenant can be directed to deliver vacant peaceful possession of the suit schedule tenanted premises to the plaintiff/ landlady as prayed?
- (ii) Whether the defendant is liable to pay the arrears of rents for the suit schedule property from May, 2016 to December, 2016?
- (iii) Whether the defendant is entitled for mesne profits @ Rs.50,000/- p.m., from 01.01.2017 till handing over the vacant possession of the suit schedule property to the plaintiff?

- (iv) Whether the defendant is entitled for a set-off claim of Rs.1,99,000/- for the charges of photography and videoshooting covering the engagement and marriage function of Mr. Sravan, who is the grandson of the plaintiff?
- (v) Whether the plaintiff can be directed to execute a registered deed in favour of the defendant for the period of 10 years from December, 2014 till the end of November, 2024, in respect of the plaint "A" schedule tenanted ground floor property?
- (vi) Whether the plaintiff can be directed to execute a registered lease deed in favour of the defendant for the period of 10 years from December, 2014 till the end of November, 2024 in respect of plaint "B" schedule tenanted ground floor property?
- (vii) To what relief?

An additional issue was also framed by the trial Court as under:

- (viii) Whether the business of the defendant comes within the nature and purview of the manufacturing purpose as mentioned in Section 106 of the TP Act and whether the quit notice issued by the plaintiff is legal and binding on the defendant?

On behalf of the plaintiff, PWs.1 and 2 were examined, and the documents Exs.A1 to A8 were marked. On behalf of the defendant, DW.1 was examined and the documents Exs.B1 and B2 were marked.

The trial Court, on considering the oral and documentary evidence available on record, decreed the suit by directing the defendant to vacate the suit premises within two months; and directed to pay the arrears of rent of Rs.2,32,000/- from May, 2016 to December, 2016 @ Rs.29,000/- per month and also to continue to pay the rent at Rs.29,000/- until handing over of vacant possession of the suit premises to the plaintiff. With respect to mesne profits, liberty was given to the plaintiff to file an Application under Order XX Rule 12 of CPC for determining the same.

Aggrieved by the judgment and decree passed by the trial Court, the defendant preferred this appeal.

Heard Sri Bankatlal Mandhani, learned counsel for the appellant-defendant, and Smt.Vanga Anita, learned counsel for the respondent-plaintiff.

Sri Bankatlal Mandhani, learned counsel for the defendant submits that the Court below had failed to appreciate the evidence in proper perspective and the entire judgment under Appeal is based on conjectures and surmises. He would submit that the plaintiff had categorically admitted in her evidence that she did not issue the legal notice to the defendant asking him to vacate the suit schedule property or demanding rents from May 2016 to October 2016; once it is admitted that there was no demand seeking vacation of the suit property, there was no cause of action for the Court to order eviction as it was never the intention of the plaintiff to evict the tenant. According to him, in response to the legal notice, though a reply was given denying the allegations, the very legal notice itself is liable to be ignored as the plaintiff herself had denied issuance of legal notice, and further the Advocate, who issued the legal notice was not examined; and therefore, the plaintiff never intended to terminate the tenancy. The learned counsel would submit that, admittedly, the ground floor and the first floor came to be leased out separately at two different times and there being no common lease agreement governing, filing of a single suit for eviction from both the first floor and the ground floor is not maintainable. He further submits that the very act of the plaintiff receiving rent after December 2016 would itself waive the legal notice and also makes the intention of the plaintiff explicit that she never intended to evict the tenant by terminating the tenancy.

In support of his contention, learned counsel Bankatlal Mandhani relied on the following judgments:

- 1) Alapati Sivaramakrishnayya v. Alapati Kasiviswanadham¹

¹ AIR 1957 Andhra Pradesh 584

2) Mansa Hembram v. State of Bihar²

3) Kaliaperumal v. Rajagopal³

4) Payal Vision Limited v. Radhika Choudhary⁴

The judgment in Alapati Sivaramakrishnayya (1 supra) was relied on with respect to variance in deposition of D.W.1, particularly, the method of appreciation of variance in the deposition. Likewise, to the same effect, is the judgment in Mansa Hembram (2 supra) which states that in the event of conflict in the statement of a witness in his chief and cross-examination, the cross-examination is to be preferred.

In Kaliaperumal (3 supra), it was held that in a case of transaction, the intention of the parties is to be ascertained.

In Payal Vision Limited (4 supra), it was held that in a suit for recovery of possession from the tenant, twin conditions are required to be satisfied; 1) the existence of tenancy / lease; and 2) termination of lease .

On the other hand, Smt. Vanga Anita, learned counsel for the plaintiff asserts that there is no dispute about the factum of notice and reply having been given by the defendant, that the admitted facts need not be proved, the defendant used the property contrary to the lease and the lease admittedly being an oral agreement, notice came to be issued and tenancy came to be terminated. The factum of filing the suit by the plaintiff itself would make clear her intention to evict the tenant from the premises. The learned counsel would further submit that, in chief examination, D.W.1 in chief-examination was not shown to the witness and not confronted as required under Section 145 of the Evidence Act, to bring out the contradictions; and in the light of the admitted facts, the contradictions, if any, are liable to be ignored. She would also further

² 1999 (4) Crimes High Court 444

³ AIR 2009 SC 2122

⁴ (2012) 11 SCC 405

submit that cross-examination was conducted by the advocate-commissioner in the absence of counsel for the plaintiff and the plaintiff being an old lady, semi-literate and not conversant with the Court proceedings, in a confused state of mind, might have stated in the affirmative, not understanding the implication of the question. Learned counsel further submits that the lease stands terminated by issuance of legal notice terminating the tenancy in terms of Section 111 (g) of the Transfer of property Act.

In support of her contentions, Smt. Vanga Anita, learned counsel for the plaintiff relied on the following judgments:

- 1) V. Dhanapal Chettiar v. Yesodai Ammal⁵ which says that there is no requirement of issuance of notice and the filing of suit itself is a notice.
- 2) M/ s Nopany Investments (P) Ltd., v. Santokh Singh (HUF)⁶ whereunder it was held that filing of an eviction suit is itself a notice on the tenant to quit the premises.

In the light of the pleadings, judgment of the trial Court and the submissions made before this Court, the point that arises for consideration is – “whether the judgment and decree in the suit claim of the plaintiff is liable to be interfered with under Section 96 of CPC”.

In the judgment in Payal Vision (4 supra) relied on by the learned counsel for the defendant, the Supreme Court held as under:

“In a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the plaintiff-landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property

⁵ (1979) 4 SCC 214 :: AIR (1979) SC 1745

⁶ (2008) 2 SCC 728

Act. So long as these two aspects are not in dispute the Court can pass a decree in terms of Order XII Rule 6 of the CPC...”

It is not necessary for this Court to delve in detail on the undisputed and admitted facts. In the case on hand, there is no dispute about the existence of tenancy. In the light of the guidance provided by the Supreme Court, the only thing which requires consideration in this case is ‘whether there was a legal termination of tenancy’. There is no dispute that a legal notice (Ex.A1) was issued by the plaintiff, and the same was replied to by the defendant (Ex.A2). Thereafter, the plaintiff initiated legal proceedings for eviction of the defendant by filing O.S.No.49 of 2017. Admittedly, the tenancy is on a month to month basis. There is no defect that was pointed out in issuance of notice. The contention of the defendant is that there was admission on the part of the plaintiff that she was not aware as to who instructed her to issue the legal notice to the defendant, and further she herself had never instructed to issue a legal notice terminating the tenancy and, therefore, there was no termination of tenancy. Much emphasis was laid on the oral testimony of the defendant DW-1, ignoring the documentary evidence on record with respect to the factum of legal notice having been issued by the plaintiff, and a reply having been given by the defendant, followed by filing the suit for eviction. When the Court is confronted with the contradiction in the oral testimony and the documentary evidence, the admitted documents revealing the fact of there being a legal notice and the fact of there being a reply cannot be ignored. Further, the very factum of the plaintiff filing a suit for eviction of defendant itself, can be taken as an expression of unwillingness on the part of the plaintiff to continue the tenancy. In those circumstances, the question of ascertaining the intention of the parties does not arise.

The evidence, when read in its entirety, particularly the counter-claim filed by the defendant, he had set up a new case of there being an oral

agreement of the plaintiff agreeing to execute a written lease for ten years and the factum that the plaintiff being a lady the entire of the lease transaction was being handled by her husband, cannot be ignored. The finding of the trial Court that the defendant had mis-utilized the property by making unauthorized alterations, which alterations were removed on a police complaint lodged by the plaintiff, went unchallenged before this Court. In other words, the defendant had put to use the subject property for the purposes other than for which it was leased, thereby entitling the plaintiff to issue a legal notice terminating the tenancy stands established.

A reference may be made to Ex.A6-acknowledgment, Ex.A7-police complaint, Ex.A8-photographs(6) and CD in evidence of temporary constructions having been made establishing the defendant's unlawful and illegal use of the leased property.

In the context of the alleged admissions made by the plaintiff, the argument of the learned counsel for the plaintiff that the plaintiff being a semi-literate lady, not fully conversant with English language, made contradictory deposition, cannot be ignored. It may be noted that PW-1 in the cross-examination, categorically stated that it is not true to suggest that the defendant never promised to vacate the premises in the month of June, 2016, and that she personally demanded the defendant to vacate the premises. The alleged admission made by the plaintiff as P.W.1 would have to be examined in the context of the defendant setting up a defence, and his counter-claim that the plaintiff agreed to execute a separate lease deed for continuing the tenancy, came to be rejected as the defendant failed to bring any evidence particularly the specific assertion that the discussions took place in the presence of one A. Subrahmanyam.

Yet another aspect that requires to be considered is the evidence which remains unchallenged with respect to there being arrears of rent and the conduct of the defendant in setting up a claim of expenditure incurred on account of the alleged photography and videography expenses for the marriage event of plaintiff's grandson, which went unsubstantiated for want of evidence.

It may be noted that the defendant filed cross-objections and counter claim with a specific prayer to decree his suit to execute a registered lease deed for a period of ten years, which claim came to be dismissed on appreciation of the evidence. The specific plea of the defendant that one A. Subramaniam, who is the brother-in-law of the defendant, was present at the time of the alleged oral agreement made by the plaintiff promising to execute a lease deed for a period of ten years, was not proved; and the said A. Subramaniam was not examined as a witness on behalf of the defendant. A cumulative assessment of the evidence indicating termination of tenancy far outweighs the one-line contradictory admission made by the plaintiff to the effect that she did not get the legal notice issued terminating the tenancy.

It is settled by the Judgment of the Supreme Court in *Akshaya Restaurant v. P. Anjanappa*⁷ that admissions can be explained. In the context of the case on hand, a single line admission made in the cross examination, that too by a semi-literate old woman, can be ignored on account of the overwhelming evidence on record as stated supra.

We may notice the statute-imposed obligations on the part of lessee and lessor under Section 108 of the Transfer of Property Act. Section 108(q) mandates a duty on the lessee to vacate and handover peaceful possession on termination of lease. In the present case on hand, the lease was terminated by

⁷ (1995 Supp (2) SCC 303)

notice; and by judgment and decree, the termination was held to be in order and thus, the lessee is liable to vacate the premises.

It may be noted that jural relationship of landlord-tenant is borne out of a Contract whereunder both the parties implicitly require to adhere to their part of contract. The jural relationship between the plaintiffs and defendants being contractual, and the lease being on a month to month basis, and the lease having been terminated, so therefore, in the absence of landlord desiring to continue the tenancy, this Court cannot thrust upon the landlord to continue the tenancy. The duty of the Court is to enforce a contract rather than create a new contract.

In the facts and circumstances of the present case, it would be apt to quote the guidance of the Supreme Court in *Kewal Chand Mimani (D) by LR. v. S.K. Sem*⁸, wherein paragraph 27 reads as under:

“.... It is trite knowledge that presently, the Law Courts are being guided by a justice oriented approach, since the concept of justice is the call of the day and a need of the hour. Justice is the goal of jurisprudence - processual/procedural as much as substantive. Puritan approach has lost its significance in the present day context; since justice ought to be the end product of equity and go to roots...”

In view of the foregoing reasons, the appeal is dismissed. No costs. Miscellaneous petitions, if any pending, shall also stand dismissed.

After pronouncement of Judgment, Sri Bankatlal Mandhani, learned counsel appearing for the appellant-defendant submits that one year time may be granted to the defendant to vacate the subject premises as the defendant is running a photo studio in the premises.

⁸ (2001) 6 SCC 512

The request of the learned counsel for the appellant is vehemently opposed by the learned counsel for the respondent-landlord, who also submits that arrears of rent have not been paid.

Considering the respective submissions, and considering the fact that the appellant-defendant is admittedly running a photo studio in the subject premises, three months' time i.e., till 30.01.2020, is granted to the appellant for vacating the premises, subject to the condition of the appellant filing an unconditional Undertaking before this Court that he would vacate on or before 30.01.2020 and subject to the condition of there being no arrears of rents payable. Such an Undertaking shall be filed by the appellant within one week from the date of receipt of a copy of this order.

The respondent-plaintiff shall file appropriate application before the trial Court for computation and realization of mesne profits as entitled in accordance with law.

09th September, 2019

KSM

CHALLA KODANDA RAM, J

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM



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