

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

CCCA No.119 of 2003

JUDGMENT:

The appellant/defendant has filed this appeal assailing the judgment and decree dated 19.12.2002 in OS No.1392 of 1993 on the file of the learned II Senior Civil Judge, City Civil Court at Hyderabad.

2. For the sake of convenience, the parties are hereinafter referred to as plaintiff and defendant as arrayed in the original suit.

3. i) The plaintiff has filed the original suit for eviction and recovery of arrears of rents of Rs.50,400/-, mesne profits of Rs.2,000/- per month from 01.11.1993 alleging that the plaintiff let out the suit schedule property - premises bearing municipal No.10-2-289/120/49/55 MIG house bearing No.21/A, Design-A, admeasuring 388.5 square yards situated at Pottisriramulu Nagar, Masab Tank, Hyderabad, with précised boundaries as mentioned in the schedule of property to the defendant on monthly rent of Rs.1,200/- per month initially with effect from 01.09.1986,

which was later enhanced to Rs.1,400/- per month excluding water and electricity consumption charges. The tenancy was oral and it was month to month commencing from 1st of every English Calendar month and the rent was agreed to payable on or before 5th of every calendar month.

3. ii) It is alleged against the defendant that he was irregular in payment of rents. He issued a cheque dated 05.11.1990 for the month of October 1990 and another cheque dated 18.01.1991 for Rs.2,800/- towards rent for the months of November and December 1990. But on presentation, these cheques were bounced. Since February 1991, the plaintiff made several requests for payment of rent regularly. The defendant has failed to pay the rent from November 1990 to August 1993. In a month of March 1992, the plaintiff has demanded the defendant for the payment of arrears of rent. But he approached the police officials and got false cases registered against the plaintiff's son. The defendant also fabricated agreement of sale, forging the signature of the plaintiff alleging that the plaintiff has sold the suit schedule property to the

defendant's wife and on the basis of alleged agreement of sale, a suit in OS No.1530 of 1993 was filed on the file of the learned II Junior Civil Judge for specific performance.

3. iii) Subsequently, the plaintiff has got issued a legal notice dated 20.09.1993 terminating the tenancy of the defendant with the end of tenancy month by 31.10.1993, also demanded for payment of arrears of rent of Rs.47,600/- from November 1990 to the end of August 1993 for a period of 34 months @ Rs.1,400/- per month. The defendant refused to receive the said notice sent under Section 106 of Transfer of Property Act, 1882. Again on 09.10.1993 the plaintiff sent notice and it was returned. Despite termination of tenancy, the defendant failed to vacate the suit schedule premises and also failed to pay the arrears of rent.

4. The defendant has resisted the suit and filed a detailed written statement admitting the tenancy since 01.09.1986 denying the enhancement of rent and also stated that his wife has obtained the agreement of sale from the plaintiff for purchase of suit schedule property for

an amount of Rs.3,85,000/-. As per the agreement of sale dated 02.11.1989, the plaintiff has received Rs.1,85,000/- towards part of sale consideration. But she has failed to pay the dues to the Telanga Housing Board and demanded for Rs.2 lakhs which was refused by his wife. Thereafter, his wife has filed OS No.1570 of 1993 and obtained interim injunction. It is also alleged about the filing of criminal case in Crime No.75 of 1992 stating that the plaintiff has tried to dispossess him forcibly and then he lodged a complaint before the police. The plaintiff failed to execute the sale deed on the name of his wife, accordingly, prayed for dismissal of the suit.

5. The above pleadings gave rise to the following issues:

- i) What is the monthly rent?
- ii) Whether the tenancy ceased from 02.11.1989 as claimed by the defendant?
- iii) If so, whether the plaintiff is entitled to claim arrears of rent from 01.11.1990 onwards till 31.10.1993?
- iv) Whether the plaintiff is entitled to claim mesne profits from 01.11.1993 as claimed?

v) Whether the plaintiff is entitled to seek eviction of the defendant?

vi) To what relief?

6. During the trial, on behalf of the plaintiff, PWs.1 & 2 examined and Exs.A.1 to A.5 documents were marked. After closure of the plaintiff's evidence, on behalf of the defendant, his wife is examined as DW.1 and Exs.B.1 to B.5 were marked.

7. Be it stated that as per the orders dated 18.11.2002, since DW.1 failed to turn up for cross-examination, her evidence was eschewed from consideration. Thus, there is no oral and documentary evidence on behalf of the defendant. The trial Court having heard on both sides on appreciation of the evidence available on record, answered all the issues in favour of the plaintiff holding that the plaintiff is entitled for eviction of the defendant and recovery of arrears of rent of Rs.50,400/- together with interest at 9% per annum from the date of suit till the date of realization and also entitled for mesne profits @ Rs.2,000/- per month from 01.11.1993 till the date of

delivery of possession on payment of separate court fee. The defendant was directed to vacate the suit schedule property within three months from the date of decree.

8. Feeling aggrieved by the said judgment and decree, the defendant has filed this appeal on the following grounds:

- i) that the learned judge of the trial Court failed to appreciate that there is no valid notice as contemplated under Section 106 of the Transfer of Property Act;
- ii) that the learned trial Judge also failed to appreciate that since there is no quit notice and there is no termination of tenancy, the trial Court has arrived at a wrong conclusion that agreement of sale between the plaintiff and the wife of defendant does not bind the plaintiff, as there is no such agreement between the plaintiff and the defendant.
- iii) that the trial Court erred in observing that the agreement of sale cannot have the effect of conferring the title on the defendant or his wife;

- iv) that the trial Court has failed to conduct an enquiry into the mesne profits and the plaintiff was not able to establish her claim.

9. Heard the learned counsel for the appellant/defendant. None appears on behalf of the respondent/plaintiff and accordingly, it was treated as heard. The submissions made by the learned counsel for the appellant have received due consideration. Perused the material available on record.

10. In the light of the submissions made by the learned counsel for the appellant/defendant, the following points arise for consideration:

- i) whether the notice dated 20.09.1993 was proper and tenancy was terminated under the said notice?
- ii) whether the plaintiff is entitled for eviction for recovery of arrears of rent and mesne profits as prayed for? and
- iii) whether the judgment and decree impugned is sustainable?

Point Nos.(i) to (iii):

11. Since all the points are interrelated or linked with each other, for the sake of brevity and to avoid repetition, it is proposed to answer them together as under:

12. The admitted or undisputed facts of the case are that the plaintiff is the owner of the suit schedule property and the defendant was the tenant of the same and the tenancy started with effect from 01.09.1986. However, the claim of the plaintiff is that the defendant has failed to pay the monthly rents from November 1990 onwards. Though he has issued cheques towards payment of rent of Rs.2,800/- for the month of November and December 1990, on presentation the said cheques were returned with an endorsement 'funds insufficient'. Having vexed with the attitude of the defendant, she has got issued a quit notice as required under Section 106 of the Transfer of Property Act on 20.09.1993 terminating tenancy of the defendant by 15 days clear notice expiring with the end of the tenancy month by 31.10.1993. But the defendant has avoided to receive the said notice.

13. On behalf of the plaintiff, she herself got examined as PW.1. She has filed her evidence affidavit in lieu of chief examination and Exs.A.1 to A.5 documents are marked. She was cross-examined at length, but nothing is elicited in support of defendant's case. She has equally denied the alleged agreement of sale said to have been executed in favour of defendant's wife and categorically stated that she has sold the suit house in the month of March 1994 in favour of one Smt. Padmavathi, vide registered sale deed dated 02.03.1994. She has also admitted that the defendant has filed OS No.1530 of 1993 and obtained temporary injunction and explained that the said suit was dismissed for default for non-prosecution. She has denied the other suggestions put to her.

14. PW.2 is the son of PW.1. He has filed his evidence affidavit in support of his mother's case. He was also cross-examined at length with reference to alleged agreement of sale dated 02.11.1989 said to have executed in favour of defendant's wife and denied all other suggestions given to him.

15. As stated above, though the wife of defendant is examined as DW.1, her evidence in chief examination was eschewed from consideration as per the orders dated 18.11.2002 since she failed to appear before the Court for cross-examination. Thus, there is no oral and documentary evidence on behalf of defendant except the admissions, if any, elicited in the cross examination of PWs.1 & 2. But the evidence of PWs.1 & 2 remained consistent throughout the cross-examination. That apart, PW.1 has categorically stated that she has sold away the suit schedule property in favour of Smt. Padmavathi, through registered sale deed dated 02.03.1994 and it is also stated by her that the suit filed by the defendant's wife in OS No.1530 of 1993 on the file of the learned II Junior Civil Judge, Hyderabad is dismissed for default.

16. Ex.A.1 is the office copy of the legal notice. It is dated 20.09.1993 wherein the plaintiff has terminated the tenancy of the defendant with effect from the end of tenancy month by 31.10.1993 and requested him to deliver the vacant possession from 01.11.1993 stating that in case

of failure to do so, the plaintiff may be considered to initiate appropriate legal action for eviction and recovery of arrears and rent and mesne profits.

17. As stated above, the plaintiff has sent the notice under certificate of posting and also by registered post. It was returned with an endorsement under Ex.A.4 as 'refused', which is treated as constructive service and finally the suit is filed. The trial Court has appreciated the entire evidence available on record and arrived at a right conclusion that there is valid termination of tenancy with effect from 31.10.1993 under Ex.A.1 and that the agreement of sale, if any, said to have been executed between the wife of defendant and the plaintiff is not binding on the plaintiff and it has no bearing on the jural relationship of the plaintiff and the defendant as land lady and tenant. Though the defendant has claimed that the plaintiff has paid Rs.1,85,000/- and entered into agreement of sale and that no such jural relationship of landlord and tenant exists, failed to establish the same either by eliciting from the cross-examination of PWs.1 & 2

or by adducing any evidence on his behalf. The only witness examined on his behalf is his wife-DW.1 and her evidence is eschewed from consideration as per the orders dated 18.11.2002. No other evidence is available on record in support of the defendant's plea.

18. It may be stated that in the case of ***Vidhyadhar v. Manikrao and another***¹ the Hon'ble Apex Court held that when the defendant having filed written statement and having denied the claim of the plaintiff, failed to enter into the witness box to speak the contents of the written statement filed by him on oath, adverse inference has to be drawn against such defendant as contemplated under Section 114 (g) of the Indian Evidence Act to the effect that the case set up by him is false.

19. In the present case also, the defendant has denied the termination stating that it is not a valid termination of tenancy under Ex.A.1 and also pleaded that his wife has entered into agreement of sale with the plaintiff and paid an amount of Rs.1,85,000/- and that he is no more a

¹ (1999) 3 SCC 573 = AIR 1999 SC 1441

tenant of the suit schedule property, failed to enter into the witness box to speak the contents of the written statement filed by him on oath, thereby avoided the cross examination by other side. This by itself is sufficient to draw an adverse inference under Section 114 (g) of the Evidence Act against the defendant holding that the defence set up by him in the written statement is false. As a result, there is no other evidence except the oral evidence of PWs.1 & 2 and the contents of Exs.A.1 & A.5, which remained consistent throughout the cross-examination. That apart, both the witnesses have categorically stated that the suit filed by the wife of defendant in OS No.1530 of 1993 is dismissed for default and no such suit is pending. Further, the plaintiff as PW.1 has explained that she has already sold away the suit schedule property in favour of Smt. Padmavathi in the year 1994 itself.

20. Therefore, for all the reasons stated above, viewed from any angle, I do not find any irregularity in appreciation of the oral and documentary evidence available on record and the point Nos.(i) to (iii) are

accordingly answered in favour of the plaintiff and against the defendant.

21. In the result, the Appeal Suit filed by the appellant/ defendant is dismissed confirming the judgment and decree dated 19.12.2002 in OS No.1392 of 1993 on the file of the learned II Senior Civil Judge, City Civil Court, Hyderabad in its entirety. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, miscellaneous applications, if any pending in this appeal, shall stand closed.

A. VENKATESHWARA REDDY, J.

Date: 08.09.2022
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