

THE HON'BLE SRI JUSTICE M. LAXMAN**I.A.No.2 of 2016**
IN/AND
C.C.C.A.No.138 OF 2016**COMMON JUDGMENT:**

1. The present Appeal is directed against the judgment and decree dated 14.03.2016 in O.S.No.1866 of 2007 on the file of the Court of the learned XVII Additional Senior Civil Judge, City Civil Court, Hyderabad, whereunder, the suit filed by the respondent-plaintiff seeking declaration of title, possession, recovery of arrears of rents, mesne profits and perpetual injunction was decreed.

2. The appellant herein is the defendant and respondent herein is the plaintiff in the suit. During the pendency of the appeal, the sole appellant died and therefore, the legal representatives of the deceased appellant are brought on record as appellant Nos.2 to 7 as per the Order dated 28.06.2022 vide I.A.No.3 of 2022. For the sake of convenience the parties herein are referred to as arrayed in the suit.

3. The sum and substance of the case of the plaintiff is that, originally one Nawab was the owner of the property. He was declared excess land holder under Urban Land Ceiling Act, 1976.

During his lifetime, he has let out the open land to various persons to reside therein by constructing small houses at their own costs. The father of the plaintiff was Nuzuldar and he was paying rents to the said Nawab. Upon the demise of the said Nawab, the plaintiff continued to stay in the said property along with the family members. The suit schedule property was given on rent to the respondent and subsequently, basing on their possession, their title was regularized in terms of the orders issued by the Government regularizing the occupations upon payment of consideration. The defendant started asserting claim over the property by not paying the rent from March, 2006. Subsequently, the plaintiff came to know that the defendant filed a suit against the third party and obtained the Injunction. On knowing the said fact, they verified the documents and found that the defendant started claiming title from the husband of the plaintiff by virtue of Gift Deed and the said document after verification from the Registrar, Registration Department, was found to be a bogus one. Therefore, the present suit is filed seeking declaration, recovery of possession, arrears of rents and mesne profits.

4. The case of the defendant is that, he is in possession by virtue of the oral Gift made by Mohd. Hussain, who is the husband of the plaintiff. The said Mohd. Hussain gifted the suit schedule property to the defendant through oral Gift dated 10.06.1994. In confirmation of the oral Gift, a Memorandum was executed confirming the oral Gift. The said Memorandum of confirmation was made on 25.08.1994. He denied the existence of jural relationship as landlady and tenant between the plaintiff and defendant. He also claimed that he filed a suit bearing O.S.No.4405 of 2006 on the file of the learned V Junior Civil Judge, City Civil Court, Hyderabad seeking Injunction against Shahjahan Begum and Ahmed Hussain. Both of them filed their counter, admitting the possession of the defendant which shows that he is in possession by virtue of his own title and not from the landlady and prayed to dismiss the suit.

5. Basing the same, the following issues are framed by the Court below:-

1. *Whether the plaintiff got right and title to the plaint schedule property ?*
2. *Whether the plaintiff is entitled for possession to the suit property ?*
3. *Whether there is no jural relationship of landlord and tenant existing between the parties ?*

4. Whether the plaintiff entitled for the arrears of rent as claimed for ?

5. Whether the plaintiff is entitled for past and future mesne profits as prayed for ?

6. Whether the plaintiff is entitled for injunction as prayed for ?

7. To what relief ?

6. The plaintiff to prove her case, examined PW1 and PW2 and relied on Exs.A1 to A16. The defendant, to support his case examined DWs.1 to 6 and no documents were marked.

7. The Court below appreciating the evidence on record more particularly the inconsistent defense taken by the defendant with regard to how he got the possession over the property, found that the plaintiff was the owner and the defendant was in possession as a tenant and not on any document executed by Mohd. Ismail. Consequently, the suit was decreed declaring the plaintiff as absolute owner of the suit schedule property and directed the defendant to hand over the vacant possession of the suit schedule property to the plaintiff within three months from the date of this judgment. The defendant was further directed to pay the arrears of rent to the plaintiff @ Rs.5,845/- per month from March, 2006 to till the delivery of vacant possession and also directed to deposit arrears of rent till date within one month. The defendant further restrained by perpetual Injunction from alienating or encumbering the suit schedule property. As far as

the mesne profits are concerned, the plaintiff is given liberty to file an appropriate application for determination of future mesne profits. Aggrieved by the same, the present Appeal has been filed.

8. Heard both sides.

9. The points for consideration are as follows:-

- 1. Whether the respondent-plaintiff has established title over the suit schedule property ?*
- 2. Whether the respondent-plaintiff is entitled for the recovery of possession ?*
- 3. Whether there is landlady and tenant relationship between the respondent-plaintiff and appellant-defendant ?*
- 4. Whether the respondent-plaintiff is entitled for past arrears and future mesne profits?*
- 5. Whether the plaintiff is entitled for Injunction ?*

10. The case of the plaintiff is that, she was in possession of excess land declared under the Urban Land Ceiling Act which originally belonged to the Nawab. They have been paying rents to the Nawab and while, holding the said possessory rights, the premises was let out to the defendant. Subsequently, she got regularized her possession by recognizing title over the surplus land by virtue of G.O.Ms.No.541 dated 10.05.2006 under Ex A11. Ex A12 is the proceedings of the Urban Land Ceiling Authority confirming the title and possession of the plaintiff. The title

documents were held by the plaintiff prior to the institution of the suit. Therefore, from such a document, the plaintiff could establish her title over the suit property.

11. Learned counsel for the appellant-defendant submitted that the regularization was challenged by way of separate suit and the said suit is still pending. Whereas, the learned counsel for the respondent-plaintiff contended that the attempt of the defendant to challenge the regularization proceedings in Writ jurisdiction failed and such orders attained finality. According to him, the suit is not maintainable even though it is pending and the pendency of the suit does not take away her title to the property.

12. As of now, undisputably, the regularization proceedings and recognition of title and possession of the plaintiff by the Government, who was the original owner of property, by virtue of vesting of the excess land with the Government, confirms the title and possession of the plaintiff. The attempts made by the defendant to set aside the said regularization proceedings in the Writ jurisdiction has also failed and the maintainability of the suit before the Court is not an issue before this Court and we cannot decide the said issue in this appeal.

13. The evidence on record, shows that the defendant in his written statement, initially, has taken defense that he got inducted into possession by virtue of an oral gift which was subsequently reduced into memorandum of past gift, obtained from the husband of the plaintiff i.e., Mohd. Hussain. There is no material on record to show that Mohd. Hussain was the owner or he had any possessory title to the property. The plaintiff by producing Ex A13, letter dated 03.11.2006, issued by the District Registrar, establishes that the memorandum of past Gift which was pressed into service by the Advocate in other suit in which the plaintiff was not party show that such a document was not sold by the vendor of the stamp paper as shown on the said document. It clearly goes to show that the said plea was taken with a fraudulent intention.

14. The other circumstance is that in evidence, the defendant has set up different stand that he purchased the property from Mohd. Ismail. This is contrary to his own defense set up in written statement in other suit filed seeking Injunction against third parties. This plea also shows how Mohd. Ismail got possession or title to the property. The plaintiff came up with a false plea to justify her possession. The possession admittedly is

a permissive possession. When the plea of the defendant that he got a possession by virtue of oral gift and the sale transaction has failed, it should be assumed that he got a permissive possession from the plaintiff. Thus failure on the part of the defendant to prove, corroborates the claim of the plaintiff that the possession of the defendant was on the basis of tenancy. This was appreciated by the trial Court by rejecting the claim set up by the defendant. Such a finding of the trial Court does not suffer from any irregularity. The Courts below rightly upheld the title as well as recovery of possession. Therefore, the circumstances of jural relationship of land lady and tenant is confirmed.

15. The plaintiff claimed that the defendant is not paying the rent from March, 2006 and the defendant has not come up with any document to show that he has paid any amount from March, 2006. When his possession has failed to trace from the documents, defendant is bound to pay the rents as per the plaintiff's claim.

16. The Court below accepted the oral evidence of plaintiff to show that monthly rent was Rs.5,845/- which was due from March, 2006 and the Court below granted the rent fixed by it from March, 2006 till delivery of possession and whereas again

the Court below, has given the liberty to file a fresh application for determining the future mesne profits. This order is conflicting to each other. The Court should have confined the arrears if any, upto the date of suit and it should have left it open to determine the mesne profits from there. So, this Court feels that monthly rent @ Rs.5,845/- shall be confined from March, 2006 to 07.09.2007 the date of suit instead of till the date of delivery. The finding with regard to the future mesne profits as given by the Court below by leaving open to file a fresh application is also confirmed.

17. The plaintiff sought injunction restraining the defendant from creating any third party right or any encumbrance basing on the bogus documents. The Court below in the light of Ex A13 gave finding that memorandum of past gift which was set up by the defendant was held to be a bogus one. This Court also confirms such a finding. Therefore, the defendant cannot create any third party right or alienate on the basis of such a document. The Court below has rightly granted Injunction which requires no interference.

18. In view of the above, the appeal is partly allowed and the findings of the Court below declaring the plaintiff as the absolute

owner of the property, order of recovery of possession of the property, grant of Injunction and directing to move a fresh application for determination of future mesne profits are confirmed. The finding of the Court below granting monthly rent @ Rs.5,845/- from March, till the date of delivery of possession is modified and instead, the plaintiff is entitled to the monthly rent @ Rs.5,845/- from March, 2006 till the date of filing of the suit.

19. I.A.No.2 of 2016 in the appeal is filed to vacate the interim order dated 22.07.2016 granted by this Court. I.A.No.4 of 2016 in the appeal is filed to grant permission to receive additional documents. The said documents establish the defendant's claim that the property was purchased from Mohd. Ismail. Subsequent plea of purchase of property from Mohd. Ismail is not the original case set up by the defendant in the written statement. If the documents in I.A.No.4 of 2016 are allowed to be introduced, it will change the character of defense of the defendant.

20. Therefore, this Court feels that these documents cannot be admitted as no explanation is given for the inordinate delay in filing the documents. Apart from that, this Court already found that previous claim of the defendant based on the oral gift which was reduced into writing was held to be a bogus name. By virtue

of the said conduct of the defendant, these documents cannot be received as additional evidence. Therefore, the I.A.No.4 of 2016 is dismissed. The previous attempt of the defendant to bring these documents in all Courts was held to be unsuccessful upto the Hon'ble Supreme Court. Hence, the said request cannot be acceded. In the light of the disposal of the main appeal, the I.A.No.2 of 2016, vacate stay is dismissed as infructuous.

20. In the result, I.A.No.4 of 2016 is dismissed; I.A.No.2 of 2016 is dismissed as infructuous; the City Civil Court Appeal is partly allowed and the findings of the Court below declaring the plaintiff as the absolute owner of the property, order of recovery of possession of the property, grant of Injunction and directing to move a fresh application for determination of future mesne profits are confirmed. The finding of the Court below granting monthly rent @ Rs.5,845/- from March, till the date of delivery of possession is modified and instead, the plaintiff is entitled to the monthly rent @ Rs.5,845/- from March, 2006 till the date of filing of the suit. There shall be no order as to costs. Miscellaneous Petitions, pending if any, shall stand closed.

M. LAXMAN , J

Date: 07.11.2022
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