

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

C.C.C.A.No.46 of 2013

JUDGMENT :

This appeal is arising out of the judgment and decree in O.S.No.403 of 2007, dated 25.03.2013 on the file of IX Additional Chief Judge (FTC), City Civil Court, Hyderabad.

2. For the sake of convenience, the parties will be referred to, as arrayed in the suit.

3. The 2nd defendant is the appellant. Initially, plaintiff filed the suit for the relief of eviction as follows:

(1) Directing the defendants to vacate the suit schedule property and to deliver the vacant and peaceful possession of the suit schedule property to the plaintiff in good condition as it was delivered to the first defendant at the time of granting lease.

(2) Directing the defendants to pay Rs.10,10,000/- towards the financial loss caused by the defendants to the plaintiff by lesser payments of rents and by keeping arrears of rent pending for several months and towards damages for the illegal and unauthorized use and occupation of the suit schedule property by the defendants and towards costs of the legal notice together with future interest at the rate of 24% per annum from the date of the suit till the date of realization.

(3) Directing the 1st defendant to pay Rs.15,000/- per month towards damages for the illegal and unauthorized use and occupation of the suit schedule property from the date of the suit till the date of realization and for costs of the suit.

4. The brief averments of the plaint are that the plaintiff and his brother had purchased the suit premises to a total extent of 326 square yards, known as “Big zajgi khana” at Dewan Devdi, Hyderabad, vide Registered sale deed dated 12.08.1975 bearing document No.2424/1975 on the file of Sub-Registrar, Azampura, Hyderabad. Later, the plaintiff and his brother got partitioned their properties between themselves and the plaintiff got the suit schedule property towards his share and became the absolute owner of the said property. The first defendant, who is the friend of the plaintiff, approached the plaintiff in the year 1989 and requested him to lease out the said property for running a godown for his transport business. The plaintiff agreed and let out the property on oral lease to the first defendant for a period of one year, with an option to renew the same for one year, on condition to enhance the rent at the rate of 10% per annum. After completion of one year, at the request of the first defendant, the plaintiff allowed him to continue the lease with an enhancement of 10% per

annum every year. It is further averred in the plaint that the first defendant committed default in payment of rents to an extent of Rs.5,00,000/- and also caused damage to the property by making unauthorized and illegal constructions in the suit property as per his needs. During the years 1996 to 1998, the plaintiff demanded the first defendant to vacate and handover the possession of suit schedule property, as promised by the first defendant, but he did not keep up his promise. In the year 2005, the plaintiff insisted the defendants to vacate the suit premises and according to the plaintiff, the defendants have caused loss to the property to the tune of Rs.5,00,000/-, for which, the plaintiff issued legal notice dated 12.03.2007 with a demand to vacate and pay the arrears of rent and damages. The first defendant issued a reply notice contending that he was not the tenant of the suit property and that the 2nd defendant was the tenant and the legal notice issued by the plaintiff is not valid under law. Further, the 1st defendant also filed caveat petition before various courts with false and vague allegations. As the plaintiff's Counsel inadvertently missed to include the name of the 1st defendant in the legal notice dated 12.03.2007, another fresh

legal notice was issued on 09.04.2007, demanding the defendants to pay a sum of Rs.5,00,000/- towards arrears of rent, Rs.5,00,000/- towards damages and Rs.10,000/- towards costs of legal notice, further demanding to vacate and handover the possession of the property to the plaintiff within 15 days. As the defendants did not comply, the plaintiff was constrained to file the suit.

5. A detailed written statement was filed by the 1st defendant denying the averments made in the plaint. The contents of the written statement disclose that the 1st defendant was not aware of the ownership of the plaintiff and that he did not obtain the suit property from the plaintiff on lease and therefore, the question of paying the rents and committing default does not arise. According to the 1st defendant, the 2nd defendant is the actual tenant, who occupied the suit property and that the plaintiff was in a habit of causing harassment to the tenant by exchanging notices for enhancement of rents and advances in the year 1996 and that the plaintiff was receiving rents regularly from the 2nd defendant. Further, the 1st defendant admitted about the legal notice dated 12.03.2007 for which, a reply notice was issued by him on

27.03.2007 and further contended that the plaintiff has not approached the court with clean hands and that the 1st defendant was unnecessarily implicated as party to the suit, therefore, suit is bad for misjoinder of the 1st defendant and prayed to dismiss the suit with exemplary costs.

6. The 2nd defendant also filed written statement denying all the allegations made in the plaint. The recitals of the written statement of the 2nd defendant disclose that defendant No.2 occupied the suit property as a tenant and was paying rents to the plaintiff at the rate of Rs.1,400/- per month since 1989. It is further averred that the 2nd defendant is a Company registered under the provisions of the Companies Act and was doing transport business and obtained the suit premises in the year 1989 and since then, it was in occupation and possession of the property as a tenant. The plaintiff used to collect rents at his whims and fancies and the said tenancy is an oral one and that there was no agreement to enhance the rent and that the plaintiff used to enhance rent under the threat of eviction. In the year 1996, the plaintiff issued notice to the 2nd defendant on the ground of default, for which, a reply was given and later, the

plaintiff requested the 2nd defendant-office for enhancement of rent. It is further alleged that the plaintiff never affected any repairs for the suit schedule property and that the 2nd defendant affected the repairs to keep up the suit premises and though the plaintiff promised to reimburse the said amount, did not pay the same. The 2nd defendant denied about causing of any damage to the suit property, and therefore, the plaintiff is not entitled for the relief of damages. It is further contended that the plaintiff has not issued notice under Section 106 of the Transfer of Property Act, which is mandatory, and therefore, the suit is liable to be dismissed and prayed to dismiss the suit with exemplary costs.

7. Basing on the above pleadings, the trial Court has framed the following issues:

- “1. Whether the 1st defendant is the tenant of the plaintiff ?
2. Whether the defendants committed default in payment of rents ?
3. Whether the plaintiff is entitled to the vacant possession as prayed for ?
4. Whether the plaintiff is entitled to money decree as prayed for ?

5. Whether the plaintiff is entitled to the damages, if so, at what rate ?
6. To what relief ?”
8. It is relevant to mention that after framing of the issues, the plaintiff has filed separate rejoinders to the written statements of defendant Nos.1 and 2.
9. The rejoinder to the written statement of the 1st defendant discloses that the 1st defendant was a friend to him and that the plaintiff has leased out the suit schedule property to the 1st defendant and that since the year 1996, due to disputes between the plaintiff and the 1st defendant, he requested the 1st defendant to vacate the suit schedule property. It is the specific admission of the plaintiff that the 1st defendant was running a godown in the suit schedule property in the name of the 2nd defendant, as its Managing Director and denied about the exchange of notices between the plaintiff and the 2nd defendant in the year 1996.
10. The rejoinder to the written statement of the 2nd defendant discloses that the plaintiff never used to collect the rents and that the defendants never paid rents and being vexed with the behavior

of the 1st defendant, the plaintiff was forced to go to the defendants to collect rents every month and the said rents were never paid regularly and that the defendants used to pay rents as per their whims and fancies, such as once in three months and some times in six months. It is the specific plea in the rejoinder that the plaintiff came to know that defendant No.2 was in possession of the suit schedule premises only through the reply notice dated 27.03.2007 and that the 1st defendant is the Managing Director of the 2nd defendant, and as such, he got issued another legal notice dated 09.04.2007 under Section 106 of the Transfer of Property Act, demanding the defendants to vacate the suit schedule premises and to pay arrears of rent and damages. Accordingly, prayed to decree the suit.

11. Basing on the rejoinders, the following issues are framed:

- “1. Whether the quit notice dated 12.03.2007 is in accordance with law ?
2. Whether the plaintiff is entitled to the damages quantified at Rs.10,10,000/- together with interest at the rate of 24% per annum as prayed for ?

3. Whether the plaintiff is entitled for the relief of eviction of the defendants in the suit schedule property ?
4. Whether the defendants are liable to pay Rs.15,000/- per month towards damages for illegal, unauthorized use and occupation of the suit schedule property till the date of realization?

12. On behalf of plaintiff, PWs.1 to 3 were examined and Exs. A-1 to A-24 were marked. On behalf of defendants, DWs.1 and 2 were examined and Exs.B-1 to B-24 were marked.

13. On considering the oral and documentary evidence on record, the trial Court has decreed the suit partly with costs directing the defendants to vacate and handover the suit schedule property to the plaintiff within a period of two months and that the defendants shall pay arrears of rent of Rs.1,26,000/- together with interest at the rate of 12% per annum from the date of suit till the date of decree and at the rate of 6% per annum from the date of decree till the date of realization, but the relief for damages is dismissed without costs.

14. Being aggrieved by the above judgment and decree, the 2nd defendant in the suit has preferred this appeal.

15. It is urged by the learned counsel for the appellant Sri Sharad Sanghi that the Civil Court has no jurisdiction to try the suit and it has to be filed before the Rent Controller under Section 32(b) of the Telangana Buildings (Lease, Rent and Eviction) Control Act, 1960. It is further urged by the learned counsel for the appellant that the trial Court ought not to have granted mesne profits without there being a prayer and the suit filed by one co-owner without the consent of the other co-owner is not valid under Muslim law. It is further contended by the learned counsel for the appellant that termination of tenancy is not valid under Section 106 of Transfer of Property Act. It is further contended that there is no territorial jurisdiction or inherent jurisdiction for the Civil Court to try the matter, and therefore, prayed to set aside the decree of the trial Court.

16. In support of his contentions, the learned counsel for appellant has relied on the following judgments:

(1) Kiran Singh & others v. Chaman Paswan & others¹,

wherein, it is held by the Hon'ble Supreme Court as under:

“It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities. The question is what is the effect of section 11 of the Suits Valuation Act on this position.”

(2) Contonment Board & another v. Church of North India²,

wherein, it is held by the Hon'ble Supreme Court as under:

“12. The submission of Mr. Venkataramani that the question of jurisdiction was not raised any time earlier is not fully correct in as much as, pointed out earlier, para 7 of the estate officer's order records the objection to the jurisdiction of the estate officer raised by the respondent though in a different manner. The counsel for the respondent submitted that the issue which he had raised now in this court disputing the jurisdiction of the Estate Officer was a question of law and the matter went to the root of jurisdiction of the authority to pass the eviction order. If the authority did not have the jurisdiction to proceed under the Public Premises Act, the eviction order could not be upheld. A point about the jurisdiction can be raised even in this court even if it was not raised any time earlier.

¹ AIR 1954 SC 340

² (2012) 12 SCC 573

13. We have considered the submission of both the counsel. As far the first submission of Mr. Singla viz. that the premises belong to the respondent is concerned, the same has never been raised any time before. On the record of the present Civil Appeal, we have the objection filed by the respondent before the Estate Officer, and a copy of the Writ Petition filed by the respondent. Nowhere have they claimed that they own the premises. On the contrary, in paragraph 3 of their objections before the Estate Officer, they have stated that the Executive Officer of the Cantonment Board is the Secretary and the Custodian of the property. In Paragraph 4 of Writ Petition No.5281/1991, filed before the Single Judge, they have clearly stated that the hospital building initially belonged to the East India Company and later on had belonged to the Government of India. They are not disputing the fact that a lease-deed was executed between the parties on 1.4.1982 whereby they were in occupation of the Hospital building. In the second recital of the lease- deed, it is clearly stated that the lessor is the owner of the premises, and the premises were being let out to the hospital run by the respondent on the terms contained therein. The respondent had nowhere claimed that they own the land or they constructed the building thereon. This being so, it is not possible to accept the first objection of Mr. Singla.
14. As far as, the second submission of Mr. Singla is concerned, it is submitted by him that the Cantonment Boards were covered under the Public Premises Act only with effect from 1.6.1994 by an amendment introducing sub-section (viii) in Section 2(e)(2) of the Public Premises Act. He has, therefore, contended that the Estate Officer had no jurisdiction to pass eviction order on 26.6.1991 and hence, on this ground alone, the present appeal must be dismissed. As far as this submission of Mr. Singla is concerned, Mr. Venkaramani submitted that this objection ought to have been raised at the earliest opportunity so that appellant could have met the same earlier. It is undoubtedly true that objection to the maintainability of a proceeding must be raised at the earliest but an objection that the authority did not have the jurisdiction to entertain the proceedings over the subject- matter

goes to the root of the proceeding. In a number of judgments, this Court has held that a defect, with respect to the lack of inherent jurisdiction is basic and fundamental and validity of such an order can be challenged at any stage, even in execution or in collateral proceedings (for reference see a judgment of a bench of three judges of this Court in *Balwant N. Viswamitra and others v. Yadav Sadashiv Mule (dead) through Lrs.* [reported in (2004) 8 SCC 706] .

15. However, such an eventuality does not arise in this case for the reason that the case of the appellant has been that the hospital premises of the respondent belong to the Union of India and are only under the management of the appellant, and therefore, are the "public premises", under Section 2(e) of the Public Premises Act 1971."

(3) S.N.D.P.Sakhayogam v. Kerala Atmavidya

Sangham & others³, wherein, it is held by the Hon'ble Supreme

Court as under at paras 16, 17 and 22 :

- "16. In our considered opinion, one question, which goes to the root of the case affecting the very jurisdiction of the Court to try the suit, was not taken note and if taken note of, it was not decided in its proper perspective by any of the Courts below. May be due to the reason, instead of raising the objection, the defendant appears to have conceded it.
17. Be that as it may, in our considered view, the issue of jurisdiction which goes to the root of the case, if found involved has to be tried at any stage of the proceedings once brought to the notice of the Court.
22. Since there was neither any discussion much less finding on any of the aforesaid issues by any of the Courts below though these questions directly and substantially arose in the case (Issue No. 1), we are of

³ (2017) 8 SCC 830

the considered opinion that it would be just and proper and in the interest of justice to remand the case to the Trial Court to answer these issues and then decide the suit depending upon the answer in accordance with law.”

(4) **Kurian Chacko v. Varkey Ouseph**⁴, wherein, it is

held by the Kerala High Court as under:

“An appellate court is the final Court of fact ordinarily and therefore a litigant is entitled to a full and fair and independent consideration of the evidence at the appellate stage. Anything less than this is unjust to him and I have no doubt that in the present case the learned Subordinate Judge has fallen far short of what is expected of him as an appellate Court. Although there is furious contest between the counsel for the appellant and for the respondent, they appear to agree with me in this observation. Shri Varkey, learned counsel for the respondent, feels that his client has a strong case not merely regarding possession but regarding title and wants me to remember that the burden is on the plaintiff to establish a subsisting title and this implies possession within 12 years of the suit.”

5. **Madhukar & others v. Sangram & others**⁵,

wherein, it is held by the Hon’ble Supreme Court at para 5 that;

“We have carefully perused the judgment and decree of the High Court in the first appeal. We find that substantial documentary evidence had been placed before the trial court including certified copies of certain public records besides copy of the judgment and decree of the earlier suit (O.S. No. 93/71). Oral evidence had also been led by the parties before the trial court, which was noticed and appreciated by the trial court. However, the impugned judgment in the first appeal, is singularly silent of any discussion either of

⁴ AIR 1969 KERALA 316

⁵ (2001) 4 SCC 756

documentary evidence or oral evidence. Not only that, we find that though trial court had dismissed the suit on ground of limitation as also on the ground that the decision in the earlier suit (O.S. No. 93/71) operated as res judicata against defendant No. 1 only the High Court has not even considered, much less discussed, correctness of either of the two grounds on which the trial court had dismissed the suit. Sitting as a Court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. It has failed to discharge the obligation placed on a first appellate court. The judgment under appeal is so cryptic that none of the relevant aspects have even been noticed. The appeal has been decided in a very unsatisfactory manner. First appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings.”

6. Jegannathan v. Raju Sigamani & another⁶,

wherein, it is held by the Hon’ble Supreme Court at paras 6, 7 and 8 as under:

- “6. Order 41 Rule 23 is invocable by the appellate Court where the appeal has arisen from the decree passed on a preliminary point. In other words, where the entire suit has been disposed of by the trial Court on a preliminary point and such decree is reversed in appeal and the appellate Court thinks proper to remand the case for fresh disposal. While doing so, the appellate Court may issue further direction for trial of certain issues.
7. Order 41 Rule 23A has been inserted in the Code by Act No. 104 of 1976 w.e.f. February 1, 1977. According to Order 41 Rule 23A of the Code, the appellate Court may remand the suit to the trial Court even though such suit has been disposed of on merits. It

⁶ (2012) 5 SCC 540

provides that where the trial Court has disposed of the Suit on merits and the decree is reversed in appeal and the appellate Court considers that retrial is necessary, the appellate Court may remand the suit to the trial Court.

8. Insofar as Order 41 Rule 25 of the Code is concerned, the appellate Court continues to be in seisin of the matter; it calls upon the trial Court to record the finding on some issue or issues and send that finding to the appellate Court. The power under Order 41 Rule 25 is invoked by the appellate Court where it holds that the trial Court that passed the decree omitted to frame or try any issue or determine any question of fact essential to decide the matter finally. The appellate Court while remitting some issue or issues, may direct the trial Court to take additional evidence on such issue/s.”

17. On the other hand, it is urged by the learned Senior Counsel Sri B. Chandrasen Reddy for respondents that the suit is maintainable before the Civil Court. As pecuniary value of the suit is more than Rs.5,000/- and it cannot be filed before the Rent Controller, as such, the regular suit for eviction was filed before the trial Court and also contended that a co-owner can file a suit for eviction of the tenant, the consent of co-owner is not necessary and it can be a deemed consent.

18. It is further contended by the learned Senior Counsel for respondents that there is no dispute with regard to the relationship of lessor and lessee and if at all the appellant contends that the

Civil Court has no territorial jurisdiction, he ought to have raised it at first instance where the trial Court could have framed an issue on the question of jurisdiction, and therefore, such plea cannot be raised at the appellate stage. It is further contended that the party initially has to plead and thereafter lead evidence to that effect. There is no issue framed by the trial Court nor any evidence before it, as to the consent of the co-owner as the pleadings are silent. It is further contended that the rent for the suit schedule premises is Rs.5,000/- and rents are deposited once in three months and six months, which are corroborated with Ex.A-5, equivalent to Ex.B-3. It is further contended that as per Section 106 of the Transfer of Property Act, notice has to be issued and Ex.A-2 is the notice issued to both the parties and that the 1st defendant also admitted in the written statement that he is the Managing Director of the 2nd defendant and signed the written statement on behalf of the 2nd defendant also.

19. In support of his contentions, the learned counsel has relied on the judgment of Hon'ble Supreme Court in **Dhannalal v. Kalawatibai & others**⁷, wherein, it is held at para 18 as under:

“18. One of the co-owners can alone and in his own right file a suit for ejectment of tenant and it is no defence open to tenant to question the maintainability of the suit on the ground that other co-owners were not joined as parties to the suit. When the property forming subject matter of eviction proceedings is owned by several owners, every co- owner owns every part and every bit of the joint property along with others and it cannot be said that he is only a part owner or a fractional owner of the property so long as the property has not been partitioned. He can alone maintain a suit for eviction of tenant without joining the other co-owners if such other co-owners do not object.”

20. The learned Senior Counsel has also relied on another judgment of Hon'ble Supreme Court in **Mohinder Prasad Jain v. Manohar Lal Jain**⁸, wherein, it is held by the Hon'ble Supreme Court at paras 10 and 11 as under:

“10. This question now stands concluded by a decision of this Court in *India Umbrella Manufacturing Co. & Ors. vs. Bhagabandei Agarwalla (Dead) by Lrs. Savitri Agarwalla (Smt.) & Ors.* [(2004) 3 SCC 178] wherein this Court opined:

"Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See *Sri Ram Pasricha v. Jagannath*

⁷ MANU/SC/0565/2002

⁸ AIR 2006 SC 1471

[(1976) 4 SCC 184] and Dhannalal v. Kalawatibai [(2002) 6 SCC 16], SCC para 25.) This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law."

11. A suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co-owner to show before initiating the eviction proceeding before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event, a co-owner objects thereto, the same may be a relevant fact. In the instant case, nothing has been brought on record to show that the co-owners of the respondent had objected to eviction proceedings initiated by the respondent herein. The submission of the learned counsel for the appellant to the effect that before initiating the proceedings, the appellant was required to show that he had experience in running the business in Ayurvedic medicine, has to be stated to be rejected."

Accordingly, he prayed to dismiss the appeal.

21. As stated supra, the trial Court has framed issues with respect to the tenancy between the plaintiff and defendants, whether there is any default in payment of rents, whether the

plaintiff is entitled for vacant possession as prayed for and whether the plaintiff is entitled for damages.

22. Further issues were also framed basing on the rejoinders such as whether the quit notice dated 12.03.2007 was in accordance with law, whether the plaintiff is entitled to damages quantified at Rs.10,10,000/- with interest @ 24% per annum and whether the defendants are liable to pay Rs.15,000/- per month towards damages for illegal and unauthorized use and occupation of the suit property till the date of realisation.

23. It is relevant to mention that as far as the future mesne profits are concerned, the trial Court has given a finding that it cannot be decided in the suit and a separate application is to be filed to that effect and the rest of the issues are decided in favour of plaintiff.

24. The oral evidence on record clearly discloses that the defendants have been in possession of the suit schedule property and the plaintiff is the owner of the property. The 2nd defendant is the Company/Firm represented by Mr.M.D.Sharma, who is the 1st

defendant, which means, the suit is filed against defendant No.1 in the individual capacity and also against the Company being represented by the 1st defendant as its Managing Director. On perusal of the written statements, it is evident that the 1st defendant signed the written statements on his behalf and also on behalf of the 2nd defendant. It was the specific plea of the plaintiff that the tenancy was oral. On the other hand the defendants also admitted that they are the tenants of the plaintiff, but the 2nd defendant claimed that it was occupying the suit schedule property as a tenant and was paying rent to the plaintiff at the rate of Rs.1,400/- per month since 1989. According to defendant No.2, it was the Company doing transport business and obtained the suit premises from the plaintiff on lease in the year 1989 and since then, it was in occupation and possession of the suit schedule property and paying rents regularly.

25. The plaintiff himself was examined as PW-1 and PWs.2 and 3 were examined on behalf of plaintiff and Exs.A-1 to A-24 were marked. Contrary to the contentions of the defendants, it is the contention of the plaintiff that the defendants are not paying the

rents regularly and committed default in payment of rents to a tune of Rs.5,00,000/- and the defendants also made unauthorised and illegal constructions in the suit schedule property and damaged the property to a tune of Rs.5,00,000/-. Ex.A-1 reveals the ownership of plaintiff over the suit schedule property. Exs.A-2 and A-3 are the copies of legal notice issued to defendant No.1 by the plaintiff and corresponding reply notice issued by defendant No.1. Ex.A-4 is the copy of legal notice issued to both the defendants by the plaintiff. In the cross-examination, PW-1 admitted that he has leased out the site of 228 square yards including vacant site to defendant No.1 on rent of Rs.1,400/- per month in the year 1989 and before leasing it out, he has also constructed a tin shed and initially, defendant No.2 used to pay rents by way of cash and later by account payee cheques. The defendant No.2 paid rent at the rate of Rs.1,400/- per month upto 1985. It is the specific admission of plaintiff that in the year 1986, he got issued a legal notice through Raman Rao Saxena, Advocate, demanding defendant No.2 to vacate the suit schedule property and that the premises was

being used as a godown, since the inception of the tenancy in the year 1989.

26. PW-2 was the neighbour of the plaintiff. His evidence discloses that he was running transport business in the name and style of 'S.S.T. Logistics' at door No.22-7-270-13/a/3, Nizam Bagh, Diwan Devdi, Hyderabad, which is situated adjacent to the suit schedule property. His evidence further discloses that he has taken the godown in the year 1989 admeasuring 4000 sft. on rent, his tenancy was oral and he paid initial rent of Rs.1,20,000/- per annum with enhancement of 10% every year and the current agreed rent is Rs.65,000/- per month i.e. Rs.7,80,000/- per annum and that the said rent is prevailing in the suit schedule area. It is pertinent to note that the evidence of PW-2 was let-in to prove the prevailing market value of the suit schedule property and it is also relevant to mention that PW-2 has produced the rental receipts which are marked as Exs.A-8 to A-19 before the Court. In his cross-examination, PW-2 admitted that defendant No.2 has a godown and office premises nearby to his business and admitted that Exs.A-8 to A-19 filed by him are fabricated. Therefore, the trial

Court has discarded the evidence of PW-2 and did not accept the rental value of the suit schedule property as Rs.65,000/- per month.

27. PW-3 is the brother of plaintiff/PW-1. His evidence discloses that he was the absolute owner and possessor of the suit schedule premises and he has leased it out to PW-2, who was running a Firm by name 'S.S.T. Logistics'. His evidence further discloses that in the year 1989, defendant No.1 approached the plaintiff with a request to give the property on lease, and accordingly, it was being leased out to defendant No.1. His evidence further discloses that he used to accompany the plaintiff whenever he used to collect rents from defendant No.1, but defendant No.1 used to protract the payment of rents for months together and further stated that PW-2 was his tenant who was paying rent of Rs.35,000/- per month and he is an income tax assessee and his rental income was shown in the income tax assessments and also filed the income tax returns before the Court, which are marked as Exs.A-21 to A-24.

28. DWs.1 and 2 are examined on behalf of defendants. Defendant No.1 himself was examined as DW-1 and marked Exs.B-1 to B-24. The chief affidavit of defendant No.1 is nothing but reiteration of averments of the written statement. In the cross-examination, it is admitted by defendant No.1 that he is the Managing Director of 2nd defendant/Company and was doing the business of transportation of goods and heavy material throughout India and they have 90 Lorries which are in the name of defendant No.2. It is admitted by DW-1 that defendant No.2 took the property on oral lease for about 23 years and he does not remember the quantum of initial rent and does not remember the last date and last payment of Rs.5,000/-, whether it is in the month of March 2005 or not. It is the specific admission of DW-1 that he did not give reply to Ex.A-4/notice dated 09.04.2007 and he signed the written statement for himself as well as for defendant No.2.

29. The evidence of DW-2, who was the Managing Director of the 2nd defendant/Company discloses that he was looking-after the affairs of the case and plaintiff used to collect rents of the suit schedule premises from defendant No.2. Ex.B-1 is the letter of

authorization given to DW-2. Ex.B-3 is the voucher signed by the plaintiff, Ex.B-4 is the statement of account of City Bank from 01.07.2006 to 30.07.2006. Exs.B-5 to B-24 are the vouchers and rent receipts for the years 1993, 1995, 1996, 1998 and 1999. In the cross-examination, DW-2 deposed that he did not produce any document to show that the 2nd defendant/Company was incorporated in the year 1993 and admitted that Ex.B-16 was the unsigned document and denied the suggestion that from the date of inception of the tenancy, defendant Nos.1 and 2 were not regular in payment of rents and used to pay rents at their whims and fancies and that from June 2006, they were not paying the rents. It is also admitted by DW-2 that Ex.A-4 contains the correct addresses of defendant Nos.1 and 2 and denied the suggestion that they committed default in paying the rents and also converted and changed the suit schedule property.

30. It is an undisputed fact that defendant No.1 is the Managing Director of defendant No.2/Company and was doing the transport business by using the suit schedule premises as godown and the said premises was taken on oral lease in the year 1989 on the

monthly rent of Rs.1,400/-. On perusal of Ex.A-2, it is evident that the plaintiff has issued the quit notice to defendant No.1 under Section 106 of the Transfer of Property Act and Ex.A-4 is the legal notice dated 09.04.2007, which was issued under the aforesaid provision, demanding the defendants to vacate the suit schedule property and handover the same by duly paying arrears of rent and damages. Therefore, the contention of the defendants that no notice was issued to the defendants under Section 106 of the Transfer of Property Act, is not tenable. Moreover, DW-1 admitted in his cross-examination about receipt of Ex.A-4/legal notice and further admitted that he did not give any reply to it. As per Exs.A-2 and A-4, it can be construed that defendant No.1/appellant was issued with the legal notice under Section 106 of the Transfer of Property Act by the plaintiff, demanding to vacate the suit schedule premises and also claiming arrears of rent and damages. The suit schedule property is being used as a godown as per the admission of DW-1, and therefore, the quit notice prescribed under Clause (1) of Section 106 of the Transfer of Property Act is not applicable. As already stated supra, Exs.B-3

and B-5 to B-24 are the vouchers and rent receipts, which show that the rents were paid at irregular intervals.

31. It is for the appellant to prove that he is regularly paying the rents, but the oral evidence of defendants as well as of the plaintiff disclose that whenever the plaintiff used to come to the premises, the defendants used to pay the rents. Being tenants, the burden is on the defendants to show that they were paying the rents regularly and there was no default in paying the rents. Further, the evidence of defendant No.1/appellant as DW-1 also discloses that they have made minor constructions and repairs to the suit schedule property without the knowledge and consent of plaintiff. Though it is contended that those repairs have been carried out at the request of the plaintiff, there is no evidence on record to prove the same.

32. The case of the plaintiff is that the defendants were irregular in payment of monthly rents and arrears of rent were accumulated to an extent of Rs.5,00,000/- and further, the defendants have raised illegal constructions without the knowledge of plaintiff, and as such, he is entitled for damages of Rs.5,00,000/-. Further, the

plaintiff has also sought the relief for payment of Rs.15,000/- per month towards damages for illegal and unauthorised use and occupation of the suit schedule property, which was rejected by the trial Court.

33. There is no doubt as to the ownership of plaintiff over the suit schedule property or about the oral lease and it is also the specific admission of the defendants that they have been in the property for more than 23 years as on the date of filing of the suit. Though the evidence of PW-2 is discarded, the documentary evidence in Exs.A-8 to A-19 corroborates with the evidence of PW-3 to the effect that he was receiving a rent of Rs.35,000/- per month in that area, which can be taken note of by the income tax returns of PW-3 i.e. Exs.A-21 to A-24. It is the specific contention of the plaintiff that initially, the monthly rent was Rs.1,400/- during the first year and thereafter, the lease was extended by enhancing the rent at the rate of 10% per annum with mutual consent and the defendant No.1 paid rent of Rs.2,600/- per month in the year 2000 and again paid Rs.3,600/- per month in the year 2005 and also paid Rs.4,500/- per month in the year 2007 and Rs.5,000/- per month at

the end. There is no cross-examination by the defendants as to the enhancement of rent. Therefore, it can be safely construed that in the year 2007, the defendants used to pay a monthly rent of Rs.5,000/- to the plaintiff. Moreover, Ex.A-2 is the legal notice dated 12.03.2007, wherein, the plaintiff has claimed the arrears of rent to an extent of Rs.5,00,000/-, but no reply notice was given by defendant No.1/appellant herein. Therefore, the calculation made by the trial Court as to the arrears of rent payable by the defendants to the plaintiff to the tune of Rs.1,26,000/- is justified.

34. Admittedly, the tenant is in the suit schedule property since 1989 and the suit is filed by the plaintiff in the year 2007 for eviction and the appellant has filed the present appeal in the year 2013, which discloses that the tenant is in possession of the suit schedule property for the past 33 years and the appellant has committed willful default in paying the rents. Therefore, the plaintiff is entitled for the relief of eviction of defendants from the suit schedule premises. Admittedly, there is no written lease agreement between the parties and it is an oral lease. The market value of the property has hiked up. The pleadings and evidence on

record disclose that since the date of inception of tenancy, the appellant was paying meagre amount of rents.

35. The further contention of the appellant that a co-owner cannot file a suit for eviction of tenant without the consent of the other co-owner, is not tenable in view of the judgment of Hon'ble Supreme Court in **Mohinder Prasad Jain's** case (8 supra), wherein, their Lordships have held that the co-owner can file the suit for eviction of tenant even without the consent of other co-owner, as the consent is deemed to have been taken, unless the other co-owner shows the disagreement. Moreover, PW-3 is the co-owner of the plaintiff who corroborated the evidence of PW-1. It is the specific claim of the plaintiff that the rent payable by the defendant is Rs.5,000/- per month. Therefore, there is no necessity to file a suit before the Rent Controller as it does not fall under the pecuniary jurisdiction and the Civil Court has got jurisdiction to try the matter. Hence, the contention of the learned counsel for appellant that the Civil Court has no jurisdiction, is not at all tenable. The judgments relied on by the learned counsel for

appellant are also not applicable to the facts and circumstances of the present case.

36. In view of the above, the appeal is dismissed as devoid of merits, confirming the judgment and decree of the trial Court in O.S.No.403 of 2007, dated 25.03.2013. Further, the appellant shall vacate the suit premises and handover the vacant possession of the suit schedule property to the plaintiff/respondent within two months from today and shall pay the arrears of rent, if any, along with interest. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 02.01.2023

ajr