

P.S. Bharathi Vs. Kamala Devi Dhar (Died) by Lr

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Court : Andhra Pradesh

Decided On : Jan-09-2004

Reported in : 2004(3)ALD778; 2004(3)ALT616

Judge : B.S.A. Swamy, J.

Acts : Transfer of Property Act, 1982 - Sections 106, 106(1), 106(3) and 110;
[Advocates Act, 1961](#)

Appeal No. : SA No. 639 of 1996

Appellant : P.S. Bharathi

Respondent : Kamala Devi Dhar (Died) by Lr

Advocate for Def. : K.V. Simhadri, Adv.

Advocate for Pet/Ap. : M.A. Shakoor, Adv.

Judgement :

ORDER

B.S.A. Swamy, J.

1. One Late Kamala Devi Dhar, who was the owner of the house bearing No. 5-166/2/1 situated at Erragadda, Sanathnagar, Hyderabad, let out the house to the appellant herein in the year 1973 on a monthly rent of Rs. 1200/-. Subsequently

having given a quit notice, she filed O.S. No. 3373 of 1980 seeking eviction of the appellant herein from the suit schedule premises. Ultimately at the intervention of some mediators they seemed to have entered into a compromise where under the appellant agreed to vacate the premises by December, 1985. Ex.A-2 is a compromise memo filed in the Court. Ex.A-3 is a decree passed in that suit. But the appellant, who has no respect for the law of the land, did not vacate the premises, perhaps on the advice of his Counsel whose conduct as noticed by me while considering the Legal Representative Petition as reprehensible one. In these circumstances once again the respondent herein perhaps on the advice of his Counsel issued another quit notice Ex.A.5 dated 25.10.1989 terminating the tenancy from 30.11.1989 and also claimed mesne profits from that date at the rate of Rs. 3,000/- per month. Since the premise is capable of getting the said rent the notice was received by the appellant as per Ex.A.4 postal acknowledgement. The appellant sent reply Ex.A.6 where under he has taken the stand that the respondent is not the owner of the property itself. Hence the respondent filed O.S. No. 1743 of 1990 seeking the relief of eviction of the appellant from the suit schedule premises and for mesne profits at the rate of Rs. 3,000/-per month from 1.12.1989 to till the date of handing over possession of the suit premises to the plaintiff.

2. In the written statement, the appellant contended that the respondent is not the owner of the property and she has only right to receive rents. She also contended that the suit is bad for non-joinder of proper and necessary party the Civil Court has no jurisdiction to entertain the suit, as the provisions of the Rent Control Act are applicable to the suit property, the notice determining the tenancy is bad and not issued by the owner, and the suit premises is not capable of fetching the income of Rs. 3,000/- per month.

3. On the basis of these pleadings, the Trial Court framed the following issues: .

1. Whether the plaintiff is the owner of the suit property?
2. Whether the suit is bad for non-joinder of necessary parties?
3. Whether this Court has jurisdiction to try the suit?

4. Whether the plaintiff is entitled for a decree against the defendant for eviction of the tenant from the suit premises?

5. Whether the plaintiff is entitled for a decree for the mesne profits as prayed for in the plaint?

6. To what relief the parties are entitled?

4. To prove her case, the respondent-plaintiff examined P.Ws.1 and 2 to prove that the premises will fetch a rent of Rs. 3000/- per month and got marked Exs.A1 to A6. No oral or documentary evidence was adduced on behalf of the appellant-defendant.

5. To my surprise the defendant-appellant did not enter into the witness box at all. As per law the contention of the party who has not gone into the witness box and who is not subjected to cross-examination has to be rejected out right and in fact, it has to be held that there is no defence from the side of the defendant. But the advocate for the appellant herein was successful in continuing the litigation for the past 14 years. Be that as it may, the Trial Court on the basis of the evidence available on record held that since the appellant himself is a party to the earlier suit O.S. No. 3373 of 1980 on the file of the IVth Assistant Judge, City Civil Court, which ended in a compromise is estopped from contending or denying the title of the respondent herein to the property. Hence, the trial Court held that the respondent was the owner of the property.

Issue No. 2: The appellant has taken the plea of non-joinder of proper and necessary party. But he miserably failed to establish as to how the suit is bad for non-joinder of necessary parties and the issue was also held against the appellant.

Issue No. 3: From Ex.A.2 the compromise memo in O.S. No. 3373 of 1980 coupled with the evidence of the respondent herein as P.W.I, the monthly rent of suit premises is more than Rs. 1000/- and as such the building is exempted from the provisions of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 as per G.O. Ms. No. 636 General Administration (Accommodation-A) dated 29.12.1983. Hence the provisions of the Rent Control Act have no application to

the suit. Hence the respondent rightly invoked the jurisdiction of the Civil Court in seeking the relief of eviction of the appellant herein.

Issue No. 4: Ex.A.5 is the notice dated 25.10.1989 where under the tenancy was terminated with effect from 30.11.1989, which is in accordance with the provisions of Section 106 of the Transfer of Property Act. Hence, the defendant having obtained the suit premises on lease is bound to handover the vacant possession of the same to the plaintiff after termination of the tenancy.

Issue No. 5: From the evidence of respondent (P.W.1) and P.W.2 the premises will fetch a monthly rent of Rs. 3,000/- and no rebuttal evidence was let in by the appellant herein. Hence, the trial Court held that the premises will fetch a rent of Rs. 3,000/- per month.

6. Thus, the Trial Court held all the issues in favour of the plaintiff (respondent herein) and decreed the suit with costs and the appellant herein was directed to handover the vacant possession of the suit premises to the respondent herein.

7. The appellant carried the matter in appeal by filing A.S. No. 6 of 1995 on the file of the Additional Chief Judge-cum-Principal Special Judge, for SPE and ACB Cases, City Civil Court, Hyderabad by contending that the quit notice is not in accordance with Section 106 read with Section 110 of the Transfer of Property Act. The appellate Court by its judgment and decree dated 17.9.1996 confirmed the judgment of the Trial Court and gave three months time to the appellant to hand over the vacant possession of the suit schedule house to the respondent herein.

8. Aggrieved by the same, the present second appeal is filed by the defendant. During the pendency of this appeal, the respondent died and without bringing the legal representatives on record, she went on making alterations to the suit schedule premises even after the respondent's Counsel served notice under Order 22, Rule 10-A to bring the present respondent Veena Sahay as legal representative of the respondent. When the appeal came up for hearing on 24.12.2003 and what happened thereafter was already adverted into while ordering the legal representatives petition.

9. The only question now Mr. M.A. Shakoor having present in the Court contended that the quit notice given by the respondent herein did not comply with the provisions of Sections 106 and 110 of the Transfer of Property Act. His case is that in case of month-to-month tenancy, the tenancy has to be determined by 15 days notice co-terminable with the end of the month. The contention of the appellant's Counsel is that the date of commencement of the tenancy has to be excluded and as that was not done, the notice is not in accordance with Section 106 of the Transfer of Property Act. Admittedly in case of a monthly tenancy of an immovable property, the tenancy can be terminated by giving the 15 days notice. The words could terminate with that of the end of the month is not there. Admittedly, in this case, notice was given on 25.10.1989 determining the tenancy with effect from 30.11.1989 that is almost the notice was given 35 days before the end of the month of November 1989. Assuming for argument sake, if there is any force in the contention of the appellant's Counsel that the tenancy commences from 2nd of that month under Section 106 of the Transfer of Property Act, 15 days notice alone has to be given. 15 days time expires on 16th November. The Counsel tried to cite some decisions. We need not go into all these facts, since there is the legislative change to the Transfer of Property Act and the old Section 106 was substituted by new Section, we need not refer to any decisions even if they are favourable to the appellant for the reasons that under Section 106 of the Transfer of Property Act even if the notice given by the owner of the immovable property invalid under Sub-section (1) of the Act on the ground that the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section the suit can not be held to be bad.

10. Admittedly, in this case the suit was presented on 4.12.1989 (i.e.,) four days after the notice period expired. Hence, I do not find any substance in the contention of the appellant herein.

11. As far as the mesne profits are concerned in the absence of any rebuttal evidence keeping in mind the report of the Advocate Commissioner that the suit building is situated on National High Way Hyderabad to Bombay at Sanathnagar. It has to be held that the premises fetches a rent of Rs. 3,000/- per month. No

other issues were raised by the appellant Counsel before this Court. The other contention that Veena Sahay is not the legal heir of the respondent herein was already dealt with supra.

12. With regard to the payment of arrears, this Court granted interim stay of eviction on condition that the appellant deposits the entire arrears of rent at the rate of Rs. 1,200/- per month within six weeks and on payment of Rs. 2,400/- per month from September, 1996 onwards on or before 10th of every month. Arrears from September to December are to be paid within six weeks. While the Counsel for the respondent brought to my notice that the appellant even violated this order, the Counsel for the appellant submitted that his client was regularly depositing the rents and there are no arrears of rent payable to the respondent. He produced bank challan dated 2.1.2004 whereunder he paid the rent for seven months. It is not known for which seven months he paid the rent. The fact remains that after the advocate for the appellant appeared before this Court on 30th December, 2003, this amount was paid. The respondent's Counsel is permitted to verify the rent deposit register and if any further amounts are payable, he shall serve a notice on the appellant claiming the said amount and the appellant has to pay the amount within one week thereafter.

13. Accordingly the Second Appeal is dismissed as devoid of merits.

14. Since the appellant squatted on the property unreasonably beyond anybody expectation, she is given one week time to vacate the premises and hand over the vacant possession of the suit property to the respondent. If she fails to vacate the premises and if the respondent is forced to file an execution petition, the Executing Court shall dispose of the execution petition within one month from the date of filing of application by getting the notice served through a special messenger on the appellant herein and pass orders.

15. Before parting with the case, it is mentioned that as per the Advocate Commissioner's report dated 8.1.2004, the tenant carried substantial alterations and modifications to the suit schedule premises either without the permission of the respondent or the Court. The learned Counsel for the appellant fairly conceded that her client made alterations to the building even without obtaining permission

from the Municipal Corporation of Hyderabad. It is open to the respondent to take such other steps that are available in law including launching criminal prosecution for effecting modifications and alterations to the suit schedule premises without her consent.

16. Coming to the role of the advocate, he is the Counsel for the appellant throughout that is from the time of filing of O.S. No. 3373 of 1980. The compromise memo was filed by him wherein the appellant admitted the respondent's title to the property. The appellant has to vacate the suit schedule premises by December, 1985. That was not done. When the second suit was filed the defendant has taken the stand that the respondent herein is not the owner of the property and Veena Sahay is the owner of the property and when Veena Sahay tried to come on record after the death of the respondent herein, as her step-daughter being the daughter of late P.C. Dhar through his first wife. He did not choose to bring her on record as legal representative and he himself decided that she is not the legal heir and advised his client to carry on the alterations to the building. After receiving notice from this Court, he appeared before this Court and undertook to file necessary petitions by 6th January, 2004. Neither he filed the petitions as promised by him nor he appeared before this Court on that day. Again at the instance of the Court, the respondent gave a telegraphic notice on 6.1.2004 stating that the case will be taken up for hearing on 7.1.2004 morning. Even then, he did not choose to appear before this Court. I have no manner of doubt that he is avoiding the Court for obvious reasons. Knowing the tricks of the trade, that he is avoiding the Court to protract the litigation, in the event of myself disposing of the case in his absence by contending that this order was passed behind the back of the appellant, I appointed an Advocate Commissioner under the guise of getting status report so that he may at least come to the Court the next day. Knowing fully well the advocate commissioner visited the suit schedule premises, he did not choose to appear before this Court on 8.1.2004. Again if I ordered the legal representative petition without notice to him, he may try to take advantage of the situation. Hence, I got the petitions served on his client and himself. At last the advocate appeared in the Court today and argued the matter. I have no hesitation to hold that the conduct of the Advocate is highly reprehensible and unbecoming of an advocate, which amounts to professional misconduct. He being the Officer of

the Court failed to discharge his professional obligations and he went on hiding from the Court, so that if any orders are passed in his absence, he can contend that these are ex parte orders. Hence, I refer the matter to the Bar Council for taking appropriate action against Mr. M.A. Shakoor, Taj Apartments, 9-1-93/2/1OB, S.D. Road, Secunderabad for professional misconduct I also give the liberty to the respondent herein to initiate criminal proceedings against the advocate for misguiding the Court and prolonging the litigation even without examining his client at the stage of trial itself for over 14 years, if law permits. No costs.

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