

Shiv Raj Vs. Ashok Kumar and Another

Shiv Raj Vs. Ashok Kumar and Another

SooperKanoon Citation : sooperkanoon.com/434690

Court : Andhra Pradesh

Decided On : Mar-22-2001

Reported in : 2001(3)ALD213; 2001(4)ALT40

Judge : V. Eswaraiah, J.

Acts : Andhra Pradesh Buildings (Lease Rent and Eviction) Control Act, 1960;
[Code of Civil Procedure \(CPC\), 1908](#); Rent Control Act

Appeal No. : SA No. 354 of 1995

Appellant : Shiv Raj

Respondent : Ashok Kumar and Another

Advocate for Def. : Mr. M.V. Suresh, Adv.

Advocate for Pet/Ap. : Mrs. Jayashree Sarathy, Adv.

Judgement :

1. The defendant, who is the tenant of the suit schedule property, filed this second appeal against the judgment and decree dated 4-4-1995 made in AS No.199 of 1991 on the file of the Additional Chief Judge, City Civil Court, Hyderabad, reversing the judgment and decree dated 12-8-1991 in OS No.546 of 1988 in the file of the X Assistant Judge, City Civil Court, Hyderabad.

2. The respondents herein are the plaintiffs and the landlords of the suit schedule premises. The parties herein are referred to as arrayed in the suit.

3. The plaintiffs filed the suit for eviction of the defendant, for arrears of rents and for future mesne profits, and costs. The said suit filed by the plaintiffs was dismissed by the Trial Court, against which, the plaintiffs filed an appeal. The Lower Appellate Court allowed the appeal and decreed the suit filed by them directing the defendant to vacate the suit mulgi within 3 months from the date of the judgment and handover vacant possession of the same to the plaintiffs within the said period. It was further directed that the defendant shall pay to the plaintiffs an amount of Rs.100/- per month from 1-12-1987 till the date of delivery of possession. It was also directed that the plaintiffs shall pay differential Court-fee on the arrears of rent, etc. Questioning the said judgment and decree dated 4-4-1995, the defendant filed this second appeal under Section 100 CPC.

4. Brief facts of the case are that the plaintiffs are the absolute owners of the suit schedule property, and the defendant is a tenant on the monthly rent of Rs.100/- excluding electricity charges, and the suit mulgi was constructed in the month of April, 1982. The defendant executed a rental agreement dated 9-7-1982 in favour of the plaintiffs. The tenancy was for 11 months. The rent was payable on or before 5th of every month. The defendant was very irregular in payment of rent, and he also filed a suit in OS No.2310 of 1992 for injunction against the landlords restraining them from interfering with his possession and from evicting him from the suit mulgi without due process of law. The said suit was decreed. The defendant was in arrears of rent for 15 months. Therefore, the plaintiffs got issued a legal notice dated 7-10-1987 calling upon the defendant to pay the arrears. The plaintiffs also terminated the tenancy by the said notice dated 7-10-1987. The defendant acknowledged the said notice but did not vacate the suitmulgi. Thus, from 1-12-1987 onwards, the defendant's possession is unlawful, and therefore, they claimed damages for use and occupation till the vacant possession of the mulgi is handed over to the plaintiffs.

5. The defendant opposed the suit by filing a written statement contending that he is an old tenant, and the rent was enhanced from time to time from Rs.5/- to

Rs.30/-. The shop was in a dilapidated condition, and at the request of the plaintiffs, the defendant handed over the vacant possession of the suit shop for the purpose of reconstruction, and after reconstruction, the plaintiffs agreed to let out the said premises to the defendant, and accordingly, an agreement was executed on 21-1-1982 (Ex.B-1). The rent of the suit shop was fixed at Rs.100/- per month after reconstruction. The plaintiffs completed the reconstruction in the month of April, 1982.

The plaintiffs failed to deliver possession of the mulgi after reconstruction; but on mediation by the elders, possession was handed over to the defendant on 9-7-1982. The defendant denied all other allegations and stated that the notice issued by the plaintiffs terminating the tenancy is illegal, and the plaintiffs are not entitled to file the suit for eviction under Section 106 of the Transfer of Property Act; the defendant is not liable to pay any amount to the plaintiffs; there is no cause of action to file the suit; and the suit is liable to be dismissed on the ground that the suit premises are only reconstructed; and it is hit by G.O. Ms. No.636, dated 26-10-1983; the suit mulgi 9 governed by the Rent Control Act; and therefore, the Civil Court has no jurisdiction to try the suit.

6. The Lower Appellate Court framed the following issues:

1. Whether the civil Court has no jurisdiction to try the suit?
2. Whether the plaintiff/appellant is entitled to the reliefs claimed in the suit?
3. Whether there are any grounds to interfere with the judgment of the trial Court? If so, to what relief the appellant is entitled?

The Lower Appellate Court answered all the issues in favour of the plaintiffs and decreed the Suit by allowing the appeal.

7. On behalf of the plaintiffs, the 2nd plaintiff was examined as PW1 and one Shivilal Patel as PW2. On behalf of the defendant, the defendant-tenant was examined as DW1 and one Janak Ram, the 2nd attestor of Ex.B1 agreement, was examined as DW2. On behalf of the plaintiffs, Exs.A1 to A6 are marked; and on behalf of defendant, Exs.B1 and B2 are marked. Through PW1, Exs.X1 to X6 were

also marked, which are rent receipts, rent receipt book and counter-foils. Ex.X6 is the cross-examination by the defendant dated 28-7-1987 in OS No.2310 of 1982.

8. It is the contention of the defendant-tenant that the suit premises is an old premises and it is more than 10 years old, and the rent payable is less than Rs.1,000/-, and therefore, the tenant is protected by the Rent Control Act in view of the notification issued in G.O. Ms. No.636, dated 26-10-1983. The learned Counsel for the appellant further submits that the civil Court has no jurisdiction and only the Rent Controller has the jurisdiction over the matter in view of G.O. Ms. No.636, dated 26-10-1983, which was published in the gazette on 2-1-1984. As per the said GO, the building for a period of 10 years from the date of construction and buildings of which monthly rent exceeds Rs.1,000/- are exempted from the operation of the provisions of the Rent Control Act. It is the contention of the learned Counsel for the appellant that the building is an old building and the age of the building is much more than 10 years and the landlords have not reconstructed the building and the mere change of the roof cannot lose the nature of the building to say that it is a new building but not a building of more than 10 years old.

9. The substantial questions, of law that argued for consideration in this second appeal are -

1. Whether the suit mulgi is an old building of more than 10 years old as on the date of filing of the suit OS No.546 of 1988 or it is a new building? And

2. Whether the civil. Court has jurisdiction to entertain the suit filed by the plaintiffs?

10. The Trial Court held that as per Exs.B1 and B2, the tenant vacated the premises for the purpose of reconstruction and handed over the same to the plaintiffs on certain conditions, and as the tenant himself agreed to reconstruct as per the agreement entered into by them and pursuant to the agreement only, the building was reconstructed, and therefore, the tenant will not lose his right to continue in the premises and the rent being less than Rs.1,000/-, the civil Court has no jurisdiction, and accordingly dismissed the suit. The Lower Appellate Court, on appreciation of the oral and documentary evidence, held that the building is a

new building, which was reconstructed according to the admitted documentary evidence, and therefore, the civil Court has jurisdiction, and accordingly allowed the appeal and decreed the suit.

11. The first agreement entered into between the parties, i.e., the plaintiffs and the defendant, is Ex.B1 dated 21-1-1982. It is clearly stated therein that the plaintiffs are the owners of the suit schedule property bearing No. 14-9-569, Chudi Bazar, Hyderabad, and the defendant is the tenant of the said shop. In the said agreement, it was agreed between the parties that the shop has become old and it is in a dilapidated condition, and the plaintiffs want to reconstruct the shop and the request of the plaintiffs has been agreed by the defendant to vacate the shop for the purpose of reconstruction and to let out the same on the monthly rent of Rs.100/- after reconstruction. After reconstruction of the mulgi, the defendant entered into an agreement in favour of the plaintiffs in Ex.A1 dated 9-7-1982, in which, it is clearly stated that the owners have constructed the RCC mulgi bearing No.14-9-569 at Chudi Bazar, Hyderabad in the month of April, 1982. The original agreement (Ex.B1 dated 21-1-1982) was entered into between the parties for the construction of the mulgi. The said recital have been agreed in Ex.A1 stating that the mulgi was constructed with RCC in April, 1982. Pursuant to the rental agreement (Ex. A1), the tenant occupied the said premises agreeing to pay Rs.100/-per month, and the tenancy is for a period of 11 months from 9-7-1982 to 31-5-1983, and the rent is payable on or before 5th of every month. The preamble and Clause 7 of Ex.A1 clearly shows that it is newly constructed RCC mulgi in April, 1982. In Ex.A5, the defendant clearly admitted in his own earlier suit filed by him that the suit mulgi is a reconstructed one and the plaintiffs demolished the old structures and constructed the new mulgies by raising RCC pillars from the ground level. In the cross-examination, the defendant was confronted with Ex.A5 and the defendant admitted as having stated in Ex.A5 that the mulgi was reconstructed with RCC. DW2, who was examined on behalf of the defendant, agreed that as per the agreement, the whole building was dismantled and a new mulgi was constructed with foundation. Thus, the Lower Appellate Court found that the suit mulgi is constructed afresh in April, 1982, and the defendant himself entered into a rental agreement (Ex.A1) admitting that the suit mulgi is constructed in April, 1982, and therefore, it is not open to the defendant to contend that it is an old building

and the Rent Controller has no jurisdiction.

12. The findings of fact recorded by the Lower Appellate Court basing on the oral and documentary evidence that the suit mulgi is a reconstructed one and it is a new building, and whether permission was taken or not, it is immaterial to treat it as a new building, and therefore, the defendant cannot press into service the notification issued in G.O. Ms. No.636, dated 26-10-1983 published in the Gazette dated 2-1-1984. As long as the building is a new building as on the date of filing of the suit and the rent payable is less than Rs.1,000/-, the provisions of the Rent Control Act are not applicable.

13. The suit is filed in the year 1988 and the building is constructed in April, 1982, and therefore, the building is a new building and the civil Court has jurisdiction as held by the Lower Appellate Court.

14. The aforesaid questions are accordingly answered in favour of the plaintiffs, and I do not see any substantial question of law to interfere with the findings of fact recorded by the Lower Appellate Court.

15. Having regard to the facts and circumstances of the case, on filing an undertaking by the defendant-tenant agreeing to vacate the suit mulgi within 5 months from today and also subject to payment of rent @ Rs.100/- per month, five months' time is granted to the defendant to vacate and handover the vacant possession of the suit mulgi to the plaintiffs. The tenant shall file the undertaking within one month from today before the Trial Court. If no such undertaking is filed within one month from today, it is open to the plaintiffs to execute the decree.

16. The second appeal is accordingly dismissed. No costs.