

THE HONOURABLE SRI JUSTICE
A.GOPAL REDDY

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S.A.No.889/2011

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Date of Judgment: 5-8-2011

Between:

Srinivasa Rice Company, represented by its Proprietor, Somisetty
Venkateswarlu, Vijayawada-2

..Appellant

And

1. T.V. Bhaskara Sastry (died) and others

...Respondents

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The Court made the following::

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Judgment:

The unsuccessful defendant in the trial Court as well as the lower appellate Court has filed this Second Appeal against the judgment and decree dated 7-7-2011 passed in AS No.223/2007 on the file of II Additional District Judge, Vijayawada, whereunder learned Judge dismissed the appeal confirming the judgment and decree dt. 28-9-2007 passed in OS No.2094/2004 on the file of Principal Junior Civil Judge, Vijayawada, decreeing the suit filed by the respondent No.1/plaintiff seeking a direction to the defendant to vacate and deliver the plaint schedule premises and to pay damages at Rs.12,000/- per month to be paid by the defendant to the plaintiff from the date of suit till the eviction of the defendant from the plaint schedule premises.

During the pendency of the appeal before the lower appellate court, the first plaintiff who filed the suit died and his legal representatives were brought on record as respondents 2 and 3.

For the sake of convenience, the parties herein will hereinafter referred to as arrayed in the trial court.

The first plaintiff instituted the above suit for eviction and for damages at Rs.12,000/- per month, stating that he is the owner of the building bearing D.No.27-21-6 situated in Ayyadevara Kaleswara Rao

Road, Vijayawada; he let out a portion to the defendant and now the monthly is Rs.3795/-; the defendant without the consent of the plaintiff made some alterations in the building; as the plaintiff wanted to occupy the said building for his personal occupation, he issued a quit notice dt. 3-7-2003; the plaintiff issued another notice dt. 9-12-2003 terminating the tenancy by 31-12-2003; the defendant sent a reply dt. 26-12-2003 requesting time for vacating the premises but failed to vacate the premises; the plaintiff got issued another quit notice dt. 31-5-2004 demanding the defendant to deliver vacant possession by 1-6-2004; the defendant having received the notice gave reply on 12-5-2004 refusing to vacate the plaintiff schedule premises; the present monthly rent of the premises is more than Rs.12000/- and the neighbour of the defendant is paying more than Rs.12000/- to him, which is relatively small premises.

The appellant/defendant filed a written statement stating that the plaintiff accepted lease for 33 years; on accepting the lease by the plaintiff, the defendant spent huge amount and repaired the old building in the year 1980; the lease deeds were executed between the plaintiff and the defendant from time to time and the last one was on 7-7-1995; that as per the understanding between the plaintiff and the defendant, the lease should be extended for a further period of 9 years from 1-6-2004 to 10-5-2013 by enhancing the rent at 20% for every three years; the plaintiff has no manner of right to terminate the tenancy before 31-5-2013; that even after giving reply notice dt. 26-12-2003 by the defendant, the plaintiff requested the defendant to enhance the rent at the rate of 30% for every 3 years from 1-6-2004 to 31-5-2013 instead of 20% as agreed earlier; though it is excessive the defendant accepted the plaintiff's proposal with a view to avoid litigation; the plaintiff having accepted the same again got issued

another legal notice with all false and baseless contentions; the plaintiff is not entitled to evict the defendant prior to 31-5-2013; the quit notice issued by the plaintiff is not in accordance with the provisions of Transfer of Property Act; the suit is bad for mis-joinder and non-joinder of proper parties as the suit is not filed properly against proper person; the court fee by the plaintiff is not correct and the plaintiff has not properly valued his claim.

On the above pleadings, the trial court framed the following issues for trial:

1. Whether the quit notice is valid?
2. Whether there is any understanding for continuation of tenancy till 31-5-2013 as claimed by the defendant?
3. Whether the suit is bad for mis-joinder or non-joinder of proper parties?
4. Whether the plaintiff is entitled for eviction of the defendant and recovery of vacant possession as prayed?
5. Whether the plaintiff is entitled to damages @ Rs.12,000/- per month as prayed?
6. To what relief?

Before the trial court, on behalf of the plaintiffs, P.Ws.1 and 2 were examined and Exs.A-1 to A-11 were marked. On behalf of the defendant, D.Ws.1 to 4 were examined and Exs.B-1 to B-3 were marked. Ex.D-1 was marked through D.W.4.

The trial court, on appreciation of the oral and documentary evidence, on issue Nos.1,2 and 4 held that the quit notice is valid, which is terminable by 15 days notice; mere acceptance of rent did not by itself constitute an of waiver unless there is an intention to treat the lease as subsisting and in view of the law declared by the Supreme Court in **SARUP SINGH GUPTA V. S. JAGDISH SINGH**^[1] the plaintiff validly terminated the lease and he is entitled for eviction of the defendant from the suit schedule premises and for vacant

possession. On issue No.5, the trial court held that the 30% enhancement of lease amount for every three years would be reasonable and the plaintiff is entitled to the said amount as damages from 1-6-2004 and answered the issue No.5 in favour of the plaintiff. Issue No.3 was answered in favour of the plaintiff holding that the suit is not bad for non-impleadment of P.Venkata Ratnam, a partner of the defendant and holding so decreed the suit. On appeal being filed by the defendant, the lower appellate court dismissed the appeal confirming the judgment and decree of the trial court.

Sri D. Prakash Reddy, learned Senior Counsel appearing for the appellant/defendant contends that even after termination of the lease under Ex.A-8, once the plaintiff accepted rents and continuously receiving rents, he has waived the quit notice, and the tenancy is renewed from time to time notice issued under Section 106 of the Transfer of Property Act is not a valid notice terminating the tenancy of the defendant.

Both the contentions were considered by the trial court as well as the lower appellate court and rejected the same.

It is now fairly well settled that mere acceptance of rent did not by itself constitute an act of the nature envisaged by Section 113 of the Transfer of Property Act, and even after accepting the rent, if the landlord has unreasonably has not taken any steps to get the tenant evicted for quite a long time, it amounts to waiver.

Admittedly, in the present case, the suit was instituted on 22-6-2004 ie., after expiry of the notice period with effect from 31-5-2004 demanding the tenant to vacate the premises by 1-6-2004. Therefore, receiving of rents is in consequential and will not amount to express waiver of termination of tenancy.

The concurrent findings recorded by both the courts are

based on appreciation of evidence, and cogent reasons were assigned for coming to such conclusion, which do not suffer from any manifest illegality. Therefore, I do not find any question of law, much less substantial question of law arises for consideration in the second appeal.

The second appeal is accordingly dismissed at the admission stage.

Since the appellant/defendant/tenant is in possession of the suit schedule property for last 30 years and is carrying on business in the said premises, time is granted till 31st March, 2012 for eviction of the appellant/defendant/tenant subject to condition of his paying to the respondent/plaintiff/landlord arrears of rent as awarded by the trial court ie., at Rs.3795/- with 30% increase for every three years within three (3) months from today; by giving undertaking that he would vacate and deliver the vacant possession of the suit schedule premises to the respondent/plaintiff/landlord by 1-4-2012; and also paying monthly rent at the enhanced rate till 31-3-2012 on or before 10th of every succeeding month.

5-8-2011

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A.GOPAL
REDDY, J.

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[\[1\]](#) (2006) 4 SCC 205