

HON'BLE SRI JUSTICE R. SUBHASH REDDY

SECOND APPEAL No.295 of 2014

JUDGMENT:

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908, is filed by the defendants in the suit in O.S.No.401 of 2009 on the file of the I Additional Senior Civil Judge, Visakhapatnam, aggrieved by the judgment and decree dated 27.06.2011, as confirmed by the I Additional District Judge, Visakhapatnam, by judgment and decree dated 05.02.2014, passed in A.S.No.116 of 2011.

The respondents-plaintiffs filed the suit in O.S.No.401 of 2009 on the file of the I Additional Senior Civil Judge, Visakhapatnam, seeking eviction of the appellants-defendants from the suit schedule property and also for payment of future rent at the rate of Rs.10,000/- per month. The appellants-defendants contested the suit.

Before the trial Court, on behalf of the respondents-plaintiffs, P.W.1 was examined and Exs.A.1 to A.12 were marked. On behalf of the appellants-defendants, D.Ws.1 and 2 were examined and Exs.B.1 to B.12 were marked.

The trial Court, having considered the oral and documentary evidence on record, decreed the suit by judgment and decree dated 27.06.2011 granting relief of eviction and negatived the relief for future profits.

Against the said judgment and decree of the trial Court, the appellants-defendants filed A.S.No.116 of 2011 on the file of the IV Additional District Judge, Visakhapatnam. The first appellate Court dismissed the appeal with costs, by judgment and decree dated 05.02.2014. Aggrieved thereby, this Second Appeal is filed.

Heard Sri Raja Reddy Koneti, learned counsel for the appellants-defendants and Sri VLNGK Murthy, learned counsel for the respondents-plaintiffs and perused the material on record.

It is not in dispute that late Sri N.S.N. Reddy was the absolute owner and possessor of the suit schedule property. During his lifetime, he purchased vast extent of land at Endada village and divided the same into plots, by obtaining layout from the competent authority and retained an extent of 1800 Sq. Yards of site and constructed a building thereon, which was named as "Vivekananda Ashram". The husband of the 1st appellant was the own brother of late Sri N.S.N. Reddy. During the lifetime of late Sri N.S.N. Reddy, he allowed his brother late Sri N. Gurunadha Reddy and the appellants herein to stay in a shed constructed by him, without any rent.

After such property was gifted by late Sri N.S.N. Reddy to his heirs, appellants were allowed to stay in the suit schedule property and when the appellants-defendants did not vacate, the aforesaid suit was filed.

From a reading of the judgment of the trial Court and the first appellate Court, it is clear that title of late Sri N.S.N. Reddy is not disputed. It is only the plea of the appellants-defendnats that there was an assurance by late Sri N.S.N. Reddy to give 400 Sq. Yards out of total area of 1800 Sq. Yards, to late Sri N. Gurunadha Reddy. The trial Court disbelieved the case of the appellants-defendants with regard to the said assurance and by recording a finding that there was no valid transfer of the suit schedule property by late Sri N.S.N. Reddy or his heirs, ordered for eviction, which has been confirmed by the first appellate Court. There is concurrent finding of fact to the effect that respondents-plaintiffs have derived title from late

Sri N.S.N. Reddy, who was the original owner of the property and in absence of any valid transfer, appellants-defendants cannot continue to be in possession. In view of the concurrent finding of fact, I do not find any questions of law for consideration, as required under Section 100 CPC, so as to admit this Second Appeal.

For the aforesaid reasons, this Second Appeal is dismissed. However, the appellants-defendants are granted time till the end of August, 2014 to vacate the suit schedule premises, subject to condition of filing an undertaking before this Court within a period of three weeks from the date of receipt of this order, that they will vacate the premises by the end of August, 2014, by

serving a copy of such undertaking on the learned counsel for the respondents-plaintiffs. It is made clear that if such undertaking is not filed, it is open for the respondents-plaintiffs to take steps for eviction of the appellants-defendants in accordance with law. No order as to costs.

R. SUBHASH REDDY, J

29 April 2014
MRR