
(2014) 09 AP CK 0075

In the Andhra Pradesh High Court

Case No : Second Appeal No. 32 of 2014

Indian Oil Corporation Limited

APPELLANT

Vs

Epuri Prithvisen Reddy

RESPONDENT

Date of Decision : 10-09-2014

Acts Referred:

Transfer of Property Act, 1882 — Section 116

Citation : (2015) 1 ALD 653 : (2015) 4 ALT 256

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : C.A.R. Seshagiri Rao, Advocate for the Appellant; Aadesh Varma, Advocate for the Respondent

Judgement

R. Kantha Rao, J.

1. This second appeal is filed against the judgment and decree dated 25.10.2013 in A.S. No.52/2010 passed by the 1st Additional District Judge, Warangal whereunder and whereby the decree and judgment in O.S. No.181 of 2006 dated 27.01.2010 passed by the Principal Senior Civil Judge, Warangal is confirmed.

2. I have heard Sri C.A.R. Seshagiri Rao, learned counsel appearing for the appellant and Sri Aadesh Varma, learned counsel appearing for the respondent.

3. The appellant is the defendant. The respondent is the plaintiff. The parties are referred to as they are arrayed in the suit in the trial Court.

4. The factual matrix giving rise to filing of this second appeal may be stated shortly as follows:

The defendant-Indian Oil Corporation Limited obtained the suit premises on lease from the mother of the plaintiff by name Vinoda Reddy on 02.01.1973. The lease was taken for establishing of a retail outlet of petroleum products. The period of lease was 20 years and was due to expire by 16.08.1992. Under Ex.A1 lease agreement dated 02.01.1973 the rent for the first 5 years is Rs. 180/- per

month, for the second 5 years @ Rs. 200/- per month, and @ Rs. 235/- per month for the next 10 years. Even before the expiry of the lease, the mother of the plaintiff filed original suit being O.S. No.77/1988 against the defendant seeking eviction on the ground of default in payment of rents. The said suit however was dismissed holding that the lease period was not expired and the terms of the lease agreement are not unconscionable. The mother of the plaintiff did not prefer any appeal against the said judgment. Subsequently, the mother of the plaintiff expired and the plaintiff stepped into her shoes as her legal representative.

5. Even though the lease period expired by 16.08.1992, the defendant did not vacate the premises, thereafter, the plaintiff who is the son of the original lessor filed original suit in O.S. No.181/2006 on the file of the Principal Senior Civil Judge, Warangal seeking eviction of the defendant on the ground that the defendant committed default in payment of rents from January, 1994 onwards and it was liable to pay damages for unauthorized use and occupation of the premises by remaining in possession of the same after the expiry of the lease period. Before instituting the suit, the plaintiff issued legal notices dated 30.07.1997 and 15.07.1999 demanding the defendant to vacate the suit schedule premises and payment of arrears of rent and damages @ Rs. 8,000/- per month. The defendant did neither respond to the aforesaid notices nor did it pay the agreed rent or damages claimed in the notices. On that, the plaintiff filed the aforesaid suit.

6. The learned trial Court passed a decree and judgment dated 27.01.2010 holding that the defendant Corporation failed to prove that it paid the rents after the expiry of 20 years of lease period and therefore, it is liable to vacate the schedule premises. However, the trial Court took the view that the defendant which has been continuing in possession of the schedule premises cannot be treated as a trespasser, it is either tenant by sufferance or holding over, it paid municipal tax on behalf of the plaintiff and therefore, it has right to continue in possession after the expiry of the lease period till it is evicted by due process of law. Consequently, the trial Court held that the plaintiff is not entitled to claim damages. The trial Court accordingly passed a judgment and decree in favour of the plaintiff and against the defendant, directing the defendant to handover the vacant possession of the plaintiff schedule premises to the plaintiff within 6 (six) months from the date of the judgment.

7. Feeling aggrieved, the defendant preferred appeal in A.S. No.52/2010 on the file of the 1st Additional District Judge, Warangal, which came to be dismissed, confirming the decree and judgment of the trial Court. The present second appeal thus arises from the concurrent findings recorded by both the learned Courts below.

8. Upon perusing the judgments passed by the learned Courts below, perusing the material papers available on record and on hearing the learned counsel appearing on either side, the following substantial questions of law have been

formulated for consideration in this second appeal.

a) When a Court of competent jurisdiction gives a finding by interpreting a document as valid and binding and which decision attained finality, can a different Court in different suit sit in judgment of that finding and can conclude differently?

b) When a contract between the parties is reduced into writing, registered and acted upon, is one party to the contract entitled to rescind from the same without following the agreed terms?

c) Whether a notice issued in 1997 and 1999 is valid and can be taken as a quit notice for a suit filed in the year 2006 that is after a lapse of almost a 7 years?

d) Whether a finding given by a competent Court and which is not appealed from, operates as *res judicata* and can be held to be invalid in a different suit by a different Court between the same parties?

9. In fact, the substantial questions of law (a) & (b) are pure questions of law and cannot be said to be substantial questions of law. The substantial questions of law would be the one with reference to the rights of the parties in the suit otherwise it would be only a pure question of law. From the aforesaid substantial questions of law which have been formulated, only two questions require to be considered in the present second appeal.

10. The first one relates to the finding of the trial Court in O.S. No.77/1988 filed by the mother of the plaintiff to the effect that one of the terms contained in the lease agreement providing for renewal of lease for every 5 years after expiration of the original period is not unconscionable since has not been appealed against became final and would operate as *res judicata* in the subsequent suit filed by the plaintiff who is the son. To decide the aforesaid question, it has to be borne in mind that a previous decision on a matter in issue would alone operate as *res judicata* but the observations made while rendering the decision or the reasons furnished for the decision do not come under the purview of *res judicata*.

11. The term providing for automatic renewal of lease for every 5 years after the expiration of original agreement has been generally dealt with by the trial Court and its observations regarding the aforesaid term will not in a subsequent suit operate as *res judicata*. Moreover, the suit filed by the mother of the plaintiff was dismissed mainly on the ground that the lease period was not expired. Thereafter her son filed the subsequent suit and therefore, it is on a different cause of action i.e. seeking eviction after the expiration of the lease. As the subsequent suit is based on different cause of action, the decision on earlier suit cannot operate as *res judicata* in a later suit. The observation made by the trial Court in the earlier suit is in the nature of making lease perpetual or eternal which was certainly not at all the intention of the parties. Therefore, the observation made by the trial Court that terms are not unconscionable is contrary to the settled proposition of law. When a judgment is rendered by a Court much against the

settled principles of law can never operate as *res judicata*.

12. In *Naveen Chand v. Nagarjuna Travels & Hotels Pvt.Ltd.* relied on by the learned counsel for the appellant, the Supreme Court held as follows:

The tenant cannot assume unilateral right of renewal without actual settlement of terms and conditions between the parties. If the terms are vague and uncertain regarding the renewal, the Court must ascertain the intention of the parties from material on record. Mere acceptance of rent after expiry of lease does not mean that the lease has been renewed.

13. The learned counsel appearing for the respondent also relied on the very same decision and as per the ratio laid down by the Apex Court in the decision, there is nothing like automatic renewal of lease and there must be a subsequent agreement between the parties regarding the renewal of lease. Having regard to the facts and circumstances before it, the Apex Court expressed the view that it is difficult to accept that the parties had intended that the lessees can unilaterally exercise the right of renewal without the terms and conditions of renewal being settled between the parties.

14. In *Hardesh Ores (P) Ltv. V. Hede and Company* relied on by the learned counsel appearing for the respondent, the Supreme Court having regard to the facts identical to the facts on hand, held as follows:

In the instant case, the appellant/plaintiff did exercise their option under the original agreement and claimed renewal. The respondents denied the appellants right to claim renewal in express terms and also unequivocally stated that the agreement did not stand renewed as contended by the appellants.

15. In order to give effect to the renewal of an agreement or a lease, a document has to be executed evidencing the renewal of the agreement or lease, as the case may be, in accordance with law evidencing the renewal. The grant of renewal is also a fresh grant. There is no concept of automatic renewal of lease by mere exercise of option by the lessee. This may be distinguished from an extension of an agreement where a new document is not required. Enforcement of the negative covenants presupposes the existence of a subsisting agreement.

16. Similarly, in *C.Albert Morris v. K.Chandrasekaran* the Supreme Court held as follows:

The consensus of the judicial opinion is that a mere continuance in occupation of the demised premises after the expiry of the lease, notwithstanding the receipt of an amount by the quondam landlord, would not create a tenancy so as to confer on the erstwhile tenant the status of tenant or a right to be in possession.

17. The second question would be whether an eviction can be ordered based on notices issued in 1997 and 1999 treating them as quit notices for a suit filed in the year 2006.

18. To answer this question, the status of the appellant/tenant has to be

understood. In terms of Sec. 116 of the Transfer of Property Act after the expiry of the lease if the possession of the tenant is without the consent of the landlord, he would be a tenant at sufferance; whereas, if the possession after termination of the lease is with the consent of the landlord, he would be a tenant by holding over. A Tenant at sufferance, in law, is not entitled to a notice of ejectment. However, in the instant case, there were demands of ejectment by issuing notices to the appellant on earlier occasions and therefore, it is not open for the appellant to contend that he is entitled for notice of ejectment, and he cannot be evicted on the basis of the earlier notices issued to him in the year 1997 and 1999. Under law, the appellant, though is not a trespasser, but has no legal status as that of a tenant requiring a notice of ejectment.

19. In the instant case, as rightly contended by the learned counsel appearing for the respondent, the arguments advanced on behalf of the appellant that the lease is perpetual and has to be renewed for every 5 years after expiry of the original lease period is most unjustifiable and unconscionable.

20. The premises in question is an extent of 1135 square yards in prime area of Hanamkonda city on National Highway Hanamkonda-Hyderabad. According to PW 2, the appellant Corporation established other outlets in and around nearby the suit schedule premises wherein rents are being paid @ Rs. 30,000/- to Rs. 40,000/- per month, whereas the lease amount in the instant case is very meager i.e. Rs. 235/- per month.

21. Both the learned Courts below made an observation that the term of the lease agreement that the lease would be renewed automatically on every 5 years on the same terms and conditions at the option of the defendant was written in handwriting and seems to have been inserted and it was not explained whether the said words were incorporated while entering into the lease agreement or at the time of obtaining the signatures of the parties. Admittedly, the mother of the plaintiff is an illiterate woman, hailing from agricultural community. In any event, the lease period was expired by 16.08.1992 as per the terms of the lease agreement. The respondent/plaintiff or his mother did not agree for the renewal of the lease. No steps have been taken by the appellant Corporation to get the lease renewed. In the absence of any fresh agreement of renewal, it cannot be said that the lease has automatically been renewed. The appellant Corporation addressed a letter under Ex.A6 dated 12.01.1993 stating therein that the lease expired on 07.08.1992 and they would like to renew the lease for a further period as per the terms of the original lease agreement, but the mother of the plaintiff did not accept for the renewal of the lease. After the expiry of the lease, the appellant Corporation is under a duty to vacate the premises and handover the vacant possession of the same to the respondent.

22. The lease was for a period of 20 years and it was expired on 16.08.1992, thereafter without any renewal, the appellant Corporation continued in possession of the premises for a period of 21 years. As there can be no automatic renewal of lease as such in law, the appellant Corporation is liable for

ejectment and the learned Courts below rightly ordered eviction of the appellant from the schedule premises.

23. For the foregoing reasons, I see no legal error or infirmity in the findings of the learned Courts below warranting interference. Accordingly, the Second Appeal is dismissed. However, the appellant/defendant is directed to vacate the premises in question and deliver vacant possession to the respondent/plaintiff within a period of 3 (three) months from the date of receipt of a copy of this judgment. There shall be no order as to costs.

24. Pending miscellaneous petitions, if any, shall stand closed in consequence.