
(2012) 11 AP CK 0025
In the Andhra Pradesh High Court
Case No : AS No. 1094 of 2012

Mohd. Akhil Ahmed

APPELLANT

Vs

Mohammed Naseeruddin

RESPONDENT

Date of Decision : 28-11-2012

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 106(4)

Citation : (2013) 1 ALD 678 : (2013) 3 ALT 287

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : Basith Ali Yavar, for the Appellant; Mohd Nasrulla Khan, Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Samudrala Govindarajulu, J.—The defendant/tenant filed this second appeal against the eviction order passed by the trial Court, which decree was confirmed by the lower appellate Court. The only point raised by the appellant's Counsel is that service of notice u/s 106 of the transfer of Property Act is not in accordance with subsection (4) thereof, inasmuch as it was not addressed to the party, but was addressed to the Advocate. The quit notice Ex. A2 though addressed as reply notice to the tenant's Counsel who issued previous notice calling upon the landlord to restrain from interfering with his possession of the tenanted premises, copy of the same was also sent to the tenant in person. There is no dispute that Ex. A2 provided valid period of 15 days within which the landlord called upon the tenant to vacate the tenanted premises. Section 106(4) which was introduced by Amendment Act 3 of 2003 reads as follows:

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

2. Notice to the party does not rule out notice to the said party's authorized agent who is an advocate. The advocate to whom the reply notice was addressed was dealing with the dispute relating to the tenanted premises between the parties. Therefore, it would be too technical to interpret the phrase "to the party" as only "to the party-in-person". In the absence of so many words in the section, the said term cannot be interpreted as "party-in-person". In that view of the matter, the notice addressed to the authorized Counsel of the party, who is a validly constituted agent for the party, is a valid notice u/s 106(4) of the Transfer of Property Act.

3. In both the Courts below, the said point was not raised, much less argued. There is no plea on the part of the defendant/ tenant that the quit notice is invalid for the above reason. In the absence of any plea or argument in the Courts below, this Court does not find any reason to permit the appellant to raise a new plea in the second appeal. Even if the said plea is allowed to be raised, the preceding paragraph in this judgment is an answer to the said new question raised by the appellant's Counsel. In the result, the second appeal is dismissed at the admission stage. However, as a matter of grace, the appellant is granted one month time from today, for vacating the tenanted premises.