

(2013) 06 AP CK 0112

In the Andhra Pradesh High Court

Case No : C.C.C.A. No"s. 23 of 1997 and 331 of 2003

M/s. Bulchand and Company

APPELLANT

Vs

Khamrunnisa Begum (Died) and Others
 M/s. Bulchand
and Company Vs Syed Ahmed and Others

RESPONDENT

Date of Decision : 19-06-2013

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 4

Citation : (2013) 5 ALD 223 : (2013) 6 ALT 162

Hon'ble Judges : S.V. Bhatt, J;L. Narasimha Reddy, J

Bench : Division Bench

Advocate : R.N. Hemendranath Reddy in both Appeals, for the Appellant; D. Prakash Reddy and Sri. Mirl Wajid Ali Khan, Counsel for Respondent Nos. 1 to 7, 9 and 10 to 14 in C.C.C.A. No. 23 of 1997, for Respondent Nos. 2 to 12 in C.C.C.A. No. 331 of 2003 and Sri. Mor Wajid Alikamil for Respondent Nos. 2 to 12 in C.C.C.A. No. 331 of 2003, for the Respondent

Final Decision : Disposed Off

Judgement

L. Narasimha Reddy, J.—The sole defendant in O.S. No. 901 of 1985 on the file of the V Additional Judge, City Civil Court, Hyderabad filed these two appeals. The deceased 1st respondent filed the suit for eviction of the appellant from the premises in question. It was pleaded that the property bearing Nos. 5-8-615 and 5-8-615/1 comprising of two mulgies at Abids, Hyderabad, was owned by Sri. A.K. Babu Khan and in a preliminary decree for partition passed in O.S. No. 38 of 1964 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad, the property fell to her share. It was stated that the appellant was the tenant of the premises and in view of the allotment of the property in the partition, the tenancy was attorned to her. According to the 1st respondent, the rent for both the mulgies was Rs. 1,300/- per month and ever since 04.10.1998, new tenancy was created and the rent is being paid from month to month.

2. The 1st respondent got issued a notice, dated 10.04.1985, u/s 106 of the

Transfer of Property Act and required the appellant to vacate the premises. Through reply, dated 24.05.1985, the appellant stated that the lease in respect of the two mulgies was separate and individual, with rent of Rs. 6507/- per mulgi, and that there was an offer by the original owner, to sell the property for a consideration of Rs. 1,64,000/-. He further pleaded that a sum of Rs. 5,000/- has been paid under receipt, dated 08.06.1982, and that the 1st respondent has no right to terminate the lease. Other contentions were also advanced.

3. In view of the stand taken by the appellant in the reply notice, the 1st respondent filed O.S. No. 901 of 1985, for eviction and mesne profits. The contents of the notice, dated 10.04.1985, were repeated in the plaint, whereas, those in the reply were repeated in the written statement. The trial Court decreed the suit through judgment, dated 12.12.1996. Apart from directing eviction of the appellant, it has directed ascertainment of mesne profits. C.C.C.A. No. 23 of 1987 is filed challenging the decree in that suit.

4. The 1st respondent died and his legal representatives were brought on record. They filed I.A. No. 1582 of 2000 before the trial Court for ascertainment of mesne profits. After hearing both parties, the trial Court passed order, dated 10.03.2003, determining the mesne profits at Rs. 4,000/- per month, with effect from June, 1985. C.C.C.A. No. 331 of 2003 is filed against the said order.

5. Sri. R.N. Hemendranath Reddy, learned counsel for the appellant, submits that the premises comprised of two mulgies and though they were owned by the same individual, the lease in respect of one mulgi commenced in 1930, and in respect of other, it commenced in 1950. He submits that the rent was being paid separately for both the mulgies and the same arrangement continued even when the tenancy was attorned to the 1st respondent. Learned counsel submits that a specific objection was raised as to the very maintainability of the suit, on the ground that the rent for each of the mulgies is Rs. 650/- and the provisions of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short "the Act") would apply to the same. He submits that the trial Court erred in treating the tenancy as composite one. It is also pleaded that the fact that there existed an agreement for sale of the property by the original owner, was not taken into account. As to the mesne profits, the learned counsel submits that the trial Court was not at all justified in enhancing the amount from Rs. 1,300/- to Rs. 4,000/- and the evidence on record does not support the finding of the trial Court.

6. Sri. D. Prakash Reddy, learned Senior Counsel for the respondents, on the other hand, submits that long before exchange of notices, there exists an arrangement between both the parties, evidenced through letter, dated 04.10.1987, marked as Ex. A1, which is to the effect that the rent for both the mulgies shall be Rs. 1300/- per month and that the lease shall be for a period of five years. He submits that the theory of existence of oral agreement, or the one that the tenancy is separate for individual mulgies is fictitious and is contrary to the deposition of the appellant as D.W. 1. He submits that the rent for the

premises, as on the date of the filing of the suit, was Rs. 1,300/- per month and the Act applies only to such of the premises for which the rent is less than Rs. 1,000/-. He further submits that the grievance vis-a-vis the fixation of mesne profits at Rs. 4,000/- per month for the premises if at all should be for the respondents, if one takes into account, the location and importance of the premises.

7. The suit was filed for the relief of eviction and recovery of mesne profits. In view of the pleadings before it, the trial Court framed the following issues for its consideration:

1. Whether the plaintiffs are entitled for vacant possession of the plaint schedule premises?
2. Whether the plaintiffs are entitled for arrears of rent of Rs. 1300/-?
3. Whether the plaintiffs are entitled for past mesne profits of Rs. 10,000/- from July, 1985 and future mesne profits to be determined by the Court, as prayed for?
4. Whether this Court has no jurisdiction to entertain the suit?

8. It is pertinent to note that the appellant filed O.S. No. 1334 of 1989 against the respondents for specific performance of an agreement of sale and that suit was tried and disposed of along with O.S. No. 901 of 1985. The evidence on behalf of the respondents comprised of the depositions of P.Ws. 1 to 3 and Exs. A1 to A18. On behalf of the appellant, D.Ws. 1 to 3 were examined and Exs. B1 to B56 were filed. Ex. X1 and Ex. C1 were taken on record. While O.S. No. 901 of 1985 was decreed as prayed for, O.S. No. 1334 of 1989 was dismissed. C.C.C.A. No. 25 of 1997 filed against the decree in O.S. No. 1334 of 1989 is dealt with separately.

9. In view of the extensive arguments advanced on behalf of the parties, the points that arise for consideration before us are as to:

1. whether the provisions of the Act apply to the suit schedule premises and whether the trial Court lacked jurisdiction;
2. whether the tenancy in respect of both the mulgies was separate or a composite one;
3. whether the notice got issued by the 1st respondent u/s 106 of the Transfer of Property Act suffers from any infirmity? and
4. whether the determination of mesne profits by the trial Court, through its order, dated 13.03.2003, in I.A. No. 1582 of 2000, can be sustained in law?

10. Point Nos. 1 and 2 need to be answered together, since they have a bearing on each other. The appellant raised a question as to the maintainability of the suit or the jurisdiction of the trial Court to entertain it on the ground that the provisions of the Act apply to the premises in question. The Act applies to the premises whose monthly rent does not exceed Rs. 1,000/-. The plea raised by

the appellant was that the leases for the two mulgies are separate and the rent was Rs. 650/- per month for each of them.

11. The lease, no doubt, commenced several decades before the premises came to be allotted to the share of the 1st respondent, through a preliminary decree in O.S. No. 38 of 1964. Whatever be the understanding of the appellant as to the nature of lease, Ex. A1 puts an end to this uncertainty. This document came to be executed after the tenancy was attorned to the 1st respondent. This is signed by both the parties. Ex. A1 reads as under:

As mutually agreed by us the rent of above mulgies occupied by you is fixed Rs. 1,300/- (Rs. One thousand three hundred only) per month from 1st November, 1978 for the period of 5 years only.

12. From this, it is evident that the parties treated the lease as composite and the rent to be at Rs. 1,300/- per month. The fact that a fresh lease came into existence, is evident from the recital about the duration, namely 5 years. In addition to this, D.W. 1 in his cross-examination categorically admitted that the rent for the premises was Rs. 1,300/- per month and he did not even mention anywhere that the rent was separate for each of the mulgies. There is no document to support the contention of the appellant. In addition to that, it has come on record that the wall that existed between the two mulgies was removed and it was elicited from D.W. 1 that the assignment of two separate house numbers to the mulgies was only to avoid the burden of the property tax. Once the record discloses that no distinction was maintained as to the composite nature of the lease, the mere fact that the subject matter of the lease is two mulgies, cannot, by itself, lead to a conclusion or inference that the leases were separate.

13. It is not in dispute that if the rent for any premises is Rs. 1,300/- per month, the provisions of the Act do not apply. The trial Court has taken into account, the oral and documentary evidence on record and applied the correct principles in coming to the conclusion that the provisions of the Act do not apply. We are in total agreement with that finding. Hence, point Nos. 1 and 2 are answered against the appellant.

14. Though an attempt was made by the appellant to point out some defect in the notice (Ex. B55) u/s 106 of the Transfer of Property Act, we are not at all convinced about the vague and general contentions advanced in this behalf. The amendment caused recently to the provision would render the arguments advanced in this behalf, unacceptable. We hold accordingly.

15. Coming to point No. 4, namely the correctness of the determination of mesne profits, the trial Court considered, the oral and documentary evidence adduced before it and determined the mesne profits at Rs. 40007- per month. Enhancement by 10% for a span of every three years was also ordered. It is not in dispute that the premises are located at the primmest of the prime commercial localities in Hyderabad and the rent for the premises as of now would not be less

than Rs. 50,000/-. Viewed from that angle, determination of the amount at Rs. 4,000/- per month cannot be found fault with.

16. Before parting with the appeals, we intend to make an observation about the impact of the determination in I.A. No. 1582 of 2000 about the question of jurisdiction. Even where the provisions of the Act apply to the premises, but the fair rent is determined u/s 4 of the Act at an amount, that exceeds the one stipulated for bringing the premises under the Act, the provisions of the Act cease to apply. For instance, if the rent of the premises was Rs. 900/- per month, the provisions of the Act invariably apply to it, since the stipulated rent, in this regard was Rs. 1,000/- or below at the relevant time. If during the pendency of any proceedings, the rent is determined either with the agreement of the parties or through a determination by the Court at Rs. 1,500/-, the premises ceased to be under the purview of the Act. From this point of view, with the determination of the rent at Rs. 4,000/- per month, with periodical enhancement, even the remote possibility of the provisions of the Act being made applicable, ceases to exist.

17. We, accordingly, dismiss the appeals. There shall be no order as to costs.

18. The learned counsel for the appellant made a request to grant time for the appellant to vacate the premises. He submits that since the appellant has established a reputed cloth showroom, it needs at least one year to choose alternative accommodation to establish a shop. The request is opposed by the learned counsel for the respondents.

19. Having regard to the facts and circumstances of the case, we grant time to the appellant till 30.03.2014, subject to the condition that:

(a) he shall clear all the arrears of rent, if any, as determined by the trial Court within six (6) weeks from today; and

(b) he shall file an undertaking before the trial Court within four (4) weeks from today to the effect that he shall put the respondents in vacant and physical possession of the premises on or before 30.03.2014.

The miscellaneous petitions filed in these appeals shall also stand disposed of.