

**HON'BLE SRI JUSTICE M. VENKATA RAMANA**

**SECOND APPEAL Nos.312 and 334 of 2021**

**COMMON JUDGMENT:**

Second appeal No.312 of 2021 is filed against the decree and judgment in A.S.No.137 of 2018 on the file of the Court of the learned VI-Additional District Judge, East Godavari at Kakinada dated 26.03.2021. It was in turn preferred against the decree and judgment in O.S.No.710 of 2016 dated 18.07.2018 of the court of the learned I Additional Junior Civil Judge, Kakinada.

**2.** Second Appeal No.334 of 2021 is presented against the decree and judgment referred to above, which is a common judgment concerned to A.S.No.136 of 2018 also, which in turn was preferred against the decree and judgment in O.S.No.506 of 2016 on the file of the Court of the learned I Additional Junior Civil Judge, Kakinada.

**3.** The appellant was tenant of the respondent. The demised premises, which is concerned to both these cases, consisted of shop Nos. 2 and 4, in the premises bearing Door No.13-3-34/1 within Samalkot Municipal limits in Bhimavaram village, within the boundaries specified in the plaint schedule. They shall be referred to hereafter as 'the suit shops', for convenience.

**4.** O.S.No.506 of 2016 was instituted by the appellant against the respondent for permanent injunction restraining her from interfering with his peaceful possession and enjoyment of these shop rooms. Whereas O.S.No.710 of 2016 was instituted by the respondent against the appellant for eviction.

**5.** The jural relationship in between these parties is not in dispute. It is also not in dispute that the suit shops were taken on monthly rent of

Rs.3,000/- by the appellant on 01.04.2012 with a condition to increase it at 15% once in three years.

**6.** The appellant is running 'Divya Cell point and gifts and fancy stores' in these shops.

**7.** On the premise that the appellant did not vacate the suit shops by the end of 31.03.2015 in terms of the lease agreement dated 01.04.2012 entered into and a false report was given to the police against her and her husband by him, who demanded Rs.10,00,000/- to vacate the premises, a legal notice was issued on 29.07.2016 terminating the tenancy of the appellant w.e.f. 31.08.2016. The appellant got issued a reply dated 02.08.2016 in respect thereto referring to lease deed dated 28.01.2016 as if executed by the respondent and that the respondent had received an advance of Rs.5,00,000/- from the appellant. In the above circumstances, the respondent claimed that she was constrained to lay the suit against the appellant for eviction.

**8.** The respondent also considered institution of O.S.No.506 of 2016 against her and her husband in this process.

**9.** The appellant denying the claim of the respondent, while admitting the nature of jural relationship between them as well as the rent for these shop rooms mainly contended that the respondent had promised to continue him as the tenant upto the year 2026 and that he had taken the suit shop rooms on lease w.e.f. 01.04.2012. He admitted the incremental increase in rent agreed to among them as well as exchange of notices. Further contention of the appellant is that he had invested huge amounts to run business and that the respondent had initially promised that she would not ask him to vacate for 15 years, which made him to believe her.

**10.** The appellant further stated that on 28.01.2016 another lease deed was executed by the respondent in his favour in respect of the suit shops as well as shop No.6 after expiry of the earlier lease on 31.03.2015 agreeing to continue his tenancy from 28.01.2016 to 28.01.2026 and that she went against the terms of this lease deed. He further claimed that the respondent also received advance of Rs.5,00,000/-, which she should return with interest at 24% p.a. He further claimed that the respondent is liable to pay damages of Rs.4,00,000/-.

**11.** On the pleadings in both the suits, the trial Court settled appropriate issues for determination:

**12.** Both the parties went to trial. Both the suits were tried together and common evidence was recorded for such purpose. The respondent examined herself as P.W.1 and her husband as P.W.2, while relying on Ex.A1 and Ex.A2. The appellant examined himself as D.W.1 and another witness as D.W.2 while relying on Ex.B1 to Ex.B4 to support his contention.

**13.** On the material, considering the evidence, the learned trial Judge directed eviction of the appellant from the suit shops granting three (03) months time to vacate or otherwise the respondent to initiate legal action for getting possession of this property. However, the other suit in O.S.No.506 of 2016 for bare injunction was dismissed.

**14.** The appeals preferred by the appellant against these decrees and common judgment were dismissed by the appellate court confirming the findings so recorded thereon.

**15.** These are the circumstances that made the appellant to present both the second appeals.

**16.** Since both the learned counsel agreed to address arguments in these appeals at this stage of admission, upon hearing them, they are now being disposed of by this common judgment.

**17.** The substantial questions of law sought to be raised by the appellant in both these appeals revolves round the nature of the lease agreement under Ex.B1, effect of its non-registration and its effect on termination of tenancy in terms of Section 106 of the Transfer of Property Act by the respondent against the appellant.

**18.** Both the courts below held that Ex.B1 dated 28.01.2016, which is the lease deed relied on by the appellant against the respondent, is inadmissible in evidence for want of registration in terms of Section 17(1) of the Registration Act , since barred under Section 49 of the Indian Registration Act. Further observation in the same context is upon application of Section 107 of the Transfer of Property Act.

**19.** The learned counsel for the appellant strenuously contended that these findings of both the Courts below are based on inappropriate application of law and when once the document was exhibited at the trial, want of registration cannot be a reason to reject it from consideration. The learned counsel for the appellant also pointed out that this lease document was impounded at the stage of trial and that the appellant had paid necessary stamp duty and penalty thereon. Thus, it is contended that this document stood validated.

**20.** The learned counsel for the respondent referring to nature of Ex.B1 being unregistered document relied on the same reasons set out by the Courts below as to its inadmissible nature and which cannot be looked into.

**21.** Ex.B1 lease document apparently was allowed to be marked and exhibited at the trial, after necessary stamp duty and penalty was paid thereon. However, an instrument of lease relating to immovable property in terms of Section 17(1)(d) of the Indian Registration Act has to be compulsorily registered. It is w.e.f. 01.04.1999 as per A.P.Act 4 of 1999. Irrespective of term or tenure of the lease, it is thus manifest that, an instrument of this nature affecting immovable property is compulsorily registerable.

**22.** Section 107 of the Transfer of Property Act is another disabling factor for the appellant in this respect.

**23.** Mere payment of stamp duty and penalty on an instrument, which is otherwise exigible cannot validate when the mandate of law is that registration of the same is compulsory. It cannot be diluted nor can be ignored by any means.

**24.** Similarly, mere marking or exhibiting such document suffering from such vice cannot clothe it with any legal character nor makes this document admissible, for the Court to consider. When the document is suffering from such vice, want of registration can be a ground that can be raised at any stage without any let or hindrance. The reason is that this prohibition in relation to admissibility of such document, affects its very nature and excludes or prevents being a part of the evidence to consider by the Court. Thus, the prohibition is plenary and goes to the root of the matter.

**25.** Therefore, the contention of the appellant on this score cannot stand and both the Courts below rightly considered this question.

**26.** Execution of Ex.B1 was disputed by the respondent at the trial as an outcome of forgery. The learned counsel for the appellant pointed

out that there is evidence of D.W.1 and D.W.2 to prove this transaction and the document. However, since Ex.B1 now is held being inadmissible, the question relating to its authenticity, true nature or otherwise has clearly become academic. Therefore, it is not necessary now to go into this question.

**27.** Exchange of notices in between these parties, as seen from Ex.B2 and Ex.B4, is not in dispute. Ex.B2 is the legal notice issued under Section 106 of the Transfer of Property Act by the respondent terminating the tenancy of the appellant. The effect and efficacy of this notice apparently were not given due attention either in the trial Court or in the appeal. Despite of issuance of Ex.B4 reply, termination of tenancy of the appellant under Ex.B2 remained as such. The legality of Ex.B2 thus remained in tact and the termination of the tenancy was effected.

**28.** In these circumstances, when the appellant did not have any defence to hold on to the property in question, which is purely a question of fact, in the presence of concurrent findings recorded by both the Courts below, it cannot be stated that there are such substantial questions of law requiring consideration and determination in terms of Section 100 CPC by this Court now. In as much as, right of the respondent to have eviction of the appellant, in these circumstances, is upheld, the claim set forth by him for termination against her, who is the owner of this property undisputedly, in O.S.No.506 of 2016, on a contrived cause of action, cannot stand. Such question is purely based on fact.

**29.** Therefore, in these circumstances, finding no reason or justification to interfere with the concurrent and consistent findings recorded by both the courts below as both these second appeals did not survive consideration, they have to be dismissed.

**30.** In the result, both these second appeals are dismissed confirming the decrees and judgments of both the courts below. The appellant is granted three (03) months time to vacate from now. If the appellant does not vacate within the time so granted, the execution proceedings initiated by the respondent shall continue to their logical end. The appellant shall pay costs to the respondent in both these matters and shall bear his own costs throughout.

As a sequel, pending miscellaneous petitions, stand closed. Interim Orders, if any, stand vacated.

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**JUSTICE M.VENKATA RAMANA**

**Dt:31.08.2021**

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