

***THE HON'BLE SMT. JUSTICE P.SREE SUDHA**

+ SECOND APPEAL No.369 OF 2005

% 28-08-2023

The Secretary, Defence of India,
Union of India, New Delhi and others.

...Appellants

vs.

\$ Mir Taqui Ali Khan and others.

... Respondents

!Counsel for the Appellants: Sri Gadi Praveen Kumar
(Dy.Solicitor General of India)

^Counsel for Respondents: Sri P.Venkat Reddy

<Gist :

>Head Note :

? Cases referred:

IN THE HIGH COURT FOR THE STATE OF TELANGANA**HYDERABAD***** * * *****SECOND APEAL No.369 OF 2005**

Between:

The Secretary, Defence of India,
Union of India, New Delhi and others

...Appellants

vs.

Mir Taqui Ali Khan and others

... Respondents

JUDGMENT PRONOUNCED ON: 28.08.2023

THE HON'BLE SMT JUSTICE P.SREE SUDHA

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : -
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : -

JUSTICE P.SREE SUDHA

THE HONOURABLE SMT. JUSTICE P.SREE SUDHA**SECOND APPEAL No.369 of 2005****JUDGMENT:**

This Second Appeal is filed against the Judgment and Decree dated 20.08.2004 in A.S.No.238 of 2004 passed by the learned X – Additional Chief Judge (FTC), City Civil Court, Hyderabad in which the Judgment and Decree dated 24.04.2003 in O.S.No.3506 of 2000 passed by the learned X – Junior Civil Judge, City Civil Court, Hyderabad was confirmed except regarding the quantum of mesne profits. The trial Court granted Rs.30,000/- per month towards mesne profits, but it was reduced by the first appellate Court to Rs.24,000/-.

2. Respondents/Plaintiffs filed a suit in O.S.No.3506 of 2000 against the appellants/defendants seeking ejectment and mesne profits. Plaintiffs in the suit stated that they are absolute owners and landlords of the building bearing MCH No.6-2-510, situated at Nawab Manzil, Lungar House, Hyderabad admeasuring about 7566 Sq.yrds surrounded by a compound wall. The defendants have obtained the suit house from the plaintiffs on 01.08.1958 and also executed lease deed in favour of the plaintiffs on 01.03.1959. The tenancy is month to month

and commencing from the 1st of every month and expires by the end of every month. The monthly rent of the said premise was Rs.1,500/- exclusive of electricity and water charges. The defendants have committed willful default in payment of monthly rents since February, 1993 till September 1999 for a continuous period of 80 months, amounting to Rs.1,20,000/- @ Rs.1,500/- per month, but plaintiffs restricted their claim of arrears of rent from October 1996 to September 1999 for a sum of Rs.54,000/-. They also stated that defendants have caused damage to the suit building and failed to pay the monthly rent and thus plaintiffs got issued legal notice dated 15.03.1999, terminating the tenancy of the defendants and directed them to hand over the possession of the suit property by 01.11.1999. Though the defendants received the said legal notice, they did not choose to give any reply and in spite of termination, failed to vacate and deliver the possession of the suit property and thus Plaintiffs are entitled to claim mesne profits @ Rs.45,000/- from 01.11.1999 onwards. Hence, the suit for ejectment and payment of mesne profits from 01.03.2000 was filed.

3. In the written statement filed by the defendants, they stated that during February, 1987 they came to know from the District Collector, Hyderabad that the area in which the suit

building exists was classified as Central Government Military Area and the said classification was as per the Town Survey Proceedings and thus the property was owned by Central Government, hence they stopped paying the rents. Plaintiffs issued several notices dated 22.03.1990, 06.04.1994, 21.04.1994, 05.03.1999, 03.08.1999 and 15.09.1999. As the building was classified as Central Government Military Area, the question of vacating and handing over the possession on 01.11.1999 does not arise and the payment of mesne profits also does not arise. They further stated that property belongs to Central Government as per the revenue records and thus plaintiffs have no cause of action to file the suit. Vide letter No.9500 of 1987 dated 22.12.1987, District Collector, Hyderabad had intimated that the building exists was classified as Government Military area and plaintiffs have to produce title deeds to claim rents or mesne profits. As the property belongs to Central Government, plaintiffs have no right or title or interest over the suit property and filed suit only to grab the suit property.

4. In a rejoinder filed by the plaintiffs, they stated that defendants have not filed the letter received from the District Collector vide reference No.9500 of 1987 before the Court nor

served a copy to the plaintiffs and hence plaintiffs bonafidely believing that it was created and got up only to deprive the lawful right of the plaintiffs to knock away the valuable property admeasuring 7566 Sq.yrds situated at Lungar House. Moreover, defendants paid rents till 1993.

5. The parties herein are referred as plaintiffs and defendants as arrayed before the trial Court for the sake of convenience.

6. Plaintiffs got examined P.Ws.1 & 2 and marked Exs.A1 to A21 and also marked Ex.X1 on their behalf. The defendants got examined D.W.1 and marked Exs.B1 and B2 on their behalf.

7. The trial Court after considering the entire evidence on record, decreed the suit in favour of the plaintiffs and directed the defendants to pay Rs.54,000/- towards arrears of rent for the period of October 1996 to September 1999 @ Rs.1,500/- per month and also directed them to pay mesne profits @ Rs.30,000/- per month from 01.03.2000 onwards till the date of delivery of possession and also directed the plaintiffs to pay requisite Court fee towards the amounts deposited by the defendants as arrears of rent and mesne profits. Aggrieved by

the said Judgment, defendants preferred an appeal before the first appellate Court in A.S.No.238 of 2004, and the first appellate Court confirmed the Judgment of the trial Court, but modified the amount of mesne profits from Rs.30,000/- per month to Rs.24,000/- per month. Aggrieved by the said Judgment, appellants therein preferred the present appeal.

8. The appellants herein mainly contended the following substantial questions of law:

“a) Whether the courts below are right in decreeing the suit of the respondents for eviction basing on the so called sale deed Ex.A1 and other documents against the Government Records i.e., Ex.B1 and Ex.B2 filed by the appellants.

b) Whether the appellant court is right in holding that the burden lies on the appellants to prove its title in suit for eviction filed by the respondents.

c) Whether the courts below are justified in not considering the exhibits B1 and B2 which are the extract of the survey report and certified copy of plan extract of Central Government Military Area.

d) Whether the findings of the Court below are perverse for not considering the relevant documentary evidence produced by the appellants and ordering eviction.

e) Whether the Courts below rightly interpreted the exhibits B1 and B2 visa vis A.1 to A21.

f) Whether the Court below is right in granting exorbitant mesne profits without any proper enquiry under Order 20 rule 12 of C.P.C.”

9. Now, it is for this Court to see whether the Judgment of the first appellate Court in confirming the Judgment of the trial Court is on proper appreciation of facts or not.

10. Plaintiffs filed suit for eviction and for mesne profits against the defendants, but the defendants disputed the ownership of the plaintiffs basing on the letter addressed by the District Collector on 22.12.1987, but for the reasons best known to them, the said letter was not filed before the trial Court and a Xerox copy of the same was filed before the first appellate Court. Defendants have filed I.A.No.290 of 2004, to receive the Xerox copy of the said letter dated 22.12.1987, but the same was dismissed by the first appellate Court stating that it is only a Xerox copy and no steps were taken by them either to summon its original or to obtain its certified copy. The certified copy of the said letter is filed before this Court without any application to receive additional documents. In the written statement filed by defendants No.1 to 3, they mainly contended that property does not belongs to plaintiffs as per the letter dated 22.12.1987 and thus they stopped paying rents. Though plaintiffs issued several notices, they did not give any reply and the copy of the said letter was not given to the plaintiffs and even did not file before the trial Court or before the first appellate Court and it is only filed before this Court without any application to receive the additional documents and thus it cannot be looked into. When defendants disputed the ownership

of the plaintiffs, plaintiffs filed Ex.A1/original sale deed along with true translation of it.

11. P.W.1 in his evidence stated that he purchased property from one Hoorunissa Begum W/o. Nawab Bande Ali Khan Saheb on 18.01.1958, under a registered sale deed vide document No.53 of 1958 and they were put in possession of the suit property. At request of the defendants' officers, they let out the suit property to them on 16.03.1959, on monthly rent of Rs.275/- and regular lease deed was executed before the witness on the same day. In the year 1964, he filed petition before the Rent Controller, Hyderabad vide case No.510/6/B/1964 for fixing of fair rent @ 1,500/- per month and the same was allowed on 07.02.1970. Aggrieved by the said Order, defendants preferred Rent Appeal vide R.A.No.44 of 1965 and the same was dismissed on 19.11.1966. Plaintiffs also filed receipts of the rental amounts, MCH Tax receipts, Non-encumbrance Tax receipts, etc., to prove his ownership and also to prove that defendants are his tenants.

12. The Special Divisional Officer, Grade-III was examined as D.W.1. He stated that defendant No.3 was in the possession and enjoyment of the suit schedule property since 1958. In March,

1958 Hoorunnisa Begum entered into a lease agreement with the defendants. Later, they paid rents to the plaintiffs. In the Cross-examination, he stated that the suit schedule property was called as Nawab Manzil. Plaintiffs and defendants have entered into a lease agreement in the year 1959. Defendant's office was continuously paying rents to the plaintiffs till January 1993 and Exs.A9 to A15 were issued by their office. He further stated that plaintiffs issued several notices, but he did not know whether their office gave any reply or not. He clearly admitted that the letter issued by the District Collector in the year 1987 was not filed before the Court and he did not know whether the defendants informed about the said letter to the plaintiffs or not. He also stated that till 1992, they addressed several letters to plaintiffs to attend repairs of the suit premises. He further stated that the suit property was situated abutting to the main road leading to lunger house and opposite of the suit property, there are commercial complexes. When Ex.A19 MCH receipt was shown to him, he evasively stated that he did not know about the said receipt. He further admitted that defendants were not paying rents to the plaintiffs from February, 1993 onwards.

13. Defendants filed Exs.B1 and B2. Ex.B1 is the true extract of the Town survey register, in which the present enjoyer of the

Fiza Parade grounds is shown as C.G.Military area. Ex.B2 is the map drawn by the surveyor. The trial Court observed that when defendants stated that plaintiffs are not the owners of the suit premises, as per the letter addressed the District Collector in the year 1987, why they addressed letters to plaintiffs in the year 1991 under Exs.A7 and A8. They have also sent the rental amounts under Exs.A9 to A14. Exs.A15 and A16 are the original Assessment receipts of the suit property from 01.04.1969 to 1978 and from 01.04.1979 to 2001 respectively. Ex.A18 was the Municipal Tax receipt for the period from 01.04.1990 to 31.03.2000. Ex.A17 was the demand notice of given under Section 106 of the Transfer of Property Act dated 15.09.1999, in which plaintiffs have clearly stated that defendants have to vacate and handover the possession by 01.11.1999, otherwise plaintiffs are entitled for mesne profits at Rs.45,000/- per month. Though it was received by the defendants, they have not given any reply and they stopped paying rents from February, 1993 onwards. Even if it is presumed that defendants got doubt regarding the ownership of the plaintiffs, it is for them to approach the Court to decide regarding the ownership of the suit schedule property and to deposit the rents in the Court, but they stopped the payment of rents as per their whims and fancies without any basis. Their

conduct and attitude clearly shows that it is a classic case of abuse of powers by the defendants against plaintiffs.

14. Plaintiffs and defendants entered into a lease agreement way back in the year 1959. For enhancement of the rent, plaintiffs are compelled to approach the Rent Controller. Even after the enhancement of the rent by the Rent controller to Rs.1,500/- per month, defendants preferred an appeal and the same was dismissed. This is another incident to show the attitude of the defendants against the plaintiffs. The first appellate Court gave detailed explanation for not relying upon Exs.B1 and B2 and it was also held that as the plaintiffs were not party to the said document, it has no significance and it was also observed that defendants filed Xerox copy of the letter addressed by the District Collector, as such it was not accepted. After considering the oral and documentary evidence of both sides, the trial Court and the first appellant Court rightly concluded that defendants are liable to be vacated from the suit schedule property in view of the quit notice issued under Section 106 of the Transfer of Property Act.

15. Another issue is regarding mesne profits. Though the total arrears of amount is Rs.1,20,000/-, for the reasons best known

to the plaintiffs, they confined only to Rs.54,000/- from October 1996 to September 1999 at Rs.1,500/- per month, as such it was granted by both the Courts. Regarding mesne profits, plaintiffs examined P.W.2, who was also having the property at Lungar house. As his property was a commercial property, he was getting Rs.3,600/- per month for an extent of 300 Sq.ft and he clearly stated that in the said area any building will fetch Rs.5/- to Rs.7/- per Sq.ft and the suit property will fetch Rs.50,000/- per month. In the Cross-examination, he stated that he was acquainted with plaintiffs for the past 20 to 25 years. The suit schedule property was old one and is not fit for commercial purpose. It was facing 300 ft road at one side. He also filed Ex.X1 and further stated that distance between his property and the property of plaintiffs is 5 to 600 mts.

16. The trial Court considering his evidence and also the fact that the suit schedule property is located in the lungar house, which is a prime locality, observed that in the year 1959 the population of the Hyderabad was only about 20 to 25 lakhs and as on the date of deciding O.S, it was more than Rs.75 lakhs and a single room was fetching more than Rs.1,000/- per month. The extent of the suit schedule property is 7,566 Sq.yrds and it naturally fetches atleast Rs.30,000/- per month,

but the first appellate Court modified the same basing on the G.O.Ms.No.35 dated 27.02.1997, which was received in I.A.No.355 of 2004. The said G.O was produced as additional evidence for deciding the mesne profits basing on the plinth area of the suit property and it was marked under Ex.A22. The said G.O was issued for fixing of rent for the private buildings taken on lease by the Government Departments. The Government fixed a maximum ceiling of rent upto Rs.5/- per Sq.ft and the said amount would be payable only for net usable area which cannot be more than net carpet area plus 10%. The total area of the suit schedule property as mentioned in R.C.No.510 of 1964 is 7,566 Sq.yrds. The building area of ground floor and the first floor is mentioned as 4562 and 4301 Sq.ft respectively i.e., 8863 Sq.ft. In Ex.A5 the extent of 1546 Sq.ft towards outhouses and 2122 Sq.ft towards open platform are shown besides compound wall on all sides and garden. If the total extent of the ground floor and the first floor is multiplied with Rs.5/-, it comes to Rs.44,315/-, but the suit property is old and used for mess. Therefore, the price was taken as Rs.2.50ps per Sq.ft instead of Rs.5/- and arrived to the conclusion of Rs.24,089/- and rounded up to Rs.24,000/-.

17. When the first appellate Court relied upon the G.O for assessing the mesne profits and calculated the plinth area of the suit schedule property with that of the amount mentioned in the G.O and arrived to the conclusion of Rs.44,315/- and again reduced the amount at Rs.2.50ps on the ground that it is old is not fair and acceptable. Plaintiffs in the suit though entitled for Rs.1,20,000/- confined to only Rs.54,000/- only towards arrears of rents and also asked for reasonable amount of Rs.45,000/- per month towards mesne profits. Even when it is calculated as per the G.O, the amount was arrived to Rs.44,315/-. Admittedly, defendants are running mess for Military Officers in the said area. The premises were let out to them from 1959 onwards and the lease agreement was also entered in the year 1959 and they continued in the suit premises as on the date of filing the suit in the year 2000, though they stopped rent from February, 1993 onwards, if at all the said accommodation was not fit for running the mess, they themselves might have vacated it long back. No doubt, they addressed letters for repairs, on that basis it cannot be presumed that the accommodation is not fit for running the Military mess. Therefore, the observation of the first appellate Court in reducing the mesne profits on the ground that it is old cannot be accepted. This Court finds that it is just and

reasonable to grant an amount of Rs.44,315/- per month towards mesne profits. The first appellate Court also observed that it was not intended to calculate certain areas, as it was not usable area as mentioned in the G.O, but the entire suit schedule property was under the occupation of defendants and thus the observation of the first appellate Court is not tenable.

18. As per the proceeding sheet dated 28.11.2005, appellants are directed to deposit the entire decretal amount, so far it is not complied. On 01.07.2005, respondents are directed not to execute the decree until further orders. Though the trial Court decreed the suit in favour of the plaintiffs in the year 2003, they preferred an appeal and it was disposed of in the year 2004. Again they preferred the present appeal in the year 2005 and kept it pending till 2023. Defendants stopped payment of rents from 1993 and dragged on litigation till 2023 i.e., for 30 years. Therefore, this Court also finds that it is just and reasonable to grant interest on the mesne profits @ Rs.7.5% per annum.

19. In the result, the second appeal is dismissed, confirming the concurrent findings of both the Courts. The defendants in the suit are directed to deposit Rs.54,000/- arrears of rent as claimed by the plaintiffs at Rs.1,500/- per month. The Order of

the first appellate Court is modified and defendants are directed to pay mesne profits at Rs.44,315/- per month from 01.03.2000 till the date of delivery of the possession to the plaintiffs with interest @ 7.5% per annum. Defendants are specifically directed to deposit the amount within one month from the date of receipt of a copy of this Judgment. On such deposit, plaintiffs are permitted to withdraw the entire amount along with interest accrued on it. Plaintiffs are also directed to pay the requisite Court fee on the amounts deposited by the defendants as arrears of rent and mesne profits and are also entitled for costs of the suit. Appellants/defendants are specifically directed to vacate the suit schedule property and hand over the possession of the same to the respondents/plaintiffs in two months from the date of this Judgment.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P.SREE SUDHA

DATE: 28.08.2023

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THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

SECOND APPEAL No.369 of 2005

DATE: 28.08.2023

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