

**(2007) 09 AP CK 0007**

**Andhra Pradesh High Court**

**Case No:** Second Appeal No. 573 of 2006

Akkineni Venkata Ranga Rao

APPELLANT

Vs

Kollipara Sai Subrahmanyam

RESPONDENT

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**Date of Decision:** Sept. 7, 2007

**Acts Referred:**

- Transfer of Property Act, 1882 - Section 106, 106(3)

**Citation:** (2008) 1 ALT 466 : (2008) 2 RCR(Civil) 667 : (2008) 1 RCR(Rent) 391

**Hon'ble Judges:** B. Seshasayana Reddy, J

**Bench:** Single Bench

**Advocate:** K. Chidambaram, for the Appellant; A. Satyanarayana, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

B. Seshasayana Reddy, J.

This second appeal is directed against the judgment and decree, dated 12-4-2006, passed in A.S. No. 26 of 2005 on the file of the Additional Senior Civil Judge (Fast Track Court), at Gudivada, whereby and whereunder the learned Additional Senior Civil Judge dismissed the appeal with costs filed by the appellant/1st defendant and confirmed the judgment and decree dated 29-8-2005 passed in O.S. No. 596 of 1999 on the file of the Principal Junior Civil Judge. Gudivada.

2. The appellant is to first defendant and whereas the respondent is the first plaintiff in O.S. No. 596 of 1999. One Lakshmi Narasamma was the owner of a terraced house bearing Door No. 12/31 with Assessment No. 12110 situated at 12th Ward, Gudivada, Gudivada Sub-Registry, Krishna District. The total extent of the site in which the house situates is 261 sq. yards. The first defendant Akkineni Venkata Ranga Rao took the premises on lease on 14-4-1979 for a period of two years on a monthly rent of Rs. 485/- for the purpose of running a coffee hotel. The second defendant Akkineni Venkateswara Rao negotiated with Lakshmi Narasamma with regard to terms of lease. The lease agreement was executed between the parties

and the first defendant was inducted into possession of the premises as tenant. The lease was extended from time to time. The said Lakshmi Narasamma died on 11-7-1980 leaving behind the first plaintiff Kollipara Sai Subrahmanyam as her sole legal heir. The first plaintiff extended the lease on the same terms and conditions from time to time and rent came to be enhanced to Rs. 2,100/- per month. Since the defendants demolished a tiled portion of the building by taking away wood and logs of roof and tried to put cement sheets in the place of tiled portion of the house, an objection was raised by the plaintiffs. The plaintiffs 1 and 2 are husband and wife. They got issued Ex. A-1 quit notice dated 30-10-1999 terminating the tenancy of the defendants and demanding them to vacate the suit schedule property by granting 45 days time from the date of receipt of the notice. They also claimed Rs. 50,000/- towards damages and at the rate of Rs. 6,000/- per month for the unauthorized use and occupation of the premises after determination of the lease. The defendants got issued a reply notice. Therefore, the plaintiffs filed the suit for eviction and recovery of possession. They also sought for decree for damages of Rs. 59,380/- with interest @ 12% p.a. and future damages at the rate of Rs. 6,000/- per month for the use and occupation of the premises after determination of the lease.

3. The defendants filed written statement. They took the plea that the second plaintiff is not a necessary party and as such the suit is bad for mis-joinder of parties. They also took the plea that the second defendant and one Yelamanchili Venkata Krishna Rao jointly took the premises on lease on 5-4-1975 and did hotel business under the name and style "Sri Jaya Laxmi Vilas". Subsequently, second defendant retired from the business by handing over the business to the said Yelamanchili Venkata Krishna Rao on 26-1-1977. Subsequently, the said Yelamanchili Venkata Krishna Rao woundup the hotel business. Then the first defendant took the premises on lease and came into possession of the suit schedule premises on 14-4-1977. The lease agreement was executed between the first defendant and mother of the first plaintiff for two years. The first defendant has been paying the rents regularly. A written lease deed came to be executed between the first defendant and mother of the first plaintiff on 14-4-1979. Subsequent to the death of Lakshmi Narasamma, natural parents of the 1st plaintiff used to receive rents on his behalf and they enhanced the rents from time to time. Enhanced rent at the rate of Rs. 1,650/- was continued till 14-2-1998. When the first plaintiff refused to receive rent for May 1997, the first defendant sent the rents through money order till December, 1997. The first plaintiff received the rents from the first defendant from January, 1998 and acknowledged the receipt of rents on a notebook maintained by the first defendant. In February, 1998 there was settlement before the elders viz., Sri Kakarala Venkata Sobhana Chalapathi Rao and Sri Vadlamudi Jogeswara Rao of Gudivada and in pursuance of which, rent came to be enhanced to Rs. 2,100/- per month on condition that the lease would be for a further period of 10 years from February, 1998. It was also agreed that the first defendant would continue to be in possession of the premises for five more years subject to his enhancing the rent at

25% per month. Since the tiled roof became old and weak, it collapsed on 7-10-1999 due to heavy rainfall. The first defendant's furniture and electrical equipment worth Rs. 30,000/- came to be damaged in the said incident. In spite of repeated demands made by the first defendant to make necessary repairs, the first plaintiff refused to oblige him. The first plaintiff expressed his inability to effect the repairs to the collapsed tiled roof. Instead, the first plaintiff gave permission to the first defendant to carry out necessary repairs and thereby the first defendant spent Rs. 24,000/- towards getting the collapsed roof repaired. Apart from spending Rs. 24,000/- towards repairs to the collapsed roof, he had also spent Rs. 40,000/- towards electrical equipment, furniture etc. The first plaintiff approached the first defendant in the last week of October, 1999 and demanded him to enhance the rent from Rs. 2,100/- to Rs. 3,100/- with immediate effect, for which the first defendant refused. Thereupon, the plaintiffs issued notice with all false allegations. Thus, the suit of the plaintiffs is liable to be dismissed.

4. The trial Court settled the following issues for trial:

Whether the suit is bad for miss-joinder of parties?

(2) Whether the plaintiffs are entitled for vacation and possession of the schedule property as prayed for?

(3) Whether the plaintiffs are entitled for special damages as prayed for?

(4) Whether the plaintiffs are entitled for future damages as prayed for?

(5) To what relief?

5. On behalf of the plaintiffs, two witnesses were examined and five documents were marked. On behalf of the defendants, four witnesses were examined and 32 documents were marked. Ex.X-1 was also marked through D.W. 4.

6. The trial Court, on considering the evidence brought on record and on hearing counsel for the parties, held all the issues in favour of the plaintiffs and accordingly, decreed the suit and directed the first defendant to vacate the suit schedule property and handover the same to the first plaintiff on or before 30-11 -2005 and further directed the first defendant to pay Rs. 50,000/- towards special damages and Rs. 9,380/- towards arrears of rent with interest at the rate of 6% per annum and at the rate of Rs. 4,000/- per month as damages for use and occupation after the determination of the lease. 6% p.a. interest has been allowed on future damages till the date of payment. However, the suit against the second defendant ended in dismissal.

7. The first defendant assailed the judgment and decree dated 29-8-2005 passed in O.S. No. 596 of 1999 on the file of the Principal Junior Civil Judge, Gudivada, by filing an appeal being A.S. No. 26 of 2005 on the file of the Additional Senior Civil Judge (Fast Track Court), Gudivada. It was contended by the first defendant/appellant

before the lower appellate Court that Ex. A-1 quit notice is not in accordance with the provisions of Law and therefore, it is invalid. It was also contended before the lower appellate Court that granting of Rs. 50,000/-as special damages is unsustainable in the eye of law.

8. The lower appellate Court formulated the following points for consideration:

(1) Whether the judgment and decree of the lower Court is sustainable according to Law?

(2) Whether there are any valid grounds to allow the appeal?

9. Much emphasis was made by the first defendant before the lower appellate Court on the validity of Ex.A-1 quit notice. The lower appellate Court repelled the contentions of the first defendant/appellant and dismissed the appeal and confirmed the judgment and decree dated 29-8-2005 passed in O.S. No. 596 of 1999 on the file of the Principal Junior Civil Judge, Gudivada. The judgment and decree of the lower appellate Court is under challenge in this second appeal.

10. The second appeal came to be admitted on 20-6-2006 on the substantial question of law with regard to validity of Ex. A-1 quit notice, dated 30-10-1999.

11. Heard learned Counsel appearing for the appellant and learned Counsel appearing for the respondent.

Learned Counsel appearing for the appellant/first defendant contends that Ex. A-1 notice dated 30-10-1999 is not a valid notice u/s 106 of the Transfer of Property Act, 1882 (for short, "the T.P. Act") since the tenancy stands terminated in the midst of the month. What he means to say is that notice has been issued on 30-10-1999 determining the tenancy on the 45th day from the date of receipt of the said notice which falls in the midst of the month. Another contention has been advanced by the learned Counsel appearing for the appellant that since the appellant/1st defendant has been carrying on hotel business involving manufacturing process, six months" notice is required before terminating the tenancy.

12. Per contra, learned Counsel appearing for the respondent/1st plaintiff submits that what is required u/s 106 of the T.P. Act is 15 days" notice and since under Ex. A-1 quit notice 45 days" time has been allowed, it is in accordance with the provisions of Section 106 of the T.P. Act. A further submission has been made that both the trial Court as well as the lower appellate Court recorded a finding that tenancy is a monthly tenancy and therefore, only 15 days" notice is required. The said finding is a concurrent finding on question of facts and the same is not required to be interfered with in this second appeal.

13. The only issue that arises for consideration in this second appeal is whether Ex. A-1 quit notice is in conformity with Section 106 of the T.P. Act.

14. It is profitable to extract Section 106 of the T.P. Act and it is thus:

106. Duration of certain leases in absence of written contract or local usage: (1) In the absence of a contract or local law or usage to the contrary, a lease of Immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six month's notice; and a lease of Immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days notice.

(2) Notwithstanding any thing contained in any other law for the time being in force, the period mentioned in Sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under Sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(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.)

15. The relationship between the parties is not in dispute. The appellant is the tenant and the respondent is the landlord of the suit schedule property. It is also not in dispute that the respondent/1st plaintiff issued Ex. A-1 quit notice dated 30-10-1999 determining the tenancy and directing the appellant to vacate the premises within 45 days from the date of receipt of the notice. Since the tenancy being a monthly one, only 15 days' notice is required u/s 106 of the T.P. Act. Though a contention has been advanced that the hotel business involves the manufacturing process, the appellant/1st defendant failed to establish involvement of manufacturing process in the hotel run by him. The trial Court as well as the lower appellate Court recorded a concurrent finding that the tenancy is a monthly tenancy and therefore, 15 days' notice is required for termination of the tenancy. The respondent/1st plaintiff has given 45 days' time under Ex. A-1 quit notice. Therefore, it can be said that Ex. A-1 quit notice is in accordance with the provisions of Section 106 of the T.P. Act. Even otherwise, under the amended proviso (sic, provision) i.e. Sub-section (3) of Section 106 of their, T.P. Act, a notice under Sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section. The issue whether the amended provision is applicable to the pending proceedings came up for consideration before this Court in [Gold Medal and Others Vs. Smt. Ameena Begum](#), , wherein it has been held that amended provision applies to pending proceedings also. Same is the view taken by this Court in [Namala Ramachandra Rao Vs. Kakileti](#)

[Bhaskara Rama Murthy and Others,](#) of the judgment [Namala Ramachandra Rao Vs. Kakileti Bhaskara Rama Murthy and Others,](#) reads as under:

11. Though, this Section came into force with effect from 31-12-2002. the amendment was given retrospective effect and the amendment applies to the pending appeals also, in this case, though the Ex. A-5 notice was given on 27-7-1983 to vacate the premises by 31-8-1983, the suit was filled only on 12-4-1984 i.e. long after expiry of six months quit notice, to be given u/s 106 of Transfer of Property Act for terminating the lease involved in the manufacturing process. On this ground also, the appellant cannot succeed in this case and the Second Appeal is liable to be dismissed confirming the judgment and decree passed by the courts below.

16. Coming to the facts of the case on hand, the respondent/1st defendant issued Ex. A-1 quit notice dated 30-10-1999. Suit came to be filed on 28-12-1999 i.e. nearly two months after Ex. A-1 quit notice. Therefore, Ex. A-1 quit notice is to be held valid. Since the appellant is stated to have been running a hotel in the suit schedule property over a period of three decades, I deem it appropriate to grant three months" time to vacate the premises. Except granting the time for vacation, no other relief can be granted to the appellant/1st defendant.

17. Accordingly, the second appeal fails and it is hereby dismissed with costs. The appellant/1st defendant is granted three months" time for vacating the premises subject to the following conditions:

(1) The appellant/1st defendant shall file an undertaking before the trial Court within two weeks from today that he would vacate the premises on or before the expiry of three months from today.

(2) He shall deposit the arrears of rent, if any, within two weeks and shall continue to pay the rents regularly by 5th of every succeeding month till he vacates the premises.