
(2019) 07 JH CK 0070

Jharkhand High Court

Case No: Second Appeal No. 126 Of 2009

Gaya Sahu

APPELLANT

Vs

Shanti Devi And Ors

RESPONDENT

Date of Decision: July 1, 2019

Hon'ble Judges: Ananda Sen, J

Bench: Single Bench

Advocate: Amar Kumar Sinha, Manjul Prasad, Arbind Kumar Sinha

Final Decision: Dismissed

Judgement

1. This appeal has been filed by the defendant of Eviction Suit No.1 of 2002. Eviction Suit No.1 of 2002 was filed by the respondents herein, praying therein to evict the defendant-appellant from the suit premises on the ground that the tenancy was for a fixed period of 5 (five) months, which had already lapsed and the defendants being a defaulter as he had not paid the rent for more than two consecutive months, is liable to be evicted. Trial Court, dismissed the suit. The plaintiff, thereafter, filed an appeal, which was allowed and the order of eviction was passed. In this second appeal the defendant-appellant has challenged the judgment and decree passed in Eviction Appeal.

2. The suit premises was sold by Somar Sahu, who is the predecessor-in-interest of the defendant in favour of the plaintiff. A registered sale deed was executed on 12.09.2001 in favour of the plaintiff by the said Somar Sahu, after receiving the consideration amount. Since there was no alternative arrangement of residence, Somar Sahu and the plaintiff entered into an agreement, which allowed the defendant to stay in the premises for a period of

5 (five) months at a monthly rent of Rs.20/- per month. At the end of tenancy, plaintiff requested the defendant to evict the suit premises, which was not vacated. It is the case of the plaintiff that rent for more than two months fell due, for which defendant is liable to be evicted. On both these grounds, i.e., expiry of fixed term of tenancy and on the ground of default, prayer was made for evicting the defendant by filing a plaint, which was registered as Eviction Suit No.1 of 2002.

3. Defendant appeared and had challenged the title of the plaintiff. They submitted that the registered sale deed was executed by fraud and misrepresentation and thus has no sanctity in the eyes of law. He further submitted that there is no relationship of landlord and tenant. It was submitted that as the executor of the sale deed was ill and was undergoing treatment, his LTI was obtained by fraud. Acceptance of consideration amount was also denied. Execution of the document, which established the relationship of landlord and tenant between the parties was also denied by the defendant, taking a ground that the same was also executed by fraudulent means. Defendant had taken a plea that he had already cancelled the registered sale deed by a registered cancellation deed dated 20.11.2001. Thus the suit was liable to be dismissed.

4. On behalf of the parties, witnesses were examined, several documentary evidence were produced. Trial Court, after going through the evidence led on behalf of the plaintiff and the defendant and also after going through the exhibit, dismissed the suit, holding that there was no relationship of landlord and tenant between the parties. Aggrieved by the order of dismissal of the suit, plaintiff preferred Eviction Appeal No.1 of 2007. The First Appellate Court, after hearing the parties and after going through the records, has held that the plaintiffs are the owner of the suit property and has given a finding that the relationship of landlord and tenant is created by virtue of Exhibit 2 and since the defendant is defaulter in payment of rent, he is liable to be evicted.

5. During the argument, the counsel appearing on behalf of the appellant, submits that the First Appellate Court committed an error in entering into the question of title of the appellant. He submits that since this is an Eviction Suit, the Court could not have decided the title in favour of the appellant. He

submits that the documents, which the appellants relied upon before the First Appellate Court, were obtained by fraud, thus, no cognizance should have been taken of the said documents. He submits that except those documents, which were obtained by fraud, there was no other cogent evidence to suggest that relationship of landlord and tenant existed between the parties. He submits that the Trial Court was correct in arriving at a finding that there is no relationship of landlord and tenant, but, the First Appellate Court has not considered the findings given by the Trial Court and reverted the same, which is improper. He submits that when there was no relationship of landlord and tenant between the parties, there was no question of paying any rent nor the question of default can arise.

6. Respondents appeared suo moto by filing vakalanama.

Counsel appearing on behalf of the respondents submits that Exhibit 1 is the sale deed and the same has been duly proved by the scribe. He submits that Exhibit 2 is the memorandum, which created tenancy between the parties, same was also duly exhibited. Counsel for the respondents submits that exhibit 2 has not been challenged as forged document. Thus, the relationship of landlord and tenant is established. He submits that since defendants had raised the issue to the effect that the sale deed was obtained by fraud and misrepresentation, the Appellate Court, for a limited purpose, entered into the question of title, which was raised at the behest of the respondents.

7. I have heard the parties and have gone through the judgments rendered by both the Courts.

8. The Appellate Court has relied upon Exhibit 1, which is a registered sale deed executed by Somar Sahu (the original tenant) in favour of the defendant. The said sale deed is duly proved by the scribe. Once the said registered document was proved, the onus was upon the defendants to rebut the execution of the same. Defendant has failed to discharge the onus. Since the defendant has raised question of title of the plaintiff and execution of the sale deed, the Appellate Court only for a limited purpose, has entered into the question, whether the deed was executed without any coercion or misrepresentation. Trial Court came to a finding that deed was executed in a proper manner and the same was executed for a consideration. Exhibit 2

is the memorandum, which established relationship of landlord and tenant between the parties. The First Appellate Court, on the evidence, has given a finding of fact that the defendant has defaulted in payment of rent in respect of the suit premises for a period of three months. This fact has also been confirmed by the witnesses of the plaintiff and there is no evidence on behalf of the defendant to counter the claim of the plaintiff. The Appellate Court has, thus, given a finding of fact on two counts: the defendant is the tenant of the plaintiff and there is arrear of rent; and the defendant is a defaulter. Since there is a concluded finding of fact on the aforesaid issue, I find that the Lower Appellate Court has correctly reversed the judgment of the Trial Court. The entire issues, which are involved, have been set at rest and cannot be reopened in this second appeal. The said issues are issues of fact. The finding of the First Appellate Court is also not perverse. In a second appeal, this Court cannot reopen the question of fact, which has been set at rest. Thus, I find no substantial question of law, which needs to be framed in this second appeal. This second appeal is, accordingly, dismissed.