

(2002) 11 GAU CK 0011

Gauhati High Court

Case No: Civil Revision No. 140 of 1997

Assam Cycle Company

APPELLANT

Vs

Motilal Bothra and Others

RESPONDENT

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**Date of Decision:** Nov. 28, 2002**Citation:** (2003) 1 GLR 296 : (2003) 1 GLT 435**Hon'ble Judges:** Ranjan Gogoi, J**Bench:** Single Bench**Advocate:** A.R. Banerjee and B. Choudhury, for the Appellant; T.C. Khetri, for the Respondent**Final Decision:** Allowed

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### Judgement

Ranjan Gogoi, J.

This revision application, at the instance of the defendants is directed against the judgment and decree dated 18.3.1997 passed by the learned Civil Judge, Senior Division, Sonitpur, Tezpur in Title Appeal No. 1 of 1994. The Judgment and decree dated 1.12.1993 passed by the learned Sadar Munsiff in Title Suit No. 24 of 1986 dismissing the plaintiffs suit having been reversed by the impugned Judgment and decree dated 18.3.1997, the present revision has been filed.

2. Title Suit No. 24 of 1986 was instituted by the present apposite parties as plaintiffs praying for a decree of eviction of the present petitioner, i.e., the defendant in the suit. According to the plaintiffs, the defendant was a tenant in respect of the suit premises and as per the agreement between the parties, rent was required to be paid after the expiry of each month according to English calendar. The defendant, it was alleged, failed to pay rent for the month of June, 1985 and, therefore, had become a defaulter and was liable to be evicted under the provisions of the Assam Urban Areas Rent Control Act, 1972. The plaintiffs had further averred in the plaint filed that the suit premises were required by them for the purposes of their business after reconstruction and hence, they were in bona fide need of the suit premises.

The claims made in the suit were resisted by the present petitioner as the defendant by filing a written statement. In the written statement filed, it was contended that the plaintiffs' suit is not maintainable as the plaintiffs are only two of the sons of late Poonam Chand Bothra, the original landlord. According to the defendant, another son of the original landlord was not impleaded in the suit for which reason, the suit has to fail. The allegations of default were denied and it was contended that the rent for the month of June, 1985 was tendered in the 1st week of July, 1985. However, the plaintiffs-landlord refused to accept the rent tendered whereafter It was deposited in Court in accordance with the provisions of Section 5(4) of the Act. The defendant also denied the assertion made in the plaint that the suit premises is bona fide required by the plaintiffs for reconstruction with a view to expanding their business, It is the specific case of the defendant in the suit that the plaintiffs were the owners of other R.C.C. Buildings located near the suit premise which property could be effectively utilised by the plaintiffs for the purposes of their business.

3. On the basis of the rival pleadings of the parties, as many as 9 (nine) issues were framed for trial. Oral and documentary evidence were placed on record by the rival parties. The learned trial Court by the judgment and decree dated 1.12.1993 dismissed the suit, inter alia, on the ground that as one of the sons of the original landlord was not impleaded as a plaintiff in the suit, the plaintiffs' suit has to fail. Notwithstanding the above finding, the learned trial Court thought it proper to go into the specific issues of default and bona fide requirement framed in the suit and on a consideration of the materials on record thought it proper to decide both the issues against the plaintiffs.

Aggrieved, the impugned judgment and decree dated 1.12.1993 passed by the learned trial Court was challenged by filing Title Appeal No. 1 of 1994. The learned lower appellate Court by the impugned judgment and decree dated 18.3.1997 held the plaintiffs' suit to be maintainable in law. The learned lower appellate Court while finding the issue relating to default against the plaintiffs however, found the issue on the point of bona fide requirement in favour of the plaintiffs and on that basis, decreed the suit for eviction of the defendant.

4. Mr. A.R. Banerjee, learned counsel appearing on behalf of the revision petitioner, in support of the challenge made, has argued that the learned lower appellate Court has gone clearly wrong in holding the plaintiffs' suit to be maintainable. The plaintiffs (2 in number) are not the only sons of the original landlord. Another son and legal heir of the original landlord has been left out and in the absence of the aforesaid son, who is a necessary party to the suit, the plaintiffs' suit is clearly not maintainable. Mr. Banerjee places reliance on a judgment of the Gujarat High Court in the case of [Nanalal Girdharlal and Another Vs. Gulamnabi Jamalbhai Motorwala and Others](#), Judgment of the Bombay High Court in the case of [Chhotabhai Motibhai Vs. Dadabhai Narandas](#), has also been relied upon.

Insofar as the finding of bona fide requirement is concerned, the argument of Mr. Banerjee is that bona fide requirement of the landlord has to be determined on an objective consideration of the materials adduced, in the course of the trial of the suit in support of the plea raised. Mr. Banerjee has contended that the materials on record adduced on behalf of the plaintiffs in the present case would go to show that apart from the fact that the plaintiffs needed the suit premises for more profitable use thereof in connection with their business by reconstructing the same and that the plaintiffs had obtained Municipal permission in this regard, no other material is forthcoming. It is argued by Mr. Banerjee, learned counsel appearing for the revision petitioner that the evidence on record had demonstrated that the plaintiffs owned and possessed other R.C.C. buildings in the neighborhood and one floor in such a building was available to the plaintiffs, the same being vacant. No material is forthcoming as to why the said available floor in another building cannot be used by the plaintiffs for the purposes of their business. In any case, Mr. Banerjee contends that obtaining of Municipal permission for reconstruction and submission of building plans would not be enough to enable the Court to come to a finding that the plaintiffs are in bona fide need of the suit premises. The said finding recorded is a jurisdictional error, contends the learned counsel. Mr. Banerjee has relied on several judgments of this Court in support of the contentions advanced. Particular reference may be made to the judgment of this Court in the case of [Dr. Sukumar Mehta Vs. District Registrar, Births and Deaths](#). Two decisions of the Apex Court in the case of Neta Ram and Ors. v. Jivan Lal and Ors., reported in AIR 1953 SC 499 and in the case of AIR 1990 1355 (SC) have also been placed by the learned counsel on behalf of the petitioner. While the first judgment of the Apex Court in the case of Neta Ram and Ors. (supra) has been relied on for the proposition that the finding of bona fide requirement in favour of the landlord can only be made by an objective determination of all surrounding facts and circumstances as evident from the evidence and materials on record, the other judgment in the case of Dina Nath and Anr. (supra) has been relied on for the proposition that obtaining Municipal permission and availability of means for reconstruction by itself would not be determinative of the bona fide requirement of the landlord.

5. Mr. T.C. Khatri, learned counsel appearing for the opposite parties in the course of his argument has sought to counter the contentions advanced by Mr. A.R. Banerjee, learned counsel appearing on behalf of the revision petitioner. The first ground regarding the maintainability of the suit is argued to be without any basis. Mr. Khatri has contended that the evidence on record has clearly demonstrated that the defendant had all along acknowledged the plaintiffs as the landlords by tendering rent to them. Omission to implead any other son of the original landlord is not fatal to the suit, the ownership being common to all the heirs of the original landlord. Reliance in this regard is placed on an Apex Court judgment in the case of [Sri Ram Pasricha Vs. Jagannath and Others](#), as well as the judgment of this Court in the case of Kishan Gopal Agarwalla v. Ramdulari Sah, reported in (1995) 2 GLJ 314.

Coming to the question of bona fide requirement of the landlord, it is argued by Mr. Khatri that the materials on record clearly demonstrates that the plaintiff was in the need of the suit premises for reconstructing the same for the purpose of more profitable use of the suit premises in the plaintiffs' business and that the plaintiffs have further established that Municipal permission has been obtained for reconstruction and the building plans have been approved. It is also argued that the plaintiffs have further proved that the possession of another part of a building near the suit premises have been obtained from another tenant by obtaining a decree from the competent Court. The fact that the one floor in an adjacent R.C.C. building is available to the plaintiffs would not debar the plaintiffs from claiming the bona fide need of the suit premises. It is for the plaintiffs to decide as to a how and in what manner the suit premises should be used and as long as the need is bona fide, the plaintiffs cannot be compelled to utilise the vacant premises and not to seek possession of the suit premises. Mr. Khatri has placed reliance on an Apex Court judgment in the case of [Panchamal Narayan Shenoy Vs. Basthi Venkatesha Shenoy](#), for the above proposition.

6. The rival contentions advanced on behalf of the parties have been duly considered. The admitted facts of the case would go to show that the defendant had acknowledged the plaintiffs as landlords by regularly tendering rent in respect of the suit premises to the plaintiffs who would, therefore, be "landlord" within the meaning of Section 2(c) of the Act. The argument of Mr. Banerjee is however, a little different. What is contended is that while the plaintiffs are the landlords, the suit has to fail for defect of the parties as the ownership being common to all heirs of the original landlord, the remaining son is a necessary party to the suit. The further argument is that what the Act postulates is the bona fide need of the landlord and in the absence of all heirs of the original landlord, the question of determination of the bona fide requirement could not have been legally made. The argument advanced on behalf of the revision petitioner, ingenious and attractive, though it may be, has to be answered in the negative as the said question stands squarely covered by the law laid down by the Apex Court in the case of *Sri Ram Pasricha v. Jagannath* (supra). The following passage from the aforesaid judgment may be usefully extracted as an answer to the question raised on behalf of the revision petitioner :-

"28. Mr. V.S. Desai reads to us from "Saknond on Jurisprudence"

(13th edition) and relies on the following passage in Chapter 8 (Ownership) paragraph 46 at page 254 :

As a general rule thing is owned by one person only at a time, but duplicate ownership is perfectly possible. Two or more persons may at the same time have ownership of the same thing vested in them. This may happen in several distinct ways, but the simplest and most obvious case is that of co-ownership. Partners, for example, are co-owners of the chattels which constitute their stock-in-trade of the

lease of the premises on which their business is conducted, and of the debts owing to them by their customers. It is not correct to say that property owned by co-owners is divided between them, each of them owning a separate part. It is an undivided unity, which is vested at the same time in more than one person... The several ownership of a part is a different thing from the co-ownership of the whole. So soon as each of two co-owners begins to own a part of the thing instead of the whole of it, the co-ownership has been dissolved into sole ownership by the process known as partition. Co-ownership involves the "undivided integrity of what is owned".

29. Jurisprudentially It is not correct to say that a co-owner of a property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part-owner or a factional owner of the property. The position will change only when partition takes place. It is therefore, not possible to accept the submission that the plaintiff which is admittedly the landlord and co-owner of the premises is not the owner of the premises within the meaning of Section 13(1)(f). It is not necessary to establish that the plaintiff is the only owner of the property for the purpose of Section 13(1)(f) as long as he is a co-owner of the property being at the same time the acknowledged landlord of the defendants."

7. Insofar as the question relating to bona fide requirement of the suit premises is concerned, the very weighty arguments and counter arguments on behalf of the parties and numerous case laws cited by the respective counsels, have been duly considered. The law in this regard is settled; the controversy, if any, is with regard to its application. The bona fide need for use and occupation of the landlord, reduced to its essentials means that the landlord has a genuine, honest and pressing need for the suit premises and such need of the landlord has to be determined by the Courts on an objective consideration of the materials brought on record by both the parties to the suit. What the plaintiffs must establish is that not only he has a desire but also and in addition, he has a genuine need of the premises and that to meet such genuine and honest need of the plaintiffs, a decree of eviction is required to be ordered. It will be difficult and at the same time it would not be necessary to lay down exhaustively as to what would constitute genuine, honest and pressing need of the landlord. Eventually and in the last resort, the said question will have to be decided in facts and circumstances of a given case. This is, perhaps precisely the reason why the Apex Court in a long line of decisions repeatedly held that the need of the landlord must be determined in an objective manner by taking into account all the relevant facts and circumstances of a given case.

Adverting to the facts of the present case, according to the plaintiffs, the suit premises is required for more profitable use by reconstruction. The landlord evidently has the means to go ahead with the reconstruction and he has taken steps in this regard by obtaining Municipal permission on the basis of building plans etc. submitted. Ordinarily, this would have been the end of the matter as it is not for the

Court to insist on further proof as to the detailed nature of the business proposed to be carried out, the manner in which the suit premises after reconstruction is contemplated to be used and other such incidental questions. But the facts of the present case would go to show that the plaintiff is the owner of other R.C.C. buildings in neighborhood and in fact, one floor in one such R.C.C. building, is admittedly vacant and, therefore, available. There is no material forthcoming on the part of the landlord as to why the business as has been proposed to be carried out after reconstruction of the suit premises cannot be carried on in the vacant premises available. The plaintiff has not adduced any evidence whatsoever to show that the vacant premises of the landlord is not conducive and suitable for carrying on the business that he has in contemplation. The ratio of the law laid down by the Apex Court in the case of [Ragavendra Kumar Vs. Firm Prem Machinery and Co.](#), appears to be that while the Court is not to sit in judgment over the decision of the landlords as regards the suitability of a particular available accommodation for the purpose of his business, the landlord must lay before the Court necessary materials to the effect that though alternative accommodation is available such alternative accommodation is not suitable for the purpose he has in mind in seeking vacant possession of the suit property. To prove that the requirement is honest and genuine, it was, therefore, necessary for the plaintiff to bring the aforesaid materials on record so as to satisfy the Court that the need for the suit premises is bona fide. In the absence of such materials forthcoming, it cannot be said that the bona fide need of the landlord has been established. The impugned decree of eviction must, therefore, be held to be vitiated by a jurisdictional error and will have to be interfered with.

8. In view of what has been discussed above, the revision application stands allowed. The judgment and decree dated 18.3.1997 passed by the learned Civil Judge, Senior Division, Sonitpur, Tezpur in Title Appeal No. 1 of 1994 shall stand set aside and the decree of dismissal of the suit passed by the learned trial Court, though for somewhat different reasons, shall stand restored and affirmed.