

(2004) 11 GAU CK 0022

Gauhati High Court

Case No: C.R.P. No. 70 of 2001

Gopika Ranjan
Chakraborty

APPELLANT

Vs

Amulya Kumar
Bhattacharjee and
Another

RESPONDENT

Date of Decision: Nov. 25, 2004

Acts Referred:

- Assam Urban Areas Rent Control Act, 1972 - Section 5, 5(4), 6
- Civil Procedure Code, 1908 (CPC) - Section 115
- Evidence Act, 1872 - Section 91, 92
- Transfer of Property Act, 1882 - Section 114

Citation: (2005) 2 GLR 613 : (2004) 3 GLT 709

Hon'ble Judges: H.N. Sharma, J

Bench: Single Bench

Advocate: N. Choudhury and J. Roy, for the Appellant; B.C. Das and B.K. Purakayastha, for the Respondent

Final Decision: Dismissed

Judgement

H.N. Sarma, J.

This revision petition has been filed by the petitioner tenant praying for revising the judgment and decree passed by the learned Civil Judge, Sr. Divn, No. 1, Silchar, Cachar in Title Appeal No. 23/99 dismissing the appeal and upholding the judgment and decree dated 16-2-1999 and 2-3-1999 passed by the learned Civil Judge, Jr. Divn. No. 2, Silchar in Title Suit No. 93/95 decreeing the suit for eviction of the petitioner defendant, under the revisional jurisdiction of this High Court in exercise of power u/s 115 of the CPC.

2. I have heard Mr. N. Choudhury, learned counsel appearing for the petitioner as well as Mr. BC Das, learned counsel appearing for the respondents. Mr. N. Choudhury during the course of his argument led me to the facts of the case to some extent. It appears from the record that Title Suit No. 93/95 was filed by the respondent landlord in the court of Sadr Munsiff No. 1, Silchar impleading the petitioner as defendant. Initially the suit was filed against the petitioner but later on by way of amendment the pro forma respondent No. 2 was also impleaded as defendant No. 2 in the suit. The plaintiff's suit, inter alia, is that the plaintiff is the owner of the land described in the schedule of the plaint with existing structures thereon and he purchased the same from the defendant No. 2, i.e. the pro forma respondent No. 2 in this petition, by sale deed executed on 25-7-1984 being No. 5469 of the year 84 which was exhibited as Ext-1 in the suit. The defendant No. 2 is the wife of the defendant No. 1. On the request of the defendant the plaintiff allowed the defendant to occupy the suit premises as a monthly tenant at the rate of Rs. 200 per month according to English calendar and the terms and conditions of the tenancy were incorporated by executing a deed of agreement commonly known as Kerayanama, which is exhibited as Ext-2 in the case. The said agreement Ext-2 contains the necessary terms and conditions of the tenancy. It is also pleaded that after purchase of the said land in the manner aforesaid the holding was registered in the name of the defendant as owner in the record of the Silchar Municipal Board. The defendant paid rent regularly against the receipt granted by the plaintiff and the rent was paid upto July 1994 and thereafter in spite of demands the defendant did not pay any rent from August 1994 to May 1995. Accordingly the defendant became a defaulter for non-payment of rent. In the said premises the plaintiff prayed for a decree for ejectment of the defendant from the suit premises and for payment of arrears of rent amounting to Rs. 2000 with compensation of Rs. 500 and the cost of the suit.

3. The defendant No. 1 filed written statement in the suit whereas defendant No. 2 did not set up any case by submitting pleadings. Along with usual defence the defendant petitioner stated in his written statement that the defendant petitioner is not a tenant in respect of the suit premises. Defendant also denied the sale deed by which the plaintiff purchased the suit premises. The defendant also denied the execution of the Ext-2 Kerayanama between the parties on 28-7-1984 as alleged by the plaintiff. It is the case of the defendant that the sale deed and the Kerayanama, Exts-1 and 2, are nothing but documents of simple mortgage of the suit property and in fact the defendant denied the title of the plaintiff over the suit land. In para 16 of the written statement the defendant pleaded his case as follows :-

"16. That the sale dated 25.7.84 and the deed of Bharanama dated 28.7.1984 are one and the same transaction and the transaction is nothing but a simple mortgage of the properties described in the schedule of the document and the plaintiff is not an owner in possession of the properties by right of purchase. But in reality he is a mortgagee and the properties involved therein is a security for repayment of the

loan aforementioned and in the circumstances the alleged bharanama is a deed of stipulated interest for the principal amount of Rs. 10,000.00. The plaintiff, on execution and registration of the deed in no way got possession of the property in question and the defendant and his wife dealt with the property as of their own subject to mortgage aforesaid. The transactions alleged by the plaintiff in the suit are colourable and in the guise of mortgage with stipulated interest. There is no relationship of landlord and tenant between the parties and the suit is not maintainable in its present form and it cannot proceed according to the provisions of Assam Urban Areas Rent Control Act."

4. The defendant prayed for dismissal of the suit of the plaintiff with cost. The learned trial court on the basis of the pleadings of the parties framed as many as four issues which are as follows :-

"(1) Is there any cause of action for the suit ?

(2) Is the suit maintainable in the present form ?

(3) Is there relationship of landlord and tenant between the plaintiff and the principal defendant ? If so, whether the defendant is defaulter in payment of monthly rents as claimed by the plaintiff ?

(4) Whether the plaintiff is entitled to get the decree for ejectment and arrear rent of Rs. 2,000 with compensation of Rs. 500 ?"

5. During the course of hearing the plaintiff examined himself as PW 1 whereas defendant examined himself as DW 1. The plaintiff exhibited the sale deed No. 5469 of 84 by which he purchased the suit land with structures as Ext-1 and the lease agreement dated 28-7-1984 as Ext-2. The plaintiff also exhibited the Municipal Tax Paying receipt in respect of the suit holding and Land Revenue paying receipt as Exts-3, 4, 5 and 6. The defendant exhibited a document which is the certified copy of the sale deed No. 6473 of 82 by which the defendant No. 2 purchased the land. The learned trial court finally heard the suit and considering, the evidence and materials on record and also considering the respective case propounded by both the parties in its proper perspective, decreed the suit. It is pertinent to note that although the defendant No. 2 was subsequently impleaded, in the suit she did not file any written statement and did not contest the suit. In deciding the Issue No. 3 regarding existence of relationship of landlord and tenant between the parties the learned trial court considered each and every aspect of Ext-1, the sale deed, as well as Ext-2 the lease deed. The learned trial court observed that besides denying the relationship of landlord and tenant between the plaintiff and the defendant No. 1, nothing is raised and shown by the defendant. The evidence of the plaintiff that the defendant paid rent upto July 1994 and thereafter did not pay any rent, has not also been challenged by the defendant, that the defendant has not pleaded anything about non-payment of the rent except denial of relationship of landlord and tenant between the parties. It is also observed that the defendant's case is that since there

is no relationship of landlord and tenant the payment of monthly rent does not arise. On a meticulous consideration of the evidence and materials on record the learned trial court decided the issue in the affirmative and in favour of the plaintiff holding that there exists relationship of landlord and tenant between the petitioner and the respondent. And that the defendant is a defaulter in respect of payment of the monthly rent according to English calendar month after July 1994. Deciding the Issue No. 4, in affirmative the learned trial court also decreed the sum of Rs. 2,000 as arrears of rent as claimed and compensation of Rs. 500 from the defendant No. 1 and vide judgment and order dated 16-2-1999 decreed the suit of the plaintiff for ejectment of the defendant and the persons claiming through them from the suit premises as described in schedule of the plaint and for payment of arrears of rent of Rs. 2,000 and compensation of Rs. 500 from defendant No. 1.

6. The defendant petitioner challenged the aforesaid judgment and decree passed by the learned trial court in Title Appeal No. 23/99 in the court of Civil Judge, Sr. Divn. No. 1, Silchar. The learned Civil Judge, Sr. Divn. heard the matter at length and on independent consideration of the documents and evidence on record, vide judgment and order dated 14-12-2000 passed in Title Appeal No. 23/99 upheld the judgment passed by the learned trial court and dismissed the appeal. The defendant petitioner has challenged the said judgment in the present revision petition.

7. Assailing the impugned judgment, Mr. N. Choudhury, learned counsel for the petitioner has contended that there is no relationship of landlord and tenant between the parties and in arriving at an affirmative decision the court did not consider in its true perspective the documents, Exts-1 and 2, and arrived at an incorrect finding committing material irregularity. Mr. N. Choudhury has further submitted alternatively that even if it is found that there exists a relationship of landlord and tenant between the parties, the Ext-2 lease agreement, not having specifically provided the exact date and mode of payment of rent and the mode of payment and without determination of such date and mode, the defendant cannot be branded as defaulter even if there is any nonpayment of rent. It is further submitted by Mr. N. Choudhury that in the facts and circumstances of the present case and in the absence of fixation of any date of payment of the rent, the suit is not covered by the provisions under the Assam Urban Areas Rent Control Act, rather it is regulated and guided by the provisions contained in Transfer of Property Act, more particularly u/s 114 of the TP Act and the Rent Control Act which is a special Act has no application. Mr. N. Choudhury submits that in terms of Section 114 of the Transfer of Property Act the defendant petitioner is ready and willing to pay the arrears of rent to the plaintiff respondent and in that event he cannot be termed as a defaulter. It is categorically denied by the learned counsel that the defendant is a defaulter and the learned courts below committed error of jurisdiction in holding the petitioner a defaulter.

8. Refuting the submissions of Mr. N. Choudhury Mr. BC Das, learned counsel for the respondent submitted that the finding on Issue No. 3, that is the existence of the relationship of landlord and tenant between the parties and defaulter, being a concurrent finding of both the courts below, this court in exercise of revisional jurisdiction will not interfere with the said finding and in that view of the matter the petition is liable to be dismissed. It has been further submitted by Mr. Das that the defendant having admitted the non-payment of rent after July 1994 is a rank defaulter and as he is a defaulter no occasion arises for this court to determine the date of payment of rent and the learned courts below have not committed any error of jurisdiction in passing the impugned judgment and decree. It is further submitted by Mr. Das that the Assam Urban Areas Rent Control Act being a complete Code by itself and the rights and remedies of the landlord and tenant having been provided by the said Act and it being a special enactment the provisions of Transfer of Property Act is not applicable in the instant case and the submission to the effect that the defendant petitioner is entitled to relief in terms of Section 114 of the TP Act is not tenable in law. Mr. Choudhury, learned counsel for the petitioner has relied on a decision of this court reported in [Tushar Kanti Dey Vs. Sulata Choudhury and Others](#), wherein this court relying on an earlier decision of this court held that determination of factual position as to when the rent becomes due is necessary before giving a finding on whether a tenant is a defaulter or not and on failure to determine this issue in the said case the impugned judgment and decree were set aside and the case was remanded to the trial court for determination of the said factual position.

9. I have considered the rival contention of the parties and gone through the records. Regarding the question as to whether there exists a relationship of landlord and tenant and whether the defendant is a defaulter the same has been dealt in Issue No. 3. By Ext-1 sale deed the plaintiff purchased the suit land with the tenanted structures standing thereon from the defendant No. 2 for valuable consideration. The said sale deed was duly executed and registered under the provisions of the Indian Registration Act and the same has not been questioned before any appropriate forum by the defendant and is very much in existence. Further, careful perusal of the lease agreement, i.e. Ext-2, discloses that there is a recital about the sale deed vide Ext-1 in favour of the plaintiff. It was also stated in the said agreement that the defendant accepted the tenancy as monthly tenant according to English calendar month at the rate of Rs. 200 per month. The said Ext-2 further discloses that there is a clause to the effect that the provisions of the Assam Urban Areas Rent Control Act would be applicable in respect of the said lease. The said document is a bilateral document signed by both the plaintiff and the defendant No. 1. In spite of existence of the aforesaid two documents the defendant has denied title of the plaintiff over the suit land and denied himself to be a tenant under the plaintiff. Both the courts below concurrently held, on examination and interpretation of the said two documents as well as on consideration of the oral

evidence adduced by the parties, that the plaintiff is the owner of the suit property and the defendant took the same on rent as monthly tenant at the rate of Rs. 200 per month payable according to the English calendar. Although the defendant pleaded in his evidence-regarding denial of relationship of landlord and tenant he has not substantiated his case by adducing any evidence. It is needless to say that when the terms of a contract, grants and other dispossession of property, required by law, to be reduced in the form of the document, have been proved according to Section 91 of the Evidence Act, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purposes of contradicting varying adding to, or subtracting from, its terms u/s 92 of the Evidence Act and accordingly I have no hesitation to hold that the learned courts below committed no error in holding that there exists a relationship of landlord and tenant between the parties.

10. Coming to the point of default it is the admitted case of the parties that rent has not been paid after July 1994 and prior to that, i.e. from 28.7.1984, which is the date of execution of the lease deed, -till July 1994 the rent was paid. What Mr. Choudhury, learned counsel for the petitioner contends that in the absence of any specific mention about the exact date on which the monthly rent is to be paid, even if the defendant is held to be a tenant, he cannot be branded as a defaulter. Mr. Choudhury has relied on the aforesaid decision in Tashar Kanti Dey (supra) in support of his contention. In the said case it was the case of the plaintiff that the defendant sent the rent for the months of February, March and April 1985 by way of money order dated 12.4.1985 to the landlord and the landlord did not accept the same and suit was filed for ejectment of the defendant tenant on the allegation of defaulter. In that case it was found by the court on materials on record that the parties departed from the exact date which was agreed to by the parties for payment of the rent and as per the convenience of the landlord rent was accepted without adhering to the said fixed date and the learned courts below held the tenant to be a defaulter without coming to a finding about the exact date of payment of the rent due. But, in the instant case the position is different. In the instant case the defendant did not tender any rent after July 1994. In fact, there is no pleading to that effect in the written statement that for non-fixation of any due date the defendant could not pay rent and he cannot be termed as defaulter. No evidence was also led to that effect. There is no material on record to hold the contention of Mr. Choudhury, as submitted by him. In view of the aforesaid finding the learned courts below committed no error in holding the plaintiff to be a defaulter. Therefore, the other point raised by Mr. Choudhury to the effect that the petitioner is entitled to benefit u/s 114 of the TP Act and he is still willing to pay the arrears of rent to the plaintiff on the face of the Rent Control Act being a special Act, the provisions of Section 114 of the TP Act is not applicable. The Assam Urban Areas Rent Control Act was enacted to deal with the fixation of fair rent of house situated within the limits of urban areas of Assam and the matters connected therewith, as

can be seen from the preamble of the Act. The object of the Rent Control Act came for consideration in LPA 11/76 (Ramesh Chandra Basak and Ors. v. Deonarayan Prasad and Ors.) reported in 1984 GHC 49. On a difference of opinion between the two noble and learned Judges about the maintainability of the Second Appeal under the provisions of the Act, the matter was referred to a third Judge (Hon"ble Mr. Justice K Lahiri, as he then was). In the said case the entire history of the Rent Control Act has been processed into and it was held therein that the Assam Urban Areas Rent Control Act is a social legislation governing the relationship of landlord and tenants, affords just and equitable protection to the needy landlords or tenants, has made inroads in the realm of contract between landlords and tenants, affected the provisions of the Transfer of Property Act and it has not made any special or different forum for adjudication of the disputes covered by "the Act". The provision of "the Act" are applicable to the landlord and the tenant until the relationship is snapped by a valid order or decree made in conformity with, the provisions of Section 6 of "the Act". It has also been held in the said case that "the Act" has done away with the enchained tradition of adherence to old theory wedded to contract and dilly-dally proceedings of ejectment. To do away with the effect of inequitable, unjust and unfair contracts and to remove the age old shade of the century old Transfer of Property Act, 1882 the Rent Control Act has been made. The scheme and object of the Act as interpreted in the aforesaid eliminating judgment of Hon"ble Lahiri, J is being followed by this court for last two decades and I am not inclined to take a different view therefrom,

Under the Rent Control Act, Section 5 of the Act provides bar against passing and executing of a decree and order for ejectment. Under the said provision no decree for recovery of possession of any house shall be made or executed by any court so long the tenant pays rent to the full extent allowable under the Act and performs the conditions of the tenancy. It is the admitted case of the parties that after July 1994 the petitioner tenant has not paid the rent. The question of due date would have arisen had the petitioner tenant approached the plaintiff landlord and offered the rent or had he deposited the same in the court. Such question will arise in the event of dispute as to date on which the rent has been deposited or offered. But in the instant case the petitioner defendant is a rank defaulter. He neither paid nor offered nor deposited in the court in terms of Section 5(4) of the Act the rent to the full extent payable in respect of the tenanted property. There is no pleading to this effect nor there is any iota of evidence on record. In the circumstances I am not inclined to hold that in the absence of specification of due date the finding as to defaulter arrived at by the courts below has been vitiated. It is noteworthy that the lease agreement, which is a bilateral agreement between the parties, specifically stated that the tenant petitioner is a monthly tenant in respect of the suit premises at the rate of Rs. 200 per month payable as per English calendar.

11. In view of the aforesaid discussion and decision I hold that this revision petition is without any merit and the learned courts below committed no error of jurisdiction

nor acted illegally or with material irregularity in passing the impugned judgment and decree nor the same has been shown to be perverse in any manner.

12. At this stage Mr. Choudhury, learned counsel for the petitioner has submitted that the petitioner tenant may be granted some time to vacate the suit premises to which Mr. Das, in his usual fairness, does not object. Accordingly it is hereby directed that the petitioner tenant will be able to stay in the suit premises for a period of not exceeding four months from today on the following conditions :

(a) That he would vacate the suit premises on the next day of the expiry of four months; if not vacated earlier ;

(b) That, the petitioner will not induct any third party or part with possession of any part of the suit premises in favour of any other person in the meantime and shall deliver vacant possession to the plaintiff landlord;

(c) That, during this period the petitioner will continue to deposit the amount equivalent to the monthly rent in the court.

In the event of the petitioner's failure to comply with any of the conditions noted above the decree shall be put to execution immediately.

13. Accordingly the revision petition is dismissed with the above observations and conditions. No order as to costs.