(1990) 2 GLR 7

Gauhati High Court

Case No: Civil Revision No. 157 of 1982

On the Death of Budhmal Gujrani his heirs Smti. Chanda Gujrani and Others		APPELLANT
	Vs	
On the Death of Kashilal Agarwala his Heirs Smti Urmila Agarwala and Others		RESPONDENT

Date of Decision: Aug. 5, 1989

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 11

Citation: (1990) 2 GLR 7

Hon'ble Judges: S.N. Phukan, J

Bench: Single Bench

Advocate: D.N. Choudhury, H.N. Sarma and K.K. Mahanta, for the Appellant; S.K. Sen, R.L. Yadav and R.P. Sharma, for the Respondent

Final Decision: Dismissed

Judgement

S.N. Phukan, J.
Opposite party herein as Plaintiff filed the suit for ejectment of the present Petitioner from the suit premises on the ground of defaulter of rent and bonafide requirement. Both the learned courts below (sic) the suit and hence the present petition.

2. From the records it appears that prior to the present suit the apposite party filed a suit before the learned Munsiff, Nowgong which WAS registered as suit No. TS 93/72 for ejectment of the present Petitioner on the ground of defaulter etc. The suit was decreed in part only for arrears of rent for the period from 1-3-71 to 30-6-72. Subsequently the present suit bas been filed and from the copy of the plaint vide schedule B it appears that

the opposite party-Plaintiff has claimed arrears of rent from 1-7-72 to 31-12-72 at the rate of Rs. 101-per month and also compensation for unauthorized use and occupation at the rate of Rs. 125/- per month from 1-1-73 to 31-12-76. According to the agreement between the parties the rent was fixed at Rs. 1,212/- per year and tenancy for 3 years from January, 1970. It was provided that the rent was to be paid at the end of each quarter of the year. The opposite party issued a notice to quit and vacate on the present Petitioner and due to his failure to do so the suit bas been filed. It is clearly stated in the plaint that the present Petitioner did not pay any rent during the entire period of tenancy. At the time of argument it was stated at the bar that the earlier decree was put into execution and some amount has been recovered.

3. In the written statement regarding the non-payment of rent is has been stated as follows:

"That the claim for arrear rent, compensation and ejectment is illegal, unjust and excessive". In other words there is no denial regarding non payment of rent by the present Petitioner, Though the opposite party pleaded in the suit that house was required for his own use and occupation this plea was rejected by the court below.

4. Mr. Mahanta learned Counsel for the Petitioner has tried his best to make out a case for the present Petitioner. First contention of Mr. Mahanta is that as no issue regarding defaulter was framed by the learned trial court impugned judgment and decree are liable to be set aside. Mr. Yadav in reply bas urged that as there was no deniel regarding defaulter, the learned trial court rightly did not frame any issue. In view of the vague statement in the written statement regarding non payment of rent I find force in the contention of Mr. Yadav. Second contention of Mr. Yadav is that as the parties proceeded in trial knowing fully the contentions of each party non-framing of issue is not fatal The above position of law, us submitted by Mr. Yadav, is well settled.

5. The second contention of Mr. Mahanta is that in view of the earlier suit where the prayer of the opposite party for ejectment was rejected the present suit is barred by res judicata as contained in Section 11 of the Code of Civil Procedure. In reply Mr. Yadav bas urged that as the on was on the Petitioner to prove this point he has failed to do so not exhibiting the plaint the written statement and the judgment of earlier suit. This contention of Mr. Yadav bas no force, as from judgment of the lower courts I find that this was duly considered the basis of the record of the earlier suit and rejected rightly on the ground that in the earlier suit prayer for ejectment was rejected as the Petitioner at that time was not a defaulter and the suit was premature.

6. To press the point that the onus of proving res judicata lies On the Defendant, Mr. Yadav has placed reliance in Durga Prasad Sharma Vs. Sadasib Biswal, wherein it was held that the onus of proving res judicata is on a Defendant who had set up the plea and he has to prove the pleadings and the judgment of the earlier suit. It was further held that in absence of proof of the pleadings and the judgment in the previous suit, plea of res

judicata could not be accepted. I respectfully agree to the above view but it is not applicable to the case in hand as the learned courts below called for the record of the earlier suit for the deciding this point.

7. In Manzurul Haq and Another Vs. Hakim Mohsin Ali, a full bench of the Allahabad High Court held that decision given by a court of small causes in a suit for arrears of rent will not operate as res judicata in a suit filed later in the court of the Munsiff for the recovery of arrears of rent for a different period and for ejectment. In Appalachacharyulu v. Rangacharyalu AIR 1957 A.P 1002 it was held that in judging whether the decision in a previous litigation operates as ret Judicata or not the test is whether it decided a general principle that in applicable to the later years also or whether it was peculiar or special to that particular years; In other words whether the considerations vary from year to year or such as would govern the subsequent years also. Similar view has also been expressed by the Delhi High Court in Bhoop Singh Vs. Bhori Lal, In that case a dispute arose as to whether the roof of the building was included in the tenancy premises and in the earlier suit it WAS held that it was so included. Their Lordship"s held that the earlier decision regarding the roof vis-a-vis the tenancy premises will operate res judicata in a subsequent suit as the earlier decision was on general principle.

8. I am therefore of the opinion that if in an earlier suit between the same parties or between parties under whom they or any of them claim, litigating under the same title in a competent court and a decision is given by the court on general principle regarding any issue which may be raised between the said parties in a subsequent suit it would operate as n res judicata in a subsequent and not otherwise. In a suit by a landlord for ejectment of a tenant on the ground of defaulter for the period mentioned in that suit and if the court held that the tenant was not a defaulter, It would not be a res judicata in a subsequent suit for defaulter after the period of the earlier suit as the earlier decision was not on general principle. I may add that for every default for payment of rent by a tenant there is a fresh cause of action. Similar would be the case of bonafide requirement. In other word even if a landlord could not prove that the house was required by him for bonafide use and occupation Anr. suit may be maintainable subsequently if there is change of circumstances.

9. Coming to the case in hand in the earlier suit as stated above, it was decided that for that period the tenant wan not a defaulter. Therefore that decision would not be a res judicata for the present suit as that decision of the earlier suit was not on general principle.

10. Mr. Mahanta has urged that there was a decision in the earlier suit that the Petitioner was a tenant under the opposite party and that decision was on a general principle and as such in the present suit the opposite party cannot claim compensation on the termination of the tenancy by a notice. In the year 1979 the apex court held that for a suit for ejectment under the relevant rent control act termination of tenancy by a notice is not necessary. The present suit was filed before 1979 and as such it was necessary to

terminate the tenancy by a notice by the landlord and after such termination landlord used to claim compensation. I am, therefore, of the opinion that even if in the present suit after the termination of the tenancy by notice the landlord has claimed compensation instead of rent it cannot be held that the decision of the earlier suit regarding the relationship of landlord and tenant would operate as res-judicata. I, therefore, do not find any force in the contention of Mr. Mahanta on this point.

11. In the instant case there is absolutely no dispute that all through the Petitioner did not pay any rent for any period and as such this is clear case of defaulter. I therefore do not find any jurisdictional error in the findings of the courts below, Hence the present petition is liable to be dismissed.

In the result petition is dismissed and the rule is discharged. Interim order, if any, stands vacated. Parties to bear their own costs.