
(2015) 04 GAU CK 0057

Gauhati High Court

Case No: Regular Second Appeal No. 11 of 2006

Sewak Dutta

APPELLANT

Vs

Sunil Bhuyan

RESPONDENT

Date of Decision: April 29, 2015

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 8 Rule 1
- Transfer of Property Act, 1882 - Section 111, 111(a), 114, 116

Citation: (2015) 04 GAU CK 0057

Hon'ble Judges: Suman Shyam, J

Bench: Single Bench

Advocate: B. Sarma, for the Appellant; P.P. Das, Advocates for the Respondent

Final Decision: Dismissed

Judgement

Suman Shyam, J

This Second Appeal is directed against the judgment and decree dated 21.09.2005 passed by the learned Civil Judge (Senior Division), Jorhat in Title Appeal No. 11/2005 dismissing the appeal and affirming the judgment and decree dated 04.02.2005 passed by the learned Civil Judge (Junior Division) No. 1, Jorhat in Title Suit No. 27/2004 decreeing the suit filed by the respondent/plaintiff for ejectment of the defendant/appellant from the tenanted premises and also for recovery of arrear and future rent.

2. The facts of the case is that the defendant had entered as a tenant under the plaintiff in respect of the suit premises on 01.02.2003 on condition of paying monthly rent of Rs. 350/- as per the English Calendar. An unregistered lease agreement dated 01.02.2003 was entered into by and between the parties for a period of 11 months i.e. from 01.02.2003 upto 31.12.2003 and the defendant had also paid a deposit of Rs. 3000/- at the time of entering into the tenancy. One of the conditions contained in the lease agreement was that in case of default on the part of the defendant in payment of the rent the plaintiff would be at liberty to terminate the tenancy. It was further agreed by and

between the parties that after expiry of the lease period, the defendant would be obliged to vacate the tenanted premises or to enter into a fresh agreement of tenancy with the plaintiff by incorporating new terms and conditions. It was also mutually agreed that in case the plaintiff is in requirement of the suit premises during the currency of the agreement, he would be required to serve one months" notice to the defendant asking him to vacate the suit premises. It is the pleaded case of the plaintiff that after the expiry of the lease agreement, as aforesaid, there was no renewal of tenancy between the parties and the defendant also neglected to pay the rent with effect from 01.01.2004 inspite of repeated demands made by the plaintiff to that effect. Further the tenanted premise was also required for starting a business by his highly qualified son who had obtained a degree of MBA. The plaintiff had, therefore, served a legal notice upon the defendant dated 25.03.2004 demanding payment of arrear rent since 01.01.2004 and also calling upon the defendant to vacate the suit premises by 30th April, 2004. Since the defendant had failed to respond to the said legal notice by complying with the same, the plaintiff was compelled to institute Title Suit No. 27/2004 in the Court of Civil Judge (Junior Division) No. 1, at Jorhat praying for the aforementioned reliefs.

3. Upon receipt of summons the defendant though appeared in the Title Suit, yet, he was not allowed to submit his written statement, the same having been held to be barred by time prescribed by Order VIII Rule 1 CPC. The suit therefore, proceeded ex parte against the defendant although he was permitted to cross-examine the plaintiff's witnesses. Since there was no written statement on behalf of the defendant hence the learned trial Court did not feel the necessity to frame any issue in the suit.

4. The plaintiff's side had adduced evidence in support of his case. The defendant side had cross-examined the plaintiff's witnesses. Thereafter, upon due appreciation of the evidence available on record, the learned trial court had decreed the suit filed by the plaintiff by the judgment and order dated 04.02.2005. The operative part of the judgment passed by the learned trial Court is quoted herein below:-

"The plaintiff shall be entitled to a decree for khas possession of the suit premises by evicting the defendant therefrom. Moreover the plaintiff shall be entitled to recover arrear and future rent from the month of January, 2004 till ejectment of the defendant @ Rs. 350/- per month, subject to pay of additional Court fees."

5. Being aggrieved by the judgment and decree passed by the learned trial Court, the defendant as appellant had preferred Title Appeal No. 11/2005 before the Court of Civil Judge (Senior Division), Jorhat. After hearing the learned counsels for the parties and on examination of the materials on record the learned First Appellate Court dismissed the appeal filed by the appellant/defendant thereby affirming the judgment and decree passed by the learned trial Court.

6. Being aggrieved by the judgment and decree dated 21.09.2005 passed by the learned First Appellate Court the defendant as appellant has preferred the instant Second Appeal

which was admitted by this Court to be heard on the following substantial question of law:-

"1) Whether the learned Court below misconstrued sections 111, 114 and 116 of the Transfer of Property Act, 1882, in holding that the appellant was evitable from the suit premises on the determination of the lease by efflux of time as envisaged in Section 111(a) of the Act?"

7. I have heard Ms. B. Sarma, learned counsel appearing for the appellant and also heard Mr. P.P. Das, learned counsel representing the respondent.

8. Referring to the substantial question of law framed by this Court, Ms. B. Sarma, learned counsel for the appellant, submits that as would be apparent from the materials on record the present is not a case falling within the purview of Section 111(a) of the Transfer of Property Act, 1882 (hereinafter referred to as the T.P. Act). On the contrary, the present is a case which is squarely covered by Section 114 of the T.P. Act since the forfeiture of the tenancy, as per the case projected by the plaintiff, is admittedly on the ground of nonpayment of the rent. Ms. Sarma submits that even though the lease agreement had come to an end on 31.12.2003, yet for about three months thereafter, the landlord plaintiff remained silent and did not take any action for ejectment of the defendant. That apart, the defendant has made a number of attempts to offer rent to the landlord plaintiff for the month of January, 2004 and the subsequent months which was declined by the plaintiff. Therefore, this is a case of tenant holding over and the defendant would be entitled to the protections available under Section 116 of the T.P. Act.

9. Refuting the submissions made by and on behalf of the appellant, Mr. P.P. Das, learned counsel for the respondent, submits that the facts on record would clearly go to show that the original lease agreement expired on 31.12.2003 by efflux of time and thereafter, there was no renewal of tenancy. The plaintiff/landlord had never agreed to permit the defendant to continue as a tenant but on the contrary he had, in fact, issued a legal notice upon the defendant asking him to pay up the arrear rent and also to vacate the tenanted premises. The learned Courts below have recorded concurrent finding of facts holding that the plaintiff had succeeded in proving and establishing his case by leading cogent evidence. It has been held by both the Courts below that after the termination of the lease agreement on 31.12.2003 there was no further renewal of tenancy by and between the plaintiff and the defendant. Mr. Das submits that the Courts below had further observed that there is no evidence available on record to show that the defendant had either offered any rent to the plaintiff or such rent had been accepted by the plaintiff.

10. Referring to a judgment and decision of this Court in the case of United Bank of India vs. Tinsukia Development Corporation Ltd. reported in 1996 (3) GLT 239, Mr. Das submits that this is a case where the defendant has become a tenant by sufferance and does not enjoy any right and protection under the T.P. Act. Therefore, there is no infirmity

in the judgment and decree concurrently passed by the Courts below.

11. I have considered the rival submissions made by and on behalf of the parties. On a perusal of the judgment and decree passed by the learned Court below as well as the materials available on record what is evident is that the agreement of tenancy (Ext-1) was for a period of 11 months with effect from 01.02.2003 till 31.12.2003. Therefore, the said agreement stood determined by efflux of time limited therein with effect from 31.12.2003. Admittedly, there was no fresh agreement of tenancy entered into by and between the parties even though there was a scope for doing so as per the original agreement. It is apparent that there was no mutual agreement by and between the parties for renewal of the tenancy. Therefore, it is evident that this is a fit case which squarely falls within the purview of Section 111(a) of the T.P. Act whereby the lease stood determined by efflux of time. It was only after the determination of the lease agreement that the plaintiff/landlord had served a legal notice dated 25.3.2004 not only demanding the arrear rent but also asking the defendant/tenant to vacate the tenanted premises which was admittedly not complied with by the defendant. Therefore, the argument made by Ms. Sarma that this is a case of forfeiture of tenancy for non-payment of rent covered by Section 114 of the T.P. Act is found to be without any substance and hence stands rejected.

12. Since there is nothing on record to show that there was renewal of the tenancy by and between the plaintiff and the defendant by either any written instrument or even by the conduct of the parties whereby rent was accepted by the plaintiff landlord from the defendant, it is not possible to agree with the submission made by Ms. B. Sarma that the defendant's case would fall within the ambit of Section 116 of the T.P. Act.

13. From a close scrutiny of the judgment and decree passed by the Courts below it is found that the plaintiff/landlord has also been able to prove and establish the fact that the defendant/tenant has been a defaulter in payment of electricity dues to the ASEB at the rate of Rs. 200/- per month since 01.01.2004.

14. In the case of United Bank of India (supra), the Hon"ble Division Bench of this Court has observed as follows:-

"(13) It is well settled that if a lessee remains in possession after determination of the term, of the lease, he is under the common law a tenant on sufferance. On the other hand if a tenant after determination of the lease is in possession without the consent of the landlord, he is a tenant by sufferance. It is only where a tenant will continue in possession with the consent of the landlord that can be called a tenant "holding over or tenant at will. These principles of law find its place in the decision rendered by the Apex Court in [Maneksha Ardeshir Irani and Another Vs. Manekji Edulji Mistry and Others](#), AIR 1974 SC 2123 : (1974) 2 SCC 621 : (1975) 2 SCR 341 : (1974) 6 UJ 691 . On this aspect the Supreme Court in [Badrilal Vs. Municipal Corporation](#) held thus; A person who is lawfully in occupation of the premises does not become a trespasser. If he does not become a tenant holding over, he would be a tenant by sufferance. When the renewal was made

subject to condition of payment of upset price and increased rent within specified date, on the failure of the lessee to pay the amount within the specified date the lessee ceases to be a tenant holding over but only a tenant by sufferance and could be evicted without notice. Acceptance of rent at old rate by the lessor does not change the position."

15. As has been mentioned above, in the instant case, there has been no renewal of tenancy between the plaintiff and the defendant after the expiry of the original lease agreement (Ext-1). There was no relation of landlord tenant in existence since the date of expiry of the tenancy agreement. After the notice to vacate the tenanted premises has been received by the defendant he did not have any legitimate right to continue in the tenanted premises. Since 01.04.2004, the status of the defendant was that of a tenant by sufferance and, therefore, the Court below has rightly affirmed the decree of ejectment and recovery of arrear and future rent passed against the defendant. Such being the position, I do not find any justifiable ground to interfere with the concurrent finding of facts recorded by the Courts below that led to the suit being decreed. In that view of the matter, the question of law framed by this Court stands answered in favour of the respondent/plaintiff and against the appellant/defendant.

16. In the result, it is held that there is no merit in the Second Appeal and the same shall stand dismissed. Having regard to the facts and circumstances of the case, the parties to bear their own cost.

The LCR be sent back immediately.