

(2014) 03 GAU CK 0054

Gauhati High Court

Case No: Case No: CRP 161 of 2013

Md. Alam and Md. Murad Ahmed

APPELLANT

Vs

Dr. Ambica Prasad

RESPONDENT

Date of Decision: March 11, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Transfer of Property Act, 1882 - Section 110, 111

Citation: (2014) 4 GLT 962

Hon'ble Judges: N. Chaudhury, J

Bench: Single Bench

Advocate: S. Ali, Mr. M. Alam, Mr. A. Ikbal and Mr. G. Bordoloi, Advocate for the Appellant;
H.K. Deka and Mr. H. Nath, Advocate for the Respondent

Final Decision: Allowed

Judgement

N. Chaudhury, J.

This revision petition is directed against the appellate judgment passed by the learned Civil Judge No. 3, Kamrup, Guwahati, in Title Appeal No. 97/2010 allowing the appeal and thereby decreeing the suit for eviction of the defendants. Plaintiff Dr. Ambica Prasad filed Title Suit No. 484/2007 in the court of learned Munsiff No. 4, Kamrup for eviction of the defendant Abdul Karim on the ground of default and bona-fide requirement. It is the case of the plaintiff that he was original owner of a plot of land measuring 1 Katha 6 Lechas covered by Dag No. 514 which he exchanged with his brother Ranjeet Prasad and thereupon he became owner of land measuring 2 Kathas 1 Lecha under same Dag and Patta. This exchange was affected on the basis of registered deeds bearing No. 4091 and 4092 executed on 23.04.1975. A market, known as Gauhati market, was situated on the R.C.C. construction standing on the said land and the said market was registered as Gauhati Municipal Holding No. 13 of ward No. 33. Previously, in the year 1968, when the said land and the building was under ownership and possession of Ranjeet Prasad, the brother of

the plaintiff, he had let out one of the rooms identified as Room No. B-1 to one Rahim Baksh, the father of the original defendant. The tenancy was a monthly one at a rental of Rs. 1,000/- per month payable within 7th day of the succeeding month as per English calendar. Even after execution of the exchange deeds, as referred to above, the plaintiff, who was residing outside, permitted his brother Ranjeet Prasad to collect rent of the tenanted premises from all the tenants including Rahim Baksh and he did make collections accordingly. After the death of Rahim Baksh, his son Abdul Karim stepped into the shoe of his father as a tenant and went on making payment of rent to Ranjeet Prasad regularly. This arrangement continued till the first part of the year 2007 when Ranjeet Prasad absolved himself of the responsibility and plaintiff took over the whole affairs including realization of the rent from the tenants. The plaintiff thereafter got his name mutated in his record of rights as owner of the aforesaid holding and thereafter by notice dated 19.02.2007, served on the defendant, informed him about the change of ownership and requested him to attorn the plaintiff as his landlord and henceforward to pay the rent to him. It is stated that the defendant accordingly attorned the plaintiff as his landlord and started paying electricity bill to him but did not pay rent which he promised to pay. It was pleaded that defendant paid electricity bill to the plaintiff through his son Md. Alam but did not execute any fresh agreement with the plaintiff on this or that pretext. The defendant paid rent upto the month of February, 2007 to Ranjeet Prasad and thereafter did not make any payment either to Ranjeet Prasad or to the plaintiff and thus became a defaulter. It is, further, stated that the plaintiff needed the suit premises for opening a medical clinic and accordingly asked the defendant to vacate. As the defendant did not vacate the premises, plaintiff filed the suit in question for recovery of arrear rent along with interest and also for Kha's possession of the suit premises by evicting the defendant.

2. On being summoned, the defendant appeared and submitted written statement denying landlord tenant relationship with the plaintiff. The defendant also denied to have attorned the plaintiff as his landlord. He, however, admitted that he was a tenant under Ranjeet Prasad and was paying rent to him, who having refused to accept rent, the defendant started depositing rent in court by various NJ cases since March, 2007. The defendant denied the bone-fide requirement claimed by the plaintiff and prayed for dismissal of the suit.

3. On such rival contentions of the parties, the learned Trial Court framed as many as 8 issues and the same are as follows:

1. Whether the suit is maintainable?
2. Whether there is cause of action for the suit?
3. Whether the suit is bad for non-joinder of necessary parties?
4. Whether the plaintiff is the landlord of the defendant in respect of the suit premises?

5. Whether the defendant is a defaulter in payment of monthly rent and as such liable to be rejected?
6. Whether the suit premise is bona-fide required by the plaintiff for his own use?
7. Whether the plaintiff is entitled for arrear rent with interest from the defendant?
8. To what relief/reliefs the parties are entitled too?

4. The plaintiff examined 3 witnesses including himself as P.W. 1. His brother Ranjeet Prasad was examined as P.W. 3 while one Joy Kishan Shah was examined as P.W. 2. The defendant, on the other hand, examined 2 witnesses. D.W. 1 was the defendant himself while D.W. 2 was the son Md. Alam.

5. After hearing the parties and on perusal of the materials, the learned Trial court, by judgment and decree dated 23.08.2010 dismissed the suit of the plaintiff holding that there was no landlord and tenant relationship between the plaintiff and the defendant. The learned Trial court held that the claim of the plaintiff to the effect that defendant had attorned him as his landlord is without any basis and there is no iota of evidence in this regard. According to the learned Trial court, there was no evidence to come to a finding that the defendant had ever attorned the plaintiff as his landlord and that he ever promised to pay rent to the plaintiff. The learned Trial court noticed that, on one hand, plaintiff was urging the defendant No. 2 to execute a fresh agreement of tenancy and on the other hand, in course of cross-examination the plaintiff suggested that the defendant went to pay rent to him in 2007 but he had refused to accept the same. With these observations the learned Trial court decided Issue Nos. 1, 2 and 3 against the plaintiff. While deciding the issue of default, the learned Trial court held that admittedly defendant was paying rent in favour of Ranjeet Prasad in court by various N.J. cases. The records of which, however, were never called for before the learned Trial court. According to the learned Trial court, the factum as to deposit of rent in court being an admitted one, the tenant was never under any obligation to prove the same. Having so held, the learned Trial court opined that the defendant was not a defaulter. The learned court also disbelieved the claim of bona-fide requirement of the plaintiff and consequently the suit was dismissed.

6. Aggrieved by the aforesaid decree of dismissal, passed by the learned Trial court, the plaintiff preferred Title Appeal No. 97/2010 before the learned Civil Judge No. 3, Kamrup, Guwahati. The learned Appellate court, by his judgment and decree dated 18.02.2013, allowed the appeal, set aside the judgment of dismissal, passed by the learned Trial court and decreed the suit for eviction of the tenants holding the issue of default and bona-fide requirement in favour of the plaintiff-appellant. The lower appellate Court was of the view that the defendant filed a written argument and the learned Trial court quoted from the said written argument including notes of punctuation without any change and thereupon dismissed the suit as referred to above. In so doing, the learned Trial court did not deal with Issue No. 4 which is the

crux of the suit. On these findings, the learned first appellate Court proceeded to appreciate evidence and decide all the issues afresh. The learned first appellate Court found that the plaintiff proved deed of exchange as Ext. 1 whereby Ranjeet Prasad had relinquished his right over the suit premises in favour of the plaintiff. On the basis of such relinquishment, plaintiff's name was duly mutated in the records of right vide order dated 09.09.2006 in mutation case No. 214/2006 and since then the plaintiff has been paying municipal taxes etc. in relation to the suit holding. Moreover, Ranjeet Prasad himself volunteered to come into witness box as P.W. 3 and supported the averments of the plaintiff. Thus, acquisition of ownership right of the plaintiff over suit property was proved in accordance with law, the learned lower appellate Court observed. It was further noted that by Ext. 5, notice dated 19.02.2007, the plaintiff informed the defendant tenant about change of ownership and asked him to attorn him as landlord and to pay rents. The defendant was also asked to execute a fresh agreement for tenancy. According to the learned first appellate Court, the D.W. 1 himself admitted that Ext. 5(4) is the signature of Md. Aslam, who is his brother-in-law and used to sit in the shop premises with his son Md. Alam. The service of Ext. 5 over the defendant, therefore, was duly proved, the learned lower appellate Court opined. In paragraph 20 of the appellate judgment it was further observed that the defendant went to make payment of rent to the plaintiff and this fact has come on record from the mouth of D.W. 1 himself. With all these observations, the learned first appellate Court held that there was landlord and tenant relationship between the plaintiff and defendant and since no rent was paid to the plaintiff after February, 2007, the defendant became a defaulter and consequently became liable to be evicted. The issue of bona-fide requirement was also held to have been established by the plaintiff and accordingly the learned appellate Court reversed the findings of the learned Trial court on all the three vital issues and decreed the suit for eviction of the plaintiff. It is this appellate judgment which has been brought under challenge in this revision petition.

7. I have heard Mr. S. Ali, learned counsel appearing for the petitioners and Mr. H.K. Deka, learned senior counsel, assisted by Mr. H Nath for the opposite party. It is to be noted here that during the course of trial the original defendant Abdul Karim died and thereupon his legal heirs were brought on record as substituted defendants who are the petitioners in the present case.

8. Mr. S. Ali submits, at the threshold, that plaintiff was never the landlord of the original defendant and/or the present petitioners. They were all along tenants of Ranjeet Prasad and the learned appellate Court committed jurisdictional error in reversing the findings of the learned Trial court in regard to issue No. 4. Once the issue No. 4 is decided in favour of the defendant, the question of deciding issues on default and bona-fide requirement would not have arisen.

9. Per contra, Mr. H.K. Deka, learned senior counsel submits that the learned court below having found that the plaintiff acquired title over the land pursuant to the

registered deeds followed mutation in the records of rights, even if the defendants are not tenants, shall be encroachers and as such relief of eviction would be granted against them by moulding the relief. According to the learned senior counsel for the opposite party, transfer of the property in favour of the plaintiff has been duly established and there is no dispute in law that transferring landlord is entitled to collect rent from the tenants. By serving notice vide Ext. 5 on the defendants, factum of transfer of ownership was duly brought to the notice to the tenants and as such the tenants were duty bound to make payment of rents to the plaintiff. This having not been done the defendants denigrated themselves to the level of defaulter and became liable for eviction thereby.

10. This revision petition arises out of a claim of relief u/s 5 of the Assam Urban Areas Rent Control Act, 1972. Unlike general law governing tenancy, this Act confers a statutory status on tenant and on attainment of such status a tenant earns protection guaranteed u/s 5 of this Act. No tenant under this Act can be evicted without a decree of Court. The landlord, therefore, is duty bound to obtain a decree from court by establishing the conditions precedent laid down u/s 5 referred to above. The foundation of such a suit is relationship of landlord and tenant. The fact that there exists a relationship of landlord and tenant between the parties is the starting point for conferring jurisdiction on a court to entertain and decide the dispute. Such fact constituting landlord-tenant relationship, therefore, is a jurisdictional fact and not a mere fact and as such High Court, in exercise of revisional jurisdiction u/s 115 of the Code of Civil Procedure, is duty bound to examine as to whether such a finding arrived at by the learned Court or Courts below is tenable and/or based on materials on record. It is, therefore, apposite to consider the respective pleadings and evidence of the parties available on record. The plaintiff, by examining 3 witnesses, sought to establish that in the early part of the year 2007 Ranjeet Prasad handed over control and management of the suit premises to the plaintiff on the basis of exchange held in the year 1975. Since the date of partition till February, 2007, Ranjeet Prasad collected rents from the tenants because of his monetary necessity and once the same was over, he returned the property to the plaintiff. As against such pleadings and evidence of the plaintiff the defendants came forward with a contrary version. The defendants brought on record two (2) documents, namely, Ext. Ka and Ext. Kha. By Ext. Kha, the tenancy started between Ranjeet Prasad and Rahim Baksh, the father of the original defendant, Abdul Karim. There was a recital in the said document to the effect that in case the tenant fails to make payment of rent continuously for 2 months in time then the tenant would be deemed as defaulter. This document was executed on 20.12.1968. Thereafter, on 20.05.2006 Ext. Ka was executed between same Ranjeet Prasad and Abdul Karim, the original defendant who is the predecessor of the present petitioners. In this document of tenancy, Ranjeet Prasad accepted Abdul Karim as his tenant at a rental of Rs. 1,000/- per month as per English calendar. In this agreement, also at clause 4, it was provided that tenant would become

defaulter on failure to pay rent for 3 months continuously in time. Both the plaintiff and the depositions of the P.W. 1 and 3 remained conveniently silent about existence of Ext. Ka, agreement of tenancy. Neither the plaintiff nor his brother Ranjeet Prasad (P.W. 3) made any whisper in their examination-in-chief in regard to existence of these documents. When he was confronted with Ext. Ka in course of his cross-examination, the P.W. 3 admitted that it was executed by him in favour of Abdul Karim and he proved his own signature's thereon. He also admitted that he executed the agreement of tenancy as owner of the suit premises and that there was no mention therein to the effect that he was making the agreement on behalf of Dr. Ambica Prasad, who is the plaintiff in the present suit. He also could not say when the exchange was done. On being confronted with clause 4 of Ext. Ka, he admitted that as per the term of contract tenant would become a defaulter only if he fails to make payment of rent for 3 months consecutively. The D.W. 1 exhibited aforesaid Ext. Ka and Kha but no question has been put to him in course of cross-examination in regard to these documents. Moreover, by exhibiting Ext. Gha, defendant has brought on record a copy of plaint in T.S. 7/2003 to show that Ranjeet Prasad had instituted a suit for eviction against one Sampat Kumar Jain and others for their eviction from one of the rooms of the same R.C.C. building which has been claimed to be the property of Dr. Ambica Prasad since 1975.

11. It is surprising that the learned Appellate court while deciding issue No. 4 did not make any mention about Ext. Ka, Kha and Gha. Ext. Ka, being an admitted document of tenancy between Ranjeet Prasad and Abdul Karim, claim of acquisition of the status of statutory tenant by Abdul Karim under Ranjeet Prasad cannot be ignored. The terms "tenant" and "landlord" within the meaning of the Assam Urban Areas Rent Control Act, 1972 has got nothing to do with ownership of property. Landlord has been defined u/s 2(c) of the Assam Urban Areas Rent Control Act, 1972 as a person who is for the time being receiving or entitled to receive rent in respect of any house whether on his own account, or on account, or on behalf of, or for benefit of any other person as trustee, guardian or receiver or even includes in respect of subtenant, a tenant who has sublet any house and includes every person, not being a tenant, who from time to time derives title under a landlord. Similarly, tenant has been defined in Section 2(f) of the same Act as a person by whom or on whose behalf rent is payable for any house and includes every person who from time to time derives title under a tenant. This being the position as per the recital of Ext. Ka, Ranjeet Prasad entered into landlord tenant relationship with Abdul Karim describing himself to be owner of the property. Although, in fact there was allegedly an exchange deed in existence irrespective of the fact as to whether such exchange deed was really acted upon after execution or not, the relationship of tenancy having been set up it can either be terminated mutually by the parties or upon a decree by competent civil court in accordance with the manner and method prescribed u/s 5 of the Assam Urban Areas Rent Control Act, 1972. Tenant under this Act, being a statutory tenant, cannot be evicted, save and except a decree passed by

competent civil court u/s 5 thereof. The procedure of determining tenancy by tenancy/lease u/s 110 or 111 of the T.P. Act is not available in case of statutory tenant. Moreover, even in 2003, Ranjeet Prasad instituted title suit against a co-tenant of the defendant claiming and describing himself to be the owner of the property. Now when Ranjeet Prasad has not denied institution of suit and/or execution of tenancy agreement, as referred to above, describing himself to be the owner of the property even in the year 2006 and there being no incident of conveyance of title subsequent to the aforesaid date of tenancy vide Ext. Ka, the question of the plaintiff having derived title under the original landlord, namely, Ranjeet Prasad, also cannot arise. Having executed Ext. Ka and having instituted suit vide Ext. Gha, it does not fit in the mouth of P.W. 3, Ranjeet Prasad that plaintiff became owner of the suit property after 1975 on the basis of so called exchange deed. Under such revelation by the defendant exhibiting Ext. Ka and Gha, burden fell heavily on the plaintiff to establish that he had derived the title after 2006. The plaintiff has miserably failed to discharge this burden. Under such conspectus of circumstances, the possibility of the apprehension expressed by the defendant, that suit has been filed by the plaintiff in collusion with Ranjeet Prasad, cannot be burst aside.

12. These aspects are no doubt relevant for the purpose of adjudicating a jurisdictional fact as to landlord tenant relationship in a proceeding u/s 5 of the Assam Urban Areas Rent Control Act, 1972. Apparently, these relevant aspects were not considered by the learned Appellate court. The finding of the learned Appellate court, therefore, on issue No. 4 is vitiated by non-consideration of relevant aspect and non-consideration of exhibits Ka, Kha and Gha. The finding of the first Appellate court that there is a landlord and tenant relationship between the plaintiff and the defendant is liable to be held as perverse, inasmuch as, plaintiff has failed to meet the challenges thrown by the defendant by bringing on record exhibits Ka, Kha and Gha and claiming the plaintiff never derived the title from Ranjeet Prasad subsequent to creation of tenancy in 2006. The decision of appellate Court, on issue No. 4, therefore, is liable to be interfered with. Once it is held that there is no landlord and tenant relationship between the plaintiff and the defendant, there is no question of giving any decision on the issue of default or bona-fide requirement. Consequently, findings of the first Appellate court on these 2 (two) issues are also set aside. In the result, civil revision petition is allowed and the impugned appellate judgment is set aside restoring the judgment of the learned Trial court. No order as to cost.