

Ashiya Khatoon and Others Vs Sadashib Prasad

Court: Jharkhand High Court

Date of Decision: Dec. 18, 2002

Acts Referred: Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 " Section 26

Citation: (2003) 2 JCR 321

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: J.P. Jha, for the Appellant; S.S. Choudhary, for the Respondent

Final Decision: Partly Allowed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.

This revision application is directed against the Judgment and decree dated 20.4.2000 passed by Sub-Judge-IV, Dumka

in title (eviction) suit No. 22/63 of 1997/98 whereby he has decreed the suit in favour of the plaintiff-opposite party on the ground of personal

necessity.

2. The facts of the case lie in a narrow compass :

The plaintiff-opposite party filed the aforementioned suit against the defendants-petitioners for a decree of eviction in respect of the suit property

comprising of holding No. 228, Ward No. 6 situated in the town of Dumka. The defendant Was inducted as monthly tenant in respect of three

rooms where the petitioners used to run a studio in the name and style of M/s. Rellex Studio. The plaintiffs case is that he has a large family

consisting of his married son and grand children whom he was unable to maintain after his retirement in 1991 from government service as his sons

are unemployed and sitting idle at home. The plaintiff therefore wants to open a shop with store in the premises occupied by the defendants.

3. The defendants case is that the plaintiff, after retirement is doing survey work and is earning a lot. Two sons of the plaintiff are employed, one is

in the forest department and the other is a lecturer in the college. The petitioner, therefore, does not require the suit premises for his own use and

occupation.

4. During the pendency of the suit one of the sons of the plaintiff died and, therefore, the plaintiff filed additional pleading. The Court below, on the

basis of the pleadings of the parties framed the following issues for the decision of the suit :

(i) Whether the suit is maintainable as framed?

(ii) Whether the plaintiff has cause of action for the suit?

(iii) Whether the plaintiff reasonably and in good faith requires the suit premises for his own occupation and business?

(iv) Whether the reasonable requirement of the plaintiff may be substantially satisfied by eviction the defendants from a part of the suit premises

only?

(v) Whether the plaintiff is entitled for a decree of eviction against the defendant from the suit premises as prayed for?

(vi) Whether the plaintiff is cut fled to any other relied or reliefs?

5. The Court below took notice of the admitted fact that the plaintiffs eldest son died during the pendency of the suit and the plaintiff got delivery of

possession in respect of one shop in a portion of the building from another tenant against whom an eviction suit being title suit No. 25/93 was filed.

On the issue of personal necessity the Court below, after considering the facts of the case and the evidences brought on record, came to the

conclusion that the plaintiff requires the premises for his own use and occupation. On the issue of partial eviction the Court below recorded the

following finding :

Issue No. IV.--As noticed earlier, the suit premises is either 8" x 23" or 8" x 30", 8"" width is towards road. On west of suit holding the door of

the proposed shop cannot be opened. 8" width is too less and so by dividing it half and half the purpose of the plaintiff can not be served as 3" is

the width of an door on general. Plaintiff also says so in evidence as well as in his pleading, so ever applying defendants second case law no

division is proper so, this issue also is decided in favour of the plaintiff and against the defendants.

6. Mr. J.P Jha, learned counsel appearing on behalf of the defendants-petitioners assailed the impugned judgment and decree as being illegal and

not in accordance with law. Learned counsel submitted that the plaintiff filed the suit mainly on the ground that his two sons are sitting idle.

Admittedly during the pendency of the suit eldest son of the plaintiff died and the plaintiff also got delivery of possession of one of the shop rooms

from another tenant. However, the plaintiff made out a case that after the death of his son his widowed daughter in law, Rita Verma has been

running a stationary shop in the premises vacated by one of the tenants. Learned counsel further submitted that the Court below has not correctly

decided the issue of partial eviction.

7. Ext-3 is a Pleader Commissioner's report. From perusal of a sketch map attached with the report it appears that the building premises situate

on the Dharamshala road. On the right side there are four big rooms. In the extreme southern side is the shop premises in occupation of the

defendants measuring 8" in width and 30" in length. The second shop room was in occupation of the tenant which was vacated and according to

the plaintiff his widowed daughter in law is running a shop. The next two rooms on the road side are occupied by the plaintiff which are used as

drawing room and bed room. Admittedly the defendants are in occupation of three contiguous rooms in the southern side. If half portion of the

shop room situated in the back side is vacated by the defendants, the plaintiff can very conveniently convert the same into bed room and the room

in the front side which is used as bed room can be used for running a shop. This aspect of the matter has not at all been considered by the Court

below while deciding the issue of partial eviction. In my opinion, a decree of partial eviction will fully satisfied the requirement of the plaintiff

particularly when during the pendency of the suit the plaintiff got possession of one shop room vacated by another tenant and accommodated his

widowed daughter in law in the said room. I can go even one step further In saying that even the other room which is in the front side and is used

by the plaintiff as drawing room can very well be used for commercial purposes.

8. Admittedly, there are four rooms in front side of the building on the main Dharamsala Road. The southern side with two more rooms in

contiguous in the back side is in occupation of the defendants whereas three rooms in front side are presently in occupation of the plaintiff. In one

room which was used as a shop room was vacated by another tenant during the pendency of the suit and according to the plaintiff his widow

daughter in law has started business in the said shop room after the death of her husband during the pendency of the suit. It is worth to mention

here that the suit was filed on the ground of personal necessity for establishing his son in business. The remaining two rooms in the front side are

used by the plaintiff for residential purposes. From perusal of the impugned judgment, it appears that in course of argument in the suit a petition was

filed by the defendants stating therein that petitioner is ready to vacate half portion in back side of the room and would be satisfied if the decree for

partial eviction is passed. As stated above, plaintiff very conveniently use the said half portion of the tenanted premises for residential purposes had

start their business in the front room situated on the main road adjacent to the shop premises presently run by widow daughter in law. There is no

evidence adduced by the plaintiff to show that the back portion of the tenanted premises is not suitable for residential purposes.

9. It is well settled that if another suitable accommodation is made available to the plaintiff/landlord then he must establish that the said

accommodation is not suitable for the purpose of his occupation or for the purpose for which he requires premises. In my opinion, the plea of the

landlord that he has unfettered right to re-enter the premises of his choice is not acceptable in the facts of the present case.

10. The Court below while deciding the issue of partial eviction has committed serious error in holding that if the suit premise is divided, the width

would be 3 feet which can not be used for business purposes. The Court below has failed to consider that two rooms in possession of the plaintiff

in the front side which can be used for commercial purposes is being used for residential purpose. If the plaintiff would have been in dire need of

the premises for starting business he could have used the front room for commercial purposes.

11. Taking into consideration the entire facts and circumstances of the case and the evidence brought on record, I am of the opinion that if the

defendants vacate half of the tenanted premises i.e. 8" x 15" from the back side that will fulfill the need of the plaintiff who can use the said

premises as bed room and thereby start business in the two rooms available in the front side of the road.

12. For the aforesaid reasons, this civil revision application is allowed in part and the finding of partial eviction passed by the Court below is set

aside. Consequently, the suit is decreed in part and the defendants/petitioners are directed to vacate half portion of the shop premises in the back

side measuring 8" x 15" and deliver possession of the same to the plaintiff within a period of two months from today.