

(2014) 12 JH CK 0013

Jharkhand High Court

Case No: Second Appeal No. 271 of 2007

Uma Devi Joshi

APPELLANT

Vs

Hemwanti Devi

RESPONDENT

Date of Decision: Dec. 18, 2014

Acts Referred:

- Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 - Section 11(1)(c), 11(1)(d)
- Transfer of Property Act, 1882 - Section 53A

Citation: (2015) 3 LJLR 170

Hon'ble Judges: Dhruv Narayan Upadhyay, J

Bench: Single Bench

Advocate: Rajiv Ranjan and Ranjan Kumar, Advocate for the Appellant; V. Shivnath, Sr. Advocate and Amar Kumar Sinha, Advocate for the Respondent

Judgement

Dhruv Narayan Upadhyay, J.

Heard learned counsel for the parties.

2. Present Second Appeal has been preferred against the Judgment and Decree passed by Additional Judicial Commissioner - cum - Special Judge, C.B.I. (A.H.D.), Ranchi in connection with Title Appeal No. 85 of 2006 whereby the Judgment dated 25.05.2006 and Decree Dated 25.05.2006 passed and signed by Munsif, Ranchi in connection with Title Suit No. 99 of 1984/Title Suit No. 100 of 1984 have been affirmed.

3. Originally Title Suit No. 99 of 1984 on the ground of personal necessity as envisaged under Section 11(1)(c) and Title Suit No. 100 of 1984 on the ground of defaulter under Section 11(1)(d) of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982 [hereinafter referred as "B.B.C. Act" in short] filed by the plaintiff Muneshwar Dayal against defendant Thakur Maharaj were amalgamated and decided by a common Judgment dated 25.05.2006 and a common Decree was prepared and signed on 02.06.2006. During pendency of the suit, plaintiff

Muneshwar Dayal as well as defendant Thakur Maharaj died and they were substituted by their legal heirs and successors who have contested the suit and the appeal as well. The appellant is the defendant whereas respondents are the plaintiffs.

4. According to the plaint, the suit property as described in the plaint was owned and possessed by Jagdishwar Dayal @ Gopal Prasad. The original defendant Thakur Maharaj was inducted as a tenant on monthly rent of Rs. 150/- and he was running a Hotel. Jagdishwar Dayal @ Gopal Prasad died issueless in the year 1982. Since he was having no Class-I legal heirs, Muneshwar Dayal (uncle of Gopal Prasad) being Class-II heirs, inherited the property left by his nephew Gopal Prasad and got the suit property transferred in his name in the Municipal record as well as in the record of other concern and he started paying required rent for the suit premises. After death of Gopal Prasad, original plaintiff Muneshwar Dayal asked the original defendant Thakur Maharaj to pay rent to him from the month of February, 1982 but it was not complied with.

In this regard notices were also served upon the defendant. It is also averred in the plaint that the suit premises is required for personal use and occupation of the plaintiffs and his family members because they had been living in a rented house and the family has also expanded. Some of the male members in the family were unemployed and they were intending to run business in the suit premises. Since the defendant refused to vacate the suit premises and to pay the rent, the plaintiffs filed a suit on the ground of willful default in payment of rent for more than two months and rent for the subsequent months and also on the ground of personal necessity as the suit premises was reasonably and in good faith was required for their use and occupation.

5. The original defendant - Thakur Maharaj appeared before the Court and filed written statement stating therein the suit is not maintainable in its present form. The plaintiffs have no right to bring the suit for eviction. The suit is barred by Law of Limitation and bad for non-joinder of necessary parties. The specific case which the defendant has made out in his written statement is that the original landlord Jagdishwar Dayal @ Gopal Prasad was living alone and he was not having sufficient income to maintain himself and, therefore, he was having his breakfast, lunch and dinner in the hotel of defendant and Bill against consumption of meal was to be adjusted out of the rent payable by the defendant. Lastly a sum of Rs. 17,973/- had become due against the landlord.

Besides aforesaid dues, a sum of Rs. 37,652/- was taken as a loan by the landlord. When Jagdishwar Dayal @ Gopal Prasad failed to repay the loan amount and dues lying against him, he had agreed to sell the suit property to the defendant for a valuable consideration of Rs. 60,000/- and for that, an agreement for sale was executed on 31.12.1981 (Ext.-B) in favour of defendant and his nephew Hari Prasad Joshi. By executing said agreement, the landlord had acknowledged receipt of Rs.

55,725/- and agreed to execute and register a Sale Deed after receipt of balance sum of Rs. 4,275/-. The Books of Account maintained by the defendant were being acknowledged time to time by the landlord Jagdishwar Dayal @ Gopal Prasad and those documents have been brought on record.

6. It is specific case of the defendant that after execution of agreement Dated 31.12.1981, he ceases to be tenant in the suit premises and the possession which he was having from before has been accepted towards part performance of the contract. Since the defendant has become owner of the property after execution of the said agreement dated 31.12.1981, he was not supposed to pay rent and, therefore, the defendants could not be made liable to be evicted on the ground of willful default in making payment of rent for two consecutive months and also rent for the subsequent months. Likewise question of evicting the defendants from the suit premises on the ground of personal necessity does not arise.

7. The appellants have argued that relation of landlord and tenant between the plaintiffs and defendant was not established and this fact has not been considered in proper perspective by both the Courts and therefore, substantial question of law is to be framed to decide this appeal.

8. The next point raised by the appellant is that possession of the defendant can well be protected under Section 53A of the Transfer of Property Act because the defendant had been occupying the suit premises and enjoying possession in part performance of the contract. Therefore, remedy available to the defendant under Section 53A of the Transfer of Property Act is to be decided and that constitute a substantial question of law to be framed for deciding the present appeal.

9. Having heard both sides and after going through the case records of lower courts, it appears that plaintiffs as well as defendants have examined number of witnesses in support of their contention and also produced and proved documents. It is admitted case of the appellant that she had not paid rent from the month of February, 1982 claiming her possession in the suit property as that of a purchaser put in possession in part performance of the contract i.e. Agreement dated 31.12.1981. According to the defendant, she ceases to be the tenant after execution of said agreement and this is also indicated in Ext.-B.

10. It is also admitted that initially the defendant Thakur Maharaj was inducted in the suit premises as a tenant by the deceased land lord Jagdishwar Dayal @ Gopal Prasad on monthly rent. The defendant Thakur Maharaj, in his deposition and also in the written statement had stated that agreement for sale dated 31.12.1981 was executed by Jagdishwar Dayal @ Gopal Prasad in his favour and in favour of his nephew Hari Prasad Joshi. The agreement (Ext.-B) did not disclose that Jagdishwar Dayal @ Gopal Prasad had ever executed any agreement to sell the property in favour of original defendant - Thakur Maharaj rather Ext.-B indicates that it was executed in favour of Hari Prasad Joshi. In course of trial the defendant Thakur

Maharaj had tried to make out a case that he was Karta of Joint Hindu Family and Hari Prasad Joshi (nephew) was member of said Joint Hindu Family and, therefore, he can claim his right over the suit property on the basis of the agreement executed in favour of Hari Prasad Joshi. It is settled law that evidence beyond pleading cannot be considered.

Furthermore, both the Courts have elaborately discussed the evidence adduced from both sides including evidence of Hari Prasad Joshi and original defendant Thakur Maharaj. Hari Prasad Joshi had stated in his deposition that he was never inducted as a tenant in the suit premises rather Thakur Maharaj was inducted as a tenant and he was running a hotel. It is evident from the case records of both the Courts below that Hari Prasad Joshi never filed suit for specific performance of contract though he had every knowledge about institution of suit filed for evicting Thakur Maharaj from the suit premises.

It is also not pleaded in the written statement that Thakur Maharaj was Karta of the Joint Hindu Family and the agreement for sale was executed at his instance in favour of Hari Prasad Joshi. It reveals from the written statement and the deposition of Thakur Maharaj that he had made out a case that the agreement for sale was executed in his favour and Hari Prasad Joshi as well. This fact is completely beyond the record and, therefore evidence on this point, if any, is not required to be considered. Both the Courts below have discussed this point in details in the Judgments passed and the finding given do not appear to be perverse. The genuineness of books of account indicating dues of Rs. 17,973/- against Late Jagdishwar Dayal @ Gopal Prasad and loan of Rs. 37,652/- given to him by the defendant from time to time had also been viewed very carefully by both the Courts. Thus, the finding of both the Courts on the point that relation of landlord and tenant was well established between the plaintiffs and defendant, does not create any substantial question of law to be decided by this Court.

11. The plea of Section 53A of the Transfer of Property Act is not available to the appellant because it is a mixed question of law as well as facts and it has not specifically been pleaded in the written statement. It is evident from Ext-B that it was an unregistered agreement allegedly executed by the original landlord Jagdishwar Dayal @ Gopal Prasad in favour of Hari Prasad Joshi and that too just few days prior to his death. It has already been indicated above that Hari Prasad Joshi never filed any suit for specific performance of contract against agreement dated 31.12.1981. The aforesaid agreement does not bears even signature of the defendant Thakur Maharaj and the document was not witnessed by any of the relative of landlord Jagdishwar Dayal @ Gopal Prasad. Since no agreement in favour of Thakur Maharaj was executed by the original landlord, question of his possession to that of a purchaser in view of part performance of contract, does not arise. Hence, I do not find that any substantial question of law is required to be framed to decide this appeal.

12. In view of concurrent finding of the Sub-ordinate courts, I do not find any merit and the appeal accordingly stands dismissed.