
(1998) 09 PAT CK 0049

Patna High Court

Case No: Civil Revision No. 1738 of 1996

Sachida Nand Prasad

APPELLANT

Vs

Smt. Savitri Sahay

RESPONDENT

Date of Decision: Sept. 24, 1998

Acts Referred:

- Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 - Section 11

Citation: AIR 1999 Patna 45 : (1998) 3 BLJR 1832 : (1998) 3 PLJR 541

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

Bench: Single Bench

Advocate: Asghar Hussain and Amarnath Mishra, for the Appellant; Suman Kumar, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.

This Civil revision application u/s 14(8) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982, is directed against the judgment and decree dated 5-7-1996 passed by the additional Munsif I, Bhagalpur, in Title (Eviction) Suit No. 15 of 1991, whereby and whereunder the learned Munsif decreed the suit for eviction filed by the plaintiff-landlord on the ground of personal necessity.

2. The defendant-petitioner is a tenant in respect of portion of the premises bearing holding No. 29A, police Line Road in Ward No. 10, situated at Bhagalpur Kutcheri Road. The said premises henceforth shall be referred to as suit premises which consists of 3 rooms, one covered verandah cum room, inside verandah, kitchen, store, latrine with bath room and the court-yard in the ground floor of the premises.

3. The plaintiff instituted the aforementioned suit for eviction stating inter alia that the defendant-petitioner is in occupation of the tenanted premises on a monthly

rental of Rs. 800/-. The plaintiffs case is that there had been a partition between the family members whereby the plaintiff got the ground floor of the building while her three sons, namely, Ajit Sahay, Rajesh Sahay and Sanjiv Sahay have got other portions of the buildings. Further case of the plaintiff is that at present she is residing in a portion of the house which fell in the share of her youngest son Sanjiv Sahay, who expressed his desire to develop and use his share of the house under the occupation of the plaintiff and, therefore, she is under pressure to vacate the said premises to her son. The plaintiff alleged that she conveyed her requirement of the suit premises for her own use and occupation to the defendant on several occasions but the defendant did not pay any heed to the same. Hence the suit.

4. On being summoned the defendant-petitioner appeared and contested the suit by filing a written statement denying and disputing each and every allegations made in the plaint. The defendant's case is that the plaintiff has no bona fide personal requirement of the suit premises as she resides in a big kothi known as "Shiv Bhavan" which is a very big building and has the biggest courtyard in Bhagalpur and all around the courtyard, there are raised plinth and a large number of rooms. The defendant's further case is that the suit has been filed with a mala fide intention to earn more rent by letting out to other person. The plaintiff asked the defendant to increase the rent of the suit premises from Rs. 800/- to Rs. 1500/- which the defendant denied. The defendant's further case is that the plaintiff recently constructed two flats on the upper floor of the said premises and has let out three flats to Fisheries Department for a period of ten years. It has further been pleaded that the ground of the southern portion of the suit premises was in occupation of Janardan Prasad Choudhary a District Supply Officer, who vacated the premises and it has been let out to Fisheries Department on the monthly rental of Rs. 1500/-. The defendant also denied and disputed the partition allegedly took place between the family members of the plaintiff.

5. On the basis of the pleadings of the parties the trial Court framed as many as five issues. Since the judgment is in Hindi, the English translation of those issues are as follows :

(i) Whether the suit is maintainable;

(ii) Whether the plaintiff has cause of action?

(iii) Whether the plaintiff requires the suit premises for her own use and occupation?

(iv) Whether the plaintiff has other alternative accommodation which fulfils her requirement and whether the requirement of the plaintiff shall be fulfilled by partial eviction?

(v) Whether the plaintiff is entitled to any other relief?

6. Learned trial Court after considering the facts and evidence brought on record and after hearing the parties decreed the suit holding that the plaintiff has been

able to prove her personal necessity.

7. Mr. Asghar Hussain, learned Senior Counsel appearing on behalf of the petitioner assailed the correctness of the judgment and decree and submitted that the Court below has adopted wrong procedure and applied a wrong legal test in deciding the issue of personal necessity. Learned counsel submitted that the findings arrived at by the Court below on the issue of personal necessity and other incidental issues are perverse in law. According to the learned counsel the Court below has committed serious illegality in so far as it held that it is unfettered right of the plaintiff-landlord to get eviction of any of the premises of her choice: Learned counsel lastly submitted that the Court below also failed to appreciate the evidence adduced by the defendant-petitioner on the question of personal necessity and also on the question of mala fide motive of the plaintiff to evict the defendant from the suit premises. In this connection, learned counsel for the petitioner relied upon the decisions of the Apex Court in the case of [Amarjit Singh Vs. Smt. Khatoon Quamarain](#), and also a decision of this Court in the case of [Umesh Kumar Verma Vs. Chandrika Pd. Singh \(since deceased\) and Others](#), .

8. On the other hand, Mr. Suman Kumar, learned counsel appearing for the plaintiff-opposite party supported the judgment and decree by submitting that there is no illegality or perversity in the judgment- Learned counsel submitted that the trial court after considering and appreciating the entire evidence adduced by the parties came to a finding of fact regarding personal necessity of the plaintiff and, therefore, this Court should not in exercise of revisional jurisdiction interfere with the finding of fact. Learned counsel further submitted that the trial Court has rightly come to the conclusion that it is the choice of the plaintiff-landlord to evict any of the tenants who are occupying the premises. Learned counsel lastly submitted that question of deciding partial eviction does not arise because of the fact that the defendant himself admitted that both the plaintiff and the defendant cannot conveniently keep the suit premises.

9. Before analysing the evidence adduced by the parties I will first scrutinise the finding arrived at by the Court below on the question of personal necessity. The Court below accepted the case of the plaintiff about partition whereby she has been allotted ground floor of the building premises. The trial Court also took notice of the fact that besides the suit premises there are other premises belonging to the plaintiff which are in occupation of the different tenants including Fisheries Department. The trial Court further took notice of the fact that other portions which were in occupation of the tenants have, been vacated and it was let out by the plaintiff to Fisheries Department on a rent of Rs. 1500/- per month. The trial Court took the view that two of the tenanted premises under the plaintiff were vacated one after another and before it was let out to the Fisheries Department on a monthly rent of Rs. 1500/- the defendant did not ask the plaintiff to occupy that premises. The trial Court lastly observed that in any view of the matter it is the

choice of the plaintiff-landlord to evict any of the tenant from the tenanted premises. The trial Court held that the plaintiff is an of any having heart disease and, therefore, the suit premises will be most suitable premises for her own use and occupation. On scrutinising the finding arrived at by the Court below it appears to me that the Court below has in fact applied wrong legal test and adopted wrong procedure in deciding the issue of personal necessity. It has been categorically stated in the written statement that before the institution of the suit the entire southern portion of the ground floor was vacated by the tenants and the same was let out to the Fisheries Department on monthly rent of Rs. 1500/-. This fact has not been denied or disputed by the plaintiff. The most important evidence is of P.W. 3-Rajesh Sahay who is one of the sons of the plaintiff and he is an advocate. In paragraphs 27 and 29 of his evidence he stated that during the pendency of the suit one of the tenant, namely, Janardhan Prasad vacated the premises and it was let out by his mother to the Fisheries Department. The witness has also very fairly admitted that this fact was brought to the notice of the Court below by the defendant by filing a petition stating that two portions of the ground floor have been vacated and it was again let out by the plaintiff to the Fisheries Department. This evidence has been totally ignored by the trial Court. From analysing the evidence it is, therefore, clear that besides the suit premises there are three other tenanted premises in the ground floor belonging to the plaintiff which were in occupation of the tenants. These premises have been vacated prior and during the pendency of the suit and it was again let out by the plaintiff at an increased rent of Rs. 1500/- each per month. In the background of this admitted position the question, therefore, falls for consideration is whether the need of the plaintiff is bona fide or the conduct of the plaintiff disentitled her from getting the decree for eviction.

10. As noticed above, the defendant has been in occupation of the suit premises on monthly rent of Rs. 800/-. The other three tenanted premises were in occupation of the different tenants on monthly rent of Rs. 1200/-. It has come in evidence that those three premises have been let out by the plaintiff to the Fisheries Department on total monthly rent of Rs. 4500/- (Rs. 1500A). It has also come in evidence that the plaintiff besides filing eviction suit also filed a petition before the Rent Controller for the determination of fair rent on the ground that the rent of the suit premises is much low. Having regard to the admitted fact and the evidence brought on record I am of the opinion that the motive of the plaintiff is not bona fide and her conduct in letting out the premises to Fisheries Department at a higher rent disentitled her from getting the decree for eviction.

11. In the case of [Amarjit Singh Vs. Smt. Khatoon Quamarain](#), the Apex Court was considering a similar question. The fact of that case was that the plaintiff landlady filed a petition for eviction of the tenant from first floor of the premises on the ground of bona fide personal necessity. In that case the defence was taken by the tenant that during the pendency of the suit the landlady occupied other premises which were vacated by the other tenants but the same were let out by her at higher

rent. The Apex Court in the facts and circumstances of the case held that if the landlady could have reasonable accommodation after her need arose and she by her own conduct disentitled herself to that property by letting it out for higher income, she would be disentitled to evict the tenant on ground of her need. The Apex Court observed:

"Shri Kacker submitted that this section should be read literally and we should ask ourselves the question today whether can it be said that the landlady had reasonably suitable other accommodation. We are unable to read it in that sense. If the lady or the landlord could have reasonable accommodation after his or her need arose and she by her own conduct disentitled herself to that property by letting it out for higher income, she would be disentitled to evict her tenant on ground of her need. The philosophy and principle of rent restriction law have nothing to do with the private exploitation of property by the owners of the property in derogation of the tenant's need of protection from eviction in a society of shortage of accommodation."

12. In the instant case, the Court below has further misdirected itself in law in so far as it held that even if the other premises were let out by the lady at a higher rent it is the choice of the plaintiff-landlady, to evict any of her tenants. I have already observed that the court below has applied wrong legal test in deciding the question of personal necessity. Time without number it has been held by the various Courts that mere assertion on the part of the landlord that he requires the premises for his own personal necessity is not decisive. It is for the Court to determine the truth of the assertion as to whether it is bona fide. The test which has to be applied is an objective test and not subjective one. The word "required" signifies that mere desire on the part of the landlord is not enough but there should be an element of need and burden is on the plaintiff to prove that he genuinely requires the premises for his personal necessity. The finding of the Court below on the issue on personal necessity is, therefore, perverse in law. It is equally perverse to hold that the landlord has unfettered right to fulfil his requirement as per his choice without proof that alternative accommodation is not suitable to meet the requirement. It has been well settled that a right of re-entry is not unfettered right and the owner-landlord is not the sole Judge to decide it. It has now become the duty of the Court to consider it objectively and find out whether requirement of the landlord is bona fide and genuine. In this connection reference may be made to a decision of the Apex Court in the case of [M.M. Quasim Vs. Manohar Lal Sharma and others](#), .

13. Having regard to the facts and circumstances of the case and the discussions made above, I am of the considered opinion that the judgment and decree passed by the Court below is perverse and contrary to law. In the result, this application is allowed and the judgment and decree passed by the Court below is set aside. The suit is, accordingly, dismissed. However, in the facts of the case there shall be no order as to costs.