
(2008) 04 PAT CK 0061

Patna High Court

Case No: S.A. No. 262 of 2003

Dwarika Poddar

APPELLANT

Vs

Alok Kumar Agrawal

RESPONDENT

Date of Decision: April 17, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100
- Specific Relief Act, 1963 - Section 34

Citation: (2008) 3 PLJR 78

Hon'ble Judges: Syed Md. Mahfooz Alam, J

Bench: Single Bench

Advocate: Shiv Nandan Rai, for the Appellant; S.S. Dwivedi, R.S. Dwivedi and L.L. Pandey, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Syed Md. Mahfooz Alam, J.

This Second Appeal has been preferred by the defendant-appellant, namely, Dwarika Poddar against the judgment dated 30.9.2003 and the decree dated 13.11.2003 passed in M.T.A. No. 20 of 2000 by the Additional District Judge-VI, Begusarai whereby he dismissed the appeal preferred by the appellant Dwarika Poddar and confirmed the judgment and decree dated 11.5.2000 passed by Sri U.C. Shrivastava, Munsif 1st, Begusarai in Title Suit No. 45 of 1978 whereby he had passed the decree for eviction of the appellant from the suit premises. For taking into consideration the grounds on which this appeal was preferred, I would like to state the case of the respective parties in brief.

2. The case of the plaintiff-respondent, in brief, is that he is the owner and landlord of the suit premises described in Schedule 1 of the plaint. The said property was his ancestral property which was allotted to his share on partition. The father of the

defendant-appellant in the capacity of Manager and Karta of his family took the suit premises on rent on monthly rental of Rs. 40/-. The tenancy started from Hindi Calendar month payable on the first day of each succeeding month with clear stipulation that in case of default in payment of rent of two successive months, the tenant would be liable for eviction without any notice. As per the averment made in the plaint, the said Ram Autar Poddar was very irregular in payment of rent and since Kartik 1384 Fasli equivalent to 9.10.1977 he defaulted in payment of rent of the suit premises and the plaintiff being compelled sent a registered notice to the said Ram Autar Poddar through his lawyer asking him to vacate the suit premises but he refused to accept the notice. After refusal of the said notice, the plaintiff on several occasions requested the said Ram Autar Poddar to vacate the suit premises who always gave assurance to the plaintiff with regard to the vacation of the suit premises. But in the meantime, the said Ram Autar Poddar died on 19.3.1978 leaving the defendants including the present appellant as his heirs who were all members of the joint family. The plaintiff made request with the defendants to pay the arrears of rent and vacate the suit premises but the defendants failed to vacate the suit premises and hence, necessity of filling of the suit arose.

3. Two written statements were filed in this suit-first written statement which is dated 1.8.1980 was jointly filed by all the three brothers of the appellant, namely. Ganesh Poddar, Lalo Poddar and Dwarika Poddar, the appellant. In the first written statement all the three brothers including the present appellant admitted the case of the plaintiff that their father, Ram Autar Poddar had taken the suit shop in rent from the father of the plaintiff but it is false to say that he defaulted in payment of rent or that he was irregular in payment of rent and the fact is that the father of the plaintiff used to grant rent receipts against the appellant and till Aswin 1383 Fasali he granted rent receipts but thereafter on the pretext that the printed rent receipts are not available he received the payment of rent but did not grant rent receipts. It has been stated that the defendants have never paid rent to the present plaintiff and as such, there is no relationship of landlord and tenant between the plaintiff and the defendant. It is also denied that the defendant's father was served with a notice to vacate the suit premises. It has further been stated that the defendants have acquired title of the suit premises by adverse possession.

4. In second written statement which was filed by the present appellant alone it has been stated that the plaintiff or his ancestor had never any manner of concern or possession over the suit premises. S.P. No. 1466 over which the suit premises stands measures 4 dhurs but in Khatian its area has been wrongly mentioned as 2 dhurs. The recorded tenant was in possession of 2 dhurs from east and the remaining 2 dhurs of land was in possession of the Malik of the ex-landlord who permitted Parmeshwar Poddar father-in-law of the appellant to make construction over 2 dhurs of land from east and accordingly he constructed the brick-built Khaparposh house and started business and thereafter Shebait of ex-landlord on behalf of the malik settled eastern portion of 2 dhurs of land of S.P. No. 1466. The said

Parmeshwar Poddar through Huknama dated 5.5.1928. The appellant was married with the daughter of Parmeshwar Poddar about 35 years back and thereafter the appellant requested his father-in-law to give the suit shop on rent in order to start his own business. The request was accepted by said Parmeshwar Poddar, who let out the suit premises on rent to the appellant in the year 1952 on monthly rental of Rs. 10/- which was gradually enhanced upto Rs. 50/-. The appellant had denied that the father-in-law of the defendant Parmeshwar Poddar had taken the suit premises (shop) on monthly rental of Rs. 40/-. He has also denied this fact that his father had ever paid rent to the plaintiff or his ancestor with respect to the suit premises. He has also denied this fact that the plaintiff had asked to vacate the suit house or had demanded arrears of rent or had ever served any notice for vacating the suit premises. With regard to his first written statement it has been stated that his two brothers were in collusion with the plaintiff and they had managed to take his signature over the first written statement.

5. From perusal of the trial court's judgment it appears that the trial court has framed altogether 11 issues for consideration on the basis of the pleadings of the parties. The issues framed by the trial court are as follows:-

- (1) Whether the relationship of landlord & tenant exists between parties or not?
- (2) Whether the plaintiff is entitled to get Rs. 990/- with interest from defendant or not?
- (3) Whether the plaintiff is entitled to get damages from defendant or not?
- (4) Whether the suit as framed is maintainable or not?
- (5) Whether the suit is barred by law of limitation?
- (6) Whether the suit is barred by res judicata?
- (7) Whether the suit is barred by waiver and estoppel?
- (8) Whether the suit is barred by Section 34 of Specific Relief Act?
- (9) Whether the suit suffers from non joinder?
- (10) Whether the plaintiff is entitled for decree of eviction against defendant or not?
- (11) Whether the plaintiff is entitled to any other relief or not?

6. From perusal of the judgment of the trial court it appears that the trial court has taken issues nos. 1, 2, 4 and 5 as main issues involved in the suit and after making full discussion on the abovementioned issues, the trial court held that the plaintiff has succeeded in proving that there is relationship of landlord and tenant between the parties and that the defendant is a defaulter in payment of rent and so, the plaintiff is entitled for getting decree of eviction against the defendant and he is also entitled to get the arrears of rent and on the basis of the above finding, the trial

court decreed the plaintiff's suit.

7. From perusal of the judgment of the appellate court it appears that the first appellate court has also thoroughly discussed oral as well as documentary evidence of both the parties in connection with the abovementioned issues and thereafter the first appellate court confirmed all the findings of the trial court with regard to the abovementioned issues. Against the said finding of the first appellate court, this Second Appeal has been preferred.

8. It has been argued by the learned Advocate of the respondent that the appellant has preferred this appeal against the concurrent findings of the courts below and as such, this Court while hearing the second appeal is not entitled to disturb the concurrent findings of the courts below on fact unless this Court finds that the findings of the court below are perverse or are based on non-consideration of the material evidence available on record.

9. It is settled principle of law that u/s 100 of the CPC (hereinafter to be called as "the C.P.C"), this Court is not authorized to disturb the concurrent findings of the court below on facts unless it is found that the findings arrived at by the courts below on facts are perverse or based on non-consideration of the material evidence available on record.

10. From perusal of the judgment under appeal it appears that the finding that the plaintiff is the owner of the suit premises and that the defendant is the tenant under the plaintiff in the suit premises is based on documentary as well as oral evidence adduced on behalf of the parties. With regard to the ownership of the plaintiff in respect of the suit premises, there is Ext. 7 on record which is compromise petition filed in Title Suit No. 20 of 1970 of the Court of the Sub-Judge, Begusarai between the plaintiff Alok Kumar vs. Dr. Krishnadeo Narain and Others. As per the compromise petition (Ext. 7) the suit premises was allotted to the share of the plaintiff Alok Kumar Poddar. In addition to the abovementioned compromise petition, there are several municipal rent receipts (Exts. 1 to 1/C) in the name of the plaintiff with respect to the suit premises and assessment register of Begusarai Municipality of the year 1978-79 and 1983-84 (Exts. 4 and 4/A) showing that the suit premises stand recorded in the Begusarai Municipality in the name of the plaintiff. Besides the abovementioned documents, there is acceptable oral evidence on record in support of the fact that the plaintiff is the owner of the suit premises. On the other hand, not a single documentary evidence has been brought on record on behalf of the contesting defendant-appellant in support of his case that the suit premises belonged to Parmeshwar Poddar who happens to be his father-in-law. Moreover, the oral evidence brought on record on behalf of the appellant is also unreliable. Under such circumstance, I find that in no way this finding of the trial court as well as the first appellate court that the plaintiff-respondent is the owner of the suit premises can be termed as "perverse" and hence this Court has no jurisdiction to interfere with the finding of the court below that the plaintiff is the

owner of the suit premises. Likewise, I find that the finding of the court below that the defend-ant-appellant is the tenant under the plain-tiff is also based upon the materials avail-able on record and in this regard the courts below have taken into consideration of this fact that firstly the contesting defendants including the present appellant had filed joint written statement accepting this fact that they were tenants in the suit premises since long and according to their case, their father had taken the suit premises on rent from the father of the present plaintiff. This averment made in the joint written statement filed on behalf of the present appellants as well as his two brothers finds corroboration from the documentary evidence i.e. Kiraynama executed by the father of the present appellant with respect to the suit premises (Exts. 11 and 11/A). Moreover, the counter folio of rent receipts produced on behalf of the plaintiff Exts. 2 to 2/H, Exts. b to 5 (2) (4) also establish that appellant's father Ram Autar Poddar had taken the suit premises on rent from the father of plaintiff. Exts. 3 to 3/C which are also counter folios of the rent receipts establish that the present appellant Dwarika Poddar had also put his signature on those counter folios. Thus, the materials available on record fully establish this fact that the appellant is "the tenant in the suit house since the time of his father and there appears no perversity in the judgment of the court below in this regard. Under this circumstance, I find that u/s 100 of the C.P.C. this Court in second appeal is not entitled to interfere with the findings of fact arrived at by the court which are based upon the materials available on record.

11. It has been argued by the learned Advocate of the appellant that in this appeal some substantial questions of law are involved which have been mentioned at page 6 of the memorandum of appeal and so, this appeal can be admitted for hearing on those substantial questions of law. It is admitted position that as per Section 100 of the C.P.C. a second appeal can be entertained only when a substantial question of law is involved in the appeal. In this regard reliance can be placed upon the decision given in the case of Boodireaddy Chandraiah & Ors., Appellants vs. Arigela Laxmi & Another, Respondents reported in AIR 2007 SCW 7062 and upon the decision of this Court given in the case of [Mahtab Devi Vs. Narayan Sao and Others](#) .

12. For better appreciation I would like to quote some observations of the Apex Court on the scope of Section 100 of the C.P.C.:-

"After (1976) amendment a second appeal can be filed only if a substantial question of law is involved in the case. The memorandum of appeal must precisely state the substantial question of law involved and the High Court is obliged to satisfy itself regarding the existence of such a question. If satisfied, the High Court has to formulate the substantial question of law involved in the case. The appeal is required to be heard on the question so formulated."

13. Thus, from the decision referred to above it is evident that the second appeal can only be admitted when the court is satisfied that some substantial question of law is involved in this appeal. The. question what is substantial question of law has

been explained in the decision reported in 2007 AIRSCW 7062 according to which it must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case and must go to the root of the matter.

14. Let me see-whether the substantial question of law formulated by the appellant fulfils the criteria mentioned in the abovementioned decision. It appears that altogether five questions have been framed by the learned Advocate of the appellants mentioning the same as substantial questions of law involved in this appeal but none of the questions relates to the main finding given in the suit with regard to the ownership of the suit premises and the relationship of landlord and tenant between the parties. The same also does not challenge the legality of the finding that the defendant had defaulted in payment of rent. Hence, in no way the questions which have been formulated by the learned Advocate of the appellant can be termed as substantial questions of law involved in this appeal. Under this circum-stance, I am of the view that the appellant has failed to satisfy this Court that any substantial question of law is involved in this appeal. Therefore, I hold that u/s 100 of the C.P.C. this second appeal cannot be entertained. In the result, I do not find any merit in this Second Appeal and as such, the same is hereby dismissed with cost at the admission stage itself. The defendant-appellant is directed to vacate the suit premises and pay the arrears of rent within 60 days from the date of this order failing which the respondent will be at liberty to get the decree executed through the process of Court.