

(2007) 03 PAT CK 0139

Patna High Court

Case No: Civil Revision No. 1502 of 2006

Md. Khalil

APPELLANT

Vs

Smt. Laxmi Devi and Others

RESPONDENT

Date of Decision: March 13, 2007

Acts Referred:

- Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 - Section 11(1)(e), 14(8), 18

Citation: (2008) 1 PLJR 654

Hon'ble Judges: Ramesh Kr. Datta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Ramesh Kr. Datta, J.

Heard Mr. Amrendra Narayan learned counsel for the petitioner and Mr. Raj Kumar learned counsel for the Opposite Party Nos. 1 and 2. The petitioner has filed this revision application u/s 14(8) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (in short "the Act"). The Eviction Suit No. 1/00 was decreed against him by judgment and order dated 28.6.2006 passed by Sri Krishna Bihari Pandey, Munsif 1st Purnia.

2. The undisputed facts of this case are that on 21.6.1993 the petitioner and Opposite Party No. 1 entered into a registered deed of lease. The period of tenancy was for a fixed period of 5 years. The period of tenancy commenced on 1.7.1993 and ended on 30.6.1998. It is further admitted that no notice u/s 18 of the Act was ever given for extension of the period of lease for the statutory period enumerated therein.

3. The plaintiff-opposite party filed Eviction Suit No. 1 of 2000 claiming the decree of eviction against the petitioner on the ground that the lease deed dated 21.6.1993

had expired on 30.6.1998 and he cannot be permitted to continue any further. He was not vacating the premises despite demand to vacate by the opposite party.

4. The defendant petitioner, after filing of the suit, obtained leave to defend the same and raised a claim that before the expiry of the period of lease in the month of May he approached the Opposite Party No. 2, husband of the landlord. The Opposite Party No. 2 has allowed him to continue as a tenant even after the expiry of the period of lease and Opposite Party No. 2 had agreed to the same on the term of paying enhanced rent of Rs. 500/- per month from July 1998 onwards to which the petitioner agreed and thus thereafter the petitioner began to pay. month to month rent on the basis of the said oral agreement. Petitioner said that agreement took place in the presence of DW 2 and DW 3 Apurva Kumar Gupta and Samsuta Alam who have accordingly deposed in his favour.

5. On consideration of the case of the parties court below did not accept the evidence of DW 2, DW 3 and DW 4 stating that they were chance witnesses of the fact of continuation of tenancy and further none of them has stated anything about the enhanced payment of Rs. 500/-per month by the defendant to the plaintiff after the expiry of the period of lease. It was further held that the defendant petitioner was unable to produce any documentary evidence with regard to the payment of the rent of Rs. 500/- after the expiry of the lease deed and thus the continuation of tenancy, after expiry of the period of lease and the payment of Rs. 500/- per month for this period was not accepted by the court below. Accordingly, judgment and decree was passed in favour of plaintiff-Opposite Parties directing the petitioner to vacate the suit premises within 60 days from the date of the order.

6. Learned counsel for the petitioner submits that the court below has not considered the evidence and the case of the defendants applying the proper law and thus the findings of the court below are perverse. It is stated that he had become statutory tenant and thus before passing any judgment and decree u/s 11 (1)(e) by the court, the court had to first adjudicate whether the lease was subsisting between the parties which had expired, but the same has not been done by the court below. It is further submission of the learned counsel for the petitioner that the eviction suit itself has been filed after one and half years of the expiry of the period under registered deed of lease and there is no explanation on behalf of the respondents regarding the delay in the filing of the suit for such a long period which goes to show that the petitioner has become statutory tenant on month to month basis as was agreed. The court below ought to have accordingly held against the plaintiff-Opposite Party in this regard. It is further submitted by learned counsel for the petitioner that the court has repeatedly referred Ex. A as the lease deed in question pertaining to the parties to the suit whereas the said lease deed had been filed as Ex. A by the defendant with respect to another registered deed executed by the Opposite Party No. 2 in favour of the tenant of another premises on the same day and this also shows that there has been non-application of mind by. the court

below while considering the cases of the parties. Since the entire finding has been recorded on the basis of Ex. A, it is vitiated and ought to be set aside. Learned counsel for the petitioner lastly submitted that the petitioner carries out his business in the said premises and if by the order he is thrown upon the street, it will affect his valuable right of livelihood.

7. Learned counsel for the Opposite Party, on the other hand, supported the judgment by referring various paragraphs therein. It is submitted by him that the court below has considered all the aspects of the matter including the testimony of the witnesses produced by the defendant petitioner and after considering the same he has rejected the evidence, holding them to be chance witnesses who had no good reason to be present at the spot when the alleged conversation took place between the petitioner and plaintiff Oppuau; Party No. 2. It is also submitted that the court below has rightly not believed the allegation regarding payment of rent at the rate of Rs. 500/- per month after the expiry of the period of the tenancy under the registered deed of lease since the petitioner could not produce any cogent evidence in his favour and moreover none of his witnesses has supported the fact regarding payment of said rent. He submitted that in the said circumstances no fault can be found in the judgment and decree of court below in not accepting the said statement regarding payment of rent after expiry of the period of lease. In view of the said facts there is no perversity, infirmity or illegality in the order of the court below and the same is not liable to be interfered in the revisional jurisdiction of the court u/s 14(8) of the Act.

8. On considering the rival submissions I find no merit in the submission of the learned counsel for the petitioner. The fact regarding registered deed of lease and the same being for a fixed period of 5 years till 30.6.1998 is not disputed. It is further not disputed that the period was not sought to be extended by applying as per the requirements of the Act u/s 18, on the basis of notice of one month before expiry of the tenancy. So far as contention regarding the petitioner, having become a month to month tenant is concerned, that is a counter plea taken by the defendant-petitioner in his written statement, and thus the onus to prove the same lay upon him which onus has not been discharged and the court has on this point disbelieved him and his witnesses. This court does not find any perversity in the appreciation of evidence in this regard by the court below and thus no ground is made out for interference in this regard.

9. Regarding the contention of learned counsel for the petitioner that the court had first to adjudicate whether a lease was subsisting before passing decree u/s 11(1)(e) of the Act, it is evident from the judgment under consideration that the court has considered the issue regarding the petitioner having become a statutory tenant on a month to month basis or not in the said judgment and has not accepted the contention of the petitioner in this regard. Thus it has rightly proceeded u/s 11(1)(e) of the Act and granted a decree in favour of the Opposite Party.

10. On the question of filing of the suit after one and half years without any explanation, this court does not find any merit in the said submission because it is open to the landlord to keep pursuing the tenant to vacate on the expiry of period of the lease instead of filing a suit immediately. If the suit has been filed within the period of limitation, the law does not require any explanation as to why the same has not been filed immediately after the expiry of the tenancy. It is a well known fact that litigants resort to the courts as a last resort and thus the filing of the suit after one and half years from the expiry of the period of lease under the registered deed does not call for any explanation from the landlord-Opposite Party.

11. Regarding the reference to Ex. A at various places in the judgment of the court below, this court is unable to accept the submission of learned counsel that the same shows a complete non-application of mind to the facts and evidence on the record. It is true that at several places the court below while referring to the lease deed dated 21.6.1993 has referred the same as Ex. A but it has also at many other places, such as in paragraph 15 of the judgment where issue No. 6 regarding the liability of the defendant to be evicted from the suit holding after expiry of lease deed or not, referred to the same as Ex 1. In this regard it appears that some confusion was generated because the petitioner had brought on the record as Exhibit-A another lease deed of the same date in favour of another tenant of the same landlord which was also for same period of time but the same would not make any difference to the final outcome of the case since the terms and conditions of the lease deed was not in dispute between the parties and nothing has been referred from the other deed of lease to show that the court has gone astray by referring to the lease deed under consideration as Ex. A at several places in the judgment instead of as Ex. 1. This court does not find that any error or illegality has crept in the judgment of the court below merely because at several places the lease deed dated 21.6.93 has been referred to as Ex. A instead of Ex. 1. Thus on considering the entire facts and circumstances, this court does not find any perversity or illegality in the judgment and order of the court below. The revision application is accordingly dismissed.