
Ramesh Sao Vs Shiva Prasad Garari

Second Appeal No. 254 of 1997

Court: Patna High Court

Date of Decision: Oct. 26, 1999

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 " Section 11

Citation: (2000) 1 PLJR 957

Hon'ble Judges: P.K. Deb, J

Bench: Single Bench

Advocate: Pushkar Narain Shahi, Ashutosh Singh and Ram Vinay Sharma, for the Appellant;
Jashri Singh Arora and Ajay Kumar, for the Respondent

Judgement

P.K. Deb, J.

This appeal has been preferred against the judgment and decree dated 27.8.1997 passed by Smt. Shakuntala Sinha,

Additional District Judge, I Patna, in Title Appeal No. 35 of 1990 by which the judgment and decree dated 28.2.1990 passed by
Munsif III,

Patna, in Title Eviction Suit no. 112 of 1988 has been reversed and eviction decree has been granted. The respondent-plaintiff
filed the above

mentioned eviction suit for ejectment of the appellant-defendant from the suit premises on the ground of personal necessity and
also on the ground

of defaulter. The case of the plaintiff is that the suit premises along with others were gifted to him and his brother jointly by a deed
of gift dated

11.12.1940 vide exhibit-4 and in the year 1970 there was partition between the two brothers, the suit premises fell into the share of
the brother

and afterwards he had purchased the suit premises from his brother. The defendant was inducted when the suit premises were
jointly owned by the

plaintiff and his brother in the year 1965, by the plaintiff alone, and he was realising the rent and after purchase also the defendant
remained his

tenant although in the meantime as per case of the defendant the rent was being paid by him to the plaintiff and his brother and to
the mortgagee

when the suit premises was mortgaged in the year 1975 to another person, namely, Vidyanand Rai. That originally the defendant was inducted by

the plaintiff has not been denied but because of the subsequent change of time and of mortgagee etc. It was pleaded by the defendant that the

plaintiff had no right to evict him as the defendant became endorsee to his brother and subsequently to the mortgagee Vidyanand Rai and that he

was paying rent to the brother of the plaintiff and also to the mortgagee. The plaintiff denied all these facts and it was his case that the plaintiff

remained the landlord and the defendant was paying rent to him.

2. The trial court after considering evidence on the record came to the finding that although originally induction was there by the plaintiff but

because of the existence of exhibit-4 i.e. the mortgage deed, the tenancy had been endorsed to the mortgagee and the plaintiff cannot be entitled to

evict the defendant because the mortgage had never been redeemed or withdrawn although it was the case of the plaintiff that the mortgage money

was paid and the mortgage deed due to inadvertance had not been returned back to the plaintiff. The issue regarding mortgage and others were

not at all relevant for the purpose of this eviction suit. The appellate court had rightly reversed the finding of the trial court holding that as there was

relationship of landlord and tenant between the plaintiff and defendant due to initial induction and such induction had never been withdrawn then the

plaintiff alone cannot eject the defendant from the suit premises. Regarding mortgage bond also learned appellate court had come to the finding that

it was only for three years and possession was never being handed over to the mortgagee because of the existence of the tenant over the suit

premises. There might be constructive possession to the mortgagee and to evade the rent the defendant might have taken the plea that he was

paying rent to the mortgagee but the fact remains that mortgage bond was for three years and had elapsed for long time and no suit was filed either

for redemption or for foreclosure by either of the parties till the filing of the eviction suit. Thus the appellate court held that mortgage money must

have been paid by the plaintiff to the mortgagee and as such the property was absolutely owned by him free from mortgage and he was entitled for

bringing eviction suit.

3. The legal position remains that even if there was only a simple mortgage, there cannot be any delivery of possession in the form of usufructuary

mortgage as the defendant remained as a tenant over the suit premises admittedly continuously since the date of his induction in the suit premises.

Even if the charge of mortgage is there the title of the plaintiff over the suit premises cannot be denied and he being the landlord on the basis of

inducting the tenant then he is the person who can evict the tenant as a landlord as the relationship continued and had never been withdrawn during

intermediary period. Thus on the facts as stated above I also come to the finding that the relationship of the landlord and tenant were there between

the plaintiff and defendant till the filing of the suit and the decree granted by the appellate court on this score cannot be interfered. The substantial

question of law framed by a Bench of this Court in the following form,

Whether the court of appeal below erred in holding that there was a relationship of landlord and tenant between the parties

is answered in negative holding that the relationship of landlord and tenant remained between the parties till the filing of the suit.

4. Regarding personal necessity it was rightly held by the appellate court that as the children of the plaintiff became grown up he needed the suit

premises for accommodation of his grown up children. But how much space is required for the purpose of accommodation of his grown up

children has not been stated specifically as there was no decision either by the appellate court or by the trial court on the ground of partial eviction.

It has now become settled principle of law that even if no plea has been taken from the side of the defendant regarding partial eviction it remains

the bounden duty of the court to consider whether the personal necessity, even if, is genuine and bonafide, whether would be satisfied by the partial

eviction or not. The suit premises consist of four rooms and one was being used as a shop premise and other three rooms were being used for

residential purposes. The personal necessity of the plaintiff was found to be genuine and bonafide and I also come to the same finding on the basis

of the evidence adduced by the parties to the suit. Whether such personal necessity can be satisfied by partial eviction or not is required to be

decided in the facts and circumstances of the case.

5. Learned counsel for the respondent-landlord has strenuously argued that the suit premises consists of four rooms in it and as there are several

children who have grown up by the time of the landlord then the whole of the suit premises must be required and partial eviction would not satisfy

the personal necessity of the plaintiff. I am not convinced with that submission. Until and unless there is specific finding by the fact finding court in

this regard, the matter cannot be decided by this Court in Second Appeal. The appeal is hereby disposed of by holding that the relationship of

landlord and tenant was established between the parties and that there was bonafide and genuine personal necessity of the plaintiff-landlord to evict

the tenant-appellant. But when there is no decision with regard to the partial eviction, the matter is sent back to the appellate court to frame a

specific issue for partial eviction as contemplated u/s 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act and then decide the issue

after giving opportunity of adducing additional evidence before the appellate court to both the parties in this regard alone. Such a decision must be

arrived at within a period of three months next from the date of receipt of the lower court records. The lower court records should be sent down

immediately to the appellate court. During this period the defendant shall have to deposit the agreed rent before the court who shall disburse the

same to the plaintiff-landlord. In the nature and circumstances, no order as to costs to either of the parties.