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(2001) 04 PAT CK 0091

Patna High Court

Case No: C.R. No. 2255 of 2000

Bimal Kishore Gupta	APPELLANT
Vs	
Smt. Beena Devi and Others	RESPONDENT

Date of Decision: April 18, 2001

Acts Referred:

- Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 - Section 11(1)(c), 14(8), 15
- Civil Procedure Code, 1908 (CPC) - Section 115

Citation: (2001) 2 PLJR 837

Hon'ble Judges: Nagendra Rai, J

Bench: Single Bench

Advocate: Manoj Kumar Ambastha, for the Appellant; S.D. Sanjay and Alok Kumar Agrawal, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Nagendra Rai, J.
This revision application is barred by limitation. Having heard the counsel for the parties and considering the averments made in the limitation petition, the delay in filing this revision application is condoned.

2. The tenant defendant is the petitioner. This revision application has been fifed u/s 14(8) of the Bihar Buildings (Lease, Rent & Eviction) Control Act (hereinafter referred to as the "Act") against the judgment dated 25.9.2000 passed by the Munsif, Danapur decreeing the suit for eviction of the plaintiff-opposite party against the defendant petitioner.

3. The plaintiff"s case in brief, is that holding no. 116 situate in mohalla Bibiganj within Danapur Municipality belonged to one Kailasho Kuer, grand mother of plaintiff-opposite party no. 2 Kanhaiya Prasad Gupta. The description of the said holding has been given in Schedule-A of the plaint. Her name was recorded in the records of the Municipality and

taxes were being paid during her life time. She died leaving behind her two sons, namely, Lakshmi Narain and Ramchandar Prasad the father of plaintiff-opposite party no. 2, and accordingly, the property described in Schedule-A of the plaint was inherited by her two sons jointly and they came in possession over the same. However, they did not get the name of their mother removed from the records of the Municipality. Ramchandra Prasad, father of the plaintiff-opposite party no. 2 died and thereafter his share in the joint family property devolved upon plaintiff no. 2, his mother and another brother Sachindanand. The defendant-petitioner was inducted as tenant by Lakshmi Narain, uncle of the plaintiff no. 2, as karta of the family in portion of the holding described in Schedule-A of the plaint on monthly rental of Rs. 200/- for running the business of cement pipes etc. twenty years back. The defendant-petitioner came in possession as tenant. Later on, Lakshmi Narain entrusted the power of collecting rent to plaintiff no. 2 and the plaintiff no. 2 used to grant receipt to the tenant. On 14.11.1994 the said Lakshmi Narain executed a deed of will with regard to his half share of Schedule-A property in favour of plaintiff no. 1, who is wife of plaintiff no. 2. Ram Dulari Devi, mother of plaintiff no. 2 also executed a separate deed of will in favour of plaintiff no. 1. Thus, the plaintiffs became owner of the entire holding mentioned in Schedule-A of the plaint.

4. The defendant, later on, stopped payment of rent and became defaulter and also used the premises for different purposes. The plaintiff no. 2 was earlier running a cloth business in a rented house but was evicted from the said house and he has no place to run his business except the suit land as described in Schedule-A of the plaint. At present, the plaintiff no. 2 is doing Feri for his livelihood. He requested the defendant-petitioner to vacate the suit premises but he did not vacate the same.

5. The defendant-tenant denied the relationship of tenant and landlord between him and the plaintiff but admitted that he was inducted in the premises by Lakshmi Narain, to whom he regularly paid rent but no receipt was granted to him due to cordial relation between them. He also asserted that he was not a defaulter. He asserted that the plaintiffs are not owners of the tenanted premises and as such there was no question of his eviction on the ground of personal necessity as claimed by them. The further stand of the defendant was that the suit was barred under Indian Succession Act as no right can be created on the basis of unprobated will. Thus the plaintiffs had no right, title and interest in the suit premises.

6. During the pendency of the suit, a petition was filed u/s 15 of the Act for payment of arrears of rent as well as current rent before the court below and the court below passed order for payment of rent. The defendant did not deposit the money and as such his defence was struck off. In view of stacking off the defence, now the defendant cannot contest the suit qua tenant.

7. The plaintiffs examined nine witnesses including two formal witnesses P.W. 7 and P.W. 8. The court below having considered the oral evidence and the documentary evidence, came to the conclusion that the plaintiffs are landlord of the premises in question and they

require the premises bonafidely for carrying on business by plaintiff no. 2 for his livelihood and accordingly decreed the suit.

8. Learned counsel appearing for the petitioner raised two points; firstly, he submitted that the defendant-petitioner was inducted as tenant by Lakshmi Narain, uncle of plaintiff no. 2 and he has not filed the suit for eviction. The plaintiffs claimed that Lakshmi Narain executed a deed of will in favour of plaintiff no. 1 and on that basis the plaintiff no. 1 became the owner, but as the will is admittedly un-probated, no right accrues in favour of plaintiff no. 1 and as such the court below committed serious error of law in decreeing suit for eviction. He further submitted that the court below has not considered the question of partial eviction as required by proviso to section 11 (1)(c) of the Act, inasmuch as white decreeing the suit the court has not considered the question of partial eviction which has to be considered, by the court even if no such prayer is made by the tenant.

9. Learned counsel appearing for the landlord plaintiffs, on the other hand, submitted that the plaintiff''s case from the beginning was that the premises in question was joint family property which after the death of Most. Kailaso Kuer devolved upon her two sons and Lakshmi Narain executed a deed of will with regard to his share in the joint family property. Even if it is accepted that on the basis of un-probated will right to Lakshmi Narain did not devolve upon the plaintiffs, the plaintiff no. 2 being one of the owners of the suit land, he has interest and the suit at his instance for personal necessity is maintainable. It was further submitted that though the court below has not considered the question of partial eviction in view of size of the premises which was let out to the defendant petitioner, the partial eviction will not reasonably satisfy their needs.

10. Section 14(8) of the Act empowers the High Court to see as to whether the order passed by the court below is in accordance with law or not. Though the power u/s 14(8) of the Act is wider than the power u/s 115 of the Code of Civil Procedure, it cannot be equated with the appellate power. This Court will interfere with the order when it is found that the order is not in accordance with law and for this limited purpose the Court will be justified to reappraise the evidence and if it is found that the findings arrived at is perverse or based on no evidence or is not possible to accept the said finding on the basis of the materials placed before the court, then this Court will interfere with the finding of fact. However, this court cannot re-assess or re-evaluate the evidence only on the ground that on appreciation of evidence a different view can be taken.

11. From perusal of para-7 of the judgment, it appears that the court below has considered the evidence of the plaintiffs witnesses and has noticed that the evidence on the record is that Lakshmi Narain was karta of the family and in that capacity he let out the premises to the tenant and later on when he became ill, he entrusted the power of collecting rent to plaintiff no. 2. Later on, he executed a deed of will with regard to his halt share. Thus, the plaintiff no. 2 is one of the owners of the suit premises and even if un-probated will does not confer any right, title and interest to the plaintiff no. 1, the same will not be a ground to defeat the claim of the plaintiffs. The reliance placed on behalf of

the counsel for the petitioner on the decision of the apex court in the case of M.M. Quasim Vs. Manohar Lal Sharma and others, does not help him. In that case, it was held that so far suit for eviction on personal ground is concerned, the person claiming eviction on the ground of his reasonable requirement must show that he is a landlord in the sense that he is owner of the building and he has right to occupy the same in his own right. A mere rent collector, though may be included in the expression "Landlord" as defined under the Act in its wide amplitude cannot be treated as a landlord for the purposes of section 11(1)(c) of the Act. The plaintiff no. 2 being member of the joint family, the property devolved upon him and he is one of the owners of the premises and he is not a mere rent collector or agent and as such he can bring a suit for eviction on the ground of personal necessity being the owner and as such the first ground raised on behalf of the petitioner is rejected.

12. Thus, the court below has not committed any error of law in holding that the plaintiffs are owners of the suit premises and they require the suit premises bona fide and reasonably for their personal necessity. Thus the said finding of the court below is upheld.

13. So far second ground is concerned, from perusal of the plaint, it appears that the suit property described in schedule-B is East to West 22 feet and North to South 21 feet. The court below has not mentioned, much less considered the question of partial eviction as required under proviso to section 11(1)(c) of the Act. Law on this point is well settled. Duty is cast upon the court to consider the question of partial eviction even if no such plea is taken by the tenant and while considering this question duty is cast on the court to consider whether reasonable requirement of the landlord would be substantially satisfied by evicting the tenant from a part only of the premises. The court is required to determine the extent of the premises which is required reasonably by the landlord and this has to be decided on the basis of the evidence adduced by the parties. Thereafter, the court has to consider as to whether the aforesaid requirement is substantially satisfied and of fully satisfied by ordering partial eviction. As stated above, the court, below has not considered this question at all and accordingly, the order of the court below directing eviction of the petitioner without considering the question of partial eviction is not according to law and as such the same is set aside and the matter is remitted to the court below to consider the question of partial eviction after giving an opportunity to the parties to adduce evidence on the said point. The learned Munsif is directed to dispose of the matter of partial eviction within a period of two months from the date of receipt/production of a copy of this order. He will give 15 days time to the plaintiffs to adduce further evidence if the plaintiffs desire and thereafter 15 days time to the defendant-petitioner to adduce his evidence on the point of partial eviction and thereafter the court below will decide the matter within the time frame as mentioned above. In the result, this revision application is allowed in part.