

Bhanu Prasad Vs. Chandra Prasad

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Court : Patna

Decided On : Sep-09-1997

Judge : M.Y. Eqbal, J.

Appeal No. : Civil Revision No. 103 of 1997 (R)

Appellant : Bhanu Prasad

Respondent : Chandra Prasad

Advocate for Pet/Ap. : Mr. S.N. Das, Mr. K.S. Mazumdar

Disposition : Application Allowed

Judgement :

M.Y. Eqbal, J.

1. This civil revision application by the defendant-petitioner under Section 14 (8) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter to be referred to as 'the Act' for short) has been filed against the judgment and decree dated 30.1.1997 passed in Title (Eviction) Suit No. 29 of 1994 whereby the learned Munsif, 1st Court, Dhanbad, decreed the suit of the plaintiff-opposite party on the ground of personal necessity.

2. The plaintiff-opposite party filed the aforesaid suit for eviction of the defendant-petitioner on the ground of bona fide personal necessity as contemplated under

Section 11 (1) (c) of the said Act.

3. The case of the plaintiff-opposite party is that he is the owner and the landlord of Schedule A property comprising within Holding No. 281, Ward No. I, within Dhanbad Municipality situate at Hirapur, Dhanbad. The plaintiff let out the suit premises on a monthly rent of Rs. 152/- and the rent was payable by the first week of subsequent month. The plaintiff alleged that he has a big family, consisting of six sons and two daughters. Out of six sons and two daughters, four sons and one daughter are students and the plaintiff has to bear all the expenses of his establishment from his small income. The plaintiff has got only one source of income, i.e. house rent and he is getting rent only to the extent of Rs. 2,500/- per month and that amount is not sufficient to maintain such a big family. The further case of the plaintiff was that his elder son passed matriculation and second son got I.T-I- training and are sitting idle since long for want of any job. The plaintiff wants to start manufacturing business of sheet metal in the shop premises to increase his family income and also to settle his second son-Anant Kumar Rai, who is competent to do the said business. The suit premises is suitable to start the said manufacturing business of metal sheets and, therefore, the plaintiff required the tenanted premises for his own bona fide use and occupation to increase the income of his family and also to settle his second son. Since the defendant refused to vacate the suit premises on repeated requests, the instant suit has been filed.

4. The defendant-petitioner contested the suit by obtaining leave and by filing written statement denying each and every allegation made in the plaint. According to the defendant the area of the suit premises is 202.6 sq. feet. It is stated that the defendant is a handicapped person and has been running a cycle and Rickshaw repairing shop in the tenanted premises consisting of two small kutcha khaparposh rooms since 1960 on a monthly rent at Rs. 50/-, but in January, 1990 the plaintiff threatened the defendant to vacate the premises or to enhance the rent for a sum of Rs. 175/- and the defendant/petitioner under the compelling circumstances started paying the rent the rate of Rs. 125/- per month. However, the rent was ultimately enhanced as the instance of the plaintiff by filing a rent fixation case. The defendant further denied the bona fide requirement of the plaintiff. It has

specifically been alleged that the plaintiff required the tenanted premises for giving it to-another person after taking huge amount of salami and on higher rent. It is stated that the claim of personal necessity of the plaintiff is not bona fide; rather malafide, which is evident from the fact that in the year, 1986 the plaintiff filed a suit for eviction against another tenant on the ground of personal necessity of his son and the said suit (Title Suit No. 10 of 1986) was compromised and the plaintiff got vacant possession of the tenanted premises. However, the plaintiff did not set up his son in business; rather after constructing a pucca house over the said premises and after taking huge amount of salami of Rs, 10,000/- let out the same to another tenant, who is running his business in the name of 'Poddar Book Stores' on payment of higher rent. It is further stated in the written statement that the sons of the plaintiff are engaged in various business and supply work at Naya Bazar and hence the plaintiff not opened ready made cloth shop on the tenanted premises vacated by another tenant- Nandu Prasad. The defendant, therefore, claimed that suit is malafide one, which is liable to be dismissed.

5. Both the parties led evidence, both oral and documentary. Learned court after hearing the parties and after considering the evidence, decreed the suit in terms of the impugned judgment. Hence, this revision.

6. Mr. S.N. Das, learned Counsel for the petitioner, assailed the judgment and decree of the court below as being illegal and contrary to facts and evidence on record. learned Counsel submitted that the court below has totally ignored the evidence to the effect that both the sons of the plaintiff are doing independent business of supply of mother parts and grossery shop and they are not sitting idle. learned Counsel submitted that the very suit for eviction on the ground personal necessity is mala fide, inasmuch as for the same cause of action the plaintiff obtained a decree against another tenant-Nandu Prasad and got the premises vacated, and thereafter let out the same to another tenant on higher rent. learned Counsel submitted that there is no bona fide requirement and it was nothing but to get higher rent by inducting other tenants after evicting the defendant therefrom. learned Counsel further submitted that the question of partial eviction also has not been correctly decided by the court below

7. On the other hand, Mr. K.S. Mazumdar, learned Counsel for the plaintiff-Apposite party supported the impugned judgment and decree of the learned court below by submitting that the plea of personal requirement has been sufficiently proved by the plaintiff by examining himself and also his son for whose requirement the suit filed. Learried counsel submitted that issue of partial eviction has been correctly decided by the court below; inasmuch as the nature of business which the plaintiff desired to start, the entire premises is required and the requirement will not be satisfied by evicting the tenant from part of the premises.

8. I have gone through the pleadings of the parties and the evidence led by them and also considered the reasonings given by the court below while decreeing the suit. From the plaint it appears that it was the specific case of the plaintiff that his both sons are sitting idle since long for want of job and the plaintiff wants to start a manufacturing business of sheet metal in the said premises to increase the income of his family and also to settle his second son, Anant Kumar Rai, who is competent to do the said business. The defendant in his written statement denied the statement made in the plaint and stated that in fact the plaintiff required the tenanted premises for giving it to another person after taking huge amount of Salami and on higher rent. The plaintiff who has examined himself as P.W. 1 has admitted in his evidence that one Nandu Prasad was also a tenant in respect of a portion of another premises and he filed the suit in the year 1986 on the ground of personal requirement for settling his son Anant Kumar Rai by starting a ready made cloth shop. This witness further admitted that the premises was ultimately vacated by Nandu Prasad, but instead of settling his son in the business, he constructed a pucca shop in the said premises and let out the same to another tenant who has been carrying a business in the name and style of M/s. Poddar Book Shop.

The court below although referred all these facts in the judgment, but took the view that the landlord has every choice to get a particular premises vacated, when there are several tenanted house and the tenant cannot dictate the landlord to get possession of a particular building. The court below was also of the view that the allegation made by the defendant that another premises was let out by the plaintiff to M/s. Poddar Book Shop on receipt of huge amount of Salami has not been

prove and the defendant ought to have examined the proprietor of M/s. Poddar Book Shop to substantiate his case. In my opinion, the court below has committed a serious illegality in not appreciating the case of the parties in its correct perspective. The choice of the plaintiff-landlord to evict a particular tenant when there are several tenants has nothing to do with the proof of bonafide personal necessity. Admittedly, the earlier suit was filed by the plaintiff for the requirement of his son Anant Kumar Rai, but after getting the premises vacated did not settle his son; rather after making pucca construction let out the same to another tenant. This admitted piece of evidence totally demolishes the case of the plaintiff that he bona fide and in good faith requires the premises for his son. In my opinion, the conduct on the plaintiff itself disentitled him to get eviction another tenant of the same ground.

In the similar circumstances, the Apex Court in the case of Amarjit Singh v. Khatoon Quamarain : [1987]1SCR275 , took the view that a landlord after his need arose could have taken possession or other reasonable accommodation, but by not doing so he is disentitled to evict the tenant on the ground of bonafide need. The Apex Court has held as under:

Shri Kacker submitted that this section should be read liberally 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 landlady 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 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..

9. It is well settled that once it is held that the need of the landlord is bonafide and reasonable, the motive of the landlord becomes irrelevant, but for the purpose of coming to a conclusion as to whether the requirement is bonafide, reasonable or not, the court is entitled to take into consideration as to whether the suit has been

filed on a purported ground of personal necessity although the real motive is to enhance the rent, being paid by the tenant or to get higher rent by inducting tenants. In the instant case, as noticed above, the plaintiff admitted that in the earlier suit exactly the same ground or bonafide requirement of the son was taken and after obtaining vacant possession of the premises it was let out on higher rent. There is no satisfactory evidence adduced by the plaintiff to the effect that under what circumstances he did not settle his son in the business. In that view of the matter, in my opinion, the requirement of the plaintiff cannot be said to be bonafide.

10. For the reasons aforesaid, this revision application is allowed and the impugned judgment and decree passed by the court below are set aside.

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