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Court : Guwahati

Decided On : Mar-12-2007

Judge : I.A. Ansari, J.

Appellant : Sunil Chandra Paul and ors.

Respondent : Abdul Bari @ Helal and ors.

Advocate for Pet/Ap. : Mr. N. Choudhury

Disposition : Petition dismissed

Judgement :

I.A. Ansari, J.

1. By this common judgment and order, I propose to dispose of all the five revision petitions, for, all these revision petitions involve identical facts and questions of law, all these revision petitions have been, on the request made by the learned Counsel for the parties, heard together.

2. All these five revision petitions have arisen out of the judgment and decree, dated 25.01.2005, passed, in Title Appeal Nos. 2/2004, 3/2004, 4/2004, 5/2004 and 6/2004, by the learned Additional District Judge (Ad hoc), Karimganj, dismissing the appeal and upholding thereby the judgment and decree, dated 27.01.2003, passed, in Title Suit No. 231, 235, 236, 240 and 241/1999, whereby,

while the plaintiffs-petitioners' suit was dismissed, the counter claims of the defendants-opposite parties were decreed.

3, The essential facts and material stages, which have led to the present revision petitions, may, in brief, be set out as follows:

(i) The petitioners herein instituted, as plaintiffs, five different suits, their case being, briefly stated, thus: The defendant Nos. 2 to 8 were the landlord of the plaintiffs in respect of the suit property, which is an Assam Type House consisting five rooms, the rooms being in the use and occupation of the plaintiffs as tenants of the defendants aforementioned. The suit property is situated within the urban area and are, thus, covered by Assam Urban Areas Rent Control Act, 1972 (in short, 'the Act of 1972). As the defendant numbers 2 to 8 defaulted in repaying their loan, which they had borrowed from the State Bank of India, the said Bank instituted Title Suit No. 45/93, in the Court of the District Judge, Karimganj, against the defendants for realization of their outstanding loan amount with interest by sale of the suit property, which stood mortgaged to the Bank and was under occupation of the plaintiffs as tenants. A preliminary decree, on 12.12.96, was passed in the suit, in favour of the Bank, for realization of the loan amount from the defendant Nos. 2 to 8. As the said defendants did not pay the decreetal amount and as the preliminary decree was not satisfied, a final decree was passed, on 26.11.98, for sale of the said mortgaged property. When the said decree was put into execution. Title Execution Case No. 3/99 arose for sale of the suit property by public auction. Eventually, the suit property was purchased, in public auction, by the defendant No. 1. The present plaintiffs-petitioners, who were tenants in the suit property, jointly resisted the said decree by filing, in this regard, a petition, which had given rise to Misc. Case No. 99/1999; but this objection petition was dismissed. The auction sale was confirmed on 28.06.99; but as the suit property was in the occupation of the defendants as tenants, symbolical possession of the suit property was given to the auction-purchaser, namely, defendant No. 1, on 25.09.2001. Though under the Act of 1972, the plaintiffs had become tenants, under the defendant No. 1, in respect of their respective tenanted shop-rooms, the defendant No. 1 refused to recognize the plaintiffs as his tenants and started attempts to forcibly evict the plaintiffs from the suit property. As the conduct of the

defendant No. 1 had created a cloud over the status of the defendants, as tenants, in the suit property, under the defendant No. 1, who had become, by virtue of purchase of the suit property, the landlord of the plaintiffs, the plaintiffs instituted the suits aforementioned seeking, inter alia, declaration of their status as tenants under the defendant No. 1, as landlord, in respect of the said shop-room and also for permanent injunction restraining the defendants from entering into the suit property or from causing any hindrance to the plaintiffs' possession thereof.

(ii) The defendant No. 1 filed his written statement with a counter-claim. In his written statement, while purchase of the suit property by the defendant No. 1, in the auction sale, was not disputed, it was denied that by virtue of such purchase, the plaintiffs had become tenants under defendant No. 1. It was also contended, in his written statement, by the defendant No. 1, that as there was no relationship of landlord and tenant existing between the plaintiffs, on the one hand, and the defendant No. 1, on the other, and as these plaintiffs had resisted not only the execution of the decree aforementioned, but also the process of taking over of the possession of the suit property by the defendant No. 1, the plaintiffs were liable to eviction from the suit property. The defendant No. 1 also filed a counter-claim praying for, inter alia, a declaration of his title as owner of the suit property on the basis of the said auction purchase. In this counter-claim, the defendant No. 1, by way of an amendment, further pleaded that the suit property was an old and dilapidated one and that the same was required bona fide by the defendant No. 1 for re-construction and also for his own use and occupation. The defendant No. 1 accordingly sought for eviction of the plaintiffs on the ground of bona fide requirement of the defendant No. 1 as landlord, should the Court come to the finding that the defendant No. 1 is the landlord of the plaintiffs in respect of the suit property.

(iii) The plaintiffs filed their written statement, in the counter-claim, stating that the counter-claim having not been properly valued and appropriate court-fees having not paid thereon, the counter-claim was not maintainable and that it was not true that defendant No. 1 bona fide required the suit property for either reconstruction or for the purpose of his own use and occupation. The plaintiffs accordingly sought for dismissal of the counter-claim.

(iv) Following issues were framed for determination in the suit:

1. Whether there is any cause of action for the suit?

2. Whether the suit is maintainable in its present form?

3. Whether the plaintiff is in possession of the suit holding as tenant?

4. Whether tenant-landlord relationship is established between the plaintiff and defendant No. 1?

5. Whether the plaintiff is entitled to get relief as prayed for?

6. Whether the counter-claim is properly valued and stamped?

7. Whether the suit holding is required by the defendant No. 1 and it is old and dilapidated?

8. Whether the defendant No. 1 is entitled to get reliefs as prayed for?

(v) Having recorded the evidence adduced by the parties, the learned trial Court concluded that the evidence on record proved that the plaintiffs were tenants under the defendant No. 1, as landlord, in respect of the suit property. The learned trial Court also held that the counter-claim was properly valued, that the defendant No. 1 had succeeded in proving that the suit property was in old and dilapidated condition, it was required to be re-constructed and that the defendant No. 1 bona fide required the suit property for his own use and occupation. Because of the conclusions so reached, the learned trial Court decreed the suits. Aggrieved by the decrees so passed, the plaintiffs preferred appeals; but the appeals having failed to yield any favourable results to the plaintiffs as indicated hereinabove, the plaintiffs are, now, before this Court with the help of these revision petitions.

4. I have heard Mr. N. Choudhury, learned Counsel for the plaintiffs-petitioners, and Mr. C.K. Sharma Baruah, learned Senior counsel, appearing on behalf of the defendant No. 1--opposite party.

5. Appearing on behalf of the petitioners, Mr. Choudhury has submitted that the learned Courts below have not decided the real issue raised by the plaintiffs, namely, as to whether the plaintiffs had been threatened by the defendant No. 1 with attempts of forcible eviction from the suit property. It is also submitted by Mr. Choudhury that the learned trial Court ought to have framed an issue on the maintainability of the counter-claim, for the counter-claim, according to Mr. Choudhury, was not maintainable inasmuch as it had not been properly valued and the court-fees had not been paid on the value of the suit property in terms of Rule 6 A of Order VIII of the Code of Civil Procedure (in short, 'the Code'). Though the suit property, points out Mr. Choudhury, is a valuable property, running into lakhs, the counter-claim was valued for Rs. 3,500/-. The valuation, so made, was, contends Mr. Choudhury, wholly inadequate and on the basis of such a valuation, the counter-claim could not have been legally decreed. Another ground on which the impugned decrees are assailed by Mr. Choudhury is that there was no cogent and convincing evidence on record that the suit property was bona fide required by the defendant No. 1 as landlord and in such circumstances, according to Mr. Choudhury, the findings of the learned trial Court that the defendant No. 1 was entitled to get the reliefs, which he had sought for, is without any foundation and not sustainable in law. Yet another ground taken by Mr. Choudhury is that the learned appellate Court has not discussed the relevant issues and without any material discussion, it has upheld the findings of the learned trial Court. The appellate decrees are, therefore, pleads Mr. Choudhury, required to be set aside and the appeals be remanded to the learned appellate Court for decision and discussion in accordance with law.

6. Resisting the submissions made on behalf of the plaintiffs-petitioners, Mr. Shanna Baruah, learned Senior counsel, appearing for the defendant No. 1--opposite party, has submitted that a specific issue was framed by the learned trial Court for determination of the question as to whether there existed relationship of landlord and tenant between the parties concerned and in view of the fact that this issue has been answered in the affmnative and against this finding, there has been no further appeal or revision by the defendant No. 1, the fact that the plaintiffs are tenants under the defendant No. 1 is not open to question any more. It is pointed out by Mr. Shanna Baruah that according to the case of the plaintiffs

themselves, they are tenants under the defendant No. 1 and that the suit property falls within the urban area. In such circumstances, contends Mr. Shama Baruah, since the suit property is an old and dilapidated one, it is located in a commercial area, the properties around the suit property are RCC constructions and the defendant No. 1 requires the suit property to start his own business along with his brothers, who are unemployed, the learned trial Court's conclusion that the suit property was bona fide required is wholly correct and in the face of such a clear finding, the suit ought to have been decreed and has been rightly decreed. As regards the valuation of the counter-claim, submission of Mr. Shanna Baruah is that the counter-claim was for eviction of the plaintiffs from the suit property on the ground of bona fide requirement of the defendant No. 1, should the Court hold that there existed a relationship of landlord and tenant between the parties concerned; hence, in such circumstances, points out Mr. Sharma Baruah, the counter-claim ought to have been valued on the basis of the rent of twelve months and as the counter-claim has, indeed, been valued and court-fees have been paid on a value, which is more than what was required in terms of Section 7(XII) of the Court Fees Act, the counter-claim was maintainable in law. It is also submitted by Mr. Sharma Baruah that though the learned appellate Court has not discussed the question of valuation of the counter-claim and also the question of bona fide requirement in great detail, the fact remains that the learned trial Court's judgments are well-reasoned ones and the learned appellate Court found no reason to interfere with the conclusions reached by the learned trial Court. In such circumstances, no prejudice, according to Mr. Sharma Baruah, has been caused to the plaintiffs-petitioners and the impugned decrees deserve to be maintained.

7. Having heard the learned Counsel for the parties and upon perusal of the materials on record particularly, the appellate judgments, I must place on record that the learned appellate Court has not really discussed the questions, which had been raised in the appeal. In respect of the relevant issues, the learned appellate Court has merely held to the effect that there has been elaborate discussion by the learned trial Court of the issues and the issues have been rightly discussed. This is not a correct approach in any appeal. Since the appeals, in question, were first appeal and there is no further appeal against the decrees so granted, it was incumbent, on the part of the learned appellate Court, even if it were to agree with

the findings of the learned trial Court, that it records the reasons for agreeing with the learned trial Court's findings. In the circumstances, such as the present one, these revision petitions would have been, ordinarily, allowed and the appeals would have been remanded to the learned appellate Court. In view, however, of the fact that the litigation between the parties commenced in the year 1999 and more than eight years have already passed since the time of institution of the suits, the remand shall be made only as an exception and not as a general rule. Appropriate it is, therefore, on the part of this Court, to determine if the findings of the learned trial Court are correct and the decrees have been passed in accordance with law. If there is absolutely no infirmity in the judgments of the learned trial Court, it would be merely an idle formality to remand the appeals to the learned Court for delivery of judgments in accordance with law.

8. In view of what have been indicated above, I have decided to examine the decisions of the learned trial Court on the relevant issues.

9. While considering the above aspect of the case, it needs to be noted that the issue No. 4, in the suit, read, 'Whether the tenant and landlord relationship is established between the plaintiff and the defendant No. 1 ?' The conclusion, reached by the learned trial Court, on the issue No. 4, reads thus, 'Taking into consideration of this aspect and the provisions laid down in Section 55 of the Transfer of Property Act, I am of the opinion that the plaintiff became a monthly bharatiya tenant under the defendant No. 1 in respect of the suit holding from 19.07.99 onwards. On the basis of the above discussion, it is held that the plaintiff is occupying the suit holding as monthly bharatiya tenant under the new owner defendant No. 1.' I find no infirmity in the conclusion so reached and, in fact, this finding has not been challenged by the defendant No. 1 and has, therefore, attained finality. So far as the plaintiffs are concerned, they could not have challenged this finding, and have rightly not done so.

10. What surfaces from the above discussion is that the learned trial Court's finding, on this issue, is in the affirmative. Against this finding, there has been no appeal by the defendant No. 1. As far as the plaintiffs-petitioners are concerned, they themselves sought for a declaration that they were tenants under the plaintiffs

in respect of the suit property. As this contention of the plaintiffs has been accepted by the learned trial Court, the plaintiffs cannot obviously express any grievance against this finding. This finding of fact, therefore, is unassailable and has, in fact, remained unassailed.

11. Bearing in mind what is indicated above, when I proceed further, what attracts the attention is that the plaintiffs had been held to be tenants, under the defendant No. 1, in respect of the suit property. In such circumstances, there was no impediment, on the part of the learned trial Court, to decree the counter-claim if the counter-claim was found valued in accordance with law and if the suit property was proved to be bona fide required by the defendant No. 1, as landlord, in terms of the provisions of Section 5(c) of the Act of 1972, which reads thus:

Section 5. Bar against passing and execution of decree and orders for ejection:

(1) No order or decree for the recovery of possession of any house shall be made or executed by any Court so long as the tenant pays rent to the full extent allowable under this Act and performs the conditions of the tenancy:

Provided that nothing in the Sub-section shall apply in a suit or proceedings for eviction of the tenant from the house:

(a) *** *** ***

(b) *** *** ***

(c) where the house is bonafide required by the landlord either for purposes of repairs or rebuilding, or for his own occupation or for the occupation of any person for whose benefit the house is held, or where the landlord can show any other cause which may be deemed satisfactory by the Court, or

(d) *** *** ***

(e) *** *** ***

(f) *** *** ***

12. The question as to whether the counter-claim was properly valued and stamped is covered by issue No. 6, which read thus: 'Whether the counter-claim is properly valued and stamped ?' For correct appreciation of the issue so raised, apposite it is that to take note of Order VIII, Rule 6A of the Code. With this end in view, Rule 6A is reproduced hereinbelow:

Rule 6A. Counter-claim by defendant--(1) A defendant in a suit may, in addition to his right of pleading as set off under Rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action according to the defendant against the plaintiff either before or after the filing of the suit but before the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not : Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counterclaim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

13. From a careful reading of Rule 6A, what becomes clear is that a counter-claim, under Order VIII, Rule 6A, is not limited to money suits alone. By way of counter-claim, a decree can be passed, in favour of a defendant, in a suit of present nature. Rule 6A, Order VIII makes it clear that the right or claim in respect of an action might have accrued to the defendant either before institution of the suit by the plaintiff or after institution thereof. There are two limitations to the filing of a counter-claim, namely, (i) that the counterclaim must be filed before the defendant adduces his evidence or before the time fixed for adducing his evidence expires and (ii) that the value of the counter-claim shall not exceed the pecuniary limits of

the jurisdiction of the Court, which is in seisin of the suit, wherein the counter-claim is made.

14. In the present case, when the plaintiffs had sought for declaration of their status as tenants under the defendant No. 1, as landlord, it was permissible, under the law, for the defendant No. 1 to contend before the Court, by way of a counter-claim, (as he has, indeed, been done, in the present case), that should the Court hold that the plaintiffs are tenants under him in respect of the suit property, then, a decree for eviction of the plaintiff concerned from the suit property be passed on the ground that the suit property was bona fide required for re-constructions and also for use and occupation of the defendant No. 1. If the defendant No. 1 could succeed in proving necessary facts, which reflected his bona fide requirement of the suit property, there was absolutely no impediment, on the part of the learned trial Court, in granting such reliefs, in the counter-claims, as had been sought for by him provided that the counter-claim had been properly valued and had not exceeded the pecuniary limits of the jurisdiction of the trial Court.

15. It needs to be borne in mind that a counter-claim is nothing, but a cross suit. Since a counter-claim is a suit, the counter-claim must lie within the pecuniary jurisdiction of the Court, where the suit is instituted. In the present case, not only that the counter-claim was required to be valued in accordance with law, but that the counter-claim could not have exceeded the pecuniary limits of the learned trial Court's jurisdiction.

16. Keeping in view what has been pointed out above, when I turn to the discussions held by the learned trial Court on the issue No. 6, I notice that the learned trial Court has correctly held that a suit for eviction of a tenant, under the Act of 1972, has to be assessed on the basis of 12 months rent and since the suit has been valued more than 12 months' rent and the court-fees have been accordingly paid thereon, the suit is properly valued and stamped. In a suit for eviction of tenant under the Act of 1972, the value of the suit property is not material; what is material is the rent. A suit, in such a case, has to be valued according to the amount of one year of the rent. To a case of this nature, provisions of Section 7(xi)(cc) of the Court Fees Act, 1870, are applicable, which

read as under:

Section 7. Computation of fees payable in certain suits --(i) The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows: between landlord and tenant.--(xi) In the following suits between landlord and tenant:

(a) *** *** ***

(b) *** *** ***

(c) *** *** ***

(cc) for the recovery of immovable property from a tenant, including a tenant holding over after the determination of a tenancy.

(d) *** *** ***

(e) *** *** ***

(f) for abatement of rent--

according to the amount of the rent of the (immovable property) to which the suit refers, payable for the year next before the date of presenting the plaint.

17. From a careful reading of what Section 7(xi)(cc) states, it becomes abundantly clear that in a case of eviction of a tenant on the ground of bona fide requirement or on the ground that he is a defaulter, value of the suit property is not material; what is material is the amount of rent, for, under Section 7(xi)(cc) of the Court Fees Act, the plaintiff is required to pay the court-fees on the basis of the amount of one year of rent payable by the tenant. To a pointed query made by this Court, Mr. Choudhury does not dispute the fact that the court-fee, paid on the counterclaim by the defendant No. 1, was more than 12 months rent in each of the suit. Viewed thus, it is clear that the counter-claim was properly valued and could not have been interfered by the learned Courts below:

18. Let me, now, turn to the question of bona fide requirement. The relevant issue, in this regard, was issue No. 7, which read,

7. Whether the suit holding is required by the defendant No. 1 and it is old and dilapidated?

19. While considering the above issue, what has been taken into account, and rightly so, by the learned trial Court, is that apart from the fact that the specific case of the defendant No. 1 was that the suit property was old and in dilapidated condition, the suit property is situated in a commercial area and that the other properties, around the suit property, are all RCC constructions. Even PW1, in his cross-examination, conceded that the suit property is very old and in dilapidated condition, the suit holding is of CI-sheet roofing, wooden posts and that walls are also of CI sheets and, further, that the CI sheets of the wall stood rusted. Thus, from the evidence of even PW1, it was crystal clear, as correctly noticed by the learned trial Court, that the suit holding is very old and in dilapidated condition. Nothing could be pointed out, on behalf of the plaintiffs-petitioners' before this Court to show that the finding, so reached, was incorrect. In fact, this finding is based not merely on the evidence of the defendant No. 1, but even on the evidence of plaintiffs themselves.

20. Coupled with the above, the suit holding is located in a commercial area. It was contended, in the learned trial Court, that the expression 'bona fide' requirement has not been used in the counter-claim lodged by the defendant No. 1 and, in such circumstances, the counter-claim could not have been allowed. While considering this aspect of the case, I find it necessary to reproduce herein below the pleadings in the counter-claim of the defendant No. 1 as contained in para E(1) of the counter-claim. This para, in the counter-claim, reads,

That the suit holding in the 2nd schedule within 1st schedule of the plaint has an old house of the plaint has an old house and it is in the dilapidated condition and need new construction of RCC building and has decided to construct RCC building in the said suit holding and for that the answering defendant No. 1 has done an estimation by competent engineer to make an RCC building in the said suit holding in 2nd schedule under the 1st schedule. The answering defendant No. 1 has

intention to start his own business in the proposed RCC building on the suit holding and that is why the answering defendant No. 1 wants to evict the plaintiffs from the suit holding and have the possession of the same, otherwise the answering defendant No. 1 shall suffer irreparable loss and injury.

21. From a bare reading of what has been pleaded in para E(1) by the defendant No. 1, it is crystal clear that this defendant has given all material facts in his counter-claim, which, if believed, would mean that this defendant's requirement of the suit house is bona fide. Merely because of the fact that in his pleadings, a defendant has not used the expression, 'bona fide', such an omission will not divest the Court of its jurisdiction to grant a decree on bona fide requirement of the suit property by a landlord if the facts, otherwise, pleaded and proved, reflect that the landlords' requirement of the suit house is, indeed, bona fide. (See Kailash Singh v. Hiralal Dey reported in 1993 (1) GLR 434).

22. Thus, merely because of the fact that the expression 'bona fide' has not been used, in his pleadings, by the defendant No. 1, while setting up his case to show as to why he required the suit premises, his counter-claim could not have been rejected, particularly, when the evidence on record speaks loud and clear that the suit property is very old and in dilapidated condition, the defendant No. 1 requires the suit premises to start his own business with his brothers, who are unemployed, that the suit property is located in a commercial area, the defendant No. 1 has already got made, through a qualified engineer, an estimate of the cost of construction of a RCC building by demolishing the old one and he is planning to start his business in the proposed new building. In fact, in his evidence, the defendant No. 1 clearly stated that he had purchased the suit property for business purpose, because the suit property is situated in a commercial area facing PWD road on the west and a place fit for his business. The plan estimate has also been proved as Exhibit H.

23. In the face of the evidence discussed above, there could have been no escape from the conclusion that the suit property was bona fide required be the defendant No. 1, as landlord, and, hence, the counter-claims deserved to be decreed. In fact, in RVE Venkatachalu Gouncler v. Venkatesh Gupta and Ors. : [2002]2SCR983 ,

the Supreme Court has held that an eviction decree can be passed if there is bona fide need for demolition and reconstruction, when the suit property is in business locality. In the present case too, the defendant No. 1 has proved that his requirement of the suit property, which is located in a commercial area, is bona fide.

24. Though the learned appellate Court has not discussed issue No. 7, the fact remains that the learned trial Court has elaborately discussed this issue and no sustainable flaw in the reasonings, assigned by the learned trial Court, could be pointed out by the present petitioners. Situated thus, it is clear that notwithstanding the failure of the learned appellate Court to discuss the issue, as was warranted by law, interest of justice would not be served if the suit is remanded to the learned appellate Court, when this Court is fully satisfied with the reasons assigned by the learned trial Court for passing the decrees and when no legally sustainable error could be found or pointed out in the findings reached, and the conclusions recorded, by the learned trial Court on all the relevant issues.

25. Because of what have been discussed and pointed out above, I find absolutely no merit in the present set of revision petitions. These revision petitions, therefore, fail and the same shall accordingly stand dismissed with cost.

26. Send back the LCR.

27. Before parting with these revision petitions, I must place on record this Court's serious anguish in the slipshod manner in which the learned appellate Court has dealt with the matter. In an appeal, since the fact and law are open to challenge and the appellate Court has the same very power, which a trial Court has, and when an appeal is nothing, but extension of suit, it is incumbent, on the part of the appellate Court, that even if it agrees with the findings of the trial Court, it assigns, howsoever briefly, not only the reasons for its agreement, but also the reasons as to why it holds that the findings reached by the trial Court as correct and sustainable in law.

28. In the facts and circumstances of the present case, necessary it is that these aspects of the matter are brought to the notice of the learned Additional District

Judge (Ad hoc), Karimganj, who had dealt with the appeals.

Let a copy of this judgment and order be, therefore, sent to the officer concerned wherever he is serving.

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