

Chandra Kala Devi and ors. Vs. Mostt. Deopari Devi and ors.

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Court : Patna

Decided On : Aug-19-1999

Judge : Gurusharan Sharma, J.

Appeal No. : Appeal from Appellate Decree No. 202 of 1996

Appellant : Chandra Kala Devi and ors.

Respondent : Mostt. Deopari Devi and ors.

Disposition : Appeal Dismissed

Judgement :

Gurusharan Sharma, J.

1. Plaintiff filed Title Suit No. 89 of 1980 for eviction of defendants from the suit house, described at the foot of the plaint and for realisation of arrears of rent with interest and costs. Suit house consisted one room facing east standing over R.S. Plot No. 8521, corresponding C.S. Plot No. 5681, situated at Hayaghat Bazar within Darbhanga district.

2. Admittedly, the suit plot was recorded as Gairmazrua Malik in C.S. Khatian. According to plaintiff, the then landlord, namely, Darbhanga Raj made settlement thereof to Babulal Choudhary, who had executed a registered Kabuliat thereby on 1-12-1909 in favour of Raj. Subsequently, plaintiff purchased it by registered deed

dated 13-10-1970 from settlee.

3. Plaintiff's further case was that defendant was inducted as tenant in the suit premises in the year 1977. He defaulted in payment of rent from 5-9-1970 to 4-8-1980 and as such he was liable to be evicted under Section 12(l)(d) of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1977 and plaintiff was entitled to recover arrears of rent from him.

4. Defendant contested the suit and denied relationship of landlord and tenant between him and the plaintiff and he claimed to be living the suit house in his own right.

5. Trial Court dismissed the suit holding that plaintiff failed to establish relationship of landlord and tenant and, therefore, he was not entitled, to get arrears of rent. However, it was also held defendant failed to prove his title over the suit property.

6. Plaintiff filed appeal. The first appellate Court considered oral evidence of P.Ws. 1, 3 and 5 and found that defendant was inducted in the suit house as tenant sometime in March, 1977 and paid rent @ Rs. 40/- per month till August 1979. He stopped payment of rent from September, 1979, therefore, he was liable to eviction under Section 12(1)(d) of the Act.

7. At the stage of hearing under Order XLI, Rule 11 of the Code of Civil Procedure the following substantial question of law was framed: 'Whether the lower appellate Court committed an error in vising third parties documents in corning to the conclusion that the suit plot belongs to the family of the plaintiffs'?

8. It is not in dispute that suit was filed under the Act for eviction and in spite of defendant claiming his own title, plaintiff did not choose to amend plaint and convert it into a suit for declaration of title over suit property, on payment of ad-valorem court fee on its market value.

9. The suit was, therefore, decided as a pure suit for eviction under the Act. Question of title of parties was not to be decided herein. The Court of appeal below considered defendant's claim of adverse possession and title incidentally and found that he failed to establish it. The defendant admitted plaintiff's

possession of rest part of the suit plot over which house in question was standing and thereby plaintiff's case of settlement by Darbhanga Raj was also accepted.

10. In my view, aforesaid substantial question of law does not arise in this appeal. This second appeal is concluded by finding of fact recorded the first appellate Court that there was a relationship of landlord and tenant between parties and defendant was defaulter in payment of rent within the meaning of the Act. Hence, he was liable for eviction from suit premises. It was reported that house in question stood demolished, so first appellate Court rightly directed delivery of possession of the land.

11. There is no merit in this Second Appeal, It is, accordingly dismissed, but without costs.

12. However, it goes without saving that any observation/finding made by either trial-Court or first appellate Court in respect of title of the suit property was not to operate as res judicata in a properly constituted suit for declaration of title between the parties.