

Roy and Company Vs. on the Death of Satya Narayan Somani His Legal Representatives and ors.

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Court : Guwahati

Decided On : Nov-18-2004

Judge : H.N. Sarma, J.

Acts : Assam Urban Areas Rent Control Act, 1972 - Sections 2 and 5(4); Assam Urban Immovable Property Tax Act, 1969 - Sections 4

Appeal No. : C.R.P. No. 78 of 2000

Appellant : Roy and Company

Respondent : On the Death of Satya Narayan Somani His Legal Representatives and ors.

Advocate for Def. : S.K. Barkakati, J. Sarma, D. Sarma, N.K. Chakravarty and D.J. Baruah, Advs.

Advocate for Pet/Ap. : B.R. Dey, K.K. Nandi, H. Talukdar and S.D. Choudhury, Advs.

Judgement :

H.N. Sarma, J.

1. By the revision petition the petitioner tenant has challenged the legality and validity of the judgment and order dated 26.11.1999 passed by the learned Civil Judge (Sr. Division) No. 1, Guwahati in Title Appeal No. 23/95 allowing the appeal and thereby reversing the judgment and decree passed by the learned Civil Judge (Jr. Division) No. 3 in Title Suit No. 17/87, in part.

2. The Title Suit No. 132/82 was filed by the landlord respondent on June 1982 praying for ejectment of the petitioner tenant on the ground of bona fide requirement and defaulter. In the said suit prayer was also made for fixation of standard rent in respect of the suit premises. The suit premises as mentioned in Schedule B of the plaint are two godowns measuring 320 sq ft and 540 sq ft being part of Holding No. 81 of Ward No. 20 of Gauhati Municipal Corporation. The defendants submitted their written statement in the suit and denied the contention of the plaintiff. The plaintiff's further case was that the suit premises originally belonged to one Champa Devi Goenka who gifted the same to Ashok Kumar Goenka on 25.3.1972 by a registered Gift Deed who in turn sold it on 16.3.1973 to Shyam Sundar Goenka. The plaintiff respondents jointly purchased the land from Shyam Sundar Goenka by registered sale deed dated 10.7.1981. There was a deed of rectification rectifying some clerical mistake of the sale deed. There is no dispute to that effect. At paragraph 8 of the plaint the plaintiff stated as follows :

'That the plaintiffs got their names mutated to the land in question in Mutation Case No. 13 of 1981-82 of the Court of the Assistant Settlement Officer, Gauhati Town Resettlement and a Kutcha Patta for the land was issued in the name of the plaintiffs. The plaintiffs are also paying the land revenue for the land. The plaintiffs also got their names recorded in respect of the structures standing on the land and the present holding number of the structures are 81 of S.R.C.B. Road, Ward No. 20 of the Gauhati Municipal Corporation and the plaintiffs have paid the Municipal Tax for the holding to the end of June 1982. The plaintiffs have also paid the Urban Immovable Property tax for the year 1981-82.'

This paragraph was replied in paragraph 18 of the written statement as follows :-

'That the statements made in paragraph 8 of the plaint are not admitted and the plaintiffs are put to strictest proof thereof.'

3. The learned trial Court framed as many as nine issues out of which Issue No. 3 relates to defaulter and Issue No. 5 relates to bona fide requirement of the plaintiff landlord. Issue No. 7 relates to the fixation of the standard rent. Both the parties adduced two witnesses in support of their respective case and exhibited connected documents. The learned trial Court vide judgment and decree dated 27.4.1995 dismissed the suit of the plaintiff holding that the defendant petitioner is not defaulter and there is no bona fide requirement of the suit premises. Against this, the present respondents of the suit premises. Against this, the present respondents filed an appeal being Title Appeal No. 23/95 in the Court of learned Civil Judge (Sr. Divn), No. 1, Guwahati. The learned Civil Judge (Sr. Divn) considering the materials and evidence on record held the defendant petitioner to be a defaulter. The learned lower appellate Court considering the documentary evidence on record and assessing the oral evidence as well as other materials on record reversed the judgment of the trial Court in respect of the issue regarding default and concurred with the finding regarding bona fide requirement. The learned lower appellate Court also fixed the standard rent at enhanced rent as claimed by the plaintiff on the basis of the valuation report submitted by the registered valuer.

4. I have heard Mr. B.R. Dey, learned counsel appearing for the petitioner defendant and Mr J. Sarma, learned counsel appearing for the respondent plaintiffs.

5. During the course of argument Mr. Dey, learned counsel submitted that the learned lower appellate committed jurisdictional error in holding the petitioner a defaulter for the month of July 1981 inasmuch as the petitioner deposited the rent in the Court and the copy of the challan was annexed as Annexure-4 of the petition. The learned counsel also submitted that the findings of the lower appellate Court that prior to depositing the rent in Court it was not offered to the landlord was perverse and not born out of records. The learned counsel further submitted that in fixation of the standard rent the learned appellate Court gave a complete go by to the procedure provided by the Assam Urban Areas Rent Control Act and only on the basis of a mere report submitted by a valuer, who was also not examined in the Court, has fixed the standard rent. According to Mr. Dey,

on this count the impugned judgment and orders are liable to be set aside. Mr J. Sarma, appearing for the plaintiff landlord, on the other hand, has supported the judgment passed by the learned lower appellate Court. Mr. Sharma very fairly agreed that in fixing the standard rent the learned lower appellate Court did not follow the procedure prescribed under the Act. However, he pointed out that in the heart of the Guwahati city two godowns, which are fairly large, are being enjoyed by the defendant tenant at a meagre rent of Rs. 120 per month and in that view of the matter the learned lower appellate Court did not commit any error in fixing the standard rent.

6. I have considered the rival contentions of the parties and perused the connected materials, evidences and other documents available on record. The learned appellate Court came to the finding that the defendant is a defaulter in respect of payment of the monthly rent for the month of July 1981. The challan by which the rent was deposited in the Court by the defendant tenant was not enclosed in the Rent Deposit Case and consequently the case was dismissed. The learned lower appellate Court also opined that before paying the rent in the Court the rent was not offered to the plaintiff landlord and accordingly the deposit was not in accordance with the mandatory provisions as contained in Section 5(4) of the Act. The submission of Mr. Dey that their having arisen a confusion as regards the identity of the landlord the tenant deposited the rent in the joint name of the present and previous owners. The purpose of depositing the rent in the Court is to the effect that the plaintiff landlord can withdraw the amount from the Court. But in the instant case depositing the rent by challan in the name of the persons who are, in fact, not owners of the suit premises is not contemplated under Section 5(4) of the Act. The first named person in the challan Champa Devi Goenka is already dead. The persons named thereafter, namely Ashok Kumar Goenka and Shyam Sundar Goenka have no right, title and interest over the suit premises and after they purchased the premises they duly notified the petitioner defendant to attorn them as landlords. Instead of that, the challan was deposited in the name of the persons who are previous owners of the premises in question and consequently the deposit in the Court cannot be said to be valid deposit under Section 5(4) of the Act and requires no interference regarding this issue of default as arrived by the learned lower appellate Court. So far the bona fide requirement

is concerned, the learned lower appellate Court concurred with the findings of the learned trial Court and this has not been assailed by the plaintiff respondents and accordingly it requires no interference. Under Section 2(e) of the Assam Urban Areas Rent Control Act, 1972 'fair rent' is described as follows : -

'(e) 'standard rent' in relation to any house means the rent calculated on the basis of annual payment of an amount equal to seven and half per cent of the aggregate amount of the estimated cost of construction and the market price of the land together with the total municipal taxes payable in respect of the house and Urban Immovable Property Tax under the Assam Urban Immovable Property Tax Act, 1969 (Assam Act XI of 1969) and monthly rent shall be equal to one-twelfth of the annual payment so calculated.'

7. Section 4 of the Act provides for the procedure prescribed for determination of fair rent. But the learned lower appellate Court without following this mandate of law has fixed the fair rent only on the basis of the report of the valuer, thereby reversing the findings of the learned trial Court on this Court. This finding of fixation of fair rent by the learned lower appellate Court is not tenable in law and is liable to be set aside which I hereby do for non-fulfilment of the provisions of the Act, 1972, as mentioned above.

8. In the result the revision petition is partly allowed and the suit of the plaintiff is decreed on the ground of default as passed by the learned lower appellate Court. There will be no order as to costs.

9. Before parting with the record Mr. B.R. Dey, learned counsel submits that the petitioner tenant has got its existing business over the suit premises and accordingly he prays for a reasonable time to vacate the premises. Mr. J. Sarma, learned counsel for the plaintiff has fairly stated that he has no objection in granting reasonable time. But Mr. Sarma submits that the tenanted premises, which consists of two godowns, is practically lying vacant. However, in view of the prayer made by Mr. Dey, I am inclined to grant two months time to the petitioner to vacate the same subject to payment of due rent to the plaintiff landlord and subject to filing an undertaking before the trial Court that he would vacate the premises on completion two months from today and will not induct any third party or part with

any possession of the godown and in the event of his failure to comply with the direction the decree shall be put to execution immediately.

10. The revision petition stands disposed of.

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