

Radha Devi and ors. Vs. Ajay Kumar Sinha

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Court : Patna

Decided On : May-13-1998

Judge : M.Y. Eqbal, J.

Appeal No. : Civil Revision No. 373 of 1998

Appellant : Radha Devi and ors.

Respondent : Ajay Kumar Sinha

Disposition : Application Allowed

Judgement :

M.Y. Eqbal, J.

1. This Revision application has been filed by the defendants-tenants under Section 14(8) of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (hereinafter referred to as 'the said Act') against the judgment and decree dated 30.7.1997 passed by Munsif, I, Begusarai in Title Suit No. 9 of 1992. By the said judgment and decree, the aforesaid suit filed by the plaintiff has been decreed on the ground of personal necessity.

2. The facts of the case are as follows. The plaintiff-opposite party filed the aforesaid suit for eviction of the defendants from the suit premises, which is a land and house comprised within the survey plot No. 652 under Khata No. 152 situated

at Begusarai. The plaintiff said to have purchased the said plot along with other Khesra which is compact block having residential house thereon. The plaintiff's case is that the defendant is a tenant in respect of the house standing on a portion of the aforesaid plot on monthly rent of Rs. 400/-. The plaintiff several times demanded rent but the, defendant never paid the same to the plaintiff. The plaintiff alleged that he requires the suit premises for his own use and occupation as he wants to start this own business of Hardware in the suit premises. The defendant contested the suit by filing written statement denying and disputing the relationship of landlord and tenant. The defendants have asserted that the land in dispute was recorded as Gairmazrua Khas land in the Cadesteral Survey Record of rights, but the remark column of Khatian, Makan and Sahan in possession of Mosst. Chhediya was recorded who was coming in peaceful possession of the said plot and said Mosst. Chhediya in the year 1910 had adopted Bachchu Mahto the grand father of these defendants as son. Mosst. Chhediya died in the year 1923 and since then the grand-father of these defendants and after his death these defendants are residing in the suit premises as their own property and they have perfected their right, title and interest over the suit property by remaining in continuous possession since long. The defendants further asserted that neither the plaintiff nor his vendor have any concern with the suit premises and they have no right, title and interest over the same. Defendant's further case is that they have filed Title Suit No. 6 of 1988 against the vendor of the plaintiff and the same is pending in appeal. The suit, therefore, according to the defendants, is barred by limitation and also barred under Section 34 of the Specific Relief Act.

3. On the basis of the pleadings of the parties, the Court below framed as many as following eight issues:

1. Is the suit as framed maintainable?
2. Whether the plaintiff has valid cause of action or right to sue?
3. Is the suit barred by law of Limitation?
4. Whether the plaintiff is landlord and the defendants are tenants of the suit premises?

5. Whether the plaintiff has personal necessity of the suit premises?
6. Whether the partial eviction of the suit premises is sustainable?
7. Whether the plaintiff is entitled to get a decree of eviction as prayed for?
8. To what other relief or reliefs the plaintiff is entitled to?

Issue Nos. 4, 5, 6 and 7 have been taken up together by the Court below and after considering the evidence, both oral and documentary, it came to a finding that the plaintiff successfully proved his right and title over the suit premises and further held that the plaintiff has been able to prove his personal necessity. Accordingly, the suit was decreed. Hence this revision application.

4. I have heard Mr. Rajiv Ranjan Sinha, learned Counsel appearing on behalf of the petitioners and Mr. Shreenath Singh, Senior Counsel for the opposite party-landlord.

5. Learned Counsel for the petitioners assailed the impugned judgment as being illegal and wholly without jurisdiction. Learned Counsel firstly submitted that the Court below committed serious illegality in passing the impugned judgment and decree by following summary procedure provided under Section 14 of the said Act and the procedure provided under the Small Causes Court Act. Learned Counsel then submitted that the impugned judgment and decree could not have been passed on the basis of prima facie finding of title in a suit for eviction filed on the ground of personal necessity. Learned Counsel for the petitioners lastly submitted that admittedly when the dispute with regard to title is pending adjudication the Court below ought to have stayed the disposal of the Eviction Suit till the final disposal of the title suit which is pending in appellate stage. In this connection, learned Counsel for the petitioners relied upon the decision of this Court in the case of Raj Kumar Prasad v. Smt. Kaushalya Devi reported in 1997 (2) PLJR 649. On the other hand, Mr. Shreenath Singh, learned Sr. Counsel appearing on behalf of the opposite party submitted that when the suit for declaration of title filed by the defendants-petitioners has been dismissed by the judgment and decree passed by the Civil Court of competent jurisdiction, then no illegality has been committed by

the Court below in decreeing the eviction suit on the basis of title of the plaintiff. Learned Counsel then submitted that even if the judgment of the trial Court with regard to title has not attained finality because of the pendency of the appeal, the trial of the eviction suit could not be deferred and the decree for eviction can well be passed against the tenant. In this connection, learned Counsel relied upon a decision of the case of Maheshwar Pd. Sharma v. Shobha Devi reported in 1998 (1) BLJR 423.

6. Before appreciating the rival contentions made by the learned Counsels for the parties, it would be useful to first consider the admitted facts of the case. In the year 1988 the defendant-petitioners filed Title Suit No. 6 of 1988 for declaration of right, title and interest over some of the plots including the plot in question and for appropriate order for injunction restraining the defendants from interfering with their possession over the suit property. While the title suit was pending, the suit premises was sold by the defendant of that suit in favour of the plaintiff-opposite party of this, suit. After purchasing the suit premises the plaintiff filed the instant suit for eviction of the defendant-petitioners from the suit premises on the ground of personal necessity. As stated above, the defendants-petitioners contested the suit by denying the relationship of landlord and tenant and they claimed title over the suit premises.

7. From perusal of the judgment of eviction suit, it appears that although the Court below frame one issue whether there was relationship of landlord and tenant between the parties, but there is no positive of finding on that issue. Before I proceed to examine and analyse the impugned judgment passed by the Court below, I would like to refer three important paragraphs of the judgment i.e. paragraphs 18, 19 and 20 on the basis of which the suit for eviction was decreed by the Court below:

(18) There is no any dispute about possession of defendant. The question is whether they are in possession over disputed house as a owner or a tenant?

(19) The oral and documentary evidence adduced on behalf of the plaintiff is more reliable. Ext. 7 and 8 shows that defendant's case for declaration of ownership and title and dismissed. The defendant has failed to prove his ownership over disputed

house. No case of adverse possession have been made out in the W.S. so the defendant shall be deemed to be the tenant of the house premises. The defendant Counsel drawn my attention towards Ext. A and A/1 which are Kirayanama executed by Arbind Kumar Das and Nand Kishore Singh in favour of defendant Shiwal Mahto. The defendant is himself a tenant of the disputed house. So these Ext. A and A/1 will to help him. Ext. A and A/1 were prepared during the pendency of this case so no importance can be given on those document.

(20) Thus on the above discussion, I come to this conclusion that the plaintiff has successfully proved his right and title over dispute house and defendant has failed to prove his ownership over the disputed house.

8. From perusal of the finding arrived at by the Court below, it is manifest that the relationship of landlord and tenant has not been proved. Rather on the basis of the evidence of title, the Court below held that the defendant shall be deemed to be a tenant of the suit premises. The question, therefore, falls for consideration is whether such decree for eviction passed against a person on the basis of title and on the ground of personal necessity shall be deemed to be a decree or order within the meaning of Section 14(7) of the said Act so as to take away the right of appeal of the tenant under the general law. The other question which falls for consideration is as to whether a disputed question of title can be decided by following the summary procedure provided under Section 14 of the said Act and a decree would follow even if relationship of landlord and tenant is not established.

9. The Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 has been enacted to regulate the letting of buildings and the rent of such buildings and to prevent, unreasonable eviction of tenants therefrom in the State of Bihar. Under the Act, a person, who is a landlord within the meaning of Section 2(f) is entitled to maintain a suit for eviction irrespective of the fact whether or not that person is owner of the suit premises. According to the definition the landlord need not necessarily be land owner but a person who is entitled to receive the rent of a building whether on his own account or on behalf of the another, or on account or on behalf of for the benefit of himself and others or as an agent, trustee, executor, administrator, receiver, guardian is also a landlord. A person is entitled to receive

rent, such as an agent, trustee, executor, and administrator etc. so also landlord. Section 11 of the said Act provides protection to a tenant from eviction. The said section enables the landlord to get an eviction decree if the conditions mentioned in the section are satisfied. In other words, where there is relationship of landlord and tenant, order of eviction be passed on the existence of any one of the grounds mentioned in Section 11 of the said Act. It is, therefore, clear that proof of relationship of landlord and tenant gives right to a landlord to get an order of eviction under the provisions of the aforesaid Act. In this connection reference may be made to a Bench decision of this Court in the case of Champa Lal Sharma v. Smt. Sunita Maitra, reported in (1990) 1 BLJR 268. His Lordship held as under:

It is also well settled that once such relationship is admitted or established, tenant would be estopped and precluded from challenging the title of the landlord and if he does so, under the general rule, make himself liable for eviction on that ground.

It, therefore, logically follows that a finding of existence of relationship of landlord and tenant is a sine quo non for passing a decree for eviction against a tenant except in a case, as mentioned hereinbefore the plaintiff on payment of ad valurum Court fee may obtain a decree for eviction on the basis of his general title.

Now, I will refer to Section 14 of the said Act which has been introduced in the year 1982 in the Rent Control Legislation of the State of Bihar. Section 14 reads as under:

Special Procedure for disposal of cases for eviction on the ground of bona fide requirement.--(1) Every suit by a landlord for the recovery of possession of any premises on the ground specified in Clause (c) or (e) of Sub-section (1) of Section 11 shall be dealt with in accordance with the procedure specified in this Section.

(2) The Court shall issue summons in the prescribed form in every suit referred in Sub-section (1) without delay.

(3)(i) The Court shall, in addition, to, and simultaneously with, the issue of summons for service on the tenant or tenants, also direct the summons to be served by registered post with acknowledgment due, addressed to the tenant or

his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and may, if the circumstances of the case so require also direct the publication of the summons in the official Gazette or in newspapers circulating in the locality, in which the tenant is last known to have resided or carried on business or personally worked for gain.

(ii) when an acknowledgement purporting to be signed by the tenant or his agent is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent has refused to take delivery of the registered article, the Court may declare that there has been a valid service of summons.

(4) The tenant on whom summons is duly served (whether by ordinary mail or by registered post) shall not contest the prayer for eviction from the premises unless he filed an affidavit stating the ground on which he seeks to make such contest and obtains leave from the Court as hereinafter provided; and in default of the appearance in pursuance of the summons or his obtaining such leave the statement made by the landlord in the suit for eviction shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order for eviction on the ground aforesaid.

(5) The Court shall give to the tenant leave to contest the suit if the affidavit filed by the tenant disclose such facts as would disentitled the landlord from obtaining an order of eviction on the. grounds specified in Clauses (c) and (e) of Sub-section (1) of Section 11.

(6) When leave is granted to the tenant to contest the suit, the latter may, within fifteen days from the date of the order, pray after filing the requisite Court fee, required for a written statement that the affidavit may be treated as the written statement or if he chooses to file a separate written statement he may do so within fifteen days of the grant of leave to contest the suit and if does not file the written statement within the period he shall not be allowed to do so later. The Court shall thereafter commence the hearing of the suit as early as practicable.

(7) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (V of 1908) or any other law, the Court while hearing a suit under this Section shall follow the practice and procedure of a Court of Small Causes including the recording of evidence.

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made in accordance with the procedure specified in this section:

Provided that on an application being made within sixty days of the date of the order of eviction, the High Court may for the purpose of satisfying itself that an order under the section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.

(9) Where no application has been made to the High Court in revision as laid down in Sub-section (8) above, the Court, which passed the order for eviction may exercise the power of review in accordance with the provision of Order XL VII of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908):

Provided that no such review be made unless an application is filed for the same within ninety days of the date of order of eviction.

From bare perusal of the aforesaid provision, it is clear that the intention of the Legislation for making this provision is for summary and quick disposal of eviction suit which go on linger for decades. The Legislature has taken notice of the hardship of the landlord seeking recovery of possession of a building premises for his personal occupation and, therefore, speedy machinery and procedure has been prescribed for the disposal of the suit. It is, therefore, clear that if a landlord wants a decree for eviction on the ground of bona fide personal necessity or expiry of the period of lease, then he may institute a suit which shall be decided by following the said procedure provided under Section 14 of the Act. At this stage I must reiterate that in any case proof of relationship of landlord and tenant is essential conditions for passing a decree for eviction after following the procedure provided under Section 14 of the said Act. It, therefore, follows that if a Court passed a decree for eviction in favour of the landlord by following summary

procedure and on proof of existence of relationship of landlord and tenant and one of the two grounds provided under Sections 11(1)(c) and (e) of the Act then the tenant has no right of appeal but he can challenge the said eviction order by filing revision application before a High Court as contemplated under Section 14(8) of the Act.

A question then arose as to what would be the position if in a suit for eviction the relationship of landlord and tenant is not established. This question was considered more than two decades earlier by this Court in the case of *Ram Chand Sah v. Chotan Sah* (1971) v. BLJR 186. His Lordship, U.N. Untwalia, J. (as he then was) has observed:

It would appear from the facts stated in the judgment of the Court below that the respondent had raised some dispute with regard to title in the year 1948. The present Title Suit No. 184 was filed in the year 1959. It is, therefore, just and proper that the question of title on which the parties have adduced evidence at the trial should be decided in the very litigation. If the plaintiffs are driven to another litigation, obviously, the suit may be barred. If they are able to establish their title in this litigation applying the principle of law as uncited in the cases referred to above. I see no reason to deny the equitable relief to the plaintiffs. I have not examined myself the merit of their case in regard to the question of their title. Any observation of mine, should not be misunderstood as expressing any opinion one way or the other in that regard.

Subsequently, in a series of decisions the law has been settled that in a suit for eviction if the relationship of landlord and tenant is not established, then the Court can give equitable relief of eviction on proof of title. But in all those cases the summary procedure provided under Section 14 of the Act was not followed rather decree for eviction was sought for on the grounds mentioned in Section 11 of the Act and the Court proceeded by following the procedure provided under the Code of Civil Procedure. In such cases a tenant against whom decree for eviction on proof of title was passed have a right to prefer first appeal and second appeal.

10. The question, therefore, arises as to whether the defendant-tenant have a right to challenge the eviction order by filing a regular appeal instead of revision under

Section 14(8) of the Act, where the Court after following the summary procedure gives equitable relief on proof of title of the plaintiff-landlord. The answer, in my opinion, should be in affirmative. The special procedure provided under Section 14 also does not contemplated passing of eviction order on the basis of title. In such a case where a procedure provided under Section 14 of the Act has been followed, the right of appeal can be taken away only when an order of eviction is passed on proof of relationship of landlord and tenant and on the grounds mentioned in Sections 11(1)(c) and (e) of the Act. I have no doubt in my mind in holding that in such a suit where summary procedure provided under Section 14 has been followed and an eviction order is passed by the Court below without positive finding of relationship of landlord and tenant rather on the basis of prima facie proof of title then the right of appeal to the defendant-tenant cannot be (sic) by virtue of Section 14(8) of the Act. Against such an eviction decree the defendant has a right of appeal and second appeal under the provisions of the Code of Civil Procedure.

11. Coming back to the instant case, as noticed above the Court below, in absence of positive evidence of relationship of landlord and tenant, has gone into the disputed question of title and gave a finding that the plaintiff has proved his right, title over the suit property so the assesses shall be deemed to be the tenant of the suit premises. The Court below, therefore, passed the impugned judgment and decree in favour of the plaintiff holding that the plaintiff has personal necessity. In my opinion, the defendant-petitioner before coming to this Court, rightly filed Regular first appeal before the District Judge, Begusarai being Title Appeal No. 28 of 1997. The lower appellate Court, in the admission stage dismissed the appeal by order dated 21.2.1998 holding that no appeal lay in view of Section 14(8) of the Act. In my opinion, the learned District Judge has committed serious illegality in not entertaining the appeal and the said order is wholly without jurisdiction. I am, therefore, of the opinion, that for the ends of justice and for avoiding filing of fresh appeal the defendant-petitioner should pursue the appeal being Title Appeal No. 28 of 1997 which was dismissed by the learned District Judge as not maintainable.

12. Having regard to the facts and circumstances of the case and the discussions made above, this civil revision application is allowed and disposed of by setting aside the order dated 21.2.1998 passed by the District Judge, Begusarai. The District Judge, Begusarai is directed to entertain and admit the aforementioned appeal and dispose of the same in accordance with law.

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