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Court : Jharkhand

Decided On : Mar-28-2003

Reported in : 2003(51)BLJR1018; [2003(2)JCR725(Jhr)]

Judge : P.K. Balasubramanyan, C.J.

Acts : Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 - Sections 11(1) and 14(8)

Appeal No. : Civil Revision No. 43 of 2003

Appellant : Kalyan Prasad Banerjee

Respondent : Smt. Meera Devi and ors.

Advocate for Def. : Manjul Prasad and; Manoj Kumar, Adv.

Advocate for Pet/Ap. : S.K. Laik, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

P.K. Balasubramanyan, C.J.

1. Heard both sides.

2. This civil revision petition has been filed by the defendant-tenant under Section 14 (8) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982. The plaintiffs, the landlords of the building, filed the suit for eviction under Section 11(1) (c) and (d) of the Act on the ground that they bona fide required the building in question for their own occupation and on the ground that the rent payable by the tenant was in arrears and the defendant-tenant was a defaulter in payment of rent. The defendant-tenant resisted the said application by denying the bona fide requirement of the building for the occupation of the plaintiffs and also denying that the rent was in arrears and he was a defaulter. A further plea was taken by the defendant that the suit premises was originally let out to his father, wherein he was carrying on his profession and after his death, the building was inherited by his successors-in-interest, including the defendant-tenant, that the other legal representatives of his father not having been impleaded as parties in the proceeding, the suit was not maintainable.

3. The trial Court held on an appreciation of the evidence adduced on behalf of the parties, that the plaintiffs have proved their case and that a relationship of landlord and tenant exists between the plaintiffs and the defendant and that the plaintiffs required the suit premises for bonafide personal necessity. It further held that the rent was in arrears and hence the defendant-tenant was a defaulter since January, 1996 and was liable to be evicted from the suit premises under Section 11(1) (d) of the Act. Thus the trial Court ordered eviction both under Sections 11 (1) (c) and 11 (1) (d) of the Act. The defendant has filed this revision petition under Section 14 (8) of the Act challenging the order of eviction thus passed by the trial Court.

4. Learned counsel for the respondents raised an objection that the present revision is maintainable only in so far as it relates to the claim for eviction under Section 11 (1) (c) of the Act and as far as the order for evidence under Section 11 (1) (d) is concerned, the tenant had a right of appeal and the revision was not maintainable. Hence, according to him, this revision petition is not maintainable, since the proceedings could not be bifurcated.

5. Though there may be some force in the submission made on behalf of the respondents, I am not inclined to uphold that objection since the order for eviction

is based on two grounds and regarding one of the grounds, the revision is maintainable.

6. Nothing much was argued on the question of default in payment of rent. There is nothing to show that the rent claimed by the landlords was ever tendered by the tenant. Thus the finding that the rent was in arrears and the defendant was in default is justified. The order passed under Section 11 (1) (d) of the Act is thus seen to be in accordance with law, and it is not liable to be interfered with either in appeal or in revision.

7. Learned counsel for the defendant-petitioner contended that the father of the defendant was the original tenant and after his death, his widow and his two sons, including himself, became the tenants of the suit premises and since all of them have not been impleaded in the suit, the suit itself was not maintainable. This contention was met by learned counsel for the landlord by pointing out that the finding was that the Revision petitioner became the tenant, he was paying the rent and he was treated as the tenant of the premises in question. This aspect was considered by the trial Court and the trial Court entered a finding that there existed the relationship of landlord and tenant between the parties. That discussion is based on evidence and in my opinion it does not call for any interference by this Court.

8. So far as bonafide requirement is concerned, the trial Court, on an appreciation of the evidence of P.W. 2 (Plaintiff No. 3) and the evidence of the other witnesses, came to the conclusion that the plaintiffs-landlords have established their case regarding bonafide requirement and they were entitled to an order for eviction under Section 11 (1) (c) of the Act. The claim of the landlord (P.W. 3) that he wants to start a business in the premises that his brother has taken a diploma from the ITI and is sitting idle and that he cannot start the business in one half of the disputed premises, was taken note of by the trial Court which came to the conclusion that partial eviction will not meet the ends of justice. In that situation, I find no reason to interfere with the order of the trial Court on the ground that the order is not in accordance with law. On the finding rendered by the trial Court, the order for eviction under Section 11 (1) (c) is justified.

9. Thus, on the whole, I see no reason to interfere with the decision of the trial Court. Hence I dismiss this revision petition confirming the order passed by the trial Court. I make no order as to costs.

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