

Sabitri Devi and ors. Vs. Badri Prasad Sah and ors.

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Court : Jharkhand

Decided On : Apr-15-2003

Reported in : [2003(3)JCR29(Jhr)]

Judge : Gurusharan Sharma, J.

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

Appeal No. : AFAD No. 101 of 2002

Appellant : Sabitri Devi and ors.

Respondent : Badri Prasad Sah and ors.

Advocate for Def. : Debi Prasad, Sr. Adv. and; L.K. Lall, Adv. for respondent No. 1

Advocate for Pet/Ap. : Chitranjan Sinha, Sr. Adv. and; Rajiv Ranjan Mishra, Adv.

Disposition : Appeal dismissed

Judgement :

Gurusharan Sharma, J.

1. This second appeal has been filed by tenants-defendants against the eviction decree passed by the Court of appeal below under the provisions of Bihar

Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as 'the Act').

2. Original defendant No. 1, Sitaram San was brother-in-law of the plaintiff, who was inducted as tenant in the suit premises, detailed in Schedule at the foot of the plaint.

3. It is a shop room approximately north-south 10' X east-west 7-1/2 and is part of Holding No. 82 (old) 91 (new), situated within ward No. IX of Deoghar Municipality.

4. Plaintiff claimed reasonable and bona fide requirement of the suit shop, under occupation of original defendant No. 1, which was most suitable for his business purpose. He had sufficient capital and had full knowledge how to run a business of utensils, but in absence of any shop he was virtually sitting idle. He, therefore, sought for a decree for eviction under the Act.

5. Original defendant No. 1 contested the suit, inter alia, on the ground that his father-in-law had purchased the suit premises and had let it out to him. After death of his father-in-law the suit property along with other properties devolved on his wife (Sabitri Devi) to the extent of 1/2 share and she became owner thereof. Consequently his tenancy merged into ownership. Plaintiff had no requirement, much less bona fide requirement of the suit shop as claimed. He was possessed of various premises, some of which were lying vacant, while others were in occupation of different tenants and the present suit was filed only for the purpose of negating the right of his wife, Sabitri Devi, who after death of her father, Sitaram Sah became a co-sharer thereof.

6. Trial Court dismissed the suit holding that it was Sabitri Devi, who was inducted as tenant through her husband by her father. Her occupation merged into ownership after death of her father, under the legal theory and concept of merger. Hence, eviction suit under the Act was not maintainable against a co-owner. Further all the co-sharers ought to have come forward and establish a case of personal necessity, which was not done in the suit. Plaintiff utterly failed to prove his requirement and was not able to establish his personal necessity for the suit shop, hence, he was not entitled to a decree of eviction against defendant No. 1

and possession of defendant No. 1, who was husband of Sabitri Devi, has merged into ownership of his wife.

7. Plaintiff thereafter filed Title Appeal No. 15 of 1990, which was allowed and impugned judgment and decree passed by trial Court were set aside and the plaintiff's suit for eviction under the Act was decreed.

8. Defendants have, therefore, filed present second appeal, which was admitted on the followed substantial question of law :

'Whether the Court of appeal below was justified in reversing the finding of the trial Court on the issue of personal necessity'?

9. Defendant-tenant or his wife Sabitri Devi never challenged plaintiff's title over the suit shop, rather admitted to have been inducted as tenant therein.

10. During pendency of Title Appeal, original defendant-respondent No. 1 died and his heirs and legal representatives, including Sabitri Devi, were substituted in his place.

11. In my view, defendants' claim of ownership over the suit property could not have been gone into and finally decided in a suit filed under Section 4 of the Act.

12. Trial Court committed a mistake in diverting the admitted relationship of landlord and tenant between the parties and proving the question of benami transaction and inheritance of the suit shop by defendant-tenant's wife.

13. The Court of appeal below, on the other hand, observed as under :

'There are overwhelming documents, bearing Exts. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 in the suit as also oral evidence which fully establish title of the plaintiff-appellant in the suit premises in occupation of defendant-respondent first party as 'tenant' in the same inasmuch as there is also overwhelming evidence of PWs available on record to show that the plaintiff- appellant is sitting idle and he bona-fidely needs the suit premises for his own occupation and use to start his business in the same and earn his livelihood as the appellant has no other accommodation available and the suit premises is very much suitable for business purpose, for which he

sought eviction of the original tenant-defendant-respondent 1st party, Sitaram Sah, who is admittedly a tenant in the same.'

14. On the question of partial eviction, the Court of appeal below further observed :

'As the suit premises is only measuring 10' x 7-1/2 and accordingly there is no question of partial eviction of the defendant-respondent 1st party because in such a small shop room, only one business can be suitably accommodated....'

15. On the grounds enumerated under Section 11 of the Act, which confers power on the Court to find out the relationship of landlord and tenant as also the grounds for eviction of the tenant, the Court, in a suit for eviction under Section 14 of the Act, is not conferred with power and jurisdiction to decide contentious question of title of the parties in the suit property, which is exclusively with the competence and jurisdiction of Civil Court in a properly constituted and on payment of ad valorem court-fee, on the market value of the suit property. Thus learned trial Court had exceeded the jurisdiction by deciding such defence in the suit, filed under the aforesaid Act.

16. It is relevant to mention that Sabitri Devi had also filed a partition suit claiming her share in the properties, including Holding No. 82 (old) 91 (new, wherein suit shop was located, which was decreed by the trial Court, but was dismissed by the Court of Appeal below. SA No. 253 of 1995(P) filed by her regarding her claim for partition of her share in the house property in question has also been dismissed by this Court.

17. In the aforesaid circumstance, I find no reason to interfere with the impugned judgment and decree passed by the Court of Appeal below, whereby trial Court's findings on the issue of personal necessity was rightly reversed and it was held that plaintiffs requirement was reasonable and bona fide.

18. In the result, this appeal is dismissed, having no merit, but without costs.