

Smt Rambha Devi and Ors Vs. Baijnath Singh

Smt Rambha Devi and Ors Vs. Baijnath Singh

SooperKanoon Citation : sooperkanoon.com/76341

Court : Jharkhand

Decided On : Jul-22-2016

Appellant : Smt Rambha Devi and Ors

Respondent : Baijnath Singh

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI S.A. No. 239 of 2014 1. Smt. Rambha Devi, wife of Late Sudama Singh; 2. Ashok Singh, son of Late Sudama Singh; 3. Vinay Singh, son of Late Sudama Singh; 4. Prashant Singh, son of Late Sudama Singh; ... Defendants/Appellants/Appellants -V e r s u s - Baijnath Singh, son of Late Rambriksh Singh Plaintiff/ Respondent/ Respondent PRESENT HONBLE MR. JUSTICE D. N. UPADHYAY For the Appellants : Mr. H.K. Mehta, Advocate. Ms. Manjushri Patra, Advocate. For the Respondents: Mr. Rohit Roy, Advocate. Mr. J.K. Mazumdar, Advocate. Mr. Pratik Sen, Advocate. C.A.V. On 30/09/2015 Dated 22/07/2015 D.N. Upadhyay, J.

This Second Appeal has been preferred against the Judgment dated 24.11.2014 and decree dated 05.12.2014, passed and signed by District Judge - IX, Dhanbad in connection with Title Appeal No. 111/2008 whereby the Judgment dated 02.08.2008 and Decree dated 11.08.2008 passed and signed by 1st Additional Munsif, Dhanbad in connection with Title (Eviction) Suit No. 34/2001, has been affirmed.

2. This appeal has been admitted on 12.03.2015 to decide following substantial question of law:- Whether the learned court-below has considered the right, title and interest of the plaintiff on the basis of any cogent evidence before passing Judgment and Decree in favour of the plaintiff?

3. The case of the plaintiff in brief is that the original defendant Sudama Singh was inducted as a monthly tenant under the plaintiff in a portion of Schedule-A property on a monthly rent of Rs.300/- per month payable by the defendant 2 to the plaintiff by the first week of each succeeding month according to English calendar. The tenanted portion has been described in Schedule-B of the plaint. Besides Schedule-B property, the defendant was also occupying a shop on a monthly rent of Rs.100/-, which was payable by the defendant to the plaintiff after each succeeding month according to English Calendar. The dispute regarding payment of monthly rent arisen and, therefore, a Panchayati was held on 09.11.1998 and said Panchayati was attended by the plaintiff as well as defendant. It was decided by the Panches that the defendant shall pay monthly rent for the tenanted premises regularly to the plaintiff. The decision was reduced to writing, acknowledged by both the parties and that has been proved as Exhibit-2. The further case of the plaintiff is that in spite of settlement arrived at between the parties, the defendant failed to pay monthly rent against Schedule-B premises from the month of December, 1998 and in spite of repeated request and demand made by the plaintiff, the defendant did not pay rent and has become defaulter in the eye of law. The plaintiff has further made out a case that due to expansion in the family, the said premises is also required for his personal use and occupation and it was also brought to the notice of defendant and request was made to vacate the suit premises. On 23.10.2000, when the plaintiff demanded rent from the defendant, sons of the defendant hurled threat to the plaintiff with dire consequences. The plaintiff has contended that partial eviction from Schedule-B premises will not fulfill the requirement, hence the plaintiff requires the entire Schedule-B premises for his personal bonafide use and occupation. Due to dispute prevailing between the parties, criminal cases were also instituted and lastly in the month of December, 2000, the defendant agreed to vacate the suit 3 premises by March, 2001 and he along with his family would shift in his own house which is situated towards southern side of the tenanted premises but he did not

stick to his promise and hence cause of action for the present suit arose on and from December, 1998 and on the date 30.04.2001 when the defendant refused to vacate the tenanted premises. The plaintiff has also claimed arrears of rent to the extent of Rs.7,800/- as described under Schedule-C of the plaint.

4. The defendant appeared and filed written statement contending interalia that the suit for eviction under Bihar Building (Lease, Rent and Eviction) Control, Act is not maintainable against the defendant. The suit is bad for non- joinder and mis-joinder of the parties and also for the vague description of the suit property. The defendant has raised a question that the plaintiff has not disclosed in the plaint as to how he became owner of the suit property and no chit of paper has been filed along with the plaint to show his ownership against the suit premises. The defendant has denied the relationship of landlord and tenant and submitted that at no point of time he was inducted as tenant in the suit premises and, therefore, question of payment of rent at the rate of Rs.300/- per month did not arise at all. As a matter of fact on a large vacant land in Mauza Jharia Fatehpur under Khata No. 24, Plot No. 332 and other plots, which is called Balugada, many persons came to earn their livelihood and they constructed hutments on the said land and started living there. In due course, the nature of construction of hutments gradually changed and the hutments stood converted into Kutcha Khapra house and some people have also made Pukka construction over the said land. The father of the defendant and the defendant himself also made construction over the said land and started living in that very house. He has also started running grocery shop. Likewise, the plaintiff also 4 with his father came in the year 1954 and constructed different hutments on the said land. The plaintiff had inducted some people in those hutments as tenants and some of the tenants are residing in those houses. Further case of the defendant is that the plaintiff has falsely stated that suit premises is required to him for his bonafide need and occupation and he is not entitled for any decree on that count because he is not owner of the said property. The plaintiff has brought the suit only to harass the defendant and he is not entitled for any relief either under Section 11(1)(c) or Section 11(1)(d) of the Bihar Building (Lease, Rent and Eviction) Control, Act.

5. On the basis of pleadings of the parties, following issues were framed by the learned 1st Additional Munsif, Dhanbad: (I) Is the suit as framed is maintainable in its present form? (II) Is there any cause of action for the suit? (III) Is the suit barred under the principle of waiver, estoppel and acquiescence? (IV) Is there any relationship of landlord and tenant between the parties? (V) Is the defendant defaulter in payment of rent? (VI) Is the suit premises reasonably and bonafidely required by the plaintiff for his personal use and necessity? (VII) Is the description of suit premises correct and identifiable? (VIII) Is the plaintiff entitled to the relief claimed? If so, to what extent? (IX) Whether the plaintiff is entitled for arrears of rent? 5 6. The plaintiff as well as defendant adduced oral and documentary evidence in support of their claims and contentions.

7. The learned Munsif has discussed the issues parawise and after assigning reasonings, decreed the suit on both the grounds in favour of the plaintiff and the defendant was directed to vacate the suit premises within two months from the date of Judgment.

8. Being aggrieved by and dissatisfied with the findings of the Trial Court, the defendant/appellant preferred Title Appeal No. 111/2008 before the learned District Judge which was transferred to the Court of learned District Judge - IX, Dhanbad and decided in favour of the plaintiff/ respondent. The Judgment and Decree passed by the learned 1st Additional Munsif, Dhanbad in connection with Title (Eviction) Suit No. 34/2001 stood confirmed and the Appeal stood dismissed on contest.

9. The learned counsel for the appellants has argued that the plaintiff did not produce any documents to show that he is owner of the suit property. Since the respondent is not having valid right, title and interest over the suit property, the Judgment and Decree passed by both the Courts are liable to be set aside. The plaintiff as well as defendants have produced documents of same and similar nature in support of their claim as owner of the property but the learned Trial Court has considered the evidence brought on record by the plaintiff and admitted him as owner of the suit property. The reasoning and findings are not tenable for the reason the land on which suit premises was constructed, was lying vacant and it

was full of sand within the colliery area of Jharia. Many people came to Jharia in the year 1950s and 60s to earn their livelihood and constructed hutments on those vacant lands and started living over there. Admittedly neither the plaintiff nor the defendant or other people who had constructed houses on those vacant 6 lands, are not the absolute owners of the properties and are not having valid right, title and interest against respective piece of land on which they have constructed their respective houses. Since the title of the plaintiff/ respondent has wrongly been decided, the concurrent findings of both the Courts are liable to be set aside. The appellants have placed reliance on the following Judgments: (I) 1995 Supp (1) SCC418- Mohd. Yunus Vs. Gurubux Singh; (II) (2002) 6 SCC404- Yadarao Dajiba Shrawane Vs. Nanilal Harakchand Shah and others (III) (2002) 7 SCC441- Rattan Dev Vs. Pasam Devi; (IV) 1995 Supp (4) SCC534- Sundra Naicka Vadiyar and others Vs. Ramaswami Ayyar (V) (2007) 14 SCC587- Surjit Singh Vs. Nanak Singh (VI) 2007 (3) JCR581(Jhr.) - Tilak Raj Tandon Vs. Basudha Coke (India) Pvt. Ltd., Dhansar, Dhanbad and other analogous cases.

10. In rebuttal, counsel for the plaintiff/ respondent, by referring Sub-Section (5) of Section 100 of the CPC has submitted that no such substantial question of law is involved to decide the issue between the parties. It is not correct to say that courts below have decided the right, title and interest of the plaintiff on the basis of evidence available. The plaintiff has not brought the suit for declaration of his right, title and interest over the suit premises rather the suit was brought under the special provision of Special Act i.e. under Section 11(1)(c) and 11(1)(d) of the Bihar Building (Lease, Rent and Eviction) Control, Act. Section 2(f) of the Bihar Building (Lease, Rent and Eviction) Control, Act give definition of landlord for bringing a suit for eviction under the said Act. If the grounds mentioned under Section 11 of the Bihar Building (Lease, Rent and Eviction) Control, Act are substantiated by the plaintiff, 7 landlord, the defendants/tenants are liable to be evicted therefrom. In a suit for eviction brought under the Bihar Building (Lease, Rent and Eviction) Control, Act which is a special legislation, the question of title to the properties in question cannot be decided and that has also not been done in the suit brought by the plaintiff and that is apparent from the issues framed. In this context learned counsel for the plaintiff/ respondents has placed reliance on the Judgment reported in AIR 2014 SC1394[Keshar Bai V. Chhunulal] - Para-14. It

was submitted that in a suit for eviction brought under Bihar Building (Lease, Rent and Eviction) Control, Act, first and foremost question is to be decided Whether relationship of landlord and tenant exists between the parties? If the opinion of the court is in affirmative then the Court would further look the grounds on which suit for eviction under Bihar Building (Lease, Rent and Eviction) Control, Act was brought. If the grounds taken by the plaintiff stood substantiated from the documents and evidence, the suit can well be decreed against the defendants. The plaintiff/respondent has further placed reliance on the following Judgments:- (I) AIR 2014 SC1394- Para 9, 14 (II) 2003(4) JLJR245SC) - Para-4 (III) AIR 1983 PAT321- Para - 7, 8 and 9. (IV) AIR 1999 SC1441- Para - 15, 16 11. In order to meet out the arguments advanced from both sides, I have gone through the substantial question of law formulated by this Court on 12.03.2015 to decide the appeal. I have also perused the issues framed by the Trial Court. I do not find that the Trial Court has framed any issue to decide right, title and interest of the parties. It is also not available on record that the appellants/ defendants ever raised objection against issues framed or filed any petition to recast the issues. 8 Needless to mention issues are framed on the basis of pleadings of the parties and according to the pleadings of the plaintiff, the defendant was inducted as tenant in the suit premises on a monthly rent of Rs.300/- to be paid in the first week of every English calendar month. Since the month of December, 1998, the defendant became defaulter in payment of monthly rent against the suit premises. Exhibit-2 is the document acknowledged by both parties according to which the defendant have admitted themselves to be tenant under the plaintiff and had agreed to pay monthly rent but admittedly did not pay the rent from the month of December, 1998 and, therefore, they are liable to be evicted from the suit premises under Section 11(1) (d) of the Bihar Building (Lease, Rent and Eviction) Control, Act. Further pleadings of the plaintiff is that the suit premises is bonafidely required for his personal use and occupation because of expansion in the family and the suit was also framed for deciding relief under Section 11(1)(c) of the Bihar Building (Lease, Rent and Eviction) Control, Act. To deny the averments made by the plaintiff, the defendant in his written statement has denied the claim and contention and further averred that suit premises were constructed by him and his father and he was never inducted as tenant in the suit premises by the plaintiff. It

would not be out of place to mention that the defendant has not placed any counter claim for declaration of his right, title and interest and possession over the suit properties. Again it is reiterated that the plaintiff/ respondent has brought the suit under the special legislation of Bihar Building (Lease, Rent and Eviction) Control, Act. On the basis of evidence and documents available on record, the plaintiff was considered as landlord as required under Section 2(f) of the Bihar Building (Lease, Rent and Eviction) Control, Act. Both the Courts further held that ground for eviction i.e. under Section 11(1)(c) and 11(1)(d) of the Bihar Building (Lease, Rent and Eviction) Control, Act stood 9 substantiated by the plaintiff against the defendants and, therefore, the suit for eviction was decreed in favour of the plaintiff and against the defendants. To make situation clear, I feel it desirable to refer para-14 of the Judgment reported in AIR 2014 SC1394

14. The High Court has expressed that the respondent was justified in asking the appellant to produce the documents. Implicit in this observation is the High Court's view that the respondent could have in an eviction suit got the title of the appellant finally adjudicated upon. There is a fallacy in this reasoning. In eviction proceedings, the question of title to the properties in question may be incidentally gone into, but cannot be decided finally. Similar question fell for consideration of this Court in Bhagadi Kannabalu (AIR 2006 SC2403 2006 AIR SCW3052. In that case it was argued that the landlady was not entitled to inherit the properties in question and hence could not maintain the application for eviction on the ground of default and sub-letting under the A.P. Tenancy Act. This Court referred to its decision in Tej Bhan Madan v. II Additional District Judge and Ors., in which it was held that a tenant was precluded from denying the title of the landlady on the general principle of estoppel between landlord and tenant and that this principle, in its basic foundations, means no more than that under certain circumstances law considers it unjust to allow a person to approbate and reprobate. Section 116 of the Evidence Act is clearly applicable to such a situation. This Court held that even if the landlady was not entitled to inherit the properties in question, she could still maintain the application for eviction and the finding of fact recorded by the Courts below in favour of the land-lady was not liable to be disturbed. The position on law was stated by this Court as under:- In this connection, we may also point out that in an eviction petition filed on the ground of sub-letting and default, the court needs

to decide whether relationship of landlord and tenant exists and not the question of title to the properties in question, which may be incidentally gone into, but cannot be decided finally in the eviction proceeding. The findings of the Apex Court is very clear on the point that in a suit brought under special legislation like Bihar Building (Lease, Rent and Eviction) Control, Act or Rent Control 10 Act prevailing in other States, normally complicated question of title cannot be decided.

12. Before parting with, I feel it necessary to mention that the facts appearing in the Judgment reported in 2007(3) JCR581(Jhr), are not available in case at hand. The ratio decided in that very case was on a different footing. Plaintiff in that very case was not considered to be landlord under Section 2(f) of the Bihar Building (Lease, Rent and Eviction) Control, Act and this Court held that he was not competent to brought the suit for eviction against the defendant. All that is not necessary to incorporate in this Judgment but to make the situation more clear it is stated that the original plaintiff did not appear in the dock to deny or rebut the contention made in Exhibit-2 and, therefore, both the Courts have rightly considered Exhibit-2 as a document to consider that the original appellants were inducted as tenants in the suit premises who had agreed to pay monthly rent.

13. In view of the observations and discussions made above, it is held that the Courts below have not decided the title of the plaintiff nor such issue was framed and, therefore, question of considering cogent evidence for the same does not arise at all. The learned counsel appearing for respondent/ plaintiff has rightly argued that the concurrent findings of both the Courts on the issues framed on the basis of pleadings does not involved any substantial question of law as formulated by this Court. I am of the opinion that learned counsel appearing for the respondent/ plaintiff has rightly exercised the right entrusted to the respondent under Sub Section (5) of Section 100 CPC. In the result, I do not find any merit in this appeal and the same stands dismissed. (D. N. Upadhyay, J.) Jharkhand High Court Ranchi 22nd July, 2017 RC/