
(2012) 08 PAT CK 0036
In the Patna High Court
Case No : S.A. No. 398 of 2011

Amar Prasad @ Amar Mistry and Others	APPELLANT
Vs	
Lallu Sah and Others	RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 11(1)(c), 11(1)(d), 15
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, 115

Citation : (2012) 4 PLJR 934

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Advocate : Neeraj Kumar, for the Appellant; Parmeshwar Mehta for the Respondents No. 1-4, for the Respondent

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—Heard Mr. Neeraj Kumar, learned counsel appearing on behalf of the appellants and Mr. Parmeshwar Mehta, learned counsel appearing on behalf of Respondents No. 1 to 4 under Order 41 Rule 11 of the Code of Civil Procedure. This second appeal has been filed by the defendants-appellants-appellants against the judgment and decree dated 31.5.2011 passed by Sri. R.C. Mishra, Additional District Judge-VI, Patna, in Title Appeal No. 92 of 2009 dismissing the appeal and thereby confirming the judgment and decree dated 16.11.2009 passed by the Additional Munsif-XV, Patna, in Eviction Suit No. 21 of 2003 decreeing the plaintiff-respondents' suit for eviction.

2. The plaintiffs-respondents filed the aforesaid Eviction Suit for eviction of defendants-appellants from the suit premises on the ground u/s 11 (1)(c) and Section 11(1)(d) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the "Act"). According to the plaintiffs, originally the father of appellant No. 1, namely, Kartik Ram was the monthly tenant in the suit premises on rent of Rs. 500/- per month. Subsequently, the said property

was purchased by the plaintiffs and came in possession of the suit property being Holding No. 287/236/221/1. Kartik Ram married his second wife Basanti Devi on the death of his first wife. Said Kartik Ram died in the month of June, 1992 and the defendants, who are the legal representatives are residing there in the suit premises on a monthly rent of Rs. 500/-. The plaintiffs require the suit premises reasonably and in good faith and that the defendants failed to pay rent hence the suit is filed.

3. The defendants-appellants filed contesting written statement denying the relationship of landlord and tenant. The defendants main defence is that the suit property was mortgaged in favour of the father of the appellant, namely, Kartik Ram for Rs. 3,000/- and he did not return the same. In Panchayati it was agreed that father of appellant No. 1 will purchase the suit property on payment of consideration of Rs. 18,000/-. Therefore, after adjustment of Rs. 3,000/-, father of appellant no. 1 paid Rs. 15,000/- as full consideration amount of the suit premises and since then he is residing in the suit premises as owner thereof and therefore there is no question of payment of rent arises. After-natively, the defendants-appellants state that they have acquired title by adverse possession.

4. After trial the trial court decreed the plaintiffs' suit recording a finding that the appellants did not comply the order passed u/s 15 of the Act by depositing the arrears and current rent. He filed Civil Revision before the High Court and the High Court also directed the defendants-appellants to deposit the rent but for non-compliance of the order passed by the High Court in Civil Revision, the defence of the quo-a-tenants (sic--qua-ten-ants ?) has been struck off. So far ownership is concerned, the trial court rejected the case of oral purchase made by the father of appellant No. 1 and therefore decreed the plaintiffs' suit on both grounds. On appeal the appellant court also dismissed the appeal recording the same finding.

5. Mr. Neeraj Kumar, learned counsel appearing on behalf of the appellants submitted that on the basis of the finding given by this High Court in Civil Revision, the trial court could not have recorded a finding that there exists relationship of landlord and tenant between the parties. Learned counsel further submitted that the appellants are residing in the suit premises on payment of consideration amount of Rs. 15,000/- since 1975 orally and even if it is not believed then also they have acquired title by adverse possession. Learned counsel further submitted that Basanti Devi the second wife of Kartik Ram was not residing in the suit premises but she was made party defendant in the Eviction Suit collusively and she filed the written statement admitting the case of the plaintiffs. Since she is not the mother nor she is widow of Kartik Ram nor is residing in the suit premises, the statement made by her in the written statement admitting, relationship of landlord and tenant is concerned, it is not binding on the appellants. Therefore, the judgments of both the courts below are vitiated and are liable to be set aside.

6. On the other hand, learned counsel appearing on behalf of the plaintiffs-

respondents submitted that none of the grounds raised by the appellants are substantial questions of law and since the defence of the appellants have already been struck off, now the appellants are required to prove their title on the suit property but both the courts below have held that the appellants failed to prove their title.

7. From perusal of the judgments of both the courts below it appears that for non-compliance of the order passed u/s 15 of the Act the defence of the appellants-qua-tenants has already been struck off. So far as the argument of the learned counsel for the appellants that it was passed in Civil Revision by this High Court, therefore the trial court should not have relied upon the order of this High Court and should have prima facie found out the relationship is concerned, it may be mentioned here that it is well settled principle of law that revisional jurisdiction is a part of appellate jurisdiction. Therefore, while sitting in Second Appeal, the legality or otherwise of the order passed by this Court in exercise of jurisdiction u/s 115 of the CPC cannot again be reconsidered. In other words, the legality or otherwise of the order passed by this Court in revisional jurisdiction cannot be examined in Second Appeal jurisdiction. The findings of relationship of landlord and tenant is a pure findings of fact.

8. From perusal of the judgments of the courts below it appears that both the courts below have noticed the order of this Court and have held that the defence qua-tenants of the appellants has already been struck off. In such view of the matter, whether there is admission made by Basanti Devi is concerned, it does not matter anything. It is the specific case of the plaintiff that Kartik Ram was the tenant on a monthly rent of Rs. 500/-. It is admitted that Kartik Ram died in the year 1992. So far ownership is concerned, it appears that the lower appellate court categorically recorded a finding that the appellants neither filed any chit of paper nor any documents to show that they are the owner of the property and their names have been mutated and paying rent and taxes to the Municipality. So far as the oral evidences are concerned, the courts below have considered each and every witness. In view of the above, the case of the defendants that they became owners of the property since 1975 on the basis of oral purchase on payment of Rs. 15,000/- cannot be relied upon and in fact the same has not been relied upon by both the courts below. In my opinion, therefore, it is not a substantial question of law for decision in the Second Appeal.

9. So far as acquisition of title by adverse possession is concerned, it may be mentioned here that defendants are claiming title on the basis of oral purchase and according to them, they are really the owner of the property and at the same time alternatively they are contending that they have acquired title by adverse possession.

10. In the case of Karnataka Board of Wakf Vs. Government of India and Others, , the Apex Court held that the pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced.

11. Therefore, in view of the Apex Court's decision, unless the claim of title is relinquished, the claim of title by adverse possession will not operate. Both cannot stand together. In the present case, since the claim of title has been disbelieved that there is no question of acquisition of title by adverse possession arises. Moreover, there is no evidence adduced by the defendants to show from which date his possession has become adverse as for constituting the adverse possession, there must not only be intention to possess but also there must be intention to dispossess. In the present case, there is no such evidence. Therefore, the ground raised by the appellants is not a substantial question of law. Accordingly, I find that no substantial question of law is involved in this Second Appeal. This Second Appeal is thus dismissed.