

(2002) 09 PAT CK 0111
In the Patna High Court
Case No : Civil Revision No. 619 of 2002

Anil Kumar @ Anil Kumar Pachisiya and Another	APPELLANT
Vs	
Shri Bengali Prasad Gupta and Others	RESPONDENT

Date of Decision : 02-09-2002

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 11(1), 14, 14(8), 2, 5
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2002) 4 PLJR 32

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Nagendra Rai, J.—Heard learned Counsel for both the parties.

2. The tenants are Petitioners against the judgment and decree dated 21.3.2002, passed by the learned Subordinate Judge, Patna, decreeing the suit of the Plaintiff-opposite parties filed for eviction of the Petitioners from the suit premises on the ground of personal necessity u/s 11(1)(c) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as "the Act"). It is admitted position that the proceeding has been conducted by adopting the special procedure as provided u/s 14 of the said Act.

3. Admittedly, one Durga Devi Khemka was the owner of the property and she inducted the Petitioners as tenants on a monthly rental of Rs. 2700/- per month. On 13.10.1993, the Plaintiffs purchased the premises from Durga Devi Khemka and the Petitioners having been informed about the aforesaid transfer, started remitting the rent to Plaintiff-opposite party No. 1 through money order. The suit premises are a single storeyed pucca house consisting of partly asbestos roof and partly roof of wooden berge. The tenants were using the same for keeping papers and. for other purposes. The southern portion of the suit property is vacant and is not under the tenancy of the tenant-Petitioners.

4. The Plaintiff-landlord's case is that Plaintiff No. 1 Bangali Prasad Gupta has a Homeo Hall named National Homeo Hall and Plaintiff No. 2 is his wife and Plaintiffs No. 3 and 4 are their sons. Their sons are grown-up and married and they have children also. They are unemployed and the Plaintiffs 1 and 2 (father and mother) want to establish them in business. They have got their own house over a piece of land, measuring 16 feet x 30 feet in Muhalla Sabjibagh itself and they constructed a four storeyed building. The ground floor is used for business. The first floor and the second floor are used as residence by the Plaintiffs. The third and fourth floors are used for storing medicine cartoons. Each of the floors consists of one room with kitchen and store etc. Only the fourth floor consists of one room with verandah. The total number of the family having increased to eleven, they have no sufficient accommodation. This apart, the house is also unhygienic for lack of space. They want the suit premises for the purpose of residences as well as for running a Homeopathic shop by the two sons of Plaintiffs No. 1 and 2. In other words, they require the suit premises reasonably and in good faith. They demanded vacation of the suit premises, but the Defendants refused to do the same. Hence, the suit.

5. The tenant-Petitioners admitted the tenancy but asserted that the Plaintiffs have no common action as they have purchased the property by three sale-deeds. Accordingly, the single suit for eviction was not maintainable. They used the premises not only as a godown but for manufacturing purposes also; inasmuch as the papers are used to be processed and they are cut to sizes and hence the tenancy was yearly though the mode of payment was monthly. Their claim for personal necessity is only a pretext. They do not require the premises for their personal need. They have a huge building in Muhal'a Sabjibagh, which is a five storeyed building. The ground floor is used for business and other floors are used as residence and are sufficient to meet the requirement of the Plaintiffs. The suit premises are not fit for residence and part of the building is still vacant and the Plaintiffs can accommodate in the said portion by renovation and reconstruction. They have also other accommodation in the other part of the town.

6. Both the parties adduced oral and documentary evidence. The Plaintiffs examined seven witnesses and also filed documentary evidence, whereas, Defendants examined nine witnesses and filed documentary evidence. The court below after having considered the oral and documentary evidence, held that the need of the Plaintiffs is genuine and bona fide as two sons of Plaintiffs No. 1 and 2 being unemployed are living in the house in which they are presently living, which is not convenient for the whole family. It also held that the partial eviction would not substantially meet the requirement of the Plaintiff-opposite parties.

7. Learned Counsel appearing for the Petitioners submitted that the court below has not considered the question of reasonable and bona fide need of the Plaintiff-opposite parties according to law. In this connection, he submitted that the court below has ignored the vital and important evidence, which have been brought on

record, that the part of the suit premises on the southern side were vacant and the same would meet the need of the Plaintiffs. He also submitted that the court below has not considered the question of partial eviction of Defendant-Petitioners from the suit premises in terms of proviso to Section 11(1)(c) of the Act.

8. Learned Counsel for the Plaintiff-opposite parties, on the other hand, submitted that the Court has considered the evidence and has come to a finding that the accommodation, which is available to the Plaintiffs, is not sufficient and they require further premises and the suit premises will meet their requirement. In other words, the court below has found that the need of the Plaintiffs was genuine and bona fide. He also submitted that the court below has considered the question of partial eviction in accordance with law.

9. This Civil Revision has been filed under the proviso to Section 14(8) of the Act, which empowers this Court to judge the validity of the order and also to see as to whether the judgment and decree are according to law or not. The power is not as wide as an appellate court nor as limited as of a revisional court u/s 115 of the Code of Civil Procedure. The Court can appraise the evidence for the limited purpose of seeing as to whether the order is according to law or not. In case, it is found that the Court has failed to consider the vital and important evidence or has relied upon inadmissible evidence or has ignored the basic requirements of law for grant or refusal of a decree for eviction, it should interfere with the order.

10. As stated above, both the parties adduced oral and documentary evidence. The Plaintiff's witnesses including the Plaintiffs stated that the present accommodation is not sufficient to meet the need of the Plaintiff's family consisting of 11 persons. The evidence also shows that in view of a large number of family members, the present accommodation is not sufficient and the Plaintiffs are not living comfortably. The evidence of the Defendants only shows that the Plaintiffs have a house at Sabjibagh but their evidence does not show that there are enough accommodation in the said house. The court below having considered the aforesaid evidence has come to a finding that the need of the Plaintiffs is genuine and bona fide one.

11. Learned Counsel for the Petitioners, during the course of argument, was not able to assail the finding of the court below on any of the grounds mentioned above. This Court does not find any legal infirmity so far as the finding of the court below holding that the Plaintiffs' need is genuine and bona fide one is concerned. So far as the question of partial eviction of the tenant Petitioners from the suit premises is concerned, the court below has considered the said question in paragraph No. 7 of its judgment. It was found that the half portion of the premises is subject matter of tenancy and the Plaintiffs want to reconstruct and renovate the entire premises and as such the partial eviction will not meet the requirement of the Plaintiffs. In my view, this approach adopted by the court below is contrary to law. Section 11(1)(c) of the Act runs as follows:

11(1)(c) Where the building is reasonably and in good faith required by the landlord for his own occupation or for the occupation of any person for whose benefit the building is held by the landlord.

Provided that where the Court thinks that the reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only of the building and allowing the tenant to continue occupation of the rest and the tenant agrees to such occupation, the Court shall pass a decree accordingly, and fix proportionately fair rent for the portion in occupation of the tenant which portion shall henceforth constitute the building within the meaning of Clause (b) of Section 2 and the rent fixed u/s 5.

12. The law is well-settled that the court has to consider the question of partial eviction even if no such claim has been made by the tenant. While deciding the said question in terms of the proviso, the court cannot outrightly reject the claim of partial eviction. It has to consider the extent of the premises which the landlord requires reasonably. This has to be determined on the basis of evidence and not on the mere ipse dixit or wish or desire of the landlord. Once the court comes to the finding about the reasonable requirement of the landlord then it has to consider as to whether such requirement will be substantially satisfied (not fully satisfied) by ordering partial eviction.

13. As held by the Supreme Court in the case of Nasirul Haque v. Jitendra Nath Dey reported in AIR 1984 SC 1799, the question, thus, has to be determined by giving full effect to the concept of reasonable extent of the requirement from the perspective of substantial satisfaction of such requirement as considered to be reasonable objectively.

14. As stated above, the court below has not considered the question of partial eviction from the said angle and on irrelevant consideration has rejected the claim of partial eviction. Accordingly, while upholding the finding of the court below that the suit premises are required reasonably and in good faith by the Plaintiff-opposite parties, the judgment and decree impugned herein are set aside in part and the matter is remitted to the court below to consider the question of partial eviction in accordance with law. It goes without saying that if any of the parties desires to lead evidence then the Court below will give an opportunity within fixed time and, thereafter, will decide the said question.

15. In the result, this Civil Revision is allowed in part as indicated above.