
(1991) 05 GAU CK 0011

In the Gauhati High Court

Case No : Civil Revision No. 131 of 1989

Atul Chandra Kharghoria, Secretary, Govt Aided Model
Commercial Institute, Jorhat

APPELLANT

Vs

Lutfur Rahman

RESPONDENT

Date of Decision : 15-05-1991

Acts Referred:

Assam Urban Areas Rent Control Act, 1972 — Section 5(c), 5(c), 5(e), 5(e)

Citation : (1991) 2 GLJ 322 : (1992) 1 GLR 341

Hon'ble Judges : S.K.Homchaudhuri, J

Bench : Single Bench

Advocate : D.C.Mahanta, P.K.Khataniar , B.M.Goswami, Advocates appearing for Parties

Judgement

1. The petitioner has impugned the judgment and decree dated 25.3.89 passed in Title Appeal No. 22 of 1987 by the learned Assistant District Judge, Jorhat affirming the judgment and decree passed in Title Suit No. 48 of 1984 by the learned Munsiff No. 1, Jorhat.

2. The plaintiff opposite parties the landlords instituted Title Suit No.48 of 1984 for ejectment of the defendant petitioners from the suit premises. Admittedly, the tenancy is governed by the provisions of the Assam Urban Areas Control Act, 1972. The plaintiffs sought ejectment of the defendant petitioners on the grounds that (i) defendants defaulted in payment of monthly rent and (ii) the suit premises was bonafide required by the plaintiffs. In para 4 of the plaint it has been stated that at the time of letting out the house, the plaintiffs with their family members were staying in different places and that for the growing numbers of family, more particularly for the education of their children, the suit premises was bonafide required. In para 5 of the plaint, plaintiff stated that defendants were also not paying monthly rent regularly and, as such, they were also defaulters.

3. Defendants contested the suit and denied the allegations that they defaulted

in payment of monthly rent. They also denied and disputed the contention of the plaintiffs that they bonafide required the suit premises. Defendants contended that plaintiff asked for enhancement of monthly rent to Rs. 1000/, which the defendants refused. Issue No.2 and 3 are relevant for disposing of this petition.

Issue No. 2 : Whether the defendant is a defaulter ?

Issue No. 3: Whether the plaintiffs required the suit premises for their bonafide use and occupation ?

In support of their cases plaintiffs examined two witnesses. PW 1 is plaintiff No. 1 and PW 2 is the plaintiff No.3. On issue No.2 PW 1 simply deposed that he did not get the rent of the suit house from the defendants regularly. Learned Munsiff decided issue No. 2 in favour of plaintiffs holding that the burden lay on the defendants to prove that they paid monthly rent regularly. Issue No.3 was also decided in the favour of the plaintiffs. On the basis of the decision learned Munsiff decreed the Title Suit No. 48 of 1984 by the judgment and decree dated 15.9.87.

4. Feeling aggrieved, the defendants preferred Title Appeal No.22 of 1987 in the Court of learned Assistant District Judge, Jorhat. Learned Assistant District Judge by the impugned judgment and decree dismissed the appeal and affirmed the judgment and decree passed by the learned Munsiff.

5. I have heard Mr.D. C. Mahanta, learned counsel for the petitioners and Mr. B.M. Goswami, learned counsel for the opposite parties.

6. The learned counsel for the petitioners submits that the learned Courts below failed to exercise jurisdiction in not taking into consideration the specific statement of PW 2, the plaintiff No.3, that defendants were paying rent regularly and that in the absence of any evidence, arbitrarily decided issue No.2 against the defendants. The learned counsel submits that learned Courts below acted illegally and with material irregularity in the exercise of jurisdiction in holding that plaintiffs required the suit premises bonafide which has caused grave failure of justice. The learned counsel for the opposite parties, on the other hand submits that once the plaintiff comes to a Court with the allegation that the defendant is not paying rent regularly, the burden lies on the defendant to satisfy the Court that he is paying rent regularly. No evidence has been adduced by the defendants to show that they paid monthly rent regularly and, as such, the Courts below have rightly decided the Issue No.2 in favour of plaintiffs. As regards the finding on Issue No.3, learned counsel submits that finding is not arbitrary. The plaintiffs have adduced evidence in support of the contention that they required the suit premises bonafide. Finding arrived at by the learned Courts below, being finding of fact, that can not be interfered with in a petition under section 115 CPC. The learned counsel has placed reliance on decisions of this Court: (i)in the case of Shri Arun Chandra Sarma vs. Janardan Prasad Verma, reported in 1989 (2) GLJ 502; and (ii) in the case of Aliram Hazarika vs. Ghanasyam Das, reported in 1 Unreported Cases (Assam) 409. In the case of

Aliram Hazarika in para 4 of the judgment this Court held

"With regard to the bonafide requirement also, there was no evidence in rebuttal of the plaintiff's claim and we must accept the finding of the Court's below unless it is shown to be erroneous on some grounds of law." In the case of Arun Chandra Sarma, supra, this Court in paragraph 10 of the judgment, held that the findings of the learned Courts below that the house was required bonafide for reconstruction not being based on surmises or conjectures, there was no scope to interfere with the said findings.

7. I have considered the submissions made on behalf of the petitioners as well as on behalf of opposite parties. I have perused the judgments and other materials on record.

8. In the plaint, a vague allegation has been made that defendants were not paying monthly rent regularly. The month or months in respect of which defendants defaulted in payment of rent, has not been pleaded in the plaint. There is also no pleading in the plaint as regards due date of payment of monthly rent. I am unable to accept an extreme view as advanced by the learned counsel for the plaintiff/opposite parties that once the landlord/plaintiff makes an allegation that defendant/tenant is not paying rent regularly, burden lies on the defendant/tenant to satisfy the Court by adducing evidence that he has not made default in payment of monthly rent. In a suit for ejectment of the tenant under the Assam Urban Areas Rent Control Act, on the ground of making default in payment of monthly rent, plaintiff/landlord should not only plead the due date of payment of monthly rent and the month or months in respect of which defendant/tenant defaulted in payment of rent, but must also adduce evidence in support thereof and discharge his initial burden.

9. I have perused the evidence on records. In support of the allegation of making default in payment of rent by the defendants, PW 1 who is also the plaintiff No.1, has simply stated in examination in chief that he did not get the monthly rent of the house from the defendant regularly. However, in cross-examination he has deposed that besides him, his brother also used to realise rent from the defendants some time. PW 2 who is plaintiff No.3, has stated in the examination in chief that defendants have been paying rent regularly. On the aforesaid materials on records, it is clear that plaintiffs have not at all been able to make out a case for eviction of the defendant/petitioners on the ground of making default in payment of monthly rent. The finding of the learned Courts below on Issue No 2 is, therefore, arbitrary and perverse, and can not be sustained.

10. As regards plaintiff's case for eviction of the defendants on the ground of bonafide requirement of the suit premises, I find that the learned Courts below have arrived at the decision on Issue No.3 arbitrarily without sifting the evidence adduced by the plaintiffs in support of the contention. On Issue No.3, the decision of the learned Munsiff is as follows :

"It is stated that the suit house is required for bonafide use and occupation of the plaintiffs especially for the children of the plaintiffs. In his cross-examination the DW 1 has admitted that the plaintiffs have no other accommodation at Jorhat Town. The issue can be decided in favour of the plaintiffs." The learned appellate Court below affirmed the said decision arbitrarily without at all discussing the evidences on records adduced by the plaintiffs. In a case for ejectment of tenant on the ground of bonafide requirement, burden lies on the plaintiff-landlord to satisfy the Court by adducing evidences that the suit premises is bonafide required by him. Mere desire of the landlord to get possession of the suit premises is not bonafide requirement. Court must sift evidences adduced by the plaintiffs and arrive at the satisfaction that the plaintiff-landlord bonafide requires the tenanted premises. In the instant case, plaintiffs' vague statement that for education of their children they need the suit premises is not sufficient. Evidences adduced by the plaintiffs should also establish that education of children would suffer if they do not start a residential establishment at the suit premises, to the satisfaction of the Court. The learned Courts below have failed to exercise jurisdiction duly vested in law in not considering the evidences of plaintiffs to derive satisfaction that the suit premises was really required by the plaintiff. The decision of the learned Courts below on Issue No. 3, therefore, can not be sustained.

For the foregoing reasons, the petition is allowed and the impugned judgment and decree are set aside. I make no order to costs.

The Title Appeal No.22 of 1987 is remanded to the Court of the learned Assistant District Judge, Jorhat for disposing of the appeal in accordance with law.