

(2009) 09 PAT CK 0024
In the Patna High Court
Case No : Civil Revision No. 1185 of 2008

Baidyanath Rai

APPELLANT

Vs

Smt. Kiran Sinha, Shree Nibas, Deepak Kumar and Manoj Kumar

RESPONDENT

Date of Decision : 10-09-2009

Acts Referred:

Citation : (2009) 09 PAT CK 0024

Judgement

S.N. Hussain, J.—This civil revision has been filed by the defendant-petitioner under the Proviso to Sub-section (8) of Section 14 of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 (hereinafter referred to as "the Act" for the sake of brevity) challenging the order of his eviction passed by the learned Munsif-III, Patna vide his judgment dated 22.05.2008 decreeing Eviction Suit No. 51 of 2001.

2. The aforesaid eviction suit was filed by the plaintiffs-opposite parties for eviction of the sole defendant-petitioner from the suit premises, namely, a shop measuring 18"x13" having its 13" wide opening, situated in R.K. Avenue, Nala Road in the town of Patna for their personal necessity. The claim of the plaintiffs was that the suit premises was allotted to late Surendra Naraian, the predecessor of the plaintiffs in family partition between him and his brothers. It was also claimed that the defendant was a tenant of the plaintiffs with respect to the suit premises on monthly rent of Rs. 500.00. It is claimed by the plaintiffs that the suit shop was required for plaintiff No. 4 Manoj Kumar, who was unemployed and was sitting idle and intended to start his furniture business in the suit premises.

3. In the said suit, the defendant-petitioner was granted leave to contest, whereafter he filed his written statement admitting relationship of landlord and tenant between the parties but claimed that the plaintiffs had no bona fide personal requirement of the suit premises as they had several other premises, in which plaintiff No. 4 can start his business and that no paper was produced by the plaintiffs to show any partition of 1973 between Surendra Naraian and his

brothers. It was further claimed that the plaintiffs wanted to oust the defendant only for getting Pagadi and higher rent, as plaintiff No. 4 is employed in a firm getting huge salary and that the suit was also bad for non-joinder of necessary parties as the firm, which is the tenant in the suit shop, is a joint family firm of defendant and other members of his family being looked after by his son Ashok Kumar Rai.

4. After considering the pleadings of the parties, the learned trial court framed following issues for deciding the suit, which are as follows:

- (i) Whether the suit filed by the plaintiff is maintainable ?
- (ii) Whether plaintiff has got any cause of action or right to sue?
- (iii) Whether there is relationship of landlord and tenant between the plaintiffs and defendant ?
- (iv) Whether plaintiff has got personal necessity of the suit premises and whether personal necessity is bona fide one ?
- (v) Whether defendant is liable to be evicted from the suit premises ?
- (vi) Whether partial eviction will satisfy the plaintiff ?
- (vii) Whether plaintiff is entitled to any other relief ?

5. In support of their pleadings on the aforesaid issues, the plaintiffs produced five witnesses, out of whom P.W. 1 was a formal witness proving Ext.1 the P.M.C. receipt; P.W.2 proved Ext.2 the tenancy and kirayanama between the predecessor of the plaintiffs and the defendant; P.W.3 was a formal witness proving Ext.3, Ext.4 and Ext. 4(A), namely, carbon copy of letter written by Shri Niwas to Baidyanath Rai dated 01.03.1999 as well as receipt of postal department relating to the Registry; P.Ws. 4 and 5 were plaintiffs No. 4 and 2, respectively, who fully proved plaintiffs' pleadings in the plaint including the necessity of plaintiff No. 4, the measurement of the suit premises etc. and out of them P.W.5 also proved the certified copy of Ext.5 the deed of partition.

6. On the other hand, the defendant also produced five witnesses, out of whom D.W.1 was a formal witness identifying Ext. "A" the signature of Birendra Kumar on his vakalatnama. D.Ws. 2, 3 and 4 had stated that they had seen Ashok Kumar Rai, son of defendant Baidya Nath Rai sitting in the furniture shop as owner but they specifically stated that they had not seen any document in that regard, whereas, D.W.5 was defendant Baidyanath Rai himself, who claimed that the shop in question belonged to his joint family and was being looked after by his son Ashok Kumar Rai. Apart from the aforesaid oral evidence, the defendant produced only one exhibit i.e. Ext "A", which is signature of Birendra Kumar on the vakalatnama executed by Baidyanath Rai.

7. After considering the pleadings and evidence of the parties, the learned court below decreed the suit vide its impugned judgment dated 22.05.2008 after

arriving at the following findings:

- (a) There is relationship of landlord and tenant between the plaintiffs and defendant ?
- (b) Plaintiff No. 4 is unemployed and requires the suit premises for running furniture business therein, which is bona fide ?
- (c) Defendant is liable to be evicted from the suit premises ?
- (d) Partial eviction will not satisfy the requirement of the plaintiffs ?
- (e) The suit filed by the plaintiffs is maintainable ?
- (f) Plaintiffs have got cause of action and right to sue ?
- (g) Plaintiffs are not entitled to any other relief except the aforesaid reliefs ?

8. The aforesaid judgment of the learned court below has been challenged by the defendant-petitioner in the instant civil revision. However, it is admitted that the relationship of landlord and tenant existed between the parties and that the rent of the suit premises was Rs. 500.00 per month. Hence, the findings of the learned court below on only two issues, namely, the personal necessity and partial eviction have been challenged by the defendant in the instant civil revision. Hence the only points raised by the petitioner and to be considered in this civil revision are as follows:

- (i) Whether plaintiffs have bona fide personal requirement of the suit premises ?
- (ii) Whether partial eviction of the defendant from the suit premises would satisfy the said requirement of plaintiffs ?

9. So far the first issue of personal necessity is concerned, the defendant-petitioner has claimed that he is doing furniture business in the suit shop, whereas, plaintiff No. 4 is engaged elsewhere in a private firm and hence he was neither in business earlier nor he genuinely wanted to do his business as he has several other space/shops, in which he could have started his business but inspite of that the instant suit has been filed by the plaintiffs only with the intention of ousting the defendant for getting higher Pagadi and rent. In this connection, he relied upon paragraph No. 14 of the deposition of plaintiff No. 4 who had deposed as P.W.4

10. From a bare perusal of the evidence of P.W.4, it transpires that he has never claimed that he was employed elsewhere and did not require the suit premises rather his specific pleading supported by his said deposition and evidence was that he was unemployed and required the suit premises for starting his own business. Apart from that, the defendant had miserably failed to show that plaintiff No. 4 was employed elsewhere by any material whatsoever and the statement made by the defendant in his pleading and evidence are mere bald averments, not supported by any material. In the said circumstances, the aforesaid plea of the defendant was rightly rejected by the learned court below.

11. On the other hand plaintiffs No. 2 and 4 have come to depose as P.Ws. 5 and 4 and in their said statements they have categorically stated that plaintiff No. 4 was unemployed and required the suit premises for running his furniture business therein, which was also supported by other evidence, which was consistent and cogent. The defendant also could not give any reliable evidence either oral or documentary to show that any other premises belonged to the plaintiffs or were vacant, which could be used by them for starting a furniture shop. In the said circumstances, the learned court below was quite justified in coming to a well-considered conclusion that the suit premises was required by the plaintiffs for their bona fide personal necessity.

12. So far the second question of partial eviction is concerned, learned Counsel for the defendant-petitioner has laid much stress to the provision of Section 11 of the Act, which prescribed that where a tenant is in possession of any building, he shall not be liable to eviction there from except in execution of a decree passed by the court on one or more of the grounds including (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 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 in occupation of the rest and the tenant agrees to such occupation, the Court shall pass a decree accordingly and fix proportionately the 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 so fixed shall be deemed to be the fair rent fixed u/s 5

13. On the aforesaid point, learned Counsel for the defendant-petitioner has relied upon several decisions of the Hon"ble Apex Court as well as of this Court, namely, (i) in case of Rehman Jeo Wangnool Vs. Ram Chand and Others, (ii) in case of Nasirul Haque Vs. Jitendra Nath Dey, (iii) in case of Om Prakash Sharma Vs. Kishun Mistry, (iv) in case of State of Bihar v. Rameshwar Prasad reported in 1994 (1) P.L.J.R. (S.C.) 87, (v) in case of Smt. Sushila Devi and Others Vs. Sri. Lakhan Lai Sah and Others, (vi) in case of The State of Bihar Vs. Pintu Sonar, and (vii) in case of Most, Sushila Devi and Others Vs. Sri. Lakhan Lai Sah and Others In the said case laws, the Hon"ble Courts had held that the Proviso to the said Section 11(1)(c) for eviction on the ground of personal necessity mandates the Court to consider whether the eviction of tenant from part of the premises is to be ordered so as to substantially satisfy reasonable requirement of the landlord and that even in the absence of specific pleading under the Proviso, the Court has to act in compliance with the mandate and give a finding on that issue.

14. From a perusal of the pleadings and evidence of the parties as well as from the impugned judgment of the learned court below, it is quite apparent that the learned court below has specifically framed issue of partial eviction as issue No.

(vi) and it considered the said issue on the basis of the respective pleadings and evidence of the parties in detail in paragraphs 16 and 17 of its impugned judgment and only thereafter has come to the conclusion that partial eviction of defendant from the suit premises will not satisfy the necessity of the plaintiffs. Hence, the requirement of the aforesaid provision of law as well as the case laws have been fulfilled by the learned court below and there is no violation of any such provision of law.

15. So far the illegality or otherwise of the said finding of the learned court below is concerned, it is an admitted fact that the shop in question is 18'1" in length and 13'1" in width having its opening of 13.1" on the road and in the entire shop room the defendant is doing his business of furniture. The plaintiffs also required the said premises for doing business of furniture, which definitely requires a big area as shop-keeper has to keep sample of all sorts of furniture in his shop apart from counter etc., for which the area of the suit shop, which is less than 250 sq. ft., is barely sufficient. Furthermore the requirement of the entire shop in the said business is also supported by the fact that the defendant had neither mentioned in his pleading nor stated in his deposition that his partial eviction from the suit premises would satisfy the requirement of the plaintiffs and no plausible ground was raised in that regard by learned Counsel for the defendant-petitioner before this Court at the time of final arguments in the civil revision. Hence the learned court below had no option but to hold that the partial eviction of the defendant from the suit premises will not satisfy the requirement of the plaintiffs for opening a furniture shop.

16. In the aforesaid facts and circumstances, this Court does not find any illegality in the impugned order of the learned court below nor does it find any jurisdictional error therein. Accordingly, this civil revision is dismissed, but there shall be no order as to cost.