

(2015) 05 GAU CK 0014
In the Gauhati High Court
Case No : CRP No. 87 of 2009

Banwarilal Agarwalla and Others

APPELLANT

Vs

Tara Prasad Borthakur and Others

RESPONDENT

Date of Decision : 21-05-2015

Acts Referred:

Assam Urban Areas Rent Control Act, 1972 — Section 5(4)
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 25, Order 41 Rule 26

Citation : (2015) 05 GAU CK 0014

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : S.K. Goswami, P.K. Sarma and M. More, for the Appellant; B.D. Das and D.C. Nath, Advocates for the Respondent

Judgement

Hrishikesh Roy, J.—Heard Mr. S.K. Goswami, the learned Counsel appearing for the petitioners (tenants), who are assailing the decree of ejectment. Also heard Mr. B.D. Das, the learned Senior Counsel appearing for the respondents (landlords).

2. The predecessor of the respondents, Tara Prasad Borthakur filed the Title Suit No. 54/1978 for ejectment of the defendant from the shop room in Ward No. XII in Sivasagar town. The plea of the landlord is that the tenant stopped paying rent from July 1977 and that tenanted room is required for the plaintiff's use for which a legal notice was issued on 10.7.1978 terminating the tenancy and demanding the arrear rent. The defendant filed the written statement (W.S.) and on the basis of the pleadings of the parties, the learned Munsiff No. 1, Sivasagar framed the following issues :

1. Whether the suit is maintainable?
2. Whether the contract was for payment of rent every month on printed receipt by signing the inner foil.
3. Whether the defendants made improvements in the holding as authorised by

the plaintiff and plaintiff assured defendants to pay for improvement?

4. Whether the plaintiff is not bound to make payment for unauthorized improvement?

5. Whether the defendant stopped payment of rent since July, 1977 and is a defaulter?

6. Whether plaintiff authorized his son S.P. Borthakur to receive rent it at all and if so he is bound to recoup it?

7. Whether the defendant became irregular in payment of rent after some time till July, 1977 when from he stopped payment?

8. Whether the defendant is a defaulter and liable to be evicted?

9. Whether the defendant is entitled to claim compensation as claimed?

10. To what relief is the plaintiff entitled?

3. After considering the evidence of the parties, the Trial Court on 22.12.1987 (Annexure-III) dismissed the Title Suit No. 54/1978 by declaring that the suit is not maintainable.

4. The aggrieved landlord then filed the Title Appeal No. 2/1988 and the learned Appellate Court felt that 3 additional issues ought to have been framed in the ejectment suit. Therefore the matter was remanded back to the Trial Court with direction for framing additional issues on -

(1) Whether the house is bona fide requirement of the plaintiff as alleged in the plaint?

(2) Whether the plaintiff is entitled to a decree for arrear house rent?

(3) Whether the plaintiff is entitled to a decree for compensation for the future house rent as alleged?

Thus the learned Munsiff, Sivasagar was directed to allow the parties to adduce further evidence on the basis of which the Trial Court was required to give decision and the Appeal was kept pending without disposal by the Civil Judge.

5. The ejectment suit was then re-considered by the Trial Court and during the process the pleadings were amended and the parties were permitted to adduce further evidence on the 3 additional issues. The Court noted that the three sons of the plaintiff got married and for their accommodation the demolition of the single storied shop room was needed for accommodation of the larger family. The defaulter aspect was considered by the Court by noting that the liability to pay lawful rent by the tenant subsists during the pendency of the suit.

6. After due consideration of the evidence, the learned Trial Judge opined that the defendant defaulted in payment of rent since January 2003 till April 2006 and taking into account the monthly rent of Rs. 125/-, the Court quantified the

payable arrear rent as Rs. 18,180/-. Bearing in mind, the expansion of the plaintiff's family through marriage of his three sons, the issue of bona fide requirement was answered in plaintiff's favour. Consequential order for ejectment of the defendant was issued and arrear rent and compensation of Rs. 18,180/- was ordered to be recovered from the tenant by the judgment dated 24.5.2006 (Annexure-VII) rendered by the learned Munsiff, Sivasagar.

7. Following the fresh decision of the Trial Court, the aggrieved tenant filed the Title Appeal No. 5/2006 and the learned Civil Judge, Sivasagar took up the fresh Appeal as well as the pending Title Appeal No. 2/1988 for analogous consideration. The tenant pleaded that the Trial Court mis-interpreted the remand order and travelled beyond the permitted exercise by ordering ejectment whereas the landlord contended that since the Trial Court was permitted to decide on the three additional issues pertaining to rent default and bona fide requirement, after giving its finding on those issues in landlord's favour, the consequential ejectment order was a mere formality only.

8. The Appellate Court proceeded to consider the evidence recorded by the Trial Court on the issue of bona fide requirement and noted that additional accommodation is needed by the plaintiff for accommodating his three married sons with their families and that they do not have sufficient space in their present residential house. Thus the suit room is required to be demolished to construct a separate residence. Thus the plea of bona fide requirement of the plaintiff was held to be genuine, honest and pressing by the Appellate Court.

9. On the additional two issues pertaining to rent default and future rent, the Appellate Court gathered from the evidence that the defendant failed to prove that house rent from 7.10.1977 till June 1978 was paid to Mr. S.P. Borthakur, the son of the plaintiff and thus the unpaid rent for this period was answered in favour of the landlord. On the rent deposited in Court by the tenant, the Appellate Court examined the evidence and noted that the defendant failed to prove rent refusal by the landlord and accordingly it was held that the tenant is a defaulter for non-compliance of the provisions of Section 5(4) of the Assam Urban Areas Rent Control Act, 1972 (hereinafter referred to as "the Rent Act").

10. On the basis of above finding, the learned Civil Judge, Sivasagar held that the plaintiff was able to establish his pleaded case of bona fide requirement and rent default by the tenant and on this basis, the finding given by the Trial Judge was approved. The Appellate Court further observed that although the Trial Court was expected to give its decision within 6 months from the remand order, the late decision given after 15 1/2 years doesn't affect the merit of the case. With these observation, the pending Title Appeal No. 2/1988 of the landlord was allowed and the subsequent Title Appeal No. 5/2006 of the tenant was dismissed by the impugned order dated 23.12.2008 (Page-83) by the learned Civil Judge, Sivasagar.

11.1. Mr. S.K. Goswami, the learned Counsel challenges the decision of the Trial

Court after remand of the suit by projecting that although the Court was authorized to take evidence and give its own finding on the three additional issues, it could not have finally decided the ejectment suit as that was left to be decided by the Appellate Court itself in the Title Appeal No. 2/1988. Therefore it is argued that the Trial Court committed an error by widening the scope of its exercise by going beyond the decision dated 12.12.1990 of the Appellate Court.

11.2. The Judgment-Debtor contends that the Appellate Court should have set aside the decision of the Trial Court rendered on 24.5.2006 and directed for a limited adjudication exercise in view of its earlier order of 12.12.1990, instead of approving the final verdict on the ejectment suit, given by the Trial Court.

11.3. Mr. S.K. Goswami refers to the Order XLI Rule 25 CPC provision to contend that the Trial Court should have considered the additional issues and after recording its finding thereon should have returned the evidence to the Appellate Court for its final decision on merit but in this case, the Trial Court unauthorizedly decided the matter finally and thereby it acted beyond the permitted power of Order XLI Rule 25 of the CPC.

12.1. On the other hand, Mr. B.D. Das, the learned Senior Counsel submits that the tenant is not at all prejudiced by the exercise undertaken by the Trial Court when the matter was remanded for framing of 3 additional issues where decision was required to be given after allowing evidence of the parties. Therefore the Counsel argues that when the findings on the key issues were given as permitted, the consequential order of ejectment was a mere formality. Therefore at best it can only be an irregularity which should not undo the elaborate legal exercise undertaken by the Trial Court.

12.2. The respondents contend that the ejectment suit was filed in the year 1978 and the Appellate Court remanded the matter for fresh decision on 12.12.1990 and 15 1/2 years thereafter on 24.5.2006, on the basis of the finding on the 3 additional issues, the ejectment of the tenant was ordered. The Senior Counsel submits that successive suits should be avoided and since many years have gone by and tenant is held to be a defaulter of rent during the pendency of the case and the landlord's bona fide need was clearly established, the Trial Court was justified in issuing the ejectment decree as it was competent to mould the relief in such cases.

13. When the case was remanded by the Appellate Court on 12.12.1990, the Trial Judge was required to take evidence on the additional issues and refer back the matter within 6 months to the Appellate Court with its finding on those key issues. But because the plaint was then amended twice leading to consequential amendment of the W.S. and the parties took their own time to adduce their evidence for the subsequent developments, the case continued for about 15 1/2 years in the Trial Court after it was remanded.

14. During this process, the Court considered the rent payment status after the case was filed and also the bona fide requirement of the plaintiff, whose 3 sons

got married in the meantime. Therefore in a sense, the Trial Court was also deciding the additional issues on the basis of subsequent developments after the suit was initially filed in the year 1978. When direction was given to decide the additional issues, a resultant decision on the merit of the suit was inevitable in a normal process. While this may not have been envisaged on strict interpretation of the Appellate Court's remand order of 12.12.1990 what is significant is that the remanding Court didn't hold this against the Trial Court. In fact the Appellate Court itself considered the entire evidence after the Trial Court gave its decision on 24.5.2006 and thereafter the ejectment verdict was rendered by accepting the plea of bona fide requirement and rent default canvassed by the plaintiff. Thus there was appropriate consideration on the merit of the case by the Appellate Court.

15. In so far the provision of Order XLI Rule 26 of the CPC is concerned, I feel that the Rules of procedure must not prevent a Court from rendering substantial justice and according to me, the Trial Court's decision of 24.5.2006 is a fallout of its own finding on the 3 key issues and the course adopted by it can at best be an irregularity which eventually got cured through re-consideration of the matter on merit by the Appellate Court itself which remanded the matter. Moreover in my opinion the defendant was not prejudiced by the consequential decision of the Trial Judge, since eventually the Appellate Court gave its own independent finding on the additional issues in the case.

16. In ejectment suits under the Rent Act, the Court is entitled to take note of subsequent events and in this case when the matter was remanded back to the Trial Court, the rent default during pendency of the case as well as the expanded need of the landlord's family was decided on the basis of the evidence adduced by the parties. When the vital issues were answered against the tenant and in favour of the plaintiff, the consequential decision on the suit on merit can't in my view be a fatal exercise only because of the limitation imposed by the Appellate Court in its remand order of 12.12.1990. Moreover as the Trial Court's verdict was subsequently ratified by the Appellate Court, the impugned exercise can't be faulted.

17. In order to secure protection under Section 5(4) of the Rent Act, a tenant has to prove refusal of the landlord to accept the rent on being tendered and it is held in *Keshab Ch. Singha and Others Vs. Moulovi Abdul Matin Choudhury and Others*, (2006) 3 GLR 635 : (2006) 2 GLT 731 that in the absence of offer and refusal, the rent cannot be deposited in Court by the tenant.

18. A Division Bench of this Court in *Sobha Biswas and Others Vs. Ranjit Lodh*, (2006) 1 GLT 479 , held that the duty to pay monthly rent by a tenant subsist during the pendency of an ejectment suit and when the tenant defaults in paying rent for the period when the suit is pending, the landlord has the right to secure a decree of ejectment for the default of the tenant. Here it was also opined that subsequent events having relevance to the issue can be brought to the notice of the Court and to do complete justice between the parties and to finally resolve

the dispute raised in the litigation, the Court can take the subsequent events into consideration and give a decision on the issues arising out of the subsequent facts.

19. In the judgment of Satya Deo Bhitha and Another Vs. Rajkumar Devi and Others L/H Late Babanji Pathak, (2001) 3 GLT 564 , this Court held that when the tenant fails to pay rent after institution of the suit for ejectment, he is to be treated as a defaulter and on that basis an ejectment decree can be passed against him under the Rent Act. In the same line another Judge in Abdul Matin Choudhury and Another Vs. Nityananda Dutta Banik, (1997) 2 GLR 468 , held that in order to claim protection from eviction under the Rent Act, the tenant must continue to tender rent during the pendency of the case in Courts at all level and when he fails to discharge his liability, a right springs up in favour of the landlord to secure a decree of ejectment.

20. On the issue of bona fide need pleaded in an ejectment suit, the Apex Court in Dinesh Kumar Vs. Yusuf Ali, AIR 2010 SC 2679 : (2010) 5 JT 543 : (2010) 6 SCALE 41 : (2010) 12 SCC 740 : (2010) 6 UJ 2847 : (2010) AIRSCW 3605 : (2010) 4 Supreme 481 , held that the landlord is the best judge of his requirement and only issue that the Court should consider is whether the pleaded need of the landlord is genuine, honest and conceived in good faith. In the case of Siddalingamma and Another Vs. Mamtha Shenoy, AIR 2001 SC 2896 : (2001) 9 JT 268 : (2001) 7 SCALE 345 : (2001) 8 SCC 561 : (2001) AIRSCW 4345 : (2001) 7 Supreme 870 , the Court observed that bona fide requirement can be established through additional evidence on the basis of amended pleadings.

21. Upon due appreciation of the ratio in the above cases and applying them to the facts of this case, I feel that the approach of the Court is consistent with the applicable laws. The scope of the revisional jurisdictional being limited and the factual findings being conclusive and are found to be based on due evidence, this case is held to be without merit and the same is accordingly dismissed by leaving the parties to bear their own cost. The Registry should return the LCR along with a copy of this order.