
(2003) 03 PAT CK 0083
In the Patna High Court
Case No : Civil Revision No. 607 of 2002

Bharat Petroleum Corporation Ltd. and Another	APPELLANT
Vs	
Smt. Raj Kumari Devi and Others	RESPONDENT

Date of Decision : 17-03-2003

Acts Referred:

Citation : (2003) 03 PAT CK 0083

Final Decision : Allowed

Judgement

Nagendra Rai, J.—The tenant-Petitioners have challenged the part of the judgment and decree dated 14.2.2002, passed by the Execution Munsif, Patna, in Execution Case No. 38 of 1998, whereby he has decreed the suit for eviction filed on behalf of Plaintiff Nos. 1 and 4(A) and dismissed the same with respect to other Plaintiffs and has ordered for eviction of the Petitioners from the property described in Schedule-I of the plaint to the extent of shares of Plaintiffs No. 1 and 4(A) only. Subsequently, the Petitioners have also challenged the order dated 5.8.2002, whereby the court below allowed the review application and decreed the suit in its entirety.

2. The premises in dispute are 20 kathas of land and a house standing thereon bearing cadestral survey plot No. 1061, holding No. 411/402, Circle No. 246, Ward No. 33, Boring Canal Road, Patna Town Admittedly, the said suit premises belonged to Sudhendra Nath Majumdar, who sold the same by a registered sale-deed dated 8.1.1970 to Plaintiff Nos. 1 to 3 and 1/4th share out of the said property to Sheo Chandra Pd. Singh, who sold the same to original Plaintiff No. 4 Raj Kishore Singh, who died during the pendency of the suit and was substituted by his heirs and legal representatives, who are Plaintiffs No. 4 and 4(A).

3. The suit premises were let out by the original owner, namely, Sudhendra Nath Majumdar to Burmah Shell Oil Storage and Distributing Company of India Ltd. by a registered agreement dated 17.8.1950 on a monthly rental of Rs. 550/- for a fixed term of five years with a renewal option. Defendants No. 1 and 2 are successors-in-interest of the aforesaid Company after acquisition by the

Government of India under the Burmah Shell Acquisition Act.

4. The Plaintiffs' case is that after the purchase they became owner of the property and on verbal agreement Defendant-Petitioner No. 1 continued as a tenant. There is a building on one and half katha of land and the remaining land is parti vacant land. The premises are used by Defendant No. 1 for residence of their officers and the Defendants agreed to enhance the rent from Rs. 550/- to Rs. 1000/- and have been regularly paying the same. The further case of the Plaintiffs is that, Plaintiff No. 1 is an old lady aged about 90 years suffering from various serious ailments and Plaintiffs No. 1 to 3 need the premises for their accommodation. Plaintiff No. 4 is also an old man, aged about 85 years and he is not keeping a good health and he has a big family and also requires the premises for his own use as well as for the use of his other family members. Plaintiffs No. 1 to 3 are living in a tenanted house, which is causing inconvenience to them. Similarly, Plaintiff No. 4 is also temporarily living in the house of one Dr. R.P. Singh and the said accommodation is not sufficient and comfortable. Original Plaintiff No. 4 died and he was substituted by his two heirs i.e.; Natni and Natin-Damad and he executed two registered deeds of gift dated 18.6.1999 and 19.6.1999 in their favour with regard to his share in the suit property to the extent of half and half each. The substituted Plaintiffs claimed that they require the premises for their accommodation and residence of their own. The Plaintiffs asked the Defendants to vacate the premises but the Defendant-Petitioners refused to do so and hence the suit.

5. The Defendants admitted the tenancy and they further admitted that after purchase by the Plaintiffs, they were informed and allowed to continue the tenancy subject to enhancement of rent and they have been regularly paying the rent prior to the institution of the suit. It was also admitted that Plaintiff No. 1 and original Plaintiff No. 4 were old persons and they cannot live anywhere alone and some persons should live with them to look after them. Plaintiff No. 1 lives with her daughter, who has her own house and establishment and it is not possible at all for daughter to live with Plaintiff No. 1 after leaving her house and family members and establishment. Other sons of Plaintiff No. 1 do not live at Patna so their necessity is imaginary. In other words, the Defendants denied reasonable and bone fide requirement of the Plaintiffs.

6. The suit was tried by following a special procedure as provided u/s 14 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as "the Act"). The Plaintiffs examined seven witnesses, whereas, the Defendant-Petitioners examined only one witness. The parties also filed documentary evidence in support of their case. The court below, after having considered the matter, found that Plaintiff Nos. 1 and 4(A) have only proved that they require the premises in good faith and reasonably and decreed the suit on their behalf and dismissed the suit on behalf of other Plaintiffs.

7. It appears that subsequently the Plaintiffs filed a review application and the court below, by order dated 5.8.2002, held that Plaintiffs No. 1 and 4(A) are

jointly entitled to decree for eviction against the Defendants from the entire suit premises as being co-owners.

8. The suit was filed by the Plaintiffs for eviction of the tenant-Defendants on the ground of bona fide personal need as provided u/s 11(1) (c) of the Act, which runs as follows:

11(1) Notwithstanding, anything contained in any contract or law to the contrary but subject to the provisions of the Industrial Disputes Act, 1947 (Act XIV of 1947), and to those or Section 18, where a tenant is in possession of any building, he shall not be liable to eviction therefrom except in execution of a decree passed by the Court on one or more of the following grounds:

(a) XX XX XX

(b) XX XX XX

(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 so fixed shall be deemed to be the fair rent fixed u/s 5.

9. Thus, it is for the landlord to prove that the building is required reasonably and in good faith for his occupation or for the occupation of any person for whose benefit the building is held by him. According to the explanation appended to Section 11(1)(c) of the Act, the landlord does not include an agent referred to in Clause (f) of Section 2. Section 2(f) defines the landlord, according to which the "landlord" includes the person who for the time being is receiving or is entitled to receive the rent of a building whether on his own account or on behalf of another, or on account or on behalf of for the benefit of himself and others or as an agent, trustee, executor, administrator, receiver, guardian or who would so receive the rent or be entitled to receive the rent, if the building was let to tenant, The definition of the landlord is a very wide one but for the purposes of decree for eviction on the ground of personal necessity as envisaged u/s 11(1)(c) of the Act, the definition of the landlord has been cut down by the said explanation. According to the said explanation, a mere rent collector such as agent etc. are not entitled to maintain suit for eviction. It is only the owner of the building, who has right to occupy the same in his own right either for his own bona fide need or for the bona fide need of any person for whose benefit the building is held by him can maintain a suit for eviction.

10 The Apex Court, while interpreting the aforesaid provision in the case of M.M.

Quasim v. Manohar Lai, reported in AIR 1981 S.C., page-1113 held as follows:

Therefore, the explanation to Clause (c) which cuts down the wide amplitude of the expression "landlord" would unmistakably show that for the purposes of Clause (c) such landlord who in the sense in which the word "owner" is understood can claim as of right to the exclusion of everyone, to occupy the house, would be entitled to evict the tenant for his own occupation.

11. Thus, the Plaintiffs can succeed in the suit only if they prove that the premises are required reasonably and in good faith. It is not necessary that all the owners should file a suit for eviction even on the ground of personal necessity. Even some can file the suit against the tenant on the ground that co-owner owns every part of the composite property along with others and he cannot be said to be only part owner or functional owner of the property. The co-owner is as much as owner of a property as individual is. (see Sri Ram Pasricha Vs. Jagannath and Others,

12. Learned Counsel appearing for the tenant-Petitioners challenged the original judgment on the ground that the court below cannot pass a decree with regard to the part of the premises on the basis of reasonable and bona fide need of the co-owners only. However, as stated above, the court below has allowed the review application and decreed the suit in entirety. He challenged that the review application was not maintainable as there was no error apparent on the face of the record. This apart, after having come to know about the pendency of the Civil Revision, the court below should not have dealt with the review application. He further submitted that in any view of the matter, either in the original order or in the order passed in review the court below has not considered the question of partial eviction in terms of proviso to Section 11(1)(C) of the Act.

13. Learned Counsel appearing for the other side submitted that the court below had committed an error of law apparent on the record in the original order and has decreed the suit only in part and when it realised the aforesaid error, it rectified the same by allowing the review application. He also submitted that though the court below has not considered the question of partial eviction, but from the tenor of both the orders, it appears that the court below has found that the eviction of the tenant-Petitioners from the entire premises would meet the needs of the Plaintiffs.

14. From a perusal of the materials on the record, it appears that the court below has committed an error of law in passing both the orders i.e. the original order as well as the order in review. The main question for consideration before the court below was as to whether the need of the Plaintiffs was reasonable or bona fide one or not as there is no dispute about the ownership. The court below did not consider the oral evidence in right perspective and in the original judgment wrongly held that no evidence has been led about requirements of Plaintiffs No. 2 and 3. The evidence of Plaintiff No. 4(A) clearly shows that all the Plaintiffs required the suit premises. In the subsequent order of review also, it

did not consider this aspect of the matter though decreed the suit in entirety on the ground that co-owners are entitled to the decree for eviction of the tenants from the entire premises. There is no dispute about the legal proposition, but the court below should have considered the entire evidence and given a definite finding as to the need and requirement of each and every Plaintiff and, thereafter, should have disposed of the matter. The court below has also not considered the question of partial eviction, which is a must in terms of proviso to Section 11(1)(c) of the Act.

15. On the aforesaid two grounds, in my view, the original judgment as well as the order passed in review are fit to be set aside and, accordingly, the same are set aside and the matter is remitted to the court below to consider the matter afresh and take a final decision in accordance with law within a period of four months from the date of receipt or production of a copy of this order.

16. In the result, this Civil Revision is, accordingly, allowed.