

(1971) 11 PAT CK 0001
In the Patna High Court
Case No : A.F.A.D. No. 712 of 1968

Binapani Sarkar	Vs	APPELLANT
Inderdeo Singh		RESPONDENT

Date of Decision : 17-11-1971

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 — Section 11(1)
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1
Transfer of Property Act, 1882 — Section 108, 111

Citation : AIR 1972 Patna 383

Hon'ble Judges : Shambhu Prasad Singh, J

Bench : Single Bench

Advocate : Sudhir Chandra Ghose, Sanat Kumat Chattopadhyaya, Pralay Kumar Sinha, Swaraj Kumar Ghose and Kalyan Kumar Ghose, for the Appellant; Kailash Roy and Kamlapati Singh, for the Respondent

Final Decision : Allowed

Judgement

Shambhu Prasad Singh, J.—This second appeal by the plaintiff arises out of a suit for eviction of the defendant-respondent from a house on holding No. 140, Ward No. 9 in the city of Patria. The eviction was claimed on the grounds of personal necessity, sub-letting of the rooms of the house by the respondent to persons suffering from diseases like tuberculosis and cancer and denial of the appellant's title by the respondent.

2. The defence was that the appellant had no personal necessity for the house, the house was never sub-let to persons suffering from diseases or anyone there was no denial of the appellant's title by the respondent. A plea was also taken that no valid notice u/s 106 of the Transfer of Property Act was given to the respondent,

3. The trial Court found that a valid notice u/s 106 of the Transfer of Property Act was served on the respondent, there was no denial of the appellant's title by the respondent and the appellant had no personal necessity for the house. It,

however, found that the respondent had sub-let rooms of the house to persons suffering from diseases and decreed the suit. On appeal, the lower appellate Court confirmed the findings of the trial Court on the questions of notice, denial of title and personal necessity. It reversed the finding of the trial Court on the question of sub-letting and allowed the appeal and dismissed the suit.

4. The appeal was taken up for hearing in December, 1970. Mr. S.C. Ghose for the appellant did not challenge the findings of the Courts below on the question of denial of title. He, however, contended that the concurrent findings, of the Courts below on the question of personal necessity and that of the lower appellate Court on the question of sub-letting were wrong in law. According to him, the Courts below should have, on the facts found by them, held that the appellant had personal necessity for the house and the respondent had sub-let the house. The trial Court accepted the evidence of the plaintiffs' witnesses that the respondent was allowing persons, not members of his family or relatives, suffering from diseases to stay in the rooms of the house for their treatment. This, in the opinion of the trial Court, amounted to sub-letting. The lower appellate Court did not record an unambiguous finding whether the evidence of the plaintiffs' witnesses on this question could be accepted or not. After having discussed their evidence, it observed that there was no conclusive evidence on the records to substantiate the plaintiffs' allegations regarding sub-letting. It was considered necessary for the purpose of decision of the appeal to have an unambiguous finding on the question whether the respondent was allowing persons suffering from diseases like tuberculosis and cancer to stay in the house. Accordingly, by order dated the 18th December, 1970, the Court of appeal below was directed to record a definite finding, on the aforesaid question after hearing the parties. It has submitted its finding that the defendant (respondent before this Court) was allowing persons suffering from diseases like tuberculosis and cancer to live in the house.

5. At the time of hearing of the appeal after receipt of the finding, Mr. Kailash Roy appearing for the respondent attempted to challenge the finding on the ground that it was based on Exts. 13 and 13 (a) which were inadmissible. He further submitted that even the oral evidence of the witnesses was nothing but an opinion formed by them and, therefore, inadmissible. The Court of appeal below has observed that even excluding Exts. 13 and 13 (a) from consideration, it would have recorded the same finding on other evidence. Therefore, the question whether these documents are admissible or not in evidence is not very material. I am not inclined to accept the contention of Mr. Roy that the oral evidence of the witnesses examined on behalf of the plaintiff is nothing but an opinion and, therefore, inadmissible. The finding recorded by the Court of appeal below that the respondent was allowing persons suffering from diseases like tuberculosis and cancer to live in the house in question is a finding of fact and binding on this Court in Second Appeal.

6. According to the appellant's own case, even if the house be vacated, it cannot

be occupied by her immediately. It requires extensive remodelling rather re-construction before she can occupy it. She herself produced a sanctioned plan (Ext. 9) for reconstruction of the house. She has also got another house of her own where she lives at present and a new house had already been partially constructed by her husband at the time of judgment of the lower appellate Court. Under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 thereafter to be referred to as "the Act"), requirement by a landlord for remodelling or reconstructing the house is not a ground for eviction of the tenant. Sub-Clause (c) of Section 11(1) of the Act provides for eviction of a tenant only 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. The provisions in this regard of similar acts of some other States differ from the Bihar Act and the decisions of the High " Courts of those States relied on by learned counsel for the appellant are not of real assistance in deciding the question. The Courts below have recorded the finding that the appellant was not able to establish that she needed the house for personal necessity, that is for her own occupation, after taking into consideration the entire material on the record. This is also a finding of fact which cannot be interfered by this Court at the second appellate stage.

7. On the question of sub-letting, the Court of appeal below in its original judgment held that unless the right to exclusive possession and enjoyment in the property was conferred on another person, there could be no sub-letting. It relied on a passage of Foa on Landlord and Tenant, 6th Edition at page 323, according to which, the mere act of letting other persons into possession by the tenant and permitting them to use the premises for their own purposes is not, so long as he retains the legal possession himself, a breach of the contract. It appears from the evidence on the record that the patients who were allowed to stay in the house were allowed on entirely temporary basis. Their stay, perhaps, was not for a month or more than a month. It cannot be said, therefore, that the respondent parted with possession of the house in their favour by allowing them to stay in the house. The Court of appeal below, therefore, rightly held that there was no sub-letting of the house by the respondent and I am not inclined to agree with the contention of Mr. Ghose that this finding of the Court of appeal below is wrong in law.

8. But Mr. Chose argued that even if the appellant did not require the house for personal necessity and there was no sub-letting, the respondent was liable to be evicted on the ground that he was allowing persons suffering from diseases like tuberculosis and cancer to stay in the house. In support of this contention of his, Mr. Ghose relied on Section 108(o) of the Transfer of Property Act. Section 108 of the Transfer of Property Act lays down the rights which the lessor and the lessee of immovable property possess and the liabilities to which they are subject against one another in absence of a contract or local uses to the contrary. Clause (o) of it runs as follows:--

"The lessee may use the property and its products (if any) as a person of ordinary prudence, would use them if they were his own, but he must not use, or permit another to use, the property for a purpose other than, that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor, or work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto."

It is not the case of the respondent that the purpose or one of the purposes for which the house was leased out to him was to allow patients to live therein; rather he has denied, of course wrongly, that he allowed patients suffering from diseases like tuberculosis and cancer to live in the house. It is thus apparent that the respondent was using the house in question for a purpose other than that for which it was given to him. Further, the use of the house by allowing outsider patients suffering from tuberculosis and cancer to stay therein cannot be said to be the use of a person of ordinary prudence, if the house were his own. It also cannot be denied that the act on the part of the respondent of allowing patients of tuberculosis and cancer to stay in the house was destructive or permanently injurious thereto. Permanently injurious does not imply an injury which can never be remedied. It merely means an injury which does a lasting damage to the leasehold property. The appellant was, therefore, guilty of breach of the implied condition of tenancy and liable to be evicted from the house under Clause (a) of Section 11(1) of the Act.

9. It was urged by Mr. Roy, learned counsel for the respondent, that the appellant in her pleadings did not claim eviction on the ground or breach of the terms of tenancy and, therefore, no decree for eviction could be passed on that ground. The appellant pleaded necessary fact that the respondent was allowing patients suffering from diseases like tuberculosis and cancer to stay in the house and was liable to be evicted on that ground. It was not necessary for her to state in the pleadings the law that this amounted to a breach of the terms of tenancy and, therefore, the respondent was liable to be evicted. Even if it were necessary for her to state that, on the facts and in the circumstances of the case, the respondent cannot be said to have been prejudiced on that ground as he could not have pleaded any further facts or led any further evidence in reply to such a pleading. In my Opinion, therefore, there is no substance in this contention of Mr. Roy.

10. In the result, for the foregoing reasons, I would allow the appeal with costs, set aside the judgment and decree of the lower appellate Court and restore those of the trial Court. The defendant must now vacate the house in question. Within a month from today failing which the appellant shall be entitled to get him evicted by executing the decree.