
(2010) 04 PAT CK 0106
In the Patna High Court

Chandradeo Kumar @ Jawaharlal

APPELLANT

Vs

Shri Krishn Prasad and Janardan Prasad

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 420, 468, 471

Citation : (2011) 1 PLJR 438

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Final Decision : Dismissed

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 Buildings (Lease, Rent & Eviction) Control Act, 1982 (hereinafter referred to as `the Act" for the sake of brevity), challenging the order of his eviction vide judgment dated 13.11.2007, by which the Munsif, Biharsharif, Nalanda decreed Eviction Suit No. 09 of 1998.

2. The aforesaid suit was filed by the plaintiff-opposite party No. 1 for eviction against the defendant-petitioner as well as defendants-opposite parties 2nd set with respect to the suit house bearing holding No. 167, (new 167A), Ward No. 8 (new Ward No. 15) of Biharsharif Municipality situated in Mohalla Kamruddinganj, in the town of Biharsharif within the district of Nalanda, claiming following relief"s on the ground of his bona fide personal requirement:

(a) A decree of eviction of the defendants in favour of the plaintiff with respect to the suit premises be passed.

(b) Direction to the defendants to hand over vacant possession of the suit premises to the plaintiff be passed, failing which the possession be delivered to the plaintiff through process of the court.

(c) A decree of injunction restraining the defendants from changing the nature of

the suit premises be passed.

(d) A decree of cost be passed in favour of the plaintiff and against the defendants.

(e) Any other relief or relief's to which the plaintiff is deemed entitled.

3. The claim of the plaintiff was that one Lala Prasad, son of Prayag Sao had four sons, namely, Shri Krishna Prasad (plaintiff), Chandradeo Kumar (defendant No. 1), Manik Chandra Prasad (non-party) and Surendra Prasad (non-party). It is further claimed that by registered sale-deed dated 30.05.1970 (Ext.8) Lala Prasad purchased the suit land in the name of his two sons, namely, Shri Krishna Prasad (plaintiff) and Chandradeo Kumar (defendant No. 1) and, thereafter, he constructed two buildings thereupon and had his flour mill etc. thereon. It is further claimed that there was partition between the aforesaid Lala Prasad and his sons on 15.08.1970 with respect to all the ancestral lands including the suit premises and in the said partition Lala Prasad did not take anything and the suit premises was allotted to the exclusive share of the plaintiff, whereas, defendant No. 1 and his other brothers were given separate properties at Mirchaiganj and a memorandum of partition (Ext.7) was, accordingly, prepared and since then the plaintiff remained in exclusive possession of the suit premises as absolute owner thereof.

4. It was also claimed by the plaintiff that his father Lala Prasad died in the year 1977, where after, defendant No. 1 wanted some residential accommodation and in February, 1982 the plaintiff inducted him as a tenant in one of his houses at the rent of Rs. 400.00 per month and since then he is living therein with his family as tenant, but subsequently defendant No. 1 sublet portion of the suit premises to defendants No. 2 and 3. The plaintiff had also claimed that he had bona fide requirement of the suit premises as due to enlargement of his family his expenditure has increased, as a result of which his income from the flour mill is not sufficient for maintaining his family and hence he wanted to expand his business for which the suit premises was required, but on 24.05.1998 the defendants rejected the plaintiff's request for vacating the suit premises.

5. On the other hand, defendant No. 1 contested the suit by filing his written statement after permission from the court and claimed that the suit properties including other properties are still joint and story of partition dated 15.08.1970 is absolutely false and concocted. It was also claimed by defendant No. 1 that two houses purchased by Lala Prasad in the names of his two sons, namely, the plaintiff and defendant No. 1 by registered deed dated 30.05.1970 had remained in their possession and due to convenience one of the said houses is in possession of the plaintiff, whereas, the other house is in possession of defendant No. 1, who is living therein as per his own right and there is no relationship of landlord and tenant between the parties. It was further claimed that defendants No. 2 and 3 are the tenants of defendant No. 1 with respect to portion of the suit properties, with which the plaintiff has no concern. Defendants

No. 2 and 3 also appeared in the suit and filed their written statement fully adopting the claim of defendant No. 1.

6. The aforesaid pleadings of the parties as well as the issues proposed by them were fully considered by the trial court, where after, the following issues were framed for deciding the suit:

- (i) Whether the suit as framed is maintainable ?
- (ii) Whether the plaintiff has any cause of action for filing this suit ?
- (iii) Whether the plaintiff was entitled to get a decree of eviction against the defendants?
- (iv) Whether the plaintiff had any personal necessity of the suit premises ?
- (v) Whether the requirement of the plaintiff would be sufficiently fulfilled by partial eviction of the defendant from the suit premises ? fee?
- (vii) Whether the suit is bad for non-joinder of necessary parties ?
- (viii) Whether there is any relationship of landlord and tenant between the plaintiff and the defendants?
- (ix) Whether the plaintiff is entitled to half share each in the suit properties as per sale-deed dated 30.05.1970 ?
- (x) Whether the plaintiff is entitled to any other relief or reliefs?

7. On the basis of the aforesaid reliefs, the evidence were adduced by the parties. The plaintiffs produced ten documentary evidence, out of which Ext. 1 was the proposed Water Linking Map, Exts. 2 series were the municipal receipts of the suit premises in the name of the plaintiff, Ext.3 was school leaving certificate dated 01.07.1968 of Nalanda High School, Nirpur of defendant No. 1, Ext. 4 was the correction slip regarding change of name in Biharsharif Municipality; Ext. 5 was the order-sheet dated 14.12.1982 to 01.02.1983 of Case No. 330 of 1982-83 of Commissioner of Biharsharif Municipality; Ext. 6 was the notice dated 03.11.1993 sent to the plaintiff from the Municipality; Ext. 7 was the memorandum of partition dated 15.08.1970 between Lala Prasad and his sons with respect to the ancestral properties including the suit properties; Ext. 8 was the registered sale-deed dated 30.05.1970 executed by the original owner with respect to the suit properties in favour of the plaintiff and defendant No. 1; Ext. 9 was the certified copy of order dated 17.12.2004 passed by the Judicial Magistrate, Ist class, Biharsharif rejecting Complaint Case No. 501C/1992 filed against the plaintiff by one of his brothers and Ext. 10 was the certified copy of order dated 08.11.2006, by which the High Court dismissed S.L.A. No. 05/2005, which was filed against the plaintiff by his said brothers.

8. Apart from the said documentary evidence, the plaintiff produced nine witnesses, out of whom P.W.7 was the plaintiff himself and P.Ws. 1 and 8 were formal witnesses, whereas, P.Ws. 2, 3, 4, 5, 6 & 9 fully supported the claim of

the plaintiff with respect to partition between the plaintiff and defendant No. 1 on 15.07.1970 and relationship of landlord and tenant between the plaintiff and defendant No. 1 as well as the bona requirement of the plaintiff with respect to the suit premises.

9. On the other hand, the defendants produced three documentary evidence, including Ext. A & Ext. A/1, which were school leaving certificates dated 03.07.1998 and 06.04.1990 of two sons of defendant No. 1; Ext. B is the electricity bill dated 07.12.1993 sent to defendant No. 1 and Ext. C is the certificate issued by Anchal Adhikari on a plain paper with regard to the income of defendant No. 1.

10. In addition to the aforesaid documentary evidence, the defendants produced five witnesses, out of whom D.W. 1 was defendant No. 1 himself, whereas, D.W.2 and D.W.4 were defendants No. 2 and 3, respectively. Defendants No. 3 and 5 merely denied any partition in the family.

11. After considering the aforesaid pleadings and evidence of the parties, the Munsif, Biharsharif, Nalanda, decreed the eviction suit on contest with cost vide his judgment dated 13.11.2007 after arriving at the following findings:

(a) It is proved by registered sale-deed dated 30.05.1970 (Ext.8) that the suit premises was purchased from the original owner in the names of the plaintiff and defendant No. 1.

(b) Although the defendants had challenged the memorandum of partition dated 15.08.1970 (Ext.7), but they never prayed for verification of the signature of defendant No. 1 and comparison thereof by any expert.

(c) Defendant No. 1 as well as his other brother Surendra Prasad deposed as witnesses in Complaint Case No. 501C/1990 and admitted their signatures on the Panchnama dated 22.02.1983, which was exhibited in the said case along with the memorandum of partition dated 15.08.1970.

(d) The other brother of defendant No. 1, namely, Manik Chand filed Complaint Case No. 501C/1992 against the plaintiff for offences punishable under Sections 468, 471 and 420 of the Penal Code alleging memorandum of partition dated 15.08.1970 as forged, but the said complaint case filed by the said Manik Chand was lost not only before the trial court but also before the High Court, which is apparent from Exts. 9 and 10.

(e) From the facts and evidence, it is incidentally apparent that there was a partition between the plaintiff and his brothers on 15.08.1970 on the basis of which memorandum of partition dated 15.08.1970 (Ext.7) was prepared and the ancestral and joint properties were partitioned in which the suit premises fell into the share of the plaintiff. After the said partition, the name of the plaintiff was recorded in the Municipality as is clear from Exts.4 and 5 as well as from municipal receipts which were issued in his name vide Exts. 2 series. The defendants have failed to disprove the partition by any valid material whatsoever.

(f) The plaintiff is incidentally found to be owner of the entire suit premises. The plaintiff has been able to prove by valid evidence that there was relationship of landlord and tenant between the parties and that the rent of the premises was Rs. 400.00 per month, which was earlier paid by defendant No. 1.

(g) The plaintiff has also proved by reliable evidence that he has got bona fide personal requirement of the suit premises for his family.

(h) The requirement of the plaintiff will not be satisfied by partial eviction of the defendants from the suit premises.

12. The said order of eviction has been challenged by defendant No. 1-petitioner in the instant civil revision. Learned Counsel for defendant No. 1-petitioner has submitted that Ext. 3 is the school leaving certificate of defendant No. 1, which shows his date of birth to be 02.03.1953 and hence according to the said document itself it is quite apparent that on the alleged date of partition dated 15.08.1970 he was a minor. It was also averred that the memorandum of partition dated 15.08.1970 (Ext. 7) is an unregistered document and it cannot effect partition by itself and it only shows the nature of arrangement arrived at between the parties. In this regard, he placed reliance upon a decision of the Apex Court in case of Roshan Singh and Ors. v. Zile Singh and Ors. reported in AIR 1988 S.C. 881.

13. It was also claimed on behalf of the petitioner that the signatures of the sons and Lala Prasad on the alleged memorandum of partition dated 15.08.1970 (Ext. 7) were denied, but the plaintiff never took any step nor the trial court even ordered for appointment of any expert to verify the said signatures. In this regard he relied upon a decision of the Apex Court in case of U.R. Virupakshapa v. Sarvamangala and Anr. reported 2009 (2) S.C.C. 177.

14. Learned Counsel for the petitioner also claims that there is no specific finding of the trial court with regard to relationship of landlord and tenant between the parties rather it is only stated that when separation was proved, defendant can only be a tenant, which finding is absolutely frivolous and without any specific finding with regard to the relationship of landlord and tenant, the suit for eviction cannot be allowed. Reliance was placed upon two decisions of this Court in case of Chandeshwar Singh and Ors. v. Ramchandra Singh and Ors. reported in 1973 P.L.J.R. 393 as well as in case of Munrika Kuer v. President, Bihar State Religious Trusts and Ors. reported in 1968 B.L.J.R. 197.

15. With regard to the other points, learned Counsel for the petitioner raised his contention that the finding of partial eviction in the impugned judgment has been recorded in a most arbitrary and cursory manner. Hence, according to him, the impugned judgment is fit to be set aside.

16. On the other hand, learned Counsel for the plaintiff opposite party has submitted that the learned court below, after considering the entire evidence on record, produced by both the parties, which is apparent from paragraph No. 8

thereof, passed the impugned order, which is in accordance with the principles of law and the materials on record. It was also stated that since the tenancy was not on the basis of any deed or kiraynama, no document was produced with respect thereto, but the same was fully proved by the statements of the witnesses produced by the plaintiff, which could not be validly disproved by the defendants by any material whatsoever.

17. So far question of partial eviction is concerned, it was stated on behalf of plaintiff-opposite party No. 1 that although the plaintiff had clearly pleaded and proved that the partial eviction of the defendants from the suit premises would not satisfy his requirement, but the defendant-petitioner never made any statement either in his pleadings or in his evidence that his partial eviction from the suit premises would satisfy the personal requirement of the plaintiff. However, the said aspect of the matter has been fully considered in paragraph No. 3 of the impugned judgment, wherein, the court below had rightly held that the plaintiff required the entire suit premises for expansion of his business for the benefit of the family. It was also claimed by learned Counsel for opposite party No. 1 that the findings of facts of the court below were based on proper scrutiny of the evidence and hence the said judgment cannot be interfered with in this civil revision.

18. Opposite parties No. 2 and 3, who were defendants No. 2 and 3 in the lower court and were alleged to be the sub-tenants of the petitioner (defendant No. 1), did not appear in this case. It was specifically stated by learned Counsel for the petitioner that they were merely proforma defendants in the eviction suit and now they have left the suit premises and are not in possession of any portion of the suit premises and hence they are neither proper parties nor necessary parties in the instant civil revision and are not required for the adjudication of the instant civil revision.

19. So far first question raised by learned Counsel for the petitioner is concerned, it is quite apparent from the pleadings of the parties as well as evidence on record including the memorandum of partition dated 15.08.1970 (Ext.7) that it was executed by Lala Prasad along with all his sons including defendant No. 1 and hence the said deed of partition was executed by a natural guardian of defendant No. 1 even if defendant No. 1 was a minor. It may further be noted that even according to the claim of the defendant-petitioner, he attained majority in 1971 but it is quite apparent that he never challenged the said partition after attaining majority rather the said partition was immediately given effect to and the respective parties including defendant No. 1-petitioner, who had also signed the memorandum of partition, got the respective properties, allotted to them by the said partition, recorded in their names and, accordingly, name of plaintiff-opposite party No. 1 was duly mutated and recorded with respect to the suit premises and municipal receipts were issued in his name, which is quite apparent from Exts. 2 series, Ext.4 and Ext.5.

20. So far the decision of the Apex Court in case of Roshan Singh and Ors.

(supra) is concerned, it is specifically held therein that the partition, unlike sale or transfer, which consists in its essence a single act, is a continuing state of facts and as such it does not require any formality, and, therefore, if parties actually divide their estate and agree to hold in severalty, there is an end of the matter. It is also held that a mere agreement to divide does not require registration, but if the writing itself effects a division, it must be registered. In the said circumstances, a deed of partition, which itself effects a division, has to be registered but a memorandum of partition does not itself effect a division, rather it merely records the division of the properties made earlier with respect to the parties and gives partition lists, which are mere records of previously concluded partition between the parties. It has to be admitted, though it is unregistered, to prove the fact of partition. In the said circumstances, the said memorandum of partition dated 15.08.1970 (Ext.7) was admissible in evidence for proving the fact of partition.

21. So far the second point raised by the petitioner is concerned, it is true that signatures of Lala Prasad and his sons over the memorandum of partition dated 15.08.1970 (Ext.7), were denied by the defendant-petitioner, but since the said document was relied upon and produced by the plaintiff in support of his case claiming the signatures over the said document to be of Lala Prasad and his sons, the onus was upon the defendant to prove that the said signatures were not genuine, but from the record it is quite apparent that the defendants never took any step nor made any prayer before the court below for appointment of any expert to verify the signatures upon the aforesaid memorandum of partition. In the said circumstances, the defendant-petitioner cannot be allowed to take advantage of his own wrong. Furthermore, the signatures of defendant No. 1 and his brother on the said memorandum of partition dated 15.08.1970 (Ext.7) were fully proved by oral evidence as well as Ext.9, which is a decision passed in the complaint case, in which the allegation of forgery has been found to be false. The said decision was affirmed by this Court vide its order passed in the S.L.A. Case, which is Ext.10. In these circumstances, the decision of the Apex Court in case of U.R. Virupaksha (supra) is not applicable to the instant matter.

22. So far the third point raised by learned Counsel for the petitioner is concerned, it is quite apparent that the trial court had gone into the question of title and ownership of the plaintiff over the suit properties incidentally and only after finding that the plaintiff had been able to incidentally prove his title over the suit properties, the trial court dealt with the matter as to whether the plaintiff was the landlord of the suit premises in paragraphs No. 8 and 9 of the impugned judgment. Furthermore, the relationship of landlord and tenant between the plaintiff and defendant No. 1 was fully proved by the plaintiff by oral evidence as the tenancy being oral in nature there was no document with respect thereto. Not only the plaintiff's deposition as P.W.7 proved his pleading with respect to the relationship of landlord and tenant between the parties as well as his personal requirement, but he was fully supported in that regard by other witnesses, namely, P.Ws. 2,3,4,5,6 and 9 also. The said witnesses were

consistent and reliable and the said claim could not be disproved by the defendants as D.Ws. 1,2 and 4 were defendants themselves and were interested witnesses, whereas, the remaining two D.Ws. 3 and 5 could not validly disprove the specific claim of the plaintiff nor could they show the basis of the possession of the defendants. In the said circumstances, it is quite apparent that the plaintiff-opposite party No. 1 has been able to prove relationship of landlord and tenant between the parties as well as his bona fide personal requirement of the suit premises. Thus, the trial court was fully justified in arriving at its finding on the said issues.

23. So far the fourth point raised by learned Counsel for the petitioner is concerned, the trial court has specifically framed Issue /no.(v) as to whether the requirement of the plaintiff would be satisfied by partial eviction of the defendants from the suit premises and elaborately dealt with it in paragraph No. 13 of its judgment. It may be noted in this connection that the defendants either in their pleadings or in their evidence had nowhere stated that the requirement of the plaintiff would be satisfied by partial eviction and the nature of the requirement of the plaintiff also shows that for the requirements of his family the plaintiff wanted to expand his business in the suit premises. Hence, considering the requirement of the plaintiff and accommodation available in the suit premises, it is quite apparent that the partial eviction of defendant No. 1 from the suit premises would not satisfy the plaintiff's need.

24. It may be noted here that this case has been filed under the Proviso to Sub-section (8) of Section 14 of the Act, according to which this Court has to see as to whether order of eviction passed by the court below is according to law. In the instant case, it is found that the court below has exhaustively considered various aspects of the case on the basis of proper scrutiny of the pleadings and evidence of the parties and only thereafter it has recorded its findings. Hence, this Court does not find any scope for interference with the said order of eviction.

25. Accordingly, this civil revision is dismissed, but, in the facts of this case, there will be no order as to costs.