

(2003) 12 GAU CK 0061

In the Gauhati High Court

Case No : Civil Revision Petition No. 247 of 1999

Daroga Prasad Kanu

APPELLANT

Vs

Monoranjan Ghose and Others

RESPONDENT

Date of Decision : 04-12-2003

Acts Referred:

Assam Urban Areas Rent Control Act, 1972 — Section 5

Citation : (2004) 2 GLR 38 : (2005) GLT 392 Supp

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : H.A. Sarkar, for the Appellant; S. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—Heard Mr. H.A. Sarkar, learned counsel for the petitioner and Mr. S. Dutta, learned counsel for the respondent.

2. This civil revision u/s 115 CPC is directed against the judgment and decree passed by the Civil Judge, (Senior Division), Dhubri in Title Appeal No. 16/1997, whereby a decree passed by the trial court in Title suit No. 140/90 was affirmed.

3. The facts of the present case in brief are that the plaintiff Sri Monoranjan Ghose was the owner of the suit premises, which was rented out to the petitioner/defendant. The plaintiff instituted the said Title Suit praying for eviction of the defendant on the ground of bona fide requirement, default of payment of rent and on the ground that the premises are required for reconstruction. The suit was contested by the defendant by filing a written statement denying the pleas raised by the plaintiff. The trial court framed as many as 9 issues out of which issue No. 5, 6 and 7 are relevant issues. The other issues are not pressed before us and they are also relevant to decide the matter. Issue Nos. 5, 6 and 7 read as follows :-

"5. Whether the defendant is a defaulter for non-payment of rent?

6. Whether the suit premises is bona fide required by the plaintiff?

7. Whether the suit house, become dilapidated and requires to be reconstructed?"

4. The trial court decided issue No. 5 against the plaintiff landlord and issue Nos. 6 and 7 against the defendant and accordingly the suit was decree for eviction. The petitioner/defendant thereafter preferred Title Appeal No. 16/97 and the appellate court by the impugned judgment affirmed the decision of the trial court as regards bona fide requirement. The trial court as well as the appellate court relied on the evidence of the plaintiff who had stated that she is a diploma holder in tailoring and at present she is unemployed and she intends to start her tailoring business in the suit premises and the plaintiff has got no other space to start her business, on the other hand the defendant has got his own house and land. The plea of bona fide requirement was accepted. The Court also accepted the plea that the suit premises require to be reconstructed, as it was in a dilapidated condition and very old one. The fact that the suit premises are in a dilapidated condition was admitted by the petitioner also by stating that it was constructed during the British age. The petitioner before us has failed to show any illegality or irregularity in the concurrent findings of the courts below.

5. There is another aspect of the matter also. The learned counsel for the respondent/plaintiff has submitted that against the rejection of plea of defaulter by the trial court, the plaintiff had preferred Title Appeal No. 18 and the said appeal was allowed and the appellate court held that the defendant is a defaulter of payment of rent. The said decision of the appellate court has not been challenged by the petitioner/defendant and as such the same has attained finality. The law is well settled that a tenant can be evicted on any of the grounds provided under the Assam Urban Areas Rent Control Act and when the plea of the plaintiff has been established the petitioner/defendant is liable to be evicted.

6. In view of the above, we find no merit in this revision. The revision is accordingly dismissed.

7. The petitioner is given three months time to hand over vacant possession of the suit premises to the decree holder.