

(2007) 07 PAT CK 0070

In the Patna High Court

Case No : Civil Revision No. 2089 of 1999

Hindustan Petroleum Corporation Ltd. and Another

APPELLANT

Vs

Rajeshwar Prasad

RESPONDENT

Date of Decision : 03-07-2007

Acts Referred:

Citation : (2007) 07 PAT CK 0070

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—This Civil Revision has been filed under the proviso to Sub-section (8) of Section 14 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the "Act" for the sake of brevity) by the defendants against judgment/order of their eviction dated 12.08.1999 by which the learned Munsif, I, Hajipur (Vaishali) decreed Eviction Suit No. 01 of 1999 which was filed by the sole opposite party.

2. The aforesaid suit was filed by the sole opposite party for eviction of the petitioners (defendants) on the grounds of expiry of the fixed period of lease as well as personal necessity of the landlord (opposite party) with respect to the suit premises for opening a business of his family.

3. The claim of the plaintiff-opposite party was that the suit property was purchased by the plaintiff from the original owner Ram Khelawan Rai by registered sale deed dated 14.08.1959, whereas the adjacent, northern land was purchased by plaintiff's brother Shyam Prasad and they started a petrol Dump outlet in partnership in the said purchased premises. Plaintiff also averred that subsequently by a deed of lease dated 30.5.1962 (Ext-2) they leased their property to Caltex India Limited and the said deed of lease was signed by the aforesaid Shyam Prasad and Rajeshwar Prasad (plaintiff) as well as by the then Manager of the said Company on its behalf. It was also plaintiff's claim that the said lease was for only a period of ten years and its rent was fixed at Rs. 210.00 per month payable by the 5th of every succeeding English calendar Month which was subsequently enhanced to Rs. 327.00 per month.

4. It was further claimed by the plaintiff that in the meantime the father of the plaintiff Gauri Shanker Sah died and the defendant, namely Caltex India Limited and its Manager (defendants) did not vacate the suit premises, although 30 years expired in the year 1992 and the defendants stopped payment of rent to the plaintiff and had become defaulters. It was also averred by the plaintiff that his son and grand-son had bonafide personal requirement of the suit premises as they wanted to start their own business of motor parts for which the locality was best suited and the plaintiff had the means to bear the expenses for opening such a shop, but inspite of plaintiff's lawyer's notice, the defendants refused to vacate the suit premises. However, the suit was filed by the plaintiff for eviction of the defendants only on the grounds of expiry of fixed period of lease and personal necessity reserving his right to file another suit for other reliefs as stated in paragraphs 9, 14 and 15 of the plaint.

5. Notices were issued to the defendants-petitioners by ordinary processes as well as by registered post, but inspite of that the defendants did not appear in the suit and hence the suit was fixed for ex parte hearing and was finally heard ex parte. The plaintiff adduced four witnesses, out of whom P.W.1 was the plaintiff himself who proved the expiry of lease and bonafide personal requirement. The plaintiff also produced several documents, out of which Ext-1 series were Government rent receipts, Ext-2 was the deed of agreement dated 30.05.1962, Ext-3 series were notices, Ext-4 was the acknowledgment receipt and Ext-5 was the sale deed dated 14.08.1959 executed by the original owner Ram Khelawan Rai in favour of the plaintiff.

6. Considering the claim of the plaintiff, learned Trial Court framed three issues:

(i) Whether there is a relationship of landlord and tenant between the plaintiff and the defendant?

(ii) Whether the defendants are defaulters in payment of rent?

(iii) Whether the plaintiff had personal necessity of the suit premises?

7. It appears that issue No. II was framed by the learned trial court in confusion as instead of that it should have framed an issue regarding expiry of fixed period of lease as per the claim of the plaintiff. However, since the suit for eviction was not filed on the ground of default in payment of rent there was no occasion for the trial court to give any finding with regard to default in payment of rent and hence the learned court below confined its findings to the question of relationship of landlord and tenant, between the parties, expiry of the fixed period of lease and personal necessity of the plaintiff. After going through the materials on record, learned trial court found that there was relationship of landlord and tenant between the parties and that the period of lease had expired and the plaintiff had genuine and bonafide requirement of the suit premises for starting a business for his family and accordingly decreed the suit on 12.8.1999.

8. Against the said ex parte judgment and order of eviction, the defendants filed

a Miscellaneous Case under Order IX Rule 13 of the CPC on 08.09.1999 before the trial court, and the same was dismissed on 14.06.2000 on merits, but the defendants did not challenge the said order of dismissal of Miscellaneous Case before any higher court. However, during the pendency of the aforesaid Miscellaneous Case, the defendants filed the instant Civil Revision on 12.10.1999 under the proviso to Sub-section (8) of Section 14 of the Act. as the impugned judgment and order of eviction was passed only on the grounds of personal necessity and expiry of the period of lease.

9. The claim of the defendants-petitioners in the instant case is that although the deed of lease dated 30.5.1962 was for a period of 10 years, but it was subsequently extended up to 30 years in favour of Caltex India Limited which is now named as Hindustan Petroleum Corporation Limited. The petitioner further claimed that the lease was a conclusive lease executed by two brothers, who were partners in the business of Retail Outlet, and the suit by one of them was not maintainable. It is also averred that the lessor never sent any notice to the lessees about any partition of the suit premises or splitting of tenancy and hence there was no occasion for one of them to file the suit for eviction of the lessees. Learned Counsel for the petitioner further stated that in the entire plaint the defendants' eviction was sought from vacant land and there was no mention about any building standing thereon, hence the provision of the Act was not applicable to the instant case and otherwise also such suit cannot be maintained in absence of any notice under the provision of Section 106 of the Transfer of Property Act, 1882. Learned Counsel for the petitioners also contended that the finding of the trial court regarding default is not correct as the petitioners are regularly sending rent to the opposite party through money orders which are being refused by the opposite party only to make out a case of default.

10. It was the further claim of the defendants-petitioners that no valid notice of the eviction suit was ever served upon the defendants, specially when the defendants-petitioners are running public utility service and hence an opportunity should have been given to it as public at large would be benefited. Learned Counsel for the defendants-petitioners further stated that the defendant-petitioner No. 1 is a Company which appointed a counsel for looking after the case and handed over papers and vakalatnama to him to do the needful, but the said learned Counsel did not take any step in the suit due to which it was decided ex parte. He further averred that the defendants-petitioners should not be allowed to suffer due to misdemeanour or inaction of their counsel. In this connection, he relies upon a decision of the Hon''ble Apex Court in case of Rafiq and Another Vs. Munshilal and Another, .

11. So far the question of personal necessity is concerned, learned Counsel for the defendants-petitioners denied the same and submitted that personal necessity of the plaintiff-opposite party was not properly proved as all the witnesses who deposed on behalf of the plaintiffs were interested persons and the defendants-petitioners had no opportunity to contradict the said evidence as

the suit was decreed ex parte. He also argued that no finding has been given by the learned trial court with regard to partial eviction, although the suit land measures 2 katha, whereas the necessity of the plaintiff-opposite party according to him was for opening a motor parts shop. Hence he has submitted that due to the failure of the court below to give any finding on partial eviction, the order of eviction is absolutely illegal as has been held by this Court in case of Dr. Hemchandra Jha Vs. Smt. Anjana Lal, .

12. On the other hand, learned Counsel for the plaintiff-opposite party submitted that by registered sale deed dated 14.8.1959 (Ext-5). It was only the plaintiff-opposite party who had purchased the suit premises measuring 2 Kathas and only the same was the subject matter of the eviction suit. He also averred that a bare reading of the plaint and the lease agreement dated 30.05.1962 (Ext-2) would show that there were several constructions on the land in question and hence the suit premises was fully covered by the definition of building under the provision of Section 2(b) of the Act and there was no applicability of any provision of Transfer of Property Act to the instant case.

13. Learned Counsel for the plaintiff-opposite party also argued that he had not filed the suit for eviction on the ground of default in payment of rent, rather he had filed the said suit for eviction on the grounds of personal necessity of the plaintiff and expiry of the fixed period of lease and hence, when the suit was decreed on both the grounds, there was no occasion for the learned court below to consider the question of partial eviction. He also averred that the question of personal necessity was fully proved by the plaintiff by adducing valid and reliable evidence, whereas the expiry of fixed period of lease is quite apparent from the admitted lease agreement dated 30.05.1962 (Ext-2) itself. He further argued that the said agreement was only for a period of 10 years, but even if the claim of defendants-petitioners that the said lease was extended to 30 years is accepted, the period of lease admittedly expired on 30.5.1992, and hence the claim of the plaintiff-opposite party was justified and there was nothing on record in the suit, nor there is any material on record in the instant Civil Revision to show that the said lease is still existing. Learned Counsel for the plaintiff-opposite party has also submitted that the defendants-petitioners cannot raise at this stage the plea of non-appearance of their counsel in the trial court due to any reason as he had already filed a Miscellaneous Case raising all those points and the said Miscellaneous Case was dismissed on merits, but that order was never challenged by the defendants-petitioners.

14. After hearing learned Counsel for the parties and after perusing the materials on record including plaint, revision petition and the judgment of the trial court, it appears that defendants-petitioners, although admitting the relationship of landlord and tenant, are completely confused with respect to the grounds of eviction taken by the plaintiff-respondent. Petitioners have assumed that the suit for eviction was on the ground of personal necessity and default in payment of rent and this confusion was aggravated due to a mistake committed by the

learned court below in framing issue No. (ii) with respect to default in payment of rent, although issue No. (ii) should have been with respect to expiry of fixed period of lease. From paragraphs 9 and 14 of the plaint as well as from the evidence adduced on behalf of the plaintiff, it is quite apparent that the suit was filed only on the grounds of expiry of fixed period of lease and personal necessity of the plaintiff, whereas in paragraph 15 of the plaint it has been specifically mentioned that the suit with respect to rent etc. would be separately filed. In that view of the matter inspite of committing a technical mistake with respect to Issue No. (ii), the learned court below decided only the questions of expiry of fixed period of lease and personal necessity of the plaintiff after arriving at specific findings regarding those issues on the basis of pleadings and evidence as would be apparent from the last three paragraphs of the impugned judgment. It appears that the defendants-petitioners were also aware that suit and the impugned judgment were only on the grounds of expiry of fixed period of lease and personal necessity of the plaintiff and hence they had challenged the said order of eviction by way of this Civil Revision under proviso to Sub-section (8) of Section 14 of the Act. Had they been of the view that the suit and order for eviction were also on the ground of default in payment of rent, the defendants-petitioners would have filed Title Appeal instead of the instant Civil Revision. Hence, the instant suit was filed by the plaintiff-opposite party for eviction of the defendants-petitioners only on the grounds of expiry of fixed period of lease and personal necessity and the learned trial court rightly considered the said issues while deciding the suit.

15. The Eviction suit had been filed by the plaintiff only with respect to two kathas of land which he had purchased by registered deed of sale dated 14.08.1959 (Ext-5) in his own name from the admitted owner. Hence, the plaintiff had full right to file the suit alone for eviction of the defendants-petitioners from the said suit premises. Furthermore, even if the business of retail outlet was in partnership between the plaintiff and his brother, who jointly executed the deed of lease in favour of the defendants, one of the co-landlords, namely the plaintiff, had full right to file the suit, for eviction of the tenant on the ground of his bonafide personal necessity and hence the suit was quite maintainable. Reference in that regard may be made to the decisions of the Hon"ble Apex Court in case of Pal Singh Vs. Sunder Singh (Dead) by Lrs. and Others, and in case of Sri Ram Pasricha Vs. Jagannath and Others, . The same principle can be applied in cases of expiry of fixed period of lease specially when the other co-landlord never objected to the plaintiff's claim of eviction.

16. So far the question of applicability of the Act in the instant case is concerned, the claim of the defendants-petitioners is that in the description of the suit property given in the schedule of the plaint only two kathas of land is mentioned. But from the perusal of the statements made in the plaint specially paragraph-7 and also from the lease agreement (Ext-2) and the Schedule attached thereto, it becomes quite apparent that there were several constructions on the land in question which was admitted by the defendants in the said agreement and hence

it is squarely covered by the definition of "building" u/s 2(b) of the Act, according to which "building" means any building, or hut or a part of the building or hut, let or to be let separately for residential or non-residential purposes, and includes the garden, grounds and out-houses, if any, appurtenant to such building or hut or part of such building or hut. This view finds support from a decision of this Court in case of Mohammad Shah Alam Vs. Abdul Hamid, as well as from a decision of the Hon'ble Apex Court in case of M/s. Shaw Wallace and Co. Ltd. Vs. Govindas Purushothamdas and Another, . It may be noted in this regard that the above decision of the Apex Court is with respect to a case of Tamil Nadu Buildings (Lease, Rent and Control) Act, 1960, but Section 2(2) of that Act is exactly the same as Section 2(b) of the Bihar Act. Even in case where originally the premises was a vacant land and subsequently the tenant makes construction and pays rent for the entire premises, the said premises cannot be legally called a vacant land and cannot be legally deemed to stand out of the definition of "building" as provided in Section 2(b) of the Act. This view finds support from a decision of this Court in case of Shri Binay Kumar Maheshwari Vs. Fanindra Prasad Mishra, . In the aforesaid facts and circumstances, it is hereby held that provisions of the Act would be applicable to the facts and circumstances of the instant case, whereas the provision of Transfer of Property Act would not be applicable.

17. Ext-2, namely the agreement of lease dated 30.5.1962, is an admitted document. In that agreement the period of lease has been specifically mentioned as 10 years and hence the said lease expired on 30.5.1972, although there is nothing to support the defendants' assertion that the lease was extended subsequently up to thirty years, but even accepting the claim of the defendants-petitioners, the lease, even according to their claim, expired on 30.5.1992. There is neither any claim by the defendants-petitioners even in this Court, nor is there any material to show that thereafter the lease was ever extended. It is well settled that acceptance of rent from tenant by landlord after expiration of contractual tenancy will not mean that the landlord has assented to a new contractual tenancy, as on determination of lease due to its expiry, it is the duty of the lessee to vacate the lease hold, but if he continues and the landlord accepts the rent, he becomes a tenant on sufferance and holds merely through the laches of the landlord. This view is supported by a decision of the Hon'ble Apex Court in Ganga Dutt Murarka Vs. Kartik Chandra Das and Others, . This view also finds support from various decisions of this Court such as in case of Rajeshwar Prasad Shahi Ghulam v. Rasul Khan and Ors. reported in 1969 BLJR 850 and in case of Raj Kumar Prasad Vs. Uchit Narain Singh, . In the said circumstances, the expiry of the fixed period of lease is well proved and the defendants-tenants are liable to be evicted on that score alone.

18. So far the question of personal necessity is concerned, it is fully proved by the plaintiff by his own pleadings and evidence which have not been disproved by the defendants-petitioners by any material whatsoever even in the instant case. Merely statement of a tenant that the plaintiff had no bona fide requirement

cannot be sufficient, as the defendants-petitioners have to prove from valid materials that the plaintiff or his son or his grand son are employed somewhere else and have no requirement of the suit premises. Defendants having failed to disprove the same, the depositions of plaintiff's witnesses are sufficient to prove bonafide personal requirement of the plaintiff for his family.

19. It is true that the learned court below has not given any finding regarding partial eviction while deciding the issue of personal necessity, but when eviction is sought on two grounds including personal necessity and the eviction suit is decreed on both counts, the advantage of partial eviction cannot be availed by a tenant specially in a Civil Revision under the provision of the Act. Hence, even if such finding regarding partial eviction is not given by the court, the said judgment/ order of eviction cannot be assailed on that ground. This view finds support from two decisions of this Court in case of Gaur Chandra Sen Vs. Yamuna Prasad, and in case of Jyoti Pd. Verma and Others Vs. Basanti Devi and Another, . Thus, it is quite apparent that the plea of partial eviction under the Act will be available to the defendants-petitioners only where the suit is based on the sole ground of personal necessity, but where the suit is filed on composite grounds and it is decreed on both the counts, the plea of partial eviction as provided under proviso to Section 11(1) (c) of the Act cannot be available to the defendants-petitioners.

20. Another plea has been raised by the defendants-petitioners that no proper notice was given to them in the suit due to which they could not appear and contest the suit which was ultimately decreed ex parte. From the facts and circumstances of this case, it is quite apparent that against the aforesaid ex parte decree the defendants-petitioners filed Miscellaneous Case under Order IX Rule 13 of the CPC raising the same plea of absence of notice, information or knowledge, but the said Miscellaneous Case was dismissed on merits and the claim of the defendants-petitioners was rejected as defendants-petitioners were found to have full notice, knowledge and information about the said suit, but they intentionally did not appear to contest the eviction suit. The said dismissal of Miscellaneous Case was never challenged by the defendants-petitioners and the same attained finality. Hence, the petitioners cannot legally be allowed to raise the same plea at this stage again. Furthermore, the eviction suit was tried in accordance with the provision of Section 14 of the Act and the statement of fact made in the plaint will be legally deemed to have been admitted by the tenant due to their intentional non-appearance in the eviction suit. Hence, the learned court below was quite justified in passing the order/ judgment of Eviction appreciating that a case for eviction has been properly made. This view finds support from a decision of this Court in case of Madan Sah Vs. Laleshwar Choubey and Another, .

21. Considering the entire matters as aforesaid this Court does not find any merit in the instant Civil Revision, which is, accordingly, dismissed and the judgment and order of eviction passed by the learned court below is affirmed.