
(2006) 05 GAU CK 0090
In the Gauhati High Court

Keshab Ch. Singha and Others

APPELLANT

Vs

Moulovi Abdul Matin Choudhury and Others

RESPONDENT

Date of Decision : 18-05-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2006) 3 GLR 635 : (2006) 2 GLT 731

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D. Biswas, J.—This revision petition u/s 115 of the CPC is directed against the judgment and decree dated 31.8.2004 passed by the learned District Judge, Karimganj in Title Appeal No. 8/2003.

2. I have heard Mr. DC Borah, learned Counsel for the revision petitioners and Mr. B.K. Goswami, learned senior counsel assisted by Mrs. T. Goswami, learned Counsel for the respondents.

3. The respondents, as plaintiffs, instituted Title Suit No. 306/83 in the Court of Civil Judge (Jr. Divn.) No. 1, Karimganj praying for a decree for eviction of the principal defendants (revision petitioners), recovery of khas possession and for payment of arrear rent. Plaintiffs' case is that they are the owners of the suit premises which they inherited from their predecessor-in-interest. A part of the land and houses described in the schedule to the plaint was let out on rent to the defendant Nos. 1 and 2 on a rent of Rs. 65 per month. On the same terms and conditions, the other part was also let out to the defendant Nos. 1 and 2 on a rent of Rs. 65 per month. The rent, as agreed, was payable on the last day of every Bengali month. The defendant Nos. 1 and 2 paid rent till the month of Kartik 1389 B.S. in respect of one part and till the month of Kartik 1380 B.S. in respect of the other part. Thereafter, they defaulted, but continued to occupy the suit premises. Therefore, they are liable to be ejected from the said land.

4. The defendant Nos. 1, 9 and 10 contested the suit. Their case is that they have been occupying the suit premises by doing business in the name and style "Babujee Thakurjee Mistanna Bhandar" since the time of their predecessor Ram Badan Singh and they have been regularly paying the rent to the landlords. The plaintiffs used to purchase eatables from the shop of the defendant No. 1 and the value thereof was adjusted against the house rent. The defendant No. 1 has always paid rent as per convenience of the landlord, who used to collect the same either early or half-yearly. There was no definite mode of payment of rent.

5. The learned Civil Judge (Jr. Divn.) No. 1, Karimganj by the judgment dated 30.9.2002 dismissed the suit holding, inter alia, that the defendants are not defaulters.

6. The aforesaid judgment delivered by the learned Civil Judge (Jr. Divn.) No. 1, Karimganj was in challenge in Title Appeal No. 8/2003 before the learned District Judge, Karimganj. The learned District Judge by the judgment and decree dated 31.8.2004 allowed the appeal, set aside the judgment and decree passed by the learned Civil Judge (Jr. Divn.) No. 1, Karimganj and decreed the suit for eviction and for arrears of rent. This revision has been preferred by the defendants challenging the aforesaid judgment of the learned First Appellate Court.

7. The powers of this Court u/s 115 of the CPC is primarily limited to the question of jurisdiction. Interference with the judgment of the court below in exercise of powers u/s 115 of the CPC is permissible when the subordinate court appears to have exercised a jurisdiction not vested in it by law or to have failed to exercise a jurisdiction so vested or to have acted in exercise of its jurisdiction illegally and with material irregularities.

8. During the course of submission, the question of jurisdiction has not been argued. There is also no dispute with regard to the jurisdiction. Mr. Borah, learned Counsel for the petitioners argued that the plaintiffs failed to prove that the defendants are defaulters. His argument is based on the proposition that the rent was never paid or collected from month to month and the same was adjusted against the amount due on account of purchase of eatables from the defendant's shop from time to time, either annually or half yearly. The mode of collection/payment of rent being uncertain, the learned First Appellate Court erred in coming to the conclusion that the petitioners are defaulters within the meaning of Section 5 of the Urban Areas Rent Control Act.

9. The learned First Appellate Court dealt with the matter relating to the plea of default from para 14 onwards of the impugned judgment. From the evidence of P.W. 1 Sakil Ahmed Choudhury as well as from the rent receipts exhibited, the learned First Appellate Court came to the conclusion that the accumulated rent for months together were paid by the petitioners and accepted by the respondents without any objection. The rent was obviously not collected or paid month to month. The mode of payment was contrary to Kerayanama (deed of lease), Exhibits-1 and 2. I see no reason to find fault with the decision of the

learned First Appellate Court, particularly in view of the decision of this Court in *Ram Karanji More v. Keshar Dev Jalan* 1996 (2) GUT 526.

10. It would appear that the rent was paid for one part of the tenancy till the month of Kartik 1379 B.S. Thereafter, the rent for the next ten months was deposited in the court. The rent for the other part of the tenancy was not at all paid or deposited. P.W. 1 deposed that no rent was offered to them before it was deposited before the court, in order to save oneself from being a defaulter, a tenant has a duty to prove that the landlord refused to accept the rent on being tendered. In the absence of an offer and refusal thereof, a tenant cannot deposit the rent before the court. Deposit of the rent before the court without offering the same to the landlord and refusal thereof, is contrary to the provisions of Sub-section (4) of Section 5 of the Act. The authority in this behalf is available in *Rap Chand Daftary v. Ashim Ranjan Modak and Anr.* (2000) 2 GLR 402.

11. In the instant case, there is no evidence to show that the relationship between the parties was so strained that it was not possible for the tenant to offer rent to the landlord. Rather, it is in the evidence that they are still having good relationship. D.W. 1 has made a categorical statement to this effect. Therefore, deposit of rent for ten months before the court by the tenant for one part of the tenancy is contrary to what is provided in Sub-section (4) of Section 5. From that point of view, the learned First Appellate Court appears to have rightly decided that the petitioners are defaulter as alleged by the respondents.

12. It may be mentioned here that all the rent deposit cases were dismissed for default on the part of the petitioners in taking steps for service of notice, if a tenant is found to be a defaulter for non-compliance of the provisions of Section 5(4) of the Act, he continues to be so even if the landlord withdraws the same deposited in the court contrary to law. The mischief of statutory default does not obliterate because of such withdrawal.

13. There is no evidence on record to show that the rent has been deposited till date. A tenant has the duty to deposit rent regularly even if a suit is instituted against him for eviction. In *Hasmat Ali Vs. State of Assam*, , a Division Bench of this Court held that if the court finds that the tenant has defaulted in payment of rent during the pendency of the ejectment proceeding, the court would be within its jurisdiction to pass an order of ejectment treating the tenant as defaulter and pass appropriate orders thereon in the same suit. The landlord cannot be subjected to file successive suits for ejectment on each occasion of default by the tenant. Viewed from this angle, the petitioners are liable to be evicted.

14. Regarding bona fide requirement, the learned First Appellate Court found that the respondents have not been able to show that the suit premises are required bona fide for their own use. This decision being in favour of the petitioners, call for no interference.

15. The discussion above shows that the petitioners are liable to be evicted from the suit premises on the ground of default alone. The learned First Appellate

Court does not appear to have committed any material irregularity warranting interference by this Court.

16. In the result, the revision petition is dismissed.