
(2010) 04 JH CK 0142
In the Jharkhand High Court

Mahadeo Prasad Soni

APPELLANT

Vs

Sushila Prajapati and Puran Gope

RESPONDENT

Date of Decision : 13-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (2010) 04 JH CK 0142

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—This civil revision filed u/s 14(8) of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred as "Act") against the Judgment and Decree dated 17.04.2008 and 29.04.2008 respectively passed by Additional Munsif, Hazaribagh in Eviction Suit No. 13 of 2002, whereby and whereunder the learned court below has decreed the suit ex-parte as against the opposite party No. 2/defendant No. 1 and on contest as against the petitioner/ defendant No. 2. Learned Court below further directed the defendants to vacate the property described in Schedule-"A" of the plaint and handover the vacant possession of the same to the plaintiff/opposite party No. 1 within 30 days from the date of order.

2. The case of the plaintiff/opposite party No. 1 is that she is the owner/land lady of the suit property details of which given in Schedule-"A" of the plaint. It is further stated that in the month of February 2000 she let out the house situated on the suit property to defendant No. 1 on a monthly rent of Rs. 100/-. It is further stated that till September 2001 defendant No. 1 regularly paid rent to her and in lieu of that she issued rent receipt and obtained signature of defendant No. 1 on the counterfoil of the rent receipts. It is further stated that the present suit filed on the ground of personal necessity. It is stated that at the time of creation of tenancy, the plaintiff/opposite party No. 1 was posted at Jamshedpur and there itself her sons were pursuing their studies. It is further stated that

later on the services of plaintiff/opposite party No. 1 has been transferred from Jamshedpur to Chaibasa. It is further stated that at Chaibasa, there is no good educational institution therefore plaintiff/ opposite party No. 1 wanted to get her sons admitted in a good school at Hazaribagh. However, at Hazaribagh the plaintiff/opposite party No. 1 has no other place/house, where she can reside along with her sons. Because of the said reason, plaintiff/opposite No. 1 requires the tenanted premises for her own use and occupation and the need of the plaintiff/ opposite party No. 1 is bonafide and reasonable. It is further stated that she requested defendant No. 1 to vacate the tenanted premises on the ground of aforesaid personal necessity, but instead of vacating the house defendant No. 1 sub-let one room to defendant No. 2 (petitioner) illegally without obtaining the permission of the plaintiff/opposite party No. 1 and hence defendant No. 1 has been made party in the present case. It is further stated that the plaintiff/ opposite party No. 1 had requested both the defendants several times to vacate the suit premises, lastly on 12.12.2002, but defendants had given no heed to her request and therefore a suit was filed for evicting the defendants from the suit premises and handover the khas vacant possession of the same to the plaintiff/ opposite party No. 1.

3. It appears that summons have been served on the defendants as per the provisions contained in law. It further appears that defendant No. 1 has not contested the suit. However, petitioner/defendant No. 2 filed an application to contest the suit which was allowed by learned court below vide order dated 30.04.2004. Thereafter, a written statement filed by defendant No. 2 (petitioner).

4. The case of petitioner/defendant No. 2 is that the plaintiff/opposite party No. 1 is not the owner of suit property. It is further stated that the suit property originally belongs to Durgeshwar Sahay and Mukteshwar Sahay which they have purchased from erstwhile owner vide Sale Deed No. 435 dated 18.01.1955. It is further stated that the aforesaid Mukteshwar Sahay inducted and put him in possession of suit premises in the year 1982. It is further stated that at that time only one room exist in the said plot No. 144 and on a portion of plot No. 143. However, thereafter, the petitioner/defendant No. 2 has constructed two rooms and one kitchen and started living in the suit premises along with his family members.

5. Further case of the petitioner/ defendant No. 2 is that he was in possession of the suit premises from 1982 and is claiming hostile title over the suit property against Durgeshwar Sahay, Mukteshwar Sahay and whole of the world including plaintiff/opposite party No. 1. Accordingly, it is stated that petitioner/defendant No. 2 is the owner of the suit property. Thus, the question of his eviction from the suit property does not arise. Further case of the petitioner/defendant No. 2 is that the defendant No. 1 Puran Gope is not a tenant of plaintiff/opposite party No. 1, and in fact he is a man set up by the plaintiff/opposite party No. 1. It is further stated that the petitioner/defendant No. 2 was never sub-lessee under the defendant No. 1. Accordingly, it is stated that there is no relationship of

landlord and tenant in between plaintiff and defendant No. 1 or in between plaintiff and defendant No. 2. It is further stated that plaintiff/opposite party No. 2 herself has no title and possession over the suit property as such the present suit which has been brought on the ground of personal necessity is false and vexatious. However, it is stated that the plaintiff has got no personal necessity as alleged by her. It is stated that the present suit has been filed for declaration of title of plaintiff/opposite party No. 1 in the garb of suit for eviction on the ground of personal necessity. Therefore, the suit is not maintainable. Accordingly, it is submitted that the suit is liable to be dismissed with cost.

6. On the basis of rival contentions of the parties, the court below has framed the following issues for adjudication:

1. Whether the suit is maintainable?
2. Whether the plaintiff has got cause of action for the present suit?
3. Whether there is relationship of landlord/landlady and tenant between plaintiff & defendant No. 1 in respect of the suit premises?
4. Whether the defendant No. 1 sublet a portion for suit premises to the defendant No. 2?
5. Whether the suit premises is reasonably and in good faith required by the plaintiff for her own use and occupation?
6. Whether the partial eviction can satisfy the requirement of the plaintiff?
7. Whether the plaintiff is entitled to any relief, if so, what relief or reliefs the plaintiff is entitled to?

It appears that the plaintiff/opposite party No. 1 had adduced oral as well as documentary evidence in support of her case, whereas on behalf of petitioner-defendant No. 2 only oral evidences has been adduced. It further appears that learned court below after considering the evidences available on record has decided all the issues in favour of plaintiff/opposite party No. 1 and consequently decreed the suit. Against the said judgment and decree, the present civil revision has been filed.

7. While assailing the impugned judgment of the court below, Learned Counsel for the petitioner/defendant No. 2 submitted that the petitioner/defendant No. 2 had adduced evidence to show that he is residing in the suit premises since 1982. Learned court below, without assigning any cogent reason, had disbelieved the said evidence. It is further submitted that it is admitted by the plaintiff/opposite party No. 1 that when she purchased the suit property from Parwati Devi, her husband Durgeshwar Sahay was alive. Under the said circumstance, Parwati Devi has no right, title and interest to sell the suit property in favour of plaintiff/opposite party No. 1. Accordingly, it is submitted that the learned court below, without considering the aforesaid aspect of the matter, had come to the conclusion that plaintiff/opposite party No. 1 is the owner of suit property. It is

further submitted that the learned court below relying upon Ext.-4 and 4b, concluded that plaintiff/opposite party No. 1 is the owner of suit property and thus committed serious illegality because Ext.-4 and 4b are not document of title. It is submitted that the plaintiff/opposite party No. 1 had not adduced any evidence to prove that the defendant No. 1 is her tenant and the said defendant No. 1 had sub-let one room to the petitioner/defendant No. 2. Without any evidence the learned court below finds that there exist a relationship of landlord and tenant between the parties, therefore the said finding cannot be sustained. It is further stated that the petitioner/defendant No. 2 has perfected his title over the suit property on the ground of adverse possession and therefore he is not liable to be evicted from the suit property.

8. It is submitted by Learned Counsel for the plaintiff-opposite party No. 1 that it is admitted by the petitioner/defendant No. 2 in his deposition that the plaintiff/opposite party No. 1 has purchased the said property from Durgeshwar Sahay. It is also admitted that he is not knowing as to when the house and rooms under litigation have been constructed. Under the said circumstance, the claim of petitioner/defendant No. 2 that he is residing in the suit property since 1982 and had constructed two rooms and one kitchen over the same cannot be believed. It is further submitted that Ext.-6, a petition filed by petitioner/defendant No. 2 in the court of Sub-Divisional Magistrate, Hazaribagh for initiation of a proceeding u/s 144 Cr.P.C., shows that the petitioner/defendant No. 2 admits that plaintiff/opposite party No. 1 is the owner of the said property. It is submitted that in the said petition, petitioner/defendant No. 2 has stated that he has entered into an agreement with plaintiff/opposite party No. 1 to purchase a portion of suit land on payment of rupees one lac twenty thousand (Rs. 1,20,000/-). Accordingly, it is submitted that the aforesaid assertion made by petitioner/defendant No. 2 belied his entire case made out in the written statement. It is further submitted that in Ext.-6 the petitioner/defendant No. 2 has stated that he has been put in possession of the suit premises by the plaintiff/opposite party No. 1 in the year 1996 which is also against his case that he is in possession of suit land from 1982, thus, perfected his title by adverse possession. It is further submitted that the petitioner/defendant No. 2 had specifically stated that after coming in possession of the suit premises in the year 1982, he took electric connection in the suit premises but surprisingly no document produced to prove the same. Under the said circumstance, an adverse inference can be drawn against the petitioner/defendant No. 2. It is submitted that plaintiff/opposite party No. 1 has filed Sale Deed Ext.-1/b and 1/c to show that she has purchased the suit property from erstwhile owner. It is further submitted that Ext.-4, 4/a and 4/b shows that after purchase, the suit land was mutated in the name of plaintiff/opposite party No. 1. Ext.-3 series further shows that Puran Gope - defendant No. 1 is paying rent to the plaintiff/opposite part No. 1 as a tenant. The oral evidence adduced on behalf of plaintiff/opposite party No. 1 further shows that the plaintiff/opposite party No. 1 had inducted Puran Gope as a tenant in the year 2000. The aforesaid assertion of the plaintiff/opposite party No. 1 has not

been contested by defendant No. 1. Accordingly, it is submitted that the plaintiff/opposite party No. 1 has proved that defendant No. 1 is the tenant under plaintiff/opposite party No. 1 and relationship of landlord and tenant exist between them. It is further submitted that the ground of personal necessity has been proved by the plaintiff/opposite party No. 1 and her witnesses and there is absolutely no cross-examination on that point. Accordingly, it is submitted that there is no illegality and/or irregularity in the judgment of court below which requires any interference by this Court.

9. Having heard the submission and I have gone through the records of the case and perused the evidences adduced by the parties. Plaintiff/ opposite party No. 1 pleaded that she is the owner and landlord of the suit property and in support of the same she filed Sale Deeds Ext.-1/ b, Ext.-1/c and Ext.-4 series, the rent receipts issued by Municipality as well as by the State authority. She has also relied upon the evidences of P.W.-1-Arun Kumar, P.W-2-plaintiff-opposite party No. 1 (Shushila Prajapati) herself, P.W.-3- Kaushal Kishore & P.W.-4-Rupendra Kumar Jain. On the other hand, the petitioner/defendant No. 2 has stated that he is residing in the suit premises since 1982 and thereafter, he constructed two rooms and one kitchen. He also averred that he took electric connection in his name. It is also stated by him that he perfected his right, title and interest over the suit property by adverse possession. It is worth mentioning that no documentary evidence has been filed in support of the aforesaid pleadings.

10. In view of the rival contention of the parties, I am proceeding to scrutinize the evidences available on record. From perusal of Ext-1/b, it appears that land pertaining to plot No. 142 and 143 has been purchased by the plaintiff/opposite party No. 1 from Mostmat Bibi Jainab, Bibi Hazra Khatoon and Bibi Saira Khatoon by registered sale deed dated 15.07.1970, whereas from perusal of Ext.-1/c, it appears that the land pertaining to plot No. 144 (area-8 decimal) and plot No. 145 (area-32 decimal) has been purchased by the plaintiff from Parwati Devi W/o Durgeshwar Sahay by sale deed dated 27.04.1974. It further appears from Ext.-4 that the holding was created in the name of plaintiff/opposite party No. 1 by Hazaribagh Municipality with respect to the aforesaid land. Ext.-4/a and 4/b shows that the rents receipt issued in favour of the plaintiff/opposite party No. 1 by the Revenue Department. It is worth mentioning that petitioner/defendant No. 2 has filed an application (Ext.-6) before Sub-Divisional Magistrate, Hazaribagh for initiation of proceeding u/s 144 Cr. P.C. against the plaintiff/opposite party No. 1 and three others. From perusal of the aforesaid application, it appears that petitioner/defendant No. 2 has accepted that the plaintiff/opposite party No. 1 is the owner of suit property. It further appears from Ext.-6 that the petitioner had entered into an agreement with plaintiff/opposite party No. 1 for purchase of 0.16 acres of land for a consideration of rupees one lac twenty thousand (Rs. 1,20,000/-). It also appears from the said petition that petitioner/opposite party No. 1 had paid Rs. 30,000/- as earnest money and took possession of the said suit property. Thus, the aforesaid admission by petitioner/defendant No. 2 demolished his own case as set out in his written statement. However, it is

argued by Learned Counsel for the petitioner that the plaintiff/opposite party No. 1 admitted in her deposition that when she purchased the land in question from the Parwati Devi, her husband namely Durgeshwar Sahay was alive. Thus, Parwati Devi has no right, title and interest to alienate the said property. The aforesaid contention has no leg to stand. It is true that plaintiff (P.W. 2) in her cross examination has admitted that the husband of Parwati Devi, namely Durgeshwar Sahay was alive at the time of execution of sale deed, but in next paragraph of her cross examination she specifically stated that Durgeshwar Sahay authorized Parwati Devi to sale the land. The aforesaid statement of P.W.-2 has not been challenged by the Petitioner. Moreover, in an eviction suit the court is required to see the title of the landlord incidentally to arrive on a conclusion that relationship of landlord and tenant exist between the parties or not. The validity of sale deed executed in favour of plaintiff/opposite party No. 1 should not be gone into eviction suit. Thus, aforesaid contentions of Learned Counsel for the petitioner/defendant No. 2 is not sustainable.

11. The next contention of Learned Counsel for the petitioner that he has perfected his right, title and interest by adverse possession appears to be misconceived and against the evidence on record. As noticed above in Ext-6, the petitioner/defendant No. 2 had categorically stated that he has been put in Khas possession of the suit property after the execution of the agreement on 02.03.1996. Thus, his contention that he is in possession of the said land since 1982 is an after thought and has stated so only with a view to harass the plaintiff/opposite party No. 1. In this connection, it is worth mentioning that at paragraph No. 30, D.W.-1 (petitioner-defendant No. 2) has categorically stated that he did not know when the house constructed on the suit property. Under the said circumstance, his assertion in the written statement that he has constructed two rooms and one kitchen on the suit premises after coming in possession in 1982 is incorrect and false. It is also worth mentioning that the petitioner/defendant No. 2 has not produced any documentary evidence to show that he has taken electric connection in the suit premises. Thus, an adverse inference can be drawn against him in this respect.

12. In view of the discussions made above, it is clear that plaintiff-opposite party No. 1 is the owner/landlady of the suit property described in Schedule -"A" to the plaint. Accordingly, I find that the court below had rightly decided the said issue in favour of plaintiff/opposite party No. 1.

13. It is worth mentioning that P.W.-1, P.W.-2 and P.W.-3 had categorically stated that the plaintiff/opposite party No. 1 had given the suit premises on rent to defendant No. 1- Puran Gope in the year 2000. The aforesaid fact further finds support from Ext.-3 series, the rent receipts. From perusal of the same, it appears that Puran Gope put his signature on the counterfoil of rent receipts. It is worth mentioning that petitioner/defendant No. 2 has not produced positive evidence to show that the aforesaid assertion made by the plaintiff/opposite party No. 1 is wrong and is incorrect. The D.W. has only stated that Puran Gope

is not the tenant of plaintiff/opposite party No. 1 because the suit property is not owned by the plaintiff/opposite party No. 1. As I have already come to the conclusion that the suit property is owned by the plaintiff/opposite party No. 1, the aforesaid evidence adduced by the petitioner/defendant No. 2 is liable to be rejected. In this connection, it is worth mentioning that defendant No. 1 Puran Gope has not contested the suit by filing written statement. Thus, the contention of plaintiff/opposite party No. 1 has not been rebutted by him. Accordingly, I hold that relationship of landlord and tenant exist between the parties. Since, the plaintiff-opposite party No. 1 had categorically stated that the defendant No. 1 sub-let the room of the suit premises to petitioner/defendant No. 2, without his permission and as there is no cross-examination in this regard, I find that the plaintiff/opposite party No. 1 has also been able to prove that he is residing in the suit premises as a sub-lessee of defendant No. 1. Accordingly, I conclude that the court below had rightly decided this issue in favour of plaintiff/opposite party No. 1.

14. The plaintiff/opposite party No. 1 had categorically stated in plaint that she required the suit property for her own residence to keep her sons there so that they can pursue their studies at Hazaribagh. It has been stated by D.W.-1 in his cross-examination at paragraph No. 28 that previously plaintiff/opposite party No. 1 was in service at Chaibasa but during the pendency, she retired from service. The petitioner/defendant No. 2 in his written statement had stated that since the plaintiff/opposite party No. 1 is not the owner of suit property, therefore, the question of any legal necessity does not arise. As I have already held that plaintiff/opposite party No. 1 is the owner and landlady of the suit premises and also taking into account the positive evidence on behalf of the plaintiff/opposite party No. 1 that she requires the suit premises for her own residence, I find that the court below had rightly concluded that the plaintiff/opposite party No. 1 has been able to prove that she required the suit premises for reasonable and bonafide ground. The court below has also given finding with respect to the question that only by partial eviction, the requirement of the plaintiff/opposite party No. 1 will not be served. Thus, I find that there is no illegality and/or irregularity in the aforesaid findings of the court below.

15. In view of the discussions made above, I find that there is no illegality and / or irregularity in impugned judgment of the court below which requires any interference by this Court.

16. In the result, this civil revision application is dismissed. However, the party shall bear their own cost.