

(2010) 04 JH CK 0158
In the Jharkhand High Court

Md. Mustaque Ansari

APPELLANT

Vs

Md. Safian

RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Citation : (2010) 04 JH CK 0158

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—This civil revision is directed against the Judgment and Decree dated 30.03.2009 and 08.04.2009 respectively passed by Sub Judge-I, Rajmahal in Eviction Suit No. 01 of 2007, whereby and whereunder he directed the petitioner to handover the vacate possession of the suit premises to the opposite party within 30 days.

2. The plaintiff/opposite party has filed the suit for eviction on the ground of personal necessity for the settlement of his son. The petitioner/defendant appeared in the Court and contested the suit after obtaining leave from court below.

3. It is submitted by Sri. Shamim Akhter, learned Counsel for the petitioner that in the instant case plaintiff/opposite party has not disclosed the nature of business, which his son is interested to start. It is submitted that the non-disclosure of aforesaid fact goes to show that the plaintiff/ opposite party has no bonafide requirement, therefore, the eviction suit is liable to be dismissed. It is further submitted that even the source of money not disclosed in the plaint from which the business is going to be started. It is also submitted that the plaintiff's elder son is not unemployed, thus, there is no need to settle him. It is submitted that the need of the plaintiff/ opposite party is not bonafide, but merely a desire.

4. On the other hand, Sri. Rajeev Ranjan, learned Counsel appearing for the opposite party submits that in the plaint it is not necessary to disclose the nature

of business, which the plaintiff or his son is going to start. It is also not necessary to mention that the plaintiff had sufficient fund for starting the business. learned Counsel for the opposite party has relied upon a judgment of Hon"ble Supreme Court reported in Gupteshwar Ram @ Gupteshwar @ Gupta and Others Vs. State of Bihar .

5. Having heard the submissions of the parties, I have gone through the record of the case. At paragraph No. 7 and 8 of the plaint, the plaintiff/opposite party had made following averments:

7. That plaintiffs sons has become young and for the settlement of his son, require suit premises for opening a shop.

8. That plaintiff has no other alternative arrangement for opening of shop for his son.

From perusal of aforesaid pleadings, it appears that the plaintiff/opposite party wants to settle his son by opening a shop. He also stated that he has no other alternative arrangement for opening of shop for his son. It is true that the nature of business which plaintiff's son is going to start has not been disclosed in the plaint as well as in the deposition/but disclosure of the same is not necessary. It has been held by their lordships of Supreme Court in Gupteshwar Ram @ Gupteshwar @ Gupta and Others Vs. State of Bihar that for eviction of tenant on the ground of bonafide requirement of landlord, it is not necessary that the precise nature of business, which is intended to be set up by the plaintiff is required to be stated in the plaint. Their lordships further held that even though nature of business is mentioned in plaint, the landlord will not be bound to start that very business in the suit premises after eviction of the tenant. Thus, the aforesaid submission of Sri Akhter that the plaintiff has not disclosed the nature of business, which his son intends to start goes to show that the plaintiff has no bonafide requirement, is misconceived and therefore cannot be accepted.

6. The next submission of Sri. Akhter that the elder son of the plaintiff/ opposite party is not unemployed, therefore, there is no need to settle him in any business, also appears to be misconceived. It has come in the evidence that the elder son of the plaintiff/opposite party was working as a compounder under a doctor, but however at the time of filing of suit he was disengaged by the said doctor. It has also come in the evidence that thereafter plaintiff's son was earning only Rs. 400/ - to Rs. 500/ - by doing some other job. It is worth mentioning that present suit filed in the year 2007, thus keeping in view the inflation rate and other circumstances Rs. 400/ - to Rs. 500/ - is not sufficient for any person to live in the society with dignity. Thus, in my view, only because the elder son of the plaintiff/opposite party was earning Rs. 400/ - to Rs. 500/ - will not debar him from starting any business.

7. The next submission of Sri. Akhter is also not acceptable. If the accommodation is available then plaintiff/opposite party may be able to obtain loan from the bank and start the business. Thus, on that ground, it cannot be

held that the opposite party has no personal requirement for the suit premises.

8. Plaintiff pleaded that from the partial eviction his purpose will not be served. Aforesaid pleading of the 1 plaintiff has not been controverted by the petitioner/defendant. Moreover, in the deposition petitioner also stated at paragraph No. 23 that by partial eviction no shop can be opened. Thus, the finding of the Court below on the issue of partial eviction appears to be correct.

9. In view of the discussions made above, I find no illegality or irregularity in the impugned judgment and decree, which requires any interference by this Court.

10. In the result, this civil revision application is dismissed. However, in the facts and circumstances of the case, the parties shall bear their own cost.