

(2004) 01 PAT CK 0033

In the Patna High Court

Case No : Civil Revision No. 1290 of 2003

Most, Sushila Devi and Others

APPELLANT

Vs

Sri. Lakhan Lai Sah and Others

RESPONDENT

Date of Decision : 05-01-2004

Acts Referred:

Citation : (2004) 01 PAT CK 0033

Judgement

Nagendra Rai, J.—This is the second round of litigation before this Court at the instance of the tenant-Petitioners.

2. The Plaintiffs/opposite parties filed a suit for eviction on the ground of personal necessity (for opening a Kirana shop) in the suit premises which is a shop katra with one room and kitchen measuring about 32" north to south and about 16" east to west facing north of Bari Path situated at Moh Machhua Toli, P.S. Kadam Kuan town, bearing part of Holding No. 13210 C. 109, Circle No. 29, Ward No. 17/12. The suit was decreed by judgment and decree dated 23rd June 2001 by the trial Court. The said judgment and decree was challenged by the tenant/Petitioners by filing civil revision application being C.R. 1435 of 2001 under proviso to Section 14(8) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the Act). The said civil revision application was allowed in part on 14.2.2003 [Reported in Smt. Sushila Devi and Others Vs. Sri. Lakhan Lai Sah and Others, This Court upheld the finding of the trial court with regard to reasonable and bonafide need of the Plaintiffs opposite parties for eviction but remanded the matter to the trial Court to decide the question of partial eviction in terms of proviso to Section 11(1)(c) of the Act as the trial Court had not considered the said question in accordance with law.

3. This Court directed that trial Court to decide the matter within four months after giving an opportunity of hearing to the parties if they want to lead evidence. In spite of opportunities having been given, the Plaintiffs/opposite parties did not lead evidence and took time on one or the other ground as mentioned in the order of the court below. Thereafter, the Court below directed

the Defendants/tenants/Petitioners to lead evidence, though little time was left for them to lead evidence in view of time frame fixed by this Court, but they also did not lead evidence on the ground that the Plaintiff's/opposite parties have not lead any evidence. Thereafter, the trial Court held that the partial eviction will not meet the substantial requirement of the landlord/Plaintiff/opposite parties and accordingly decreed the suit for eviction for the entire suit premises by the order dated 26th June, 2003 which has been impugned in this civil revision application.

4. The Revision application has been filed under proviso to Section 14(8) of the Act which empowers this Court to satisfy itself whether the order passed by the Court is according to law or not. The power conferred to this Court under the aforesaid provision is wider than the revisional power conferred under the Code of Civil Procedure, but the same cannot be equated with the appellate power. To satisfy as to whether the order is according to law or not, the Court will interfere with the finding of the trial Court only, if the finding is perverse, unreasonable or is contrary to law in the sense that while deciding the matter, the Court has either overlooked the material evidence or has relied upon inadmissible evidence affecting the merits of the case or has not addressed itself to the legal principles governing grant of eviction/partial eviction.

5. As already stated, the finding of the trial Court that the premises was required by the Plaintiffs/opposite parties reasonably and in good faith has been upheld by this Court and the same has attained finality. The question for consideration is only as to whether the question of partial eviction has been considered in terms of the proviso to Section 11(1)(c) and in the light of the observations made earlier by this Court.

6. To appreciate the point, it is necessary to quote Section 11(1)(c) along with proviso which runs as follows.

(c) where the building is reasonably and in good faith required by the landlord for his own occupation or for the occupation of any person for whose benefit the building is held by the landlord:

Provided that where the Court thinks that the reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only of the building and allowing the tenant to continue occupation of the rest and the tenant agrees to such occupation, the Court shall pass a decree accordingly, and fix proportionately fair rent for the portion in occupation of the tenant, which portion shall henceforth constitute the building within the meaning of Clause (b) of Section 2 and the rent so fixed shall be deemed to be the fair rent fixed u/s 5;

7. According to the proviso the Court has to consider the question as to whether the reasonable requirement of the landlord will be satisfied substantially (not fully) by evicting the tenant from the part of the building and permitting the tenant to continue occupation of the rest and the tenant agrees to such occupation. In case the Court finds that the requirement of the landlord will be substantially satisfied by partial eviction and the tenant agrees, the Court will

pass a decree accordingly and fix proportionately fair rent as provided under the aforesaid provision.

8. A similar provision under the Act of 1977 was considered by the Supreme Court in the case of State of Punjab Vs. Gurnam Singh, wherein it was held as follows:

In determining the question of partial eviction the proviso to Section 12(1)(c) of the Bihar Buildings (Lease, Rent and Eviction) Control Act of 1977, in terms enjoins that what is necessary to be considered is the "reasonable" requirement of the landlord and whether it would be "substantially" satisfied by evicting the tenant from a part only of the premises. The court has therefore in the first instance to determine the extent of the premises which the landlord "reasonably" requires. Determine it objectively and not on the basis of his ipse dixit or his mere desire to occupy as much as he wants. But the Court has to, furthermore apply a test as to whether such requirement, as the court considers reasonable, will be "substantially" satisfied (not fully satisfied) by ordering partial eviction. The question, thus, has to be determined by giving full effect to the concept of reasonable extent of the requirement from the perspective of "substantial" satisfaction of such requirement as considered to be reasonable objectively.

9. Again in the case of Krishna Murari Prasad v. Mitar Singh, reported in 1994 (1) PLJR SC 87 the Apex Court dealing with the aforesaid proviso held that the order of eviction from the entire premises could be made only if a decree for partial eviction in the manner provided could not substantially satisfy the landlord's requirement.

10. Thus, according to the settled law, the Court while considering the partial eviction has to consider firstly the extent of the premises and then to consider the reasonable requirement of the landlord which has to be determined on the basis of the evidence on record and not on the basis of mere desire or wish of the landlord and thereafter the Court has to consider as to whether the said reasonable requirement would be satisfied substantially and not fully by partial eviction.

11. It is well settled that the proviso to Section 11(1)(c) of the Act mandates the Court to decide the question of partial eviction. Even the absence of pleading does not stand in the way of the obligation cast on the Court to act in compliance with the requirement of the statutory provision. (See Rehman Jeo Wangnoo Vs. Ram Chand and Others,

12. From perusal of the judgment of the Court below it appears that the Court has considered the evidence of P.W. 1 Vijay Kumar (Plaintiff No. 3), P.W. 2 Lakhan Sao (Plaintiff No. 1) and P.W. 4 Raj Kishore Prasad, advocate and his reports, Ext-1/1 and 1/2 as well as the evidence of D.W. 3 Vinod Kumar and D.W. 4 Rameshwar Prasad (Defendant No. 1). The Court has determined the extent of the premises and has come to a definite finding that 16" x 30" or 32" space is available in the disputed premises. 16" situate towards the main road and 30" or

32" (approximate) space is available from north to south and there are two rooms as per Exts-1/1 and 1/2; one room measuring 18" x 16" in front and back room is 10" x 16" approximately. The trial Court has also found that both parties have not led evidence with regard to actual requirement, particularly, the Plaintiff has not specifically mentioned about the requirement and thereafter the trial Court himself considered the question and according to it, 12" east to west and 30" or 32" north to south is necessary for running a Kirana shop and the remaining area left is 4" x 30" which will be available to the Defendant who is running a hotel business and that will not meet the requirement and the Defendants have not agreed for such settlement, from which he inferred that they are not agreeable for partial occupation. The trial Court has also held that the partial eviction might satisfy the reasonable requirement of the Plaintiffs/opposite parties but it will be highly inconvenient to the Defendants, as such the partial eviction is not possible.

13. Learned Counsel appearing for the Defendants/tenants/Petitioner submitted that the Court below has committed an error of record in saying that they are not agreeable to partial occupation of the premises, rather they were agreeable to partial occupation and on the other hand they submitted that if the suit premises is divided half and half, the reasonable requirement of the Plaintiffs/opposite parties will be satisfied and the tenants/Petitioners will also run a hotel business in the said premises.

14. The Plaintiffs required the premises for running a Kirana business as well as the tenants/Petitioners was running a hotel in the same since long and they are ready to run hotel business in half of the premises. Even according to the trial Court, the Plaintiffs/opposite parties did not mention about the requirement. The trial court did not make any effort to find out as to whether the partition of the premises half and half will meet the substantial requirement of the Plaintiffs/opposite parties. In other words, the trial court has committed an error of law in not deciding the second and third questions, namely, as to what is the reasonable requirement of the Plaintiffs/opposite parties to run the Kirana Shop and as to whether the said reasonable requirement would be substantially satisfied by partial eviction. The trial Court has misdirected in deciding the said question by wrongly observing that the Defendants are not agreeable to the partial eviction. When the court has to decide as to the reasonable requirement of the Plaintiffs/opposite parties, it has to consider the evidence on record and not to summaries as has been done in this case.

15. Accordingly, the impugned judgment passed by the trial Court is set aside and the matter is remitted to the trial court to consider the question afresh in the light of the observation made above.