

(1965) 05 GAU CK 0004
In the Gauhati High Court
Case No : Second Appeal No. 98 of 1962

Mst. Mira Khumbi and Others

APPELLANT

Vs

Usha Ranjan Bhadra and Others

RESPONDENT

Date of Decision : 13-05-1965

Acts Referred:

Citation : AIR 1966 Guw 118

Hon'ble Judges : G. Mehrotra, C.J;S.K. Dutta, J

Bench : Division Bench

Advocate : S.M. Lahiri, H. Goswami and N.M. Lahiri, for the Appellant; S.K. Ghose, D.K. Sharma and J.P. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

G. Mehrotra, C.J

1. This is an appeal by the Defendants arising out of a suit for ejectment of the Defendants.

2. The case of the Plaintiff is that the land in dispute belonged to one Atul Krishna Bhattacharjya, father of pro forma Defendants 5 to 7 and husband of pro forma Defendant No. 8. Along with other lands the Plaintiff purchased 21 Bighas, 2 Kathas 17 Lechas under a registered sale deed DT. 22-12-44 for Rs. 25,000/- from Atul Krishna Bhattacharjya and got possession over the same. One Pathak Sing, the father of Defendants Nos. 3 and 4 and husband of Defendant No. 2, was in occupation of the suit land as a tenant under Atul Krishna Bhattacharjya at the time when the Plaintiff purchased the land. During the lifetime of Pathak Sing, he inducted Defendant No. 1 Badan Singh to the suit land. All the Defendants are in occupation of the land and have their houses on that land. The Plaintiff after the purchase asked the Defendants to vacate the land but they did not accede to it and hence the suit was filed for possession and for the ejectment of the Defendants after giving due notice. The defence taken was that the Defendants were protected u/s 6 of the Assam Non-Agricultural Urban Areas

Tenancy Act, The finding of the courts below was at there was no contract under which the tenants were entitled to make constructions and as the constructions though permanent were made beyond five years of the date of the tenancy, the Defendants were not protected u/s 5 of the Assam Non-Agricultural Urban Areas Tenancy Act. The finding of the court below has been challenged.

3. It is contended by the Appellants that the obligation in order to get protection u/s 5 of the Assam Non-Agricultural Urban Areas Tenancy Act. hereinafter referred to as the Act, to make constructions within five years applies only to those class of cases where the agreement provides for making constructions on the land but the limitation of five years is not applicable to the case where there is no such contract. This Court has recently held that the rule of five years applies also to the cases where there is no contract under which the tenant is entitled to build and it is, therefore, not necessary for us to elaborately deal with that point. Though the Appellants do not give up that point and contend that the decision requires reconsideration, we do not think that there is any reason to take a different view. There is thus no force in this contention. In fact the case was referred to a Division Bench primarily for the purpose of laying down clearly the law as to whether the limitation of five years applies to the cases where there is no contract for making constructions or not.

4. Mr. Lahiri then contends that Section 11 of the Act is a condition precedent for the filing of any suit under this Act for ejectment of the tenant and in the present case that has not been complied with. Section 11 of the Act reads as follows:

11. No suit for ejectment except for arrears of rent shall be instituted until after the expiration of one month from the date of receipt by the tenant of a notice in writing by the landlord requiring the tenant to surrender possession of the land in favour of the landlord.

5. The argument of Mr. Lahiri is twofold. His first contention is that no suit for ejectment can be brought under this Act unless it is for arrears of rent. In our opinion, there is no substance in this contention. Nothing like this follows from the language of Section 11. In fact the provision in Section 6(2) clearly lays down something contrary to this contention of Mr. Lahiri.

6. It is then urged that a notice u/s 11 is to be given after the tenancy has been terminated by a notice under the Transfer of Property Act and as in the present case no notice u/s 11 was given after the tenancy had been terminated the suit is not competent. This contention, in our opinion, has no force. What Section 11 of the Act requires is that if a suit is to be brought for ejectment not on the ground of arrears of rent, the suit can only be brought after the expiry of one month from the date of the notice. There is nothing in the section which enjoins upon the landlord to send a notice u/s 11 only after the tenancy has been terminated by another notice under the Transfer of Property Act. No doubt the conditions laid down u/s 11 have got to be fulfilled before a suit for ejectment on the ground other than arrears of rent is to be maintainable, but there is no bar to

one composite notice being given both u/s 11 of the Act and under the Transfer of Property Act.

7. It is then urged that as the notice which was given under the Transfer of Property Act did not comply with the requirements of Section 11, that cannot be treated to be a notice u/s 11 of the Act. The only requirement of Section 11 is that the notice should be in writing by the landlord requiring the tenant to surrender possession of the land. If these two things, are satisfied, namely that the notice is in writing and It requires the tenant to surrender possession of the land, all the necessary conditions of Section 11 have been fulfilled, and it cannot be said that in the present case no notice in conformity with the provisions of Section 11 was given. In fact the point was not expressly urged before either of the courts below, but as the point was one of law and We were not inclined to accept the argument of the Appellants on the merit itself, we allowed the Appellants to argue the point.

8. It is then contended that the court below was not right in coming to the conclusion that the permanent structures were not constructed within five years In short, the contention is that within five years the structures were such that they came within the unamended definition of permanent structures and the Appellants were entitled to get benefit of the definition of permanent structure in the unamended Act The finding of the court below is clear on this point The amended section of the Act also has been given retrospective effect and thus to find out whether the permanent structure was constructed within five years or not the test which will be applied will be the same as laid down in the Act that was in force at that time. By law as the amending Act has been given retrospective effect, it will be deemed to be in force on the date of the suit and thus it is not open to the Appellants to say that because the structures made by them within five years complied with the requirement of the definition under the unamended Act the condition has been fulfilled.

9. Lastly it is contended that the entire approach to the question of awarding compensation to the Defendants has not been considered from the right point of view The lower appellate court has held that Section 5 of the Act gives a right to the tenant to claim compensation for any improvement made on the land. Only in the cases where the construction has been made beyond five years under the contract that the construction itself has been regarded as an improvement by virtue of Section 6. But in other cases, the construction cannot be regarded as an improvement What the tenant is entitled to is only to get compensation for the improvement of the land Both the courts below have found as a fact that the Defendants have failed to prove the amount of compensation That is a clear finding of fact and whatever view of Sections 5 and 6 may be taken, in this case the Defendants are not entitled to any compensation as they have failed to prove the amount spent in improving the land.

10. It was also urged that the land in dispute has recently been taken under the Town Committee Previously the Assam (Temporarily Settled Districts) Tenancy

Act was in force and under that Act the Defendants being in possession of the land for over 40 years acquired occupancy right. It is sufficient to point out that there is no averment by the Defendants that they ever took the land on tenancy for agricultural purposes. Unless the tenancy was taken for agricultural purposes no question of the Defendants acquiring occupancy right under the Assam (Temporarily Settled Districts) Tenancy Act would arise. There is thus no force in this contention either.

11. In the result, therefore, there is no force in this appeal and it is dismissed, but there will be no order as to costs in this appeal.