

(1998) 11 PAT CK 0018
In the Patna High Court
Case No : C.R. No. 449 of 1997

Mustaqeem @ Md. Mustaqeem and Others	APPELLANT
Vs	
Akhilesh Kumar and Others	RESPONDENT

Date of Decision : 02-11-1998

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 14(8)

Citation : (1999) 1 BLJR 417 : (1998) 3 PLJR 846

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This Civil revision application u/s 14(8) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982, has been filed by the defendants-petitioners against the judgment and decree dated 21.12.1996 passed by the Munsif, Biharsharif, in Eviction Suit No. 13 of 1995, whereby he decreed the suit for eviction of the defendants from the suit premises.

2. The plaintiffs-Opposite parties instituted the aforesaid suit for a decree of eviction on the ground of bona fide personal necessity. The plaintiffs' case, in short, is that plaintiff Nos. 1 and 2 Akhilesh Kumar and Lai Bahadur Shastri passed B.Sc. and B.A. Hons. examination in 1984 and 1994 respectively and plaintiff No. 3 Niraj Kumar passed the matriculation examination in 1988 but they are unemployed and they have been sitting idle. All the three brothers wanted to start their separate business under the guide of their father and their elder brother Chandra Shekhar Prasad. It is stated that the suit premises consists of two inter connected shops in which the plaintiff No. 1 wants to start a cloth shop and for the requirement of plaintiff Nos. 2 and 3 a separate eviction suit has been filed against two other tenants. The plaintiffs further case is that the plaintiffs are members of the joint family under the managership of their father who became old. The plaintiffs pleaded that they have purchased the suit premises from Dr. Bhuvnesh Kumar for their personal use and occupation. The

defendants-petitioners appeared in the suit and after obtaining leave to contest the suit filed written statement denying and disputing each and every allegation made in the plaint. The defendants' case is that the plaintiffs' father being the manager of the joint family is looking after all the family affairs. The cultivation is being looked after by the husband of plaintiff No. 4 and the business are being looked after by the plaintiffs and none of the plaintiffs are unemployed. They all are engaged in potato and onion business which is carried on in holding No. 162 of Mohalla Sohsarai near Kisan Cold Storage. The defendants further alleged that the plaintiffs have various shops and houses in different parts of the Biharsharif town and they have other vacant shop in the market complex where this shop in question is situated.

3. On the basis of the pleadings of the parties the learned Court below framed as many as seven issues which are as follows:

- (1) Whether the suit is Maintainable?
- (2) Whether the suit is barred by law of limitation?
- (3) Whether the plaintiffs have any cause of action in the suit?
- (4) Whether there is any relationship of landlord and tenant between the plaintiffs and defendants?
- (5) Whether the plaintiffs required the suit premises for their personal own use and occupation?
- (6) Whether the plaintiff No. 1 is unemployed or not?
- (7) Whether the plaintiffs are entitled to any other relief or reliefs?

4. The learned Court below after considering the pleadings of the parties and evidence, both oral and documentary came to the finding that the plaintiffs required the suit premises for their own use and occupation as the plaintiffs are sitting idle. The trial Court, therefore, decreed the suit holding that a decree for partial/eviction will not satisfy the need of the plaintiffs. Hence this Civil revision application by the defendants.

5. I have heard learned Counsel for the parties and I have perused the impugned Judgment passed by the Court below.

6. While deciding the issue on personal necessity, the Court below has considered in detail the evidence adduced by the parties. After discussing the evidence the Court below came to a finding that the plaintiffs wanted to start their independent business. The Court below has taken into consideration the fact that three suits were filed by the plaintiffs for eviction of other tenants including the defendants petitioners of this case, one case being title suit No. 12 of 1985 was compromised and one shop was vacated by the tenant in favour of the plaintiffs. The Court below further considered the evidence that one more shop in the eastern side is lying vacant. However, the learned Court below took

the view that the shop premises vacated by another tenant and other shops lying vacant in the market complex are not suitable for carrying on business by plaintiff No. 1. I have minutely gone through the reasonings arrived at by the Court below and evidence considered by it. P.W. 1 is the plaintiff who has deposed that after doing his graduation he has been sitting idle and he is unemployed. P.W. 7 is Ram Chandra Pd. who is father of the plaintiffs, has very categorically stated that he is an old man of 80 years and is suffering from heart disease and his eye-sight is very weak. He admitted that his business carried on in holding No. 162 has been shifted in another flat. He further admitted that he constructed a room in holding No. 162 where one Nandu Mali is a tenant. No evidence has been led by the plaintiffs as to which of the plaintiff is looking after the whole-sale trade and business of potato and onion which has been carried out by their father Ram Chandra Prasad. Learned Court below on the one hand came to a finding that the plaintiffs have been looking after the business of their father but took the view that the plaintiffs have no independent business. It further appears that the plaintiffs have view categorically admitted that one of the shop room vacated by another tenant In Title Suit No. 12 of 1985 has been lying vacant and the plaintiffs have not yet started the business. The plaintiffs have led evidence to the effect that plaintiff No. 2 will start business in that shop. It has also come in evidence that one more shop in the eastern side is lying vacant. P.W. 7 has very categorically stated in his evidence that there is one more shop in the eastern side but access to those two shops are not good. The learned Court below although took notice of the fact that besides one shop vacated by one tenant two other shops are lying vacant but the Court below took the view that these shops are not suitable for the business. This finding of the Court below is totally perverse in law inasmuch as there is no positive evidence to show that the other shop in the market complex lying Vacant are not suitable for carrying business by the plaintiffs. The Court below completely misappreciated the evidence and failed to weigh the evidence in its right perspective. The plaintiffs in their evidence have admitted that one shop vacated by another tenant is kept for the use of the plaintiff No. 2. There is no evidence to the effect that plaintiff No. 3 also wants to start business of his own. Learned Court below on the basis of the evidence came to the finding that plaintiff No. 1 is sitting idle. While arriving at this finding the learned Court below has completely ignored the fact that some other shops are vacant and further that the said plaintiff No. 1 has been looking after the wholesale business of potato and onion of his father Ram Chandra Prasad. After considering the entire evidence I have come to the conclusion that the requirement pleaded by the plaintiffs are not genuine rather mere desire. The element of need is absent in the evidence. There is no satisfactory evidence to infer that the plaintiffs required the premises reasonably and in good faith. Learned Court below, therefore, committed serious error of law and facts in arriving at the finding of personal necessity in favour of the plaintiffs. The judgment and decree is, therefore, not in accordance with law.

7. For the reasons aforesaid this Civil revision application is allowed and the impugned judgment and decree passed by the learned Court below is set aside; consequently the suit filed by the plaintiffs-Opposite parties is dismissed.