
(1964) 03 PAT CK 0010
In the Patna High Court
Case No : Civil Revision No. 358 of 1961

Pir Mohammad and Another	Vs	APPELLANT
Abdul Majid and Others		RESPONDENT

Date of Decision : 04-03-1964

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 2, 5, 5(1)

Citation : AIR 1964 Patna 376

Hon'ble Judges : V. Ramaswami, C.J;R.K. Choudhary, J

Bench : Division Bench

Advocate : K.B.N. Singh and S.B.N. Singh, for the Appellant; S. Sarwar Ali, for the Respondent

Final Decision : Allowed

Judgement

Choudhary, J.—This revision application by the defendants is directed against the judgment and order of the Munsif, Third Court, Arrah, exercising Small Cause Court powers, decreeing in part the suit of the plaintiffs opposite party for arrears of rent of a house from the 1st of November 1957, to the 31st of October, 1960, at the rate of twelve annas "per month. The land over which the house stands, according to Ext. "Da", a certified copy of the Khatian, was ghairmazrua malik land of the plaintiffs. There was a litigation between the parties with respect to this land and the house which ultimately came to this Court in Second Appeal No. 706 of 1948. The appeal was, however, disposed of on compromise according to which, on payment of a sum of Rs. 175/- by way of premium by the petitioners to the plaintiffs, the petitioners were recognised as permanent tenants of the land and the house standing thereon, subject to payment of rent at twelve annas per month. The certified copy of the order sheet of the High Court recording the compromise is Ext. "Ba" in this case. Subsequently, the opposite parties filed a suit for recovery of arrears of rent against the petitioners in which a contest was made by the petitioners on the ground that the suit was governed by the provisions of the Bihar Tenancy Act and as such, it was not

triable by a Small Cause Court Judge. The learned Small Cause Court Judge held that there was no agricultural land in dispute, nor was any tenancy created under the Bihar Tenancy Act; and, in that view of the matter, he repelled the contention of the petitioners and decreed the suit. A civil revision, being Civil Revision No. 851 of 1951, was filed in this Court on behalf of the petitioners against the judgment and order of the Small Cause Court Judge, but the same was dismissed. The plaintiffs, thereafter, filed the present suit for recovery of arrears of rent numbered as S.C.C. Suit No. 147 of 1960, out of which this application arises. The contention raised on behalf of the petitioners was that there was no relationship of landlord and tenant between the parties, and since after the vesting of the estate of the plaintiffs in the State of Bihar under the provisions of the Bihar Land Reforms Act, they were not entitled to realise any rent for the land and the building standing thereon. It was pleaded that since after the vesting of the estate the petitioners had been paying rent to the State of Bihar, and, in support of that contention, they filed a rent receipt, Ext. "Aa" in this case. The learned Small Cause Court Judge held that in the previous S.C.C. suit it was held that no tenancy was created in respect of any agricultural land and, therefore, the plaintiffs were entitled to a decree for arrears of rent. On behalf of the plaintiffs, however, it was contended that, u/s 5 of the Bihar Land Reforms Act, they were entitled to receive the rent of the building in question, notwithstanding the vesting of their estate in the State of Bihar. This contention was accepted by the learned Small Cause Court Judge and a decree for arrears of rent was passed in favour of the plaintiffs. The claim for interest was, however, disallowed as there was no agreement for paying the same. Being thus aggrieved, the present revision application has been filed by the defendants.

2. Counsel for the petitioners has contended, in support of this application, that by the compromise order aforesaid the petitioners became permanent tenants, not only with respect to the building, but also with respect to the land on which the same stood and they were, therefore, permanent tenants under the plaintiffs, who were only entitled to realise the stipulated rent and had no concern with the land or the building, beyond realisation of rent. It was submitted that, after the vesting of the estate of the plaintiffs in the State of Bihar, the right of the plaintiffs to realise the rent vested in the State and, therefore, the plaintiffs were not entitled to sue for recovery of rent. On the other hand, Counsel for the opposite parties has contended that notwithstanding the vesting of their estate in the State of Bihar, the plaintiffs' interest was left untouched u/s 5 of the Bihar Land Reforms Act (hereinafter to be referred to as "the Act") and they were, therefore, within their legal rights to institute the suit for recovery of rent.

3. In support of his contention, Counsel for the petitioners has relied on the provisions of Clauses (a) and (b) of Section 4 of the Act, which deals with the consequences of the vesting of an estate or tenure in the State. Section 4, so far as is relevant for the purposes of the present case, runs thus:

"Notwithstanding anything contained in any other law for the time being in force or in any contract, on the publication of the notification, under Sub-section (1) of Section 3, or Sub-section (t) or (2) of Section 3-A the following consequences shall ensue, namely:

(a) Such estate or tenure including the interests of the proprietor or tenure-holder in any building or part of a building comprised in such estate or tenure and used primarily as office or cutchery for the collection of rent of such estate or tenure, and his interests in trees, forests, fisheries, jalkars, hats, bazars, mela and ferries and all other sairati interests as also his interest in all sub-soil including any rights in mines and minerals, whether discovered or undiscovered, or whether being worked or not, inclusive of such rights of a lessee of mines and minerals, comprised in such estate or tenure-(other than the interests of rayats or under-rayats) shall, with effect from the date of vesting, vest absolutely in the State free from all incumbrances and such proprietor or tenure-holder shall cease to have any interests in such estate or tenure, other than the interests expressly saved by or under the provisions of this Act.

(b) All rents, cesses and royalties accruing in respect of lands comprised in such estate or tenure on or after the date of vesting shall be payable to the State and not to the outgoing proprietor or tenure holder and any payment made in contravention of this clause shall not be binding on the State Government.

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According to Clause (a), therefore, the estate of the plaintiffs, including their interests in respect of matters enumerated therein, vested absolutely in the State and the plaintiffs ceased to have any interest in such estate other than the interests expressly saved by or under the provisions of the Act. According to Clause (b), all rents, cesses and royalties accruing in respect of lands comprised in the estate became payable to the State, and not to the outgoing proprietor on or after the date of its vesting. Under the above provisions, therefore, there is no doubt that, on the vesting of the estate of the plaintiffs in the State of Bihar the interests of the plaintiffs therein including their right to realise rent, vested in the State and the plaintiffs could not claim any payment of such rent accruing due since after the date of the vesting. It is an admitted fact in the case that the estate of the plaintiffs vested in the State of Bihar on the 1st of January, 1956, and the period for which the claim for arrears of rent has been made is subsequent to that vesting. The plaintiffs, ordinarily, therefore, could not claim to recover the arrears of rent for the period for which the claim was made, unless their right to realise the rent was expressly saved by or under the Act.

4. Section 5(1) of the Act states:

"(1) With effect from the date of vesting all homesteads comprised in an estate or tenure and being in the possession of an intermediary on the date of such vesting shall, subject to the provisions of Sections 7A and 7B, be deemed to be settled by the State with such intermediary and he shall be entitled to retain

possession of the land comprised in such homesteads and to hold it as ft tenant under the State free of rent:

Provided that such homesteads as are used by the intermediary for purposes of letting out on rent shall be subject to the payment of such fair and equitable ground-rent as may be determined by the Collector in the prescribed manner".

Counsel for the plaintiffs has based their case on the above proviso and has submitted an argument that the "building in question came within the term "homestead" and was used by them for purposes of "letting out on rent" and, as such, the right of the plaintiffs to claim rent from the the tenants was not in any way affected by the provisions of the Act and the only liability that arose to the plaintiffs was to make payment of such fair and equitable ground-rent as may be determined by the Collector in the prescribed manner. According to Section 2(j) of the Act, "homestead" means a dwelling house used by the proprietor or tenure-holder for the purposes of his own residence or for the purpose of letting out on rent together with any court-yard, compound, attached garden, orchard and out-buildings and includes any out-buildings used for purposes connected with agriculture or horticulture and any tank, library and place of worship appertaining to such dwelling house.

5. In order to bring the case of the plaintiffs within the proviso to Section 5(1) of the Act as well as within the meaning of the word "homestead", as defined in Section 2(3) of the Act, it has to be found out whether the building in question was used by the plaintiffs for purposes of letting out on rent so as to prevent it from being vested in the State. On behalf of the petitioners it has been submitted that, in order to apply the above proviso, the house must have been used by the plaintiffs for the purposes of letting out on rent within the meaning of the Act. It has been urged that where the house, with the land on which it stood, has been settled with the petitioners making them permanent tenants in respect thereof it cannot be said to have been used by the plaintiffs for the purposes of letting out on rent. In other words, the argument put forward is that the expression "letting out on rent" means "letting out on temporary basis"" and not permanently. On behalf of the plaintiffs, however, it has been urged that the expression "letting out" includes the act of giving the house on lease and, therefore, a lease of a building on permanent basis is also protected under the above proviso. "Letting out" has not been defined in the Act. According to the Oxford English Dictionary (1961 edition -- page 220), the word "letting" means "The action of allowing the use of (houses, lands, etc.) on payment of rent etc." It also means "leasing". According to Bouvier's Law Dictionary (Baldwin's Century Edition) (1926 edition-page 689), the word "Let" means "To lease; to grant the use and possession of a thing for compensation. It is the correlative of hire." Counsel for the plaintiffs has pressed an argument that according to the meaning given to the term "let" or "letting out" in the aforesaid dictionaries, a lease on perment (sic) basis is also included within the expression "letting out on rent" for the protection given under the proviso to Section 5 (1) of the Act. In

this connection our attention has been drawn to Section 105 of the Transfer of Property Act which defines "lease" of Immovable property as being "a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered, periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms". It has, therefore, been contended that the expression "letting out" in the present case included a permanent lease and is protected from being vested in the State u/s 5(1) of the Act.

6. According to item 8, the meaning of the word "let" in the Oxford English Dictionary at page 212 is "to grant the temporary possession and use of (land buildings, rooms, movable property) to another in consideration of rent or hire"; whereas according to item 7 at page 1130 of the Shorter Oxford English Dictionary (Third Edition), the word "let" means "To grant the temporary possession and use of, in consideration of rent or hire". It has, therefore, been contended on behalf of the petitioners that the expression "letting out" in Section 5(1) and Section 2(j) of the Act means "giving the house on hire temporarily". The argument is that, in order to bring the case within the above provisions of the Act, "letting out" envisages the repeated action of giving the house on hire to tenants whenever vacancy occurs.

7. The dictionary meaning of the word "let" or "letting out" varies and it is not necessary in the present case to decide precisely as to what is the meaning of those expressions. The actual meaning of the expression "letting out" in the present case must be found out on a consideration of the context in which it has been used. It may be that on a consideration of the context in which the term has been used in a particular Act, "letting out" may include a lease on permanent basis or may mean only a hire of the house temporarily. It has, therefore, to be seen as to in what context the expression "letting out" has been used in Sections 5(1) and 2(j) of the Act.

8. The expression used in, the proviso to Section 5(1) of the Act is "such homesteads as are used by the intermediary for purposes of letting out on rent". Similarly, the expression used in Section 2(j), so far as is relevant for the present purpose; is that "homestead" means "a dwelling house used by the proprietor or tenure-holder for the purpose of letting out on rent". According to both these sections, therefore, the purpose of using the homestead must be to let it out on rent. The words "are used" and "for the purpose" are very significant. They indicate, in my opinion the continued and repeated action of the proprietor or intermediary to let out the building on rent. In other words, the purpose of use of such homestead must be the repeated letting out of the house on rent whenever it falls vacant. A permanent lease of the house, along with the land over which it stands, cannot, therefore, come within the purview of the expressions "are used" and "for the purposes of letting out". Thus, in the context in which the expression "letting out" has been used in these two sections, it cannot but mean

letting out on temporary basis on hire. The argument advanced on behalf of the plaintiffs that the lease in question (which, as already observed, is a permanent lease) is protected from vesting in the State of Bihar under the proviso to Section 5(1) of the Act cannot be accepted and is, accordingly, rejected.

9. The learned Small Cause Court Judge rejected the plea raised by the petitioners also on the ground of the decision in the previous Small Cause Court suit, a reference to which has already been made above. "Counsel for the plaintiffs, however, has not supported the judgment of the Court below on that ground. I, therefore, do not propose to examine this aspect of the matter in the present case.

10. For the reasons given above, I hold that, after the vesting of the estate of the Plaintiffs in the State of Bihar under the Bihar Land Reforms Act, they were not entitled to recover rent of the building in question from the defendants as the right to realise rent from them vested in the State of Bihar. The suit of the plaintiffs, therefore was not maintainable.

11. The result, therefore, is that the application is allowed, the judgment and order of the Court below is set aside and the suit of the plaintiffs is dismissed with costs throughout. Hearing fee Rs. 50/- for this Court.

Ramaswami, C.J.

12. I agree.