
(2007) 02 PAT CK 0152
In the Patna High Court
Case No : Second Appeal No. 166 of 2003

Prahlad Rai Choudhary and Others	Vs	APPELLANT
Mina Sinha and Others		RESPONDENT

Date of Decision : 14-02-2007

Acts Referred:

Citation : (2007) 2 PLJR 458

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Ashutosh Jha and Narendra Pandey, for the Appellant; Chitragupta Prasad and Brajesh Kumar Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—Heard learned counsel for the appellants and learned counsel for the respondents. This appeal filed by the defendants-tenants is against the judgment of affirmance passed by the learned appellate court.

2. Title Suit No. 38 of 1984 (34 of 1995) was filed by the plaintiffs-respondents for eviction of the defendants-appellants from the suit premises which is a pucca room with a Verandah in which the defendants-appellants were holding their Kirana shop. The defendants admitted the relationship of landlord and tenant between the parties, but contested the claim of the plaintiffs with respect to claim that they had personal requirement of the suit premises and the defendants had defaulted in payment of rent. On 12.4.1995 the learned 1st Addl. Munsif, Naugachia, decreed the suit on both the grounds and directed the defendants to vacate the suit premises and pay the arrears of rent to the plaintiffs-respondents. Against the said judgment and decree, the defendants-tenants filed Title Appeal No. 30 of 1995 which was dismissed by the learned 1st Addl. District Judge, Naugachia on both the aforesaid counts by the impugned judgment and decree dated 19th July, 2003.

3. Learned counsel for the defendants-appellants challenges the aforesaid

judgments and decree of the learned courts below on the ground that no finding on partial eviction has been given in the said judgments and hence the plea of personal necessity cannot be legally upheld. He further submits that since one part of the impugned judgments with regard to personal necessity is not in accordance with law, hence, the entire matter has to be remitted to the trial court. In this connection, he relies upon a decision of this court in case of Smt. Panna Devi & Anr. vs. Atma Ram Kaushan, reported in 1996 (2) PLJR 98.

4. After perusing the aforesaid decision of a learned Single Judge of this court in case of Smt. Panna Devi (supra), it appears that it had also arisen out of a Title Suit for eviction on both the grounds of personal necessity and default in payment of rent and the suit was decreed on both the counts, but thereafter the facts of that case is completely different to the facts of the instant case as Title Appeal filed by the defendant-tenant in that case was partly allowed and the trial court was directed to give a finding with respect to partial eviction which was not done earlier. The said judgment of the Title Appeal was challenged by the landlord in Second Appeal before this court and this court summarily dismissed the said Second Appeal affirming the order of remand of the lower appellate court.

5. In the said circumstances, in my view, the said decision cited by the learned counsel for the appellants is not attracted to the facts and circumstances of this case.

6. Here in the instant case default in payment of rent for several months by the tenant-defendants-appellants has been found by both the learned courts below. Finding of default is a finding of fact and the lower appellate court is the final court of facts and hence such finding based clearly on facts cannot be challenged in a Second Appeal. This view has been taken by this court in case of Ganga Sao vs. Bishwanath Gupta & Ors. reported in 1981 BBCJ 218 [: 1981 PLJR 201]. Furthermore, no illegality in the said finding by the courts below with respect to question of default has been pointed out and hence the order of eviction and payment of arrears of rent passed by the learned courts below cannot be faulted with and on that score alone the tenants-defendants-appellants are bound to vacate the suit premises and pay the arrears of rent and this appeal is fit to be dismissed.

7. It may be mentioned here that the plea of partial eviction has to be raised in the written statement and in the deposition and cannot be decided suo motu as has been held in case of Food Corporation of India & Ors. vs. Vishun Properties & Enterprises & Ors, reported in 1995 BBCJ 711 and the onus is on the tenant to show that partial eviction shall satisfy the personal necessity of the plaintiffs as has been held by this court in case of M/s Bata India Ltd. vs. Dr Md. Qamruzzama, reported in 1993(1) PLJR 87, but even where the tenant has not taken the plea of partial eviction in the suit, it is the duty of the court to examine that aspect and to record a finding regarding it. It is clear from the pleadings that the suit premises is a room and a verandah as mentioned in the plaint itself

in which the defendants-appellants are running their Kirana shop, whereas the personal necessity of the plaintiffs for starting an office of the transport agency for running carrier business in the said premises has been affirmed by both the courts below.

8. Considering the pleadings of the parties, it is quite apparent that office of a transport agency for running carrier business requires a larger space. Furthermore, a room and a verandah appears to be just and sufficient for running such a carrier business and hence it is quite apparent that the partial eviction of the tenants-defendants-appellants from the suit premises will not satisfy the requirement of the plaintiffs. Hence, on this count also, the claim of the tenants-defendants cannot be allowed. Accordingly, neither any substantial question of law in the instant Second Appeal nor any illegality in the impugned judgments and decree of the courts below having been found, this Second Appeal is dismissed.