
(2015) 05 GAU CK 0030

In the Gauhati High Court

Case No : Civil Revision Petition No. 331/2008 and R.S.A. No. 165 of 2010

Pratima Rani Dey and Others

APPELLANT

Vs

Diwan Abdul Munim Choudhury and Others

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Assam Urban Areas Rent Control Act, 1972 — Section 2(f), 5, 5(1)(e)

Citation : (2015) 05 GAU CK 0030

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : N. Dhar, S. Chakraborty and B. Malakar, for the Appellant; H.R.A. Choudhury, F.U. Borbhuya and R. Choudhury, Advocates for the Respondent

Judgement

Hrishikesh Roy, J.—Heard Mr. N. Dhar, the learned counsel appearing for the petitioners/defendants in the CRP No. 331/2008, who by way of abundant caution has also filed the R.S.A. No. 165/2010, to challenge the concurrent order(s) of ejection passed against them, on the ground of rent default. Also heard Ms. R. Choudhury, the learned counsel for the respondents/plaintiffs.

2. The respondents filed the Title Suit No. 211/1993 to claim title over the suit property by inheritance from their predecessor Late Abdus Sabur Choudhury and the gift made of the estate of the deceased to the 2nd plaintiff, by Mahmuda Khatun Choudhury (the widowed wife of Late Abdus Sabur Choudhury). The plaintiffs also applied for a declaration that the defendants are unauthorized occupants of the suit property and accordingly recovery @ Rs. 100/- P.M. for unauthorized use and occupation was sought with consequential prayer for recovery of khas possession from the defendants.

3. In the common W.S. filed by the defendant Nos. 1, 3 and 4, they pleaded that the suit is not maintainable and that the suit house is not correctly described in the plaint. The plaintiffs' claim of title was also denied by the defendants.

4. On the basis of the pleadings, the learned Trial Judge framed the following

issues:-

1. Is there any cause of action for the suit?
2. Is the suit maintainable in its present form?
3. Whether the defendants are defaulters?
4. To what relief or reliefs if any the plaintiffs are entitled to?

Additional issues:-

1. Whether the defendants are defaulters and liable to be evicted?
5. In support of their case, the plaintiffs examined three witnesses and produced few documents, whereas a single witness was adduced from the defendants' side.
6. On the 2nd issue of maintainability of the suit in its present form, the learned Trial Judge in a cryptic fashion declared that the suit is maintainable. Proceeding thereafter to consider the issues of rent default and whether the defendants are to be evicted, the learned Civil Judge (Jr. Division) No. 1, Karimganj referred to the obligation of the tenants to pay rent within a fortnight of its falling due as provided under Section 5(1)(e) of the Assam Urban Areas Rent Control Act, 1972 (hereinafter referred to as "the Rent Act"). Since the defendants' predecessor Late Babul Dey failed to pay the rent for November and December, 1991 and January to March, 1992, until he died on 30.4.1992, the Court held that the defendants as successors are liable to be evicted and accordingly the ejectment decree was passed on 7.2.2003 (Annexure-3) by the learned Civil Judge (Jr. Division) No. 1, Karimganj.
7. The aggrieved defendants then filed the Title Appeal No. 41/2003, where they, inter alia, reiterated that the declaratory suit could not have been treated as ejectment suit under the Rent Act. They further contended that their predecessor Late Babul Dey paid rent uptill October, 1991 for which rent receipt was produced and subsequently when the successors offered rent to the plaintiff No. 1, he refused to accept the same by declining to recognize them as successor tenants and therefore the defendants deposited the rent in Court.
8. The Appellate Court considered the defendants' argument on non-maintainability of the suit in its present form where requisite Court Fee under the Rent Act was not paid. But nevertheless without any pleadings, it held that this was a rent suit for eviction of the tenants on the ground of rent default and therefore Court opined that the ejectment suit is maintainable under the Rent Act.
9. The rent receipt for the month of October, 1991 (Exhbt.2) was considered by the Appellate Court from which it was inferred that the defendants' predecessor Late Babul Dey was the tenant under the plaintiffs and on this basis the deceased tenant was declared to be defaulter of rent for about five months till he died on 30.4.1992. The defaulter finding against the tenants was thus reiterated

and the Appellate Court declared that the Trial Court rightly ordered the ejectment.

10. Although only a declaratory suit was filed and ejectment proceeding under the Rent Act was never initiated, the Court noted that the defendants admitted their tenancy under the plaintiffs. On this basis it was held that the Rent Act governs the rights of the parties and therefore the Court opined that ejectment of the defendants can be ordered on the ground of rent default.

11.1. Assailing the legality of the impugned finding, Mr. N. Dhar, learned counsel submits that when the plaintiffs applied for declaration of title, they were obliged to lead evidence in support of their title claim but no such evidence was ever adduced in the case by the plaintiffs. Accordingly the counsel relies on R.K. Madhuryyajit and Another Vs. Takhellambam Abung Singh and Another, AIR 2001 Guw 181 : (2001) 2 GLT 144 and Ram Das Vs. Salim Ahmed and Another, (1998) 8 JT 534 : (1998) 9 SCC 719 to argue that unless the plaintiffs adduce evidence in support of their claim, no effective order in a declaratory suit can be passed by the Court.

11.2. The petitioners contend that it was not an ejectment suit under the Assam Urban Areas Rent Control Act and since the defendants were declared as trespassers by the PW.1 himself who specifically testified that the defendants are not tenants of the plaintiffs, the Courts could not have ordered for ejectment of the defendants by applying the provisions of the Rent Act.

11.3. The learned counsel points out that in the schedule to the plaint, the holding number of the suit property is given as 156 (old)/100 (new), whereas the rent receipt (Exhbt.2) showing tendering of rent by Babul Dey (predecessor of the defendants) relates to the holding No. 153/160. On this basis, the petitioners argue that the rent receipt for a different property was taken into account by the Courts leading to improper appreciation of evidence and for this reason itself, the decision of the Trial Court is contended to be perverse.

11.4. Since the plaintiffs accepted Babul Dey to be the tenant, the defendants' claim tenancy right by succession under Section 2(f) of the Rent Act and accordingly it is argued that when the PW.1 testified that ".....the present defendants are not our tenants but are trespassers.....", without declaration of the tenancy rights of the defendants, the ejectment decree could not have been passed against them by applying the Rent Act, in a declaratory suit.

11.5. The petitioners also contend that as the plaintiffs never adduced any evidence like patta, jamabandi, etc. for proving their title claim, the order for ejectment of the defendants could not have been directed as the plaintiffs were not declared to be owner of the suit property and it was the specific case of the plaintiffs that the defendants are not their tenants.

11.6. The lawyer for the petitioners further submits that an ejectment suit under the Rent Act can be filed against statutory tenant on the grounds specified under

Section 5 of the Rent Act, where proper Court Fee etc. is required to be paid and in this case the declaratory suit could not have been converted into an ejectment suit under the Rent Act since the suit was not in proper form or was filed under applicable legislation.

12.1. On the other hand, Ms. R. Choudhury, learned counsel for the respondents/ plaintiffs submitted that in their W.S., the defendants admitted that the plaintiffs are their landlords and therefore she argues that ejectment of the defendants by applying the Rent Act is permissible, as the Court is entitled to mould the relief in appropriate cases.

12.2. On the non-framing of issue pertaining to title of the suit property, the respondents refer to the W.S. of the defendants to project that they acknowledged the plaintiffs title to the suit property and therefore there was no necessity of framing an issue on the admitted fact.

13. Before proceeding further, it may be appropriate to note that the connected RSA No. 165/2010, filed by way of abundant caution was admitted for hearing on 4.10.2010 on the following substantial question of law:

"(1) Whether the learned Courts below were justified in passing the decree for ejectment of the defendant Nos. 1 and 2 under the provisions of the Assam Urban Areas Rent Control Act, 1972 in view of the prayer made in the plaint by the plaintiff for declaration of right, title and interest over the suit property?

(2) Whether the learned First Appellate Court is justified in upholding the judgment and decree passed by the learned Trial Court as against the defendant Nos. 3 and 4 (appellant Nos. 3 and 4) without recording any finding as to whether they are trespassers and are, therefore, liable for ejectment?"

14. From the formulation of the law point in the 2nd Appeal as noted above, it can be understood that one of the key issue to be decided is whether the ejectment of the defendants could have been ordered under the Assam Urban Areas Rent Control Act, 1972, because the prayer in the plaint was for declaration of right, title and interest over the suit property and realizing Rs. 100/- P.M. for illegal occupation. Moreover when the pleaded case of the plaintiffs is that the defendants are trespassers, without any specific issue and a finding on whether the defendants are trespassers or are statutory tenants, whether the Court could have ordered for eviction of the defendants from the suit property.

15. When the PW.1 himself contends that the defendants are not their tenants and their eviction is sought as trespassers, in my view it was not proper for the Court to apply the Rent Act to declare the defendants to be defaulter of rent and on that basis, order for their ejectment. This approach can't be approved particularly when, the plaintiffs never said that the defendants are liable to pay rent for the suit premises and there was no claim for arrear rent.

16. When ejectment is ordered under the Rent Act, existence of landlord-tenants relationship between the plaintiffs and the defendants is a pre-requisite and

without such connection, the defendants can't be declared to be defaulter and on this basis their ejectment according to me can't be ordered, by applying the Rent Act.

17. In the W.S., the defendants never conceded to the plaintiffs' claim to title but on the other hand claimed that they are the successors of the recognized tenant Late Babul Dey. On this basis, the Court could have given a finding on whether landlord-tenant relationship exists between the plaintiffs and the defendants. The limited admission on rent payment in the W.S. should not have prevented the Court from framing the specific issue on the title claim of the plaintiffs, particularly when, the title of the plaintiffs was never admitted by the defendants. Moreover the definition of landlord in the Rent Act itself suggest that the rent collector needn't be the owner of the property.

18. It is also significant to note that the Courts below failed to appreciate that the rent receipt (Exhbt.2) pertains to a different holding number and not the one mentioned in the plaint schedule and therefore the Court made an erroneous appreciation of the Exhbt.2. If the said rent receipt for a different property would have been appreciated correctly it would have in my opinion, led to opposite conclusion (For support see Ishwar Dass Jain (Dead) Thr. Lrs. Vs. Sohan Lal (Dead) By Lrs., AIR 2000 SC 426 : (2000) 1 CTC 359 : (1999) 9 JT 305 : (2000) 125 PLR 56 : (1999) 7 SCALE 277 : (2000) 1 SCC 434 : (1999) 5 SCR 24 Supp : (2000) 1 UJ 666 : (1999) AIRSCW 4573 : (1999) 10 Supreme 27 .

19. In a case where the plaintiffs do not recognize the defendants as tenants and arrear rent is not claimed from them, the defaulter finding is not consistent with the pleaded case of the plaintiffs and therefore I feel that the ordering of ejectment in a declaratory suit was legally impermissible and by doing so, the Court's have passed a perverse order, which is required to be rectified.

20. For the above reasoning and discussion, I find merit in the case projected by the plaintiffs/appellants and consequently the impugned decision dated 7.2.2003 (Annexure-3), in the Title Suit No. 211/1993 passed by the learned Civil Judge (Jr. Division) No. 1, Karimganj and the appellate decision dated 22.5.2008 (Annexure-4) in the Title Appeal No. 41/2003, rendered by the learned Civil Judge, Karimganj are declared to be unsustainable and the same are quashed. However this order will not foreclose the future option of the plaintiffs to apply for ejectment in accordance with the Rent Act. With this order, both cases are allowed, by leaving the parties to bear their respective cost(s). It is ordered accordingly.

21. The Registry is accordingly directed to return the L.C.R. with a copy of this order to the concerned Court.