
(1984) 05 GAU CK 0015
In the Gauhati High Court
Case No : Civil Revision No. 96 of 1980

Priyalal Das

APPELLANT

Vs

Shyam Sundar Goenka

RESPONDENT

Date of Decision : 31-05-1984

Acts Referred:

Assam Urban Areas Rent Control Act, 1972 — Section 6, 7, 8
Transfer of Property Act, 1882 — Section 108, 109

Citation : (1985) 1 GLR 47

Hon'ble Judges : T.S. Misra, C.J

Bench : Single Bench

Advocate : B.K. Goswami and P.K. Kalita, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

T.S. Misra, C.J.—The revision is directed against an order dated 5th November, 1979 passed by the Assistant District Judge No. 2 Gauhati allowing the appeal and setting aside the order passed by the trial court. The present Petitioner is a tenant of the accommodation in question at a monthly real of Rs. 135/including electric charges. He is using it as a godown the room in question has C.I. sheet roofs, pucca brick plinth, cement plastered floor and C.I. sheet wards. A drain was also provided for taking out rain water to the Municipal drain. The case of the Petitioner was that the room being very old needed repairs. He then asked the landlord of the said room to carry out the repairs but to no avail. Hence he filed a Misc. Case No. 57 of 1973 in the court of Sadar Munsiff No. 1, Gauhati u/s 7 of the Assam Urban Areas Rent Control Act 1972, hereinafter called "the Act". The learned Munsiff on consideration of the evidence adduced held that the room in question required repair; hence he allowed the application and directed the landlord to carry out the repair and restore electric connection. He also directed the landlord to restore the drain which was lying blocked vide his order dated 24th June, 1978. The opposite party filed an appeal from that order alleging that the application u/s 7 of the Act was not maintainable against him, inasmuch as,

he had purchased the said accommodation during the pendency of the Misc. Case No. 57 of 1973. His contention was that he had never selected to carry out any repairs in the said room and in fact no damage was caused to the building requiring repairs after he had purchased the said property. He also said that he had not disconnected the electric supply line. Hence he was not bound to restore the same. The same was the plea with respect to drain also. The appellate Court below found favour with this contention and allowed the appeal and set aside the order passed by the learned Sadar Munsiff. The Petitioner being aggrieved has preferred the instant revision petition.

2. For the Petitioner it was urged that the court below totally ignored the provisions of Section 109 of the Transfer of Property Act which were squarely applicable to the facts of the case.

3. In order to appreciate the contention of the Petitioner it would be appropriate to read Section 6 of the Act which is in the following terms:

6. Duties of landlord: Every landlord shall be bound to keep wind proof and water-proof any house which is in occupation of a tenant and to carry out other repairs which he is bound to make by law, contract or custom and also to maintain the existing essential supplies and services such as sanitary arrangement, water supply, supply of electricity or drainage service in respect of the house.

Explanation:?"Repair" includes annual white-washing and recolouring."

4. Section 6 of the Act mandates every landlord to keep a house which is in occupation of a tenant wind-proof and waterproof and to carry out all other necessary repairs which he is bound to do under, contract or custom or law. He is also bound to maintain existing essential supplies to the house which is occupied by a tenant as is borne out from the provision of Section 7 of the Act. If he fails to carry out repairs or maintain existing essential supplies and services the tenant may approach the Court by an application u/s 7 of the Act. The Court shall then give a notice to the landlord to appear before it and show cause against the application of the tenant. If the landlord fails to show sufficient cause, he will be directed to make such repairs and to restore the essential supplies and services as are contemplated in Section 6 of the Act within such period as may be specified by the court. If the landlord fails or neglects to carry out repair or provide existing essential supplies and services, the tenant would be permitted to do the same at a cost not exceeding the amount determined by the court and in such an event the tenant would be entitled to deduct the cost from the rent or recover the amount from the landlord by executing the decree. The order passed u/s 7 of the Act is appealable u/s 8 of the Act.

5. There may be a contractual or statutory liability to carry out the repairs. If the terms of the lease provide or if a provision of law stipulates that the lessor would be liable to keep the accommodation in question in good repairs he would be compelled to carry out repairs and if he neglects, to do so the lessee would be

entitled to make the same him self and deduct the expenses of such repairs from the rent or otherwise recover it from the lessor. The principle contained in Clause (f) of Section 108 of the Transfer of Property Act is reflected in Section 6 and 7 of the Assam Urban Areas Rent Control Act. Section 6 of the said Act, as pointed out hereinabove, make a landlord liable to keep his house which he has let out to a tenant, windproof and waterproof and to continue to maintain essential supplies and services therein. If he neglects to do so, the tenant would be entitled to approach the Court for redress u/s 7 of the Act. If the lessor transfers his property leased or any part thereof or any part of his interest therein the transferee shall be subject to all the liabilities of the lessor as to the property or any part transferred so long as he is the owner of it, if the lessor so elects. Section 109 of the Transfer of Property Act imposes that liability on the transferee. He will be subject to the liability so long as he is the owner of the house.

6. In the instant case the present Petitioner filed the petition u/s 7 of the Act against his landlord. The Court issued notice to him to show cause against the application. During the pendency of the application the present opposite party became the owner of the property by transfer. He was, therefore, impleaded in the case. He, however, contended that as he had not neglected to Carry out repaired and as the essential supplies and services had long been disconnected before he became the owner of the property and as the accommodation had also been damaged before he became the owner, he was not bound to carry out the repairs and restore the essential supplies and services. The plea of the present opposite party was accepted by the court below without taking notice of the provisions of Section 109 of the Transfer of Property Act. As discussed above, the present opposite party being the transferee was bound to carry out the repairs and restore the essential supplies and services. Tile present Petitioner, who is the lessee of the premises in dispute has elected to make the present opposite party responsible and liable for it. The ingredients of Section 109 of the Transfer of Property Act were thus fully satisfied. The order of the court below being contrary to law is manifestly erroneous. In fact, the provisions of Section 109 of the Transfer of Property Act were not kept in view while passing the impugned order. In these circumstances, the order under challenge is not sustainable and has got to be set aside.

7. In the result, the revision petition is allowed and the order dated 5th November, 1979 passed by the Assistant District Judge No. 2. Gauhati in Misc. Appeal No. 4 of 1979 is set aside and the order dated 24th June, 1978 parsed by the Mnnsiff No. 1 Gauhati is restored.

8. Since no one appears to contest the revision. I make no order as to costs.