

(2003) 08 JH CK 0031
In the Jharkhand High Court
Case No : FA No. 28 of 1985

Purushottam Das Ajmera

APPELLANT

Vs

Bharat Coking Coal Ltd. and Others

RESPONDENT

Date of Decision : 29-08-2003

Acts Referred:

Coking Coal Mines (Nationalisation) Act, 1972 — Section 2, 3(J)(1), 3(J)(6), 4

Citation : (2004) 2 JCR 98b

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : V. Shivnath, A.K. Banerjee, B. Kumar and S. Topno, for the Appellant; A.K. Mehta, Rupesh Kumar Singh and R. Mukhopadhyay, for the Respondent

Final Decision : Dismissed

Judgement

Vikramaditya Prasad, J.—The first appeal has been preferred by the plaintiff-appellant against the judgment and decree made in Title Suit No. 16/15 of 1975/1976 by the 1st Additional Subordinate Judge, Dhanbad.

2. There is one pacca building having five rooms, servant rooms etc as described in the schedule of the plaint in plot No. 198 of Mauza Patherdih being Mauza No. 162 under Khata No. 52. The plaintiff filed a title suit for a decree for eviction of the defendant from the aforesaid premise and also for arrears of rent from 17.10.1971 to date and pendent lite. The case of the plaintiff is that by a registered deed of sale (Ext-4) dated 19.3.1964 he had purchased 33 dismals of land in plot No. 198 of Mauza Patherdih being Mauza No. 162 under Khata No. 52 from Shri Hazarilal Shahu for a valuable consideration thereafter he constructed one pacca house consisting of five rooms etc over that for which Jharia Water Board had sanctioned water supply. After the construction of the building the plaintiff let out the same to different persons and lastly to the Manager of M/s. New Sudamdih Colliery (P) Ltd who occupied the same for residential purposes. The said M/s. New Sudamdih Colliery (P) Ltd had no building of its own for

providing residence to the Manager of the said colliery. Thereafter on 17.10.1971, the Government of India by a notification in the Official Gazette took over the Management of all coking coal mines including the said New Sudamdih Colliery and with the consent of the plaintiff the Manager of the New Sudamdih Colliery was allowed to continue as a tenant under the plaintiff on a monthly rent of Rs. 344/- on and from the date of taking over the aforesaid Coking Coal. The monthly rental was agreed between the defendant No. 1, BCCL represented by defendant Nos. 2 and 3 Sri S.K. Chatterjee, the Manager of Tasra Colliery and plaintiff. According to the plaintiff the defendant No. 3 who was serving under defendant No. 1 occupied the said building on the aforesaid rental even after taking over. Thereafter he neglected to pay the rent from the date of taking over till 31.10.1974, consequently Rs. 11,868/- became arrears payable by defendant to the plaintiff as house rent. Plaintiff thereafter requested the defendant to vacate the house for his own use and occupation and especially for the purposes of business at Patherdih. The plaintiff also served a notice upon the defendant-respondent on 23.09.1974 requesting him to quit, vacate and pay the arrears and by the said notice the tenancy was determined w.e.f. 31st October" 1974. The defendant-respondents neither made payment of the rent nor did they vacate, consequently they are defaulters and liable to pay the arrears of rent.

3. The defendant BBCL appeared and contested the suit filing a written statement in which it denied the relationship of landlord and tenant. The claim of tenancy and fixation of rent and set out a case that the suit premises formed a part of New Sudamdih Colliery which became nationalized and the said building is integral part of the Mines and also have vested as such the building now belongs to the defendant BCCL.

4. Defendant No. 3 Sri. S.K. Chatterjee also appeared and filed a W.S. in which he stated that he was Manager of New Sudamdih Colliery owned by New Sudamdih Colliery Private Limited. The plaintiff owned the said house and the plaintiff was not carrying any business in coal or colliery rather he was having an engineering workshop. The plaintiffs father and brother were directly connected with the New Sudamdih Colliery and were of good opinion about this defendant, therefore the plaintiff induced the defendant No. 3 Sri. S.K. Chaterjee and permitted him temporarily to resides in the said house as a licensee and as such he was expected to look after the up keep of the House. He denied that defendant has resides in the said house as tenant stating that it was wrong on the part of the plaintiff to say that the suit premise was at any time renanted to him.

5. It appears that by an amendment petition the plaint was allowed to be amended by which the plaintiff declared that the defendant No. 3 is a licensee.

6. The learned trial Court had framed following four issues for determination.

1. Has the plaintiff any cause of action for the present suit?

2. Is there any relationship of land lord and tenant between the plaintiff and the

defendant and if so whether the plaintiff is entitled to recover arrear of rent as claimed?

3. Whether the Suit premises vested in defendant No. 1 under the provisions of the Coking Coal Mines (Nationalization) Act, 1972?

4. To what relief or reliefs if any is the plaintiff entitled?

The issue No. 2 aforesaid was decided against the plaintiff and it was held that there is no relationship of landlord and tenant and therefore the plaintiff was not entitled to recover arrears of rent. The issue No. 3 was also decided against the plaintiff and it was held that the suit premises vested in defendant No. 1 BCCL under the provision of Coking Coal Mines (Nationalization) Act, 1972 consequently other issues were accordingly disposed of and the suit was dismissed.

7. The point for determination in this appeal is whether the suit land vested in defendant-respondent No. (1) BCCL? A question was raised whether or not the suit premises has vested could have been decided was being the scope of the suit? According to own admission of the plaintiff-appellant the suit premises was tenanted to the Sudamdih Colliery from before the date of vesting and Sudamdih Colliery used to pay the rent and after vesting of the Sudamdih Colliery the new management BCCL entered into an agreement to pay rent for the building as it was being used by the Manager of Sudamdih Colliery. Therefore the plaintiff had a new oral agreement with defendants BCCL after the vesting, in respect of this land. Thus the plaintiff submits that this suit land was not a part of the New Sudamdih Colliery and therefore it never vested, to the contrary BCCL claims that it vested. If it vested then any right title and interest of the plaintiff is extinguished and he can not maintain a suit for eviction. Only in event of non-vesting of the suit land other issues require examination i.e., whether or not there was a relationship of landlord and tenant and whether plaintiff was entitled to get arrear of rent. Therefore this issue which was issue No. 3 in the Court below has to be determined.

8. Before I proceed to determine this point I think it necessary to refer to the pleadings and provings of the contesting parties. The plaintiff claimed in the plaint that he had purchased the land and has constructed the house thereon which is in dispute, contesting defendants claims that the building was constructed out of the funds of the colliery. The plaintiff has failed to adduce any evidence that the consideration money for purchasing of the suit land on which the disputed house stands was paid by his own account. He has also miserably failed to bring any evidence that he got the suit house constructed. He could not produce any chit of paper or adduce even oral evidence in this regard. In the words of the plaintiff "I had account showing the purchase of the land in suit and also the construction of the building but now here I do not possess the same (paragraph 52 of PW 11)" "I do not remember the name of the supplier of the bricks, cement but the building materials procured from Dhanbad. I had all those

receipt of such purchase with regard to Bricks and all but presently I do not have (para-53, PW 11)". Though the contesting defendants BCCL pleaded that suit house was constructed from the funds of the colliery but they also failed to adduce any evidence in this regard. The plaintiff after his aforesaid evidence could not produce any other document in support of those claims. The onus was on the plaintiff to prove, that the building was purchased and constructed out of his own funds but the plaintiff failed to discharge this onus in that circumstances the onus of proving that the building was constructed by the contesting defendant does not shift to them even though pleaded. Had they proved it, it would have been far better to establish their cases but here we are concerned with the claim of the plaintiff.

9. The pleading of the plaintiff with regard to letting out the suit house on rent and collecting the rent is that the plaintiff let out the same to different persons and allegedly the Manager of M/s. New Sudani Dih Colliery who occupied the same for his residential purpose and after vesting of the colliery the said Manager of New Sudam Dih Colliery continued in occupation on a monthly rental of Rs. 344/- and with the officers of the contesting defendants an agreement for paying the monthly rental @ Rs. 344/- was arrived, this claim of the plaintiff was denied by the contesting defendants and it has been stated that the defendant is not occupying the said house on monthly rental or on any rent whatsoever because the building belonged to mines and defendant No. 3 is in occupation of the same as Manager of the Colliery.

10. Admitted position is that even prior to the date of vesting of the colliery, the disputed house was in occupation of the Manager of the said colliery and it continued even thereafter. The onus is on the plaintiff to prove that the occupation by the defendant No. 3 was in the capacity of a tenant. In his evidence the plaintiff said that after the construction of the said house some other persons were inducted as tenant thus he wanted to prove that the suit house was from very beginning being Tenanted by him and the Manager of the Colliery in the same sequence came as a tenant.

11. The plaintiff has failed to produce any such tenant though he claimed in his evidence to prove that those persons occupied the suit house at anytime as a tenant and paid rent to the plaintiff. No rent receipts has been produced by the plaintiff which was issued by him to those tenants, no other document proving of realisation of rent from them has been produced by the plaintiff. Similar is the case in respect of present occupant of the suit house, in the word of the plaintiff himself- "(Sri S.K. Chatterjee defendant No. 1 while Manager of the New Sudam Dih Colliery he was occupying the same premise in the year 1968 (para-45). That prior to S.K. Chatterjee there were two tenant in the said premises namely, Mr. R.S. Lal and Mr. Sinha. Mr. R.S. Lal was working at Dhanbad. I do not know what was the occupation of R.S. Lal. I can not say how many exact month was in occupation of Mr. Sinha, I do not remember the full name of Mr. Sinha (para- 46) Mr. R.S. Lal was paying as rent Rs. 500/- to me monthly (para-47). There was no

written agreement of tenancy between me and Mr. R.S. Lal. There is no paper to show or any counter foil of the rent receipt as I used to keep the carbon copy and the same does not bear any signature of the tenant. I do not possess all those carbon copies (para-48). I do not remember the date of induction of vacation of Mr. R.S. Lal in the suit premises. I have got no paper in support of my realisation of rent for Mr. R.S. Lal and Mr. Sinha. Both vacated the suit premises voluntarily. I used to realise rent Rs. 500/- from Mr. Sinha also (para-49). At present I have got no paper to show about the realisation of rent from Mr. S.K. Chatterjee but I was in possession of all those paper previously (para-50) Mr. S.K. Chatterjee paid rent to me prior to taking over the management but I have got no proof (para-51)."

12. Thus the plaintiff badly failed to prove that he was dealing with different tenants in the capacity of landlord or he was in fact realizing rent even from the present occupant, though he (defendant No. 3) was in occupation of the house right from the year 1968. he could not produce any chit of paper in realisation of the rent and even after the alleged vesting. No evidence could be adduced on the oral agreement between the BCCL and the plaintiff for continuance of the tenancy of defendant No. 3 or payment of the rent. The plaintiff has relied on Ext-6 heavily in support of his claim that the suit house did not vest in the colliery. This letter was issued on 27.11.1972 by the Manager of the Patherdih Colliery and was sent to the Sub-area Manager of Sudamdih Sub-area, Bhowrah. This letter was produced in the Court at a very later stage and with regard to this letter it was said by the plaintiff that it had been received from the office of the Compensation Commissioner. This letter was filed on 9.7.1984 though the suit had been filed in the year 1975. PW 4 Madan Purahit in his evidence stated that this paper (Ext. 6) has been received by him from the Court of the Commissioner, Kolkata. He had not seen the original of this document. This time does not speak any thing which can be interpreted only in favour of the plaintiff. This letter reads as follows :

Bharat Coking Coal Limited Sudamdih Group XXI P.O. PATHERDIH (Dhanbad)

To

The Sub-Area Manager Rhowrah/Sudamdih Sub-Area, Bhowrah

Dear Sir,

In reference to your letter No. BCCL/ CCO/Accommodation/17/72/21495-96, we are to inform you that as per Assets list given by M/s. New Sudamdih Collieries P. Ltd. the following quarters are in possession physically.

This is for your information

(a) 18 quarters under New Housing Scheme

(b) 83 quarters under Low Cost

(c) 4 Dhowraha

(d) I pucca quarter

(e) I old type quarter near 9 seam

Your"s faithfully Manager Patherdih Colliery

Copy to :

M/s. New Sudamdih Colliery Pvt. Ltd.

P.O. Patherdih (Dhanbad).

If it plain meaning is taken then it appears that one pucca quarter was in the possession of the BCCL on 27.11.1972. The word quarter can not always mean as to include the quarter of the colliery or inside the colliery. It Is a vague term and can not exclude the suit land, in absence of the production of the original this documents does not become admissible even though it is said by the plaintiff that original was received from the office of the Commissioner at Kolkata and thereafter Photo Stat copy was prepared. This submission does not appear to be commencing because any document filed in any Court generally bears the sign or seal of that Court if it was filed there. This letter bears no mark of the Court for the reasons aforesaid I do not give any credence to this document.

13. Admittedly the BCCL is a Government Company, any expenditure on account of rent made, it is expected to be done according to certain norms and there appears no scope for oral agreement between the BCCL on the one hand and plaintiff at the other for payment of rent @ Rs. 344/- in respect of the suit house. Therefore the tenancy is not at all proved by the plaintiff. There are some evidence brought on record by the plaintiff to prove his possession over the suit land, the deed of title and possession which are not directly in issue had been discussed (Ext-4). It has been found that despite the sale deed it has not been proved that the consideration money in respect of the sale deed was paid by the plaintiff. The rent receipts (Ext. 2 series) are three in number and issued in the years 1972, 1974 and 1982 moreover all those rent receipts are without prejudiced and consequently can not be taken as document of confirmatory possession. Ext. 1 is acknowledgement by which tenancy was terminated and was received by the contesting defendants. Ext. 5 is the correction slip showing mutation in respect of the said land, in the circumstances discussed above that also does not: go to prove the possession of the plaintiff over the said land. Ext-3 series are the different signature appearing on the plaint and are not very vital for the decision of this case.

14. Now I come to the real question whether there was vesting of the land. Admittedly New Sudam Din Colliery was a Coking Coal Mines, undisputedly this mines vested under the Coking Coal Mines Nationalisation Act, 1972 on 1st day of May, 1972 the appointed date u/s 4 of the aforesaid Act. A serious argument was made by the learned counsel for the plaintiff-appellant that the suit land does not form part and parcel of the New Sudamdih Colliery and therefore it does not come within the mischief of the word "belonging to the Mines".

Emphasis was given on the definition of Mine as given in Sub-section 3(J)(6) and 3(J)(1) of the Act. It was also argued that as per the definition of Mines given in the Mining Act the suit land does not come within the mines and therefore the land/house in occupation of the manager does not come within the mischief of the word mining, consequently it can not vest Section 2(r) of the Act provides the word and expressions which are not defined in the Act and have been defined in this Act but have been defined in the Coal Mines Conservation, Safety and Development Act, 1952 will have the meaning assigned to them in that Act, The word mines has been defined in Coking Coal Nationalisation Act. Section 2(j) reads as follows "Mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes-(vi) all lands, buildings, works, adits levels, planes, machinery and equipments, instruments, stores, vehicles, railways, tramways and sidings in or adjacent to a mine and used for the purposes of the mine.

15. This definition of Mines is to be read with the definition of Coking Coal Mines as defined in Section 2(c). Thus even if building or the land does not belong to a Mines but if it is in or adjacent to a Mines, it will come within the definition of Mine and consequently it will vest u/s 4 of the Act. The plaintiff has not at all pleaded that the land in question had not vested. In fact it was not a title suit rather an eviction suit. The question is whether the suit house is in or adjacent to the Mines ? In his evidence the plaintiff said that the suit land/suit property is at distance of 3 km from the mine in question. Plaintiff says that the suit premises is not situated within the premises of New Sudamdih Colliery and the suit premises is situated at a distance of half miles from the colliery. I have never seen the working filed of the New Sudamdih Colliery (Para- 62). In para 63 says that I have never seen the New Sudamdih Colliery. "A person, if he has not seen New Sudamdih Colliery, how can he say what is the distance of suit house from that. Though he has admitted that H D Ajmera his own brother was a Director of the New Sudamdih Colliery and his father was Managing Director of the said company (Para 45), yet this witness says that he has not seen even that colliery. Apparently he is lying, to the contrary there is evidence adduced on behalf of the contesting defendants throwing light on the location of the suit premises.

16. The defendant No. 3 appeared and contested the case disputing his status as a tenant of the plaintiff. He admitted in para 13 of his cross-examination that the Bungalow was within the area of New Sudamdih Colliery. In last paragraph of page 10 he stated the boundary of the suit land in the following word;

Wah Bangla Ke Uttar Me BCCL Ka Staff Quarter, Dakhin Me Samanto Saheb Ka Godam Jo BCCL Le Liya. Purab Me Karib 25/30 Foot Par Colliery Ka Incline Aur Pachim Me Main Road Hai Jo Kolyari Ke Adave Anya Log Istmal Karte Main.

From this evidence it is clear that the suit house is near the incline of the colliery and thus very near to the colliery. The phrase in or adjacent to is a wider. Therefore the suit land being situated as such come within the definition of Mine as given in the definition of the Mine in the Act. Therefore, in this view of the

matter the argument of the learned counsel for the appellant that the definition of Mine as given in Mines Act should be adopted can not be appreciated because now the question of occupation of suit house by a Mines Manager does not remain material for the simple reason that the suit house falls within the mischief of the word "in or adjacent" and consequently it gets included in the definition of Mine and consequently it has to vest.

17. The learned counsel for the plaintiff relied on a decision reported in Bharat Coking Coal Ltd. Vs. Madanlal Agrawal, that deals with Coal Mines Nationalisation Act 1973 where as the case in hand is with regard to Coking Coal Mines, therefore the differences being in the definition of the Mine in the two respective Acts, so that decision is not helpful to the plaintiff. The direct decision in respect of Coking Coal Mines is in A.K. Ghosh Vs. Bharat Coking Coal Limited, and this was relied. In that case the title suit for declaration of title and the suit for declaration of permanent injunction and recovery of possession was filed and in that case the learned trial Court held that the land was purchased from his own money and the building was also constructed by him from his own fund and it was also held that the building in question did not form part and parcel of Colliery consequently the building did not vest.

18. The question is whether the ratio laid down in A.K. Ghosh Vs. Bharat Coking Coal Limited, is applicable in the facts and circumstances. In that case the property in question was being used for residential purposes and finding was recorded in favour of the plaintiff. He had purchased it in individual capacity and not on behalf of the Govind Pur Company Pvt. Ltd. Consequently, the Apex Court held that the suit land did not come within the definition of Mine. Here in this case on evidence the trial Court finds as follows--(1) The building was used for residential purpose of the Manager of the colliery (2) though the plaintiff exhibited the sale deed but in fact, he could not prove that he had purchased this land out of his own fund and (3) Plaintiff pleaded that he got the building in dispute constructed but he badly failed to prove that the expenditure of construction were made out of his fund. Plaintiff pleaded that the disputed plot was tenanted by him and he was the land lord but he failed to prove any insignia of landlord ship and therefore even the relationship of land lord and tenant was not proved. This Court on appreciation of evidence as discussed above also finds the above findings of the learned trial Court on proper appreciation of evidence and this Court also finds on evidence that the house in question is adjacent to the Mines and has always been used as Managers Bungalows, as it was popularly called and after taking over of the Mines the Mines Manager (respondent No. 3) used to reside in that though he was in charge of different Mines also at that time. Therefore, excepting one fact that the building in question was being used as residential house all other claims of the plaintiff has not been proved. Consequently this case is distinguishable from the case of A.K. Ghosh. On the basis of the discussion made above I find that Mines has vested and I further find that the plaintiff has neither proved the relationship of landlord and tenant, as this case was an eviction suit, so on this ground alone this suit fails.

Consequently I do not find any reason to interfere with the impugned judgment and decree. In the result this First Appeal fails. The impugned judgment and decree is confirmed on contest. There will be no order as to costs.