
(2006) 08 PAT CK 0115
In the Patna High Court
Case No : C.R. No. 1912 of 2005

Quisar Khan Warsi @ Md. Kaishar Khan APPELLANT
Vs
Md. Shamim Ahmad and Another RESPONDENT

Date of Decision : 22-08-2006

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 8(4)
Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 15

Citation : (2006) 4 PLJR 309

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Bimlendu Mishra, for the Appellant; Sashi Shekhar Dwivedi and Manoj Kumar, for the Respondent

Judgement

Mridula Mishra, J.—Heard learned counsel for the petitioner and the counsel appearing for the opposite parties. Petitioner is aggrieved by the order dated 19.8.2005, passed by the Subordinate Judge, 1st Bhagalpur in Title Eviction Suit No. 2 of 2004 whereby the petition filed by the opposite parties u/s 15 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the B.B.C. Act) has been allowed and the petitioner has been directed to deposit rent at the rate of Rs. 1000/- per month from the date of the institution of the suit, within 15 days from the date of the order and also to deposit current rent of each month by 15th day of each succeeding month.

2. The petitioner is residing in Badrul Hassan lane in Mohalla Mullachak of Ward No. 8 (old) 26 (new) District Bhagalpur bearing Bhagalpur Municipal Survey Plot No. 574 of Khata No. 28. Title Eviction Suit was filed by the opposite parties claiming to be the landlord of the suit premises. Plaintiff's case is that the suit premises was purchased by him through three registered sale deeds dated 18.9.2000 for valuable consideration from the Asrar Mallik alias Md. Asrar Hassan Mallik The vendor of the plaintiff had sent notice to the petitioner that the suit premises has been transferred in favour of the plaintiff and the defendant was

directed to pay rent at the rate of Rs. 1000/- per month. Since the rent from 18.9.2000 was not paid, the eviction suit has been filed. Defendant petitioner contested the eviction suit and denied relationship of landlord and tenant in between the defendant and the plaintiff. His case was that since 1946 his father started living in the suit premises which belonged to Imamuddin. Initially a portion of the suit premises was occupied by the father of the defendant and for that Rs. 10/- was being paid as monthly rental. In the year 1945-46 said Imamuddin left India and settled in Pakistan. Thereafter his full brother Quaayamuddin used to collect rent from the father of the defendant. It continued till October, 1951. In the year 1955-56 Quayamuddin also went to Pakistan and the father of the petitioner occupied entire premises. Subsequently a notice was served upon the father of the petitioner u/s 8(4) of the Administration of Evacuee Property Act and the rent at the rate of Rs. 18/- per month was fixed. The petitioner paid rent at the rate of Rs. 10/- per month from the period of December 1951 to March 1952. Subsequently since 1959 no rent was paid either to the custodian or anybody. In the year 1967 Md. Nizamuddin, full brother of Md. Imamuddin demanded rent at the rate of Rs. 18/- per month but the same was denied by the defendant petitioner. This claim was made till 1972. In the year 1968-69 Asrar Mallik also demanded rent but the father of the petitioner ascertained his own right, title and interest over the suit property. Thereafter no one turned up to take legal steps against the defendant and his father. Trie plaintiff cannot acquire any title of the suit premises by so-called registered sale deed because of the fact that his vendor has already lost his title over the suit property by not taking steps within a period of 12 years against the defendant or his father. The defendant claimed his own title on the basis of adverse possession. The defendant also claiming that he has paid rent and Municipal Tax of the suit premises as such there exist no relationship of landlord and tenant. During pendency of the suit petition u/s 15 of the B.B.C. Act was filed which has been allowed by the impugned order.

3. Counsel for the petitioner submits that since there does not exist any relationship of landlord and tenant there is no question for payment of rent and the impugned order is illegal and without jurisdiction.

4. Counsel appearing for the opposite parties, however has drawn my attention towards the finding recorded by the court below at page 6 of the order, in which it has been discussed that Title Suit No. 90 of 1967 was filed by Md. Nizamuddin against Union of India and custodian and the vendor of the plaintiff in which right, title of vendor of the plaintiff was decided and the suit was dismissed. In this very suit, one of the issues was that whether the sale of the holding by the custodian in favour of vendor of the plaintiff was valid or not and this issue was decided in affirmative. In this judgment finding has also been recorded regarding the status of the defendant as tenant. Since the defendant has not challenged the plaintiff's case in the municipal survey operation and in the final publication of the municipal record of rights, so there are evidence against the defendant's defence of adverse possessions. His status as tenant has also been decided in

Title Suit No. 90 of 1967. In this view of the matter the order passed by the court below in eviction suit u/s 15 of the B.B.C. Act cannot be held to be completely without jurisdiction.

5. So far direction to make payment of rent at the rate of Rs. 1000/- per month is concerned it is denied that there is nothing to show that ever the petitioner has paid this rent either to the present plaintiff, his vendor. The State was earlier the landlord of the premises. The last fixed rent for which notice u/s 8(4) of the Evacuee Property Act was issued by the father of the petitioner was Rs. 18/- per month. At best it can be held that the admitted rent of the premises which was laid paid was Rs. 18/-, the court should have passed order for making payment of rent at this rate, till the plaintiffs gets the fair rent fixed by the competent authority for the premises, the defendant cannot be directed to make payment of any other rent as arrears of rent.

6. Accordingly the party (sic-part ?) of the order where the petitioner has been directed to make payment of arrears of rent and current at the rate of Rs. 1000/- is set aside. The petitioner will make payment of arrears of rent as well as current rent at the rate of Rs. 18/- per month till the fair rent of the premises is fixed by the competent authority under the B.B.C. Act. This application is accordingly disposed of.