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(2000) 09 PAT CK 0093

In the Patna High Court

Case No : Civil Revision No. 341 of 2000

Rajesh Kumar @ Rajesh Kumar Khaitan and Others — APPELLANT

Vs

Sri Laxmi Narayan Sah and Others — RESPONDENT

Date of Decision : 19-09-2000

Acts Referred:
Transfer of Property Act, 1882 — Section 107

Citation : (2001) 1 BLJR 32 : (2001) 1 PLJR 336

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Deb, J.—This revision petition has been preferred u/s 14(8) of the Bihar Buildings (Lease Rent & Eviction) Control Act, 1982 against the judgment and decree passed in Title Eviction Suit No. 23 of 1995 by the Sub-Judge IX, Patna on 22.1.2000.

2. The relationship of landlord and tenant between the parties is admitted. According to the plaintiffs-Opposite parties, the suit premises were purchased in the year 1980 in the name of plaintiff No. 1 for their own occupation and residential purposes but for some reason or other they could not be able to occupy the suit premises which was a Pucca single storeyed house having opening towards the road. Then on being approached the suit premises were leased out to the defendant No. 1 for five years on the basis of a registered lease-deed dated 15.9.1989. After the lease period was over then the plaintiffs were to vacate the suit premises but then there was negotiation between the parties and the lease period was extended for 11 months on an agreement being arrived at on 9.9.94 but then also, the suit premises were not vacated and hence after giving notice the above-mentioned eviction suit was filed by the plaintiffs on two grounds, namely, for personal necessity and opening a sweet meat shop in the front portion and for residential purpose in the back portion and also for expiry of tenancy as contemplated u/s 11(1)(c) and 11(1)(e) respectively. It was also

mentioned that the eviction suit was filed on the basis of Section 18 of the B.B.C. Act. In respect of personal necessity, it was contended from the side of the plaintiffs that they are residing in a rented house and the owner is pressing hard for vacating and that the whole suit house is necessary for the accommodation of the large family of the plaintiffs having 8/15 members amongst whom some are school and college-going students. In respect of expiry of tenancy, it was contended that the extension of the lease period was made for 11 months as per Section 18 of the B.B.C. Act on a consensus being arrived at between the parties but since after that expiry of the period, the defendants had no right to stay over.

3. The suit was contested by the defendants by filing written statement. Factual aspects regarding registered lease of five years and then extension for 11 months by an agreement or a new agreement is admitted but their case is that the whole of the constructions in the suit premises had been made by the defendants and for that purpose, the defendants had incurred a cost of Rupees 1,00,000/- and when for vacating the suit premises after the lease period the defendants wanted back their money towards construction as a security kept by the plaintiffs. They could not do so and, as such, for buying time by the plaintiffs 11 months extension was granted but still then the plaintiffs could not pay up the security amount of Rupees 50,000/- and unless that amount is paid the plaintiffs are not entitled to get eviction. Regarding the personal necessity, it has been submitted from the side of the defendants that the plaintiffs have of a sweet meat shop in the heart of the city of Patna and there is no necessity of any other business of sweet meat shop in the suit premises as the same is situated almost in rural area under Shastri Nagur P.S. about eight kilomets away from the main city. It has also been contended that for residential purposes also, the plaintiffs have got no need and according to the defendants even if such need is there both the plaintiffs and the defendants can be accommodated in the suit premises itself by partial eviction. Regarding partial eviction, the plaintiffs have stated in their plaint itself that considering their need of having separate rooms for the reading facility of the school and college-going students of their family members the whole of the suit premises is necessary and no partial eviction can suffice the need of the plaintiffs.

4. Both the parties adduced evidence both oral and documentary. Several issues were framed including that of partial eviction and the learned Court'' below after considering the evidence on record and the materials available came to the finding that the plaintiffs could establish both the grounds of eviction, i.e., expiry of tenancy and personal necessity and then decreed the suit holding that partial eviction in the teeth of the personal necessity as stated from the side of the plaintiffs would not suffice their need. Hence, this revision petition.

5. The main point urged before this Court by is the earned Counsel appearing for and on behalf of the petitioner that the eviction on the ground of expiry of tenancy was illegal inasmuch as the period of tenancy expired on the basis of an unregistered subsequent lease is not maintainable as Section 107 of the Transfer

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of Property Act would come into play, relying on a decision of a Single Bench of this Court as reported in 1989 PLJR 1162 Rajendra Bahal Bahal v. Desraj Singh. His further contention is that the personal necessity could also not be proved as such personal necessity could only be termed as a desire of the plaintiffs and not a need. Earned Counsel appearing on behalf of the Opposite party has submitted that such sort of submission on the part of the petitioners regarding the expiry of tenancy is not maintainable as not only in the written statement but also in the evidence, it has been admitted that a subsequent agreement was arrived at after the expiry of the previous registered lease for five years and the subsequent agreement/lease was for 11 months alone and, as such, it does not require registration even as per Section 107 of the Transfer of Property Act. It has further been submitted that the subsequent agreement is on the basis of Section 18 of the BBC Act and the BBC Act being a complete enactment it cannot attract even the provisions of the T.P. Act. To consider the rival submission of both the parties, some factual aspect is required to be considered. The first lease for five years was a registered one and that was entered in between the plaintiff No. 1 and the defendant No. 1. The second agreement/lease is an unregistered one and entered in between the plaintiff No. 2 and the defendant No. 2 and on this score, it is submitted that the second agreement/lease is not a continuation/ extension of the previous registered lease. This sort of distinction has not been raised by the defendants in their written statement rather it could be found from the evidence also that the defendant No. 2 after the first lease was executed had started business in the suit premises and the defendant No. 1 admitted that she could not start business for paucity of fund. It was also admitted by both the parties that both the parties are joint Hindu Family and up-till-now there is no partition between the coparceners in either of the family. In the legal notice given from the side of the defendants, it could be found that the circumstances in which the second agreement was entered clearly disclosed that it was an extension of the earlier lease and not an independent one. Now only for argument''s sake, a distinction is attempted to be made. On the facts and circumstances and on consideration of the averments in the second agreement, it could be found that the second agreement was nothing but an extension of the earlier lease and if that be so the second agreement comes within the purview of Section 18 of the BBC Act. The question of application of Section 107 of the Transfer of Property Act does not arise. Even if in my opinion, the lease being signed by both the parties of an immovable property does not require registration if the same is not for a year or more than a year. When the lease is for 11 months it did not require registration. The ruling cited by the earned Counsel appearing for the petitioner that means 1989 PLJR (supra) cannot be adhered to in the present case and it appears that in that case, no notice has been taken by the learned Single Judge regarding Section 18 of the BBC Act. Here in the present case from the very beginning the plaintiffs had hammered on Section 18 of the BBC Act and as per the provisions of Sub-section (2) of Section 18 of the Act the subsequent agreement is totally a legal one and the expiry period of that agreement definitely comes within the purview of Section 11(1)(e)

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of the Act itself. Learned Court below has rightly deciphered the oral and documentary evidence and also the legal phenomenon and came to the right finding that the plaintiffs could prove the ground of expiry of tenancy and thus entitlement is there of the plaintiffs for a decree for eviction.

6. Let us for argument''s sake, we leave aside that ground of expiry of tenancy then also, it is to be seen whether plaintiffs could be able to prove the ground of personal necessity in its proper perspective for grant of eviction decree. The plaintiffs'' case is that the family consists of two sons, one daughter-in-law and several grand children, some of whom are school and college-going students. This factum has been admitted by the defendants in their evidence also. It has also not been denied that the plaintiffs are now residing in a rented house and there is plea from the side of the plaintiffs that their landlord is pressing them to vacate the house. So definitely, the plaintiffs'' need of personal necessity cannot be said to be a simple desire and not a need. Moreover only because the plaintiffs have got another sweet meat shop, it cannot be dictated by the defendants that the plaintiffs cannot have a second sweet meat shop in the Mohallah where the disputed premise situates. Thus, the personal necessity besides the expiry of tenancy could also be proved from the side of the plaintiffs and on that ground alone, the plaintiffs are entitled to get decree of eviction. The plea of the defendants that the constructions have been made by them for which there was permission from the side of the plaintiffs and the money spent for construction was construed as a security money had been rightly disbelieved by the learned Court below. The existence of the house before the tenancy was created in the year 1989 could be found from the leas deed itself which has been marked as Ext. 2 in the case. So it could not be proved that the houses have been constructed by the defendants after taking the premises on lease. Some oral evidence had been adduced from the side of the defendants in support of their case but the learned Court betowhas rightly discarded this evidence on the basis of materials on record itself. Oral evidence in contrary to the documentary evidence has rightly been discarded by the learned Court below. Regarding security money, etc. is a connoted story on the face of it when the defendant No. 1 had stated in her evidence that because of paucity of fund she could not even open up the business. So that story of the defendants has rightly been construed as a myth. Regarding partial eviction, the learned Court below has decided after considering the evidence on record that in the facts and circumstances partial eviction is not possible as the same would not suffice the genuine needs of the plaintiffs. Thus, on scrutiny of the impugned judgment and the submission made by the earned Counsel for both the parties, I find and hold that the eviction decree passed by the learned Court below is perfectly a legal one both on facts and on points of law and there is nothing to be interfered with the same.

7. Thus, the revision petition has got no force and hence, the same is rejected but in the facts and circumstances no order as to costs.

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