
(1998) 10 GAU CK 0003
In the Gauhati High Court
Case No : Civil Revision No. 23 of 1993

Rama Ghosh and Others

APPELLANT

Vs

Rukhia Begum and Others

RESPONDENT

Date of Decision : 30-10-1998

Acts Referred:

Citation : (1999) 3 GLT 170

Hon'ble Judges : D.N. Chowdhury, J

Bench : Single Bench

Advocate : A. Roy and S.R. Sen, for the Appellant; B.P. Katakya and B.N. Sarma, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Chowdhury, J.—This Civil Revision at the instance of the legal heirs of the Defendant is directed against the judgment and decree dated 25.11.92, passed by the District Judge, Dibrugarh in Title Appeal No. 9 of 1992, affirming the judgment and decree dated 25.10.84, passed by the Munsiff No. 1, Dibrugarh in Title Suit No. 54 of 1983, decreeing the suit for ejectment and recovery of arrear of rents.

2. The Title Suit was instituted by the Plaintiff against the sole Defendant-the predecessor-in-interest of the present Petitioners for a decree of eviction of the Defendant on the ground of default in payment of rent and also on the ground of bonafide requirement. The Plaintiffs pleaded that the suit land was purchased by the Plaintiffs along with other lands and premises from the original landlord on execution of sale deed dated 09.03.1981 and 16.03.1981. The Plaintiffs entered into the possession of the land as owners of the suit premises. The sole Defendant was a tenant under the original landlord at a monthly rent of Rs. 35/- per mensem. The change of ownership was informed by the vendors as well as by the Plaintiffs, but the Defendant did not pay rent, not it asked for a fresh lease. The Plaintiff served notice of ejectment on the Defendant, the predecessor-in-interest of the Petitioners, terminating the tenancy and asking him to quit the

premises and to deliver vacant possession. The Defendant on receipt of the notice, agreed to pay the Plaintiffs rents and requested them to allow him to continue as tenant under the Plaintiffs. However, the Defendant failed to comply with the notice and continued to occupy the suit premises without paying any rent. Hence the suit. The Plaintiffs inter-alia also pleaded that the suit premise was required for their bonafide use. The Defendant contested the suit and filed written statement. The Defendant pleaded inter-alia absence of cause of action, questioned the maintainability of the suit, absence of necessary, parties and that the suit was barred by limitation etc. The Defendant further objected to the alleged family settlement amongst the original landlord and Ors. , and over and above averred that one-sixth share was purchased by one Sardar Mal Singh, who also claimed the rent. In the absence of the partition of the property, the suit could not proceed in the form instituted. The Defendant pleaded about the absence of notice of the alleged transfer of the suit land and became aware of the same on receipt of the ejectment Notice. The Defendant thereafter approached the Plaintiff for fresh settlement and expressed its willingness to pay the rent. The rent tendered to the Plaintiffs was refused and in that situation he deposited the rent in Court. The Defendant also disputed the Plaintiffs' plea of bonafide requirement of the suit property. On the pleadings of the parties, the learned trial court framed the following issues:

1. Is the suit maintainable?
2. Is there any cause of action for the suit?
3. Whether the Defendant is a tenant under the Plaintiffs and whether he defaulted in payment of rent?
4. Whether the Plaintiffs required the suit premises for bonafide purpose?
5. Whether the tenancy is terminated by serving valid notice of ejectment?
6. Whether the Defendant is liable to be ejected and the Plaintiffs are entitled to get the possession?
7. Whether the Plaintiffs are entitled to get the arrear rent and compensation as claimed?
8. To what relief, the parties are entitled?

3. The Plaintiffs examined two witnesses besides exhibited some documents and the Defendant also examined two witnesses apart from proving some records in support of his claim. The learned trial court decided the issue Nos. 1, 2, 3, 6 and 7 against the Defendants while adjudicating issue No. 5 in favour of the Plaintiffs. The learned trial court ruled out the necessity of ejectment Notice in a suit under the Rent Control Act. The learned trial Court found the Defendant defaulter for the period from March, 1981 to December, 1981. The issue No. 4 was decided against the Plaintiffs and held that the Plaintiff failed to prove their bonafide requirement of the suit land. Accordingly, the suit was decreed in favour of the

Plaintiffs for evicting the Defendant.

4. The matter was taken-up on appeal by the Defendant. The learned Appellate Court considered the evidence on record and on evaluation of the materials on record including the Exhibits "Ka" Series, rent receipts issued by the original landlord and the rent challans relied on by the Defendant, found the Defendant to be a defaulter. The learned Appellate Court assiduously scrutinised the pleadings as well as the evidence on record and concurred with the findings of the learned trial Courts and accordingly dismissed the Appeal. Hence the revision.

5. Mr. A. Roy, learned Counsel for the Petitioners, strenuously pointed to the pleadings as well as the evidence adduced in support of his case, to show that the Defendant did not default in payment of the rents. Mr. Roy particularly referred to exhibits "Ka" "Kha" series as well as to exhibits "Ga" to "Cha" to show that there was no default in the payment of rent. Mr. Roy, the learned Counsel for the Defendants/Petitioners, strenuously argued by referring to the materials on record, that the suit for eviction was instituted by the Plaintiffs and it was for the Plaintiffs to prove its case on its own merit and the Plaintiffs cannot get a decree on the weakness of the Defendant.

6. Mr. B.P. Katakya, the learned Counsel appearing on behalf of the opposite parties, submitted that the Defendant was a defaulter and that there was no proof of the Defendant paying the rent at least from the month of September, 1981 i.e. from the month on which notice was issued to the Petitioners. Mr. Katakya, the learned Counsel, further submitted that the Defendant after coming to know that the Plaintiffs became the joint owners of the suit premises, agreed to deposit the rents from the month of September, 1981 but the Defendant deposited rents only from the month of January, 1982 and thereby the Defendant/Petitioner became defaulter.

7. Mr. A Roy, the learned Counsel for the Petitioners, is no doubt right in his contention that the Plaintiff in a suit of this nature must succeed in his own strength by citing adequate legal evidence in its support to discharge the onus on it regardless of the fact as to whether the Defendant has proved its case or not. But in the case in hand, the Plaintiffs adduced sufficient evidence in support of its case to pursued the courts below for a decree of eviction.

8. The learned Appellate Court considered the material piece of evidence, oral as well as documentary, those were placed before the court and came to the conclusion as mentioned earlier. The findings of fact cannot be said to be the result of misreading of evidence or perverse.

9. Exhibits Ga, Gha, Unga, Cha, Chha, are miscellaneous cases by which the rents were deposited. Exhibits Ka (1) to Ka (3) are the rent receipts for the year 1982 and exhibits Kha (1) to Kha (5) are the challans of rents deposited. In the absence of proof of deposit of rents from the month of March, 1981 to December, 1981 as also if from September, 1984 onwards, the learned Courts below did not commit any error in holding the Defendant a defaulter. On the face of the

concurrent findings by both the courts below, this Court sitting in revision shall not interfere with the finding of facts in the absence of any error or jurisdiction or material irregularity affecting the jurisdiction of the courts below. The revision petition is thus liable to be dismissed.

10. However, considering the length of period for which the Petitioner(s)/ Defendants have been occupying the suit premises as well as other attending circumstances, and to enable them to make alternative arrangement for their accommodation, the Petitioners are allowed to continue to be in possession of the suit premises till 31st of July, 1999.

11. In the result, the revision petition is dismissed. However, in the circumstances of the case, there will be no order as to costs.