
(2010) 09 PAT CK 0116
In the Patna High Court
Case No : Civil Revision No. 673 of 2004

R.R. Enterprises and Others

APPELLANT

Vs

Smt. Pratibha Lal and Others

RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Citation : (2010) 09 PAT CK 0116

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—The Defendants have preferred this civil revision application u/s 14(8) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the "Act"), and are aggrieved by the judgment and decree dated 1.4.2004, passed by the learned Subordinate Judge-10, Patna, in Binod Bihari Lal and Ors. v. R.R. Enterprises and Ors. Title Eviction Suit No. 17 of 1996), whereby the eviction suit preferred by opposite party 1st set herein for eviction of the Petitioners on the ground of expiry of the period of lease as well as personal necessity, has been decreed.

2. Binod Bihari Lal, one of the Plaintiffs, died during the pendency of the present proceedings, on 6.8.2008. The order of substitution has been passed in the present proceedings on 1.9.2010.

3. According to the plaint, the Plaintiffs are the owners of the suit house bearing Holding No. 809/407, Circle No. 249, situate in Mohalla-Mohanpur Punaichak, P.S.-Shashtrinagar, Patna. On the request of Defendant No. 2, the Plaintiffs agreed to induct the Defendants as their monthly tenant for a monthly rental of Rs. 11,000/-. An amount of Rs. 27,500/- was paid as advance rent on 15.9.1995, and the Defendants took possession of the leased-out portion of the house on the same date. As per the lease deed inter-parties, the suit premises is the whole of the ground floor of the building. It is further said that the agreement was executed for eleven months from the date of occupation of the suit premises and the terms of the lease deed, the period of lease was to be extended only after one month's notice. The further case is that the Defendants have not paid a

single farthing to the Plaintiffs save and except the advance money as stated above. It is further claimed that the period of lease agreement expired on 24.8.1996. Since the terms of tenancy was as per the English Calendar, and the Defendants have not given any notice in writing to the Plaintiffs for renewal of the lease as agreed upon by the parties.

3.1. Further case is that the Plaintiffs required the suit premises for their own use, who are themselves residing in a rented house, have not vacated the same. Plaintiff No. 1 has got two daughters of marriageable age, and the rented house in which they are presently residing cannot accommodate such ceremony. It is also said that Plaintiff No. 1 himself is suffering from various chronic diseases such as asthma and diabetes, blood pressure etc., and is under treatment of one Dr. Santosh Thakur. Likewise his wife is also an ailing lady suffering with disease and gout trouble. On health grounds, the doctors have advised the couple to reside on the ground floor. Furthermore it is said that the son of Plaintiff No. 1 who is now unemployed intends to run a business in the suit premises. Hence this suit.

4. The Defendants (the Petitioners herein) entered appearance and filed their written statement.

5. The Plaintiffs examined a number of witnesses and also brought on record documentary evidence in support of their case set out in the plaint. The Defendants did not cross-examine the Plaintiffs' witnesses, nor did they produce any witness of their own, nor did they bring on record any documentary evidence. On a consideration of the materials on record, the suit was decreed by judgment dated 20.2.1998. The Defendants preferred Miscellaneous Case No. 17 of 1998 on the ground that his counsel could not appear for various reasons. The same was allowed by the learned trial court, and he recalled his judgment dated 20.2.1998, for fresh hearing and judgment. The matter was reheard and the Defendants were given fresh opportunity.

6. The learned trial court framed the following issues for consideration:

1. Is the suit as framed maintainable?
2. Has the Plaintiff valid cause of action for the suit?
3. Is the suit barred by principle of estoppel, waiver and acquiescence?
4. Is the court fee paid sufficient?
5. Is the suit barred by the provisions of Specific Relief Act?
6. Is the suit bad for non-joinder of necessary parties?
7. Is there relationship of landlord and tenant between the Plaintiffs and Defendants?
8. Is the lease agreement executed between Plaintiff No. 1 and Defendants is valid, legal and binding?

8A. Is on the basis of expiry of period of lease whether Defendants are liable to be evicted from the suit premises?

9. Is the Plaintiff entitled for a decree of eviction as claimed?

10. To what other relief or reliefs the Plaintiff is entitled for?

11. Whether the Plaintiff has bona fide personal necessity of the suit premises or not?

12. Whether the partial eviction may reasonably satisfy the need of the Plaintiff?

7. After full consideration of the matter, the impugned judgment has been passed. The learned trial court has held that the Defendants purposely delayed disposal of the suit. They had deliberately failed to appear in the matter at various stages, they purposely refused to cross-examine the witnesses of the Plaintiffs, and also refused to produce their evidence. The learned trial court has further held that it was a tenancy for 11 months and, therefore, the lease deed did not need compulsory registration. He has also held that the Plaintiffs need the suit premises for bona fide personal requirement, and partial eviction will not serve their purpose.

8. While assailing the validity of the impugned judgment, learned Counsel for the Defendants (Petitioners) submits that the lease-deed was for a period of 11 months, but is covered by Section 107 of the Transfer of Property Act. Therefore, it needed compulsory registration, failing which it cannot be the basis for eviction. He relies on the provisions of Section 49 of the Registration Act, and also on the judgment of a learned Single Judge of this Court in *Rajendra Behl @ Bahal Vs. Deshraj Singh*, He next submits that, on account of circumstances which were not within the knowledge of the Defendants, their counsel could not appear and there could not be cross-examination of the Plaintiffs' witnesses, nor could they lead their own evidence. He next submits that the Plaintiffs have not been able to prove bona fide personal necessity. In any case, partial eviction will serve the purpose of the Plaintiffs.

9. Learned Counsel for the Plaintiffs (opposite party 1st set herein) submits that the Defendants from the very beginning of the suit made every possible effort to delay disposal of the suit in various ways and has been noticed in the impugned judgment. Non-examination of witnesses of the Plaintiffs, and non-production of their own witnesses, was also purposive. He next submits that the Plaintiffs have been able to prove their case of bona fide personal necessity. He submits that in such an event adverse inference has to be drawn against the Defendants. He relies on the judgment of the Supreme Court in *Vidhyadhar Vs. Manikrao and Another*, He also submits in the same vein that the learned trial court has clearly found that partial eviction will not serve the needs of the Plaintiffs. He lastly submits that it was a case of oral agreement for 11 months and, therefore, did not need compulsory registration.

10. We have perused the materials on record and considered the submissions of

learned Counsel for the parties. Learned Counsel for the Plaintiffs (opposite party 1st set) is right in his submission that the Defendants have purposely delayed disposal of the matter at all stages and intended to continue in the suit premises as long as they could. After the suit was instituted, the Defendants had entered appearance and filed their written statement. After sometime, their counsel purposely stopped appearing in the matter. The Plaintiffs examined their witnesses and proved their documents. The Plaintiffs' witnesses were not cross-examined, nor the Defendants produced their own evidence, leading to the previous judgment and decree dated 20.2.1998. However, the recall petition bearing Miscellaneous Case No. 17 of 1998 succeeded. The learned trial court recalled his judgment for a fresh hearing. They were successful in delaying disposal of the matter. It was thereafter reheard. It is apparent from the order-sheet, and has also been summarized in the impugned judgment, that more than adequate and reasonable opportunity was afforded to the Defendants to cross-examine the witnesses of the Plaintiffs, and produce their own evidence, which they once again purposely failed to do. During the pendency of the suit, the Defendants preferred Civil Revision No. 803 of 2003, which was rejected with the direction to dispose of the suit within a period of six months. The Defendants did not take any step and, after expiry of four months, they again put obstruction in disposal of the suit which were repelled by the learned trial court, and the suit was disposed of within the period allowed by the High Court. This aspect of the matter has been discussed at length by the learned trial court and we entirely agree with the discussion and the observations made by the learned trial court.

11. The Plaintiffs set up their case in the plaint that, apart from the couple, they have one son and two daughters of marriageable age. Apart from the position that they need the suit premises on the ground floor for business purposes, they also need it for medical purposes. The husband and wife are in bad health and have been advised to live on the ground floor to avoid the strain of climbing to the first floor. The family was occupying the first floor. Their further case is that Plaintiff No. 3 (the son) needs the premises to start his own business. It is also their case that they need the premises to perform the marriage of their two daughters. The learned trial court has found and held that the Plaintiffs have been able to prove their personal need for bona fide reasons by cogent and reliable evidence. In fact, as stated hereinabove, the entire evidence on behalf of the Plaintiffs has gone unchallenged and, therefore, the Plaintiffs' case practically stands admitted because of non-cross-examination. Learned Counsel for the Plaintiffs has rightly relied on the judgment of the Supreme Court in *Vidhyadhar v. Mankikrao* (supra), wherein the Supreme Court has held as follows:

This plea was not supported by Defendant No. 1 as he did not enter into the witness box. He did not state the facts pleaded in the written statement on oath in the trial Court and avoided the witness box so that he may not be cross-examined. This, by itself, is enough to reject the claim that the transaction of sale between Defendant No. 2 and the Plaintiff was a bogus transaction.

16. Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decision passed by various High Courts and the Privy Council beginning from the decision in AIR 1927 230 (Privy Council) This was followed by the Lahore High Court in AIR 1930 1 (Lahore) and the Bombay High Court in Martand Pandharinath Chaudhari Vs. Radhabai Krishnarao Deshmukh, The Madhya Pradesh High Court in Gulla Kharagjit Carpenter Vs. Nar Singh Nandkishore Rawat, also followed the Privy Council decision in AIR 1927 230 (Privy Council) (supra). The Allahabad High Court in Arjun Singh Vs. Virendra Nath and Another, held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab and Haryana High Court in Bhagwan Dass Vs. Bhishan Chand and Others, drew a presumption u/s 114 of the Evidence Act against a party who did not enter into the witness box.

12. In other words, as has been held by the Supreme Court, if the Defendants did not appear, nor did they produce their own witnesses, did not set up his own defence, and did not cross-examine the witnesses of the Plaintiffs, a presumption would surely arise that the case set up by the Plaintiff is correct. We are satisfied with the discussion in the impugned judgment about the case of personal necessity set up by the Plaintiffs. We entirely agree with the same.

13. The learned trial court has also discussed the issues relating to partial eviction of the suit premises in view of diverse needs of the family. Law is well settled that the needs of the Plaintiff can be judged by his needs alone, and the Defendant cannot dictate terms, except to set up a case that the Plaintiff does not need the premises bona fide and that it is a ploy to evict the Defendant. The need and requirement of the Plaintiff has to be adjudged, not that of the Defendant. The learned trial court has held that the Plaintiffs have been able to prove convincingly that they need the suit premises bona fide and for diverse reasons. We cannot fail to take notice of the fact that the Plaintiffs have two daughters of marriageable age. It is, therefore, natural that the Plaintiffs would not like outsiders to live in the same house in a situation where the Plaintiffs are already in occupation of the first floor. We entirely agree with the discussion in the impugned judgment on this aspect of the matter that partial eviction of the suit premises has to be judged from the angle of the requirement of the Plaintiffs, and not that of the Defendants. The contention is rejected.

14. Learned Counsel for the Defendants has submitted that the lease was for a period of 11 months and, therefore, needed compulsory registration. Section 107 of the Transfer of Property Act is reproduced herein below:

107. Leases how made.--A lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

[All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

[Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:]

Provided that the State Government [***] from time to time, by notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument by oral agreement without delivery of possession.

(Emphasis added)

15. Learned Counsel for the Defendants relies on the underlined portion and submits that it was a written unregistered document and, therefore, need compulsory registration, failing which it is inadmissible in evidence in view of provisions of Section 49 of the Act. Paragraph 6 of the plaint is reproduced herein below:

6. That all the aforesaid terms and conditions as laid down in the agreement were orally decided on 20.6.95 when the Defendant No. 2 approached the Plaintiff No. 1 for hiring the premises to be leased out and on that very day they thought to execute the deed of lease expeditiously. It is stated that the terms and conditions of lease were actually orally settled on 20.6.95 and the Plaintiff No. 1 directed the Defendant No. 2 to purchase the stamp papers and get the terms and conditions as orally agreed upon be typed as said earlier.

(Emphasis added)

It is evident on a plain reading of the same that the tenancy was for a period of 11 months and was orally arrived at. The lease-deed (Exhibit-3) was only a memorandum of the terms and conditions of lease already orally agreed upon. In that view of the matter, the lease in question was really an oral agreement accompanied by delivery of possession, and is covered by the relevant portion of Section 107 of the Transfer of Property Act. In that view of the matter, the document did not need compulsory registration, and can be the basis for eviction on the ground of expiry of the period of lease.

16. In the result, this civil revision application is dismissed. In the circumstances of the case, there shall be no order as to costs.

17. Learned Counsel for the Petitioners submits that the decree-holders (opposite party Nos. 2 and 3) have already levied execution case bearing Execution Case No. 1 of 2004, and is currently pending in the Court of learned Subordinate Judge-12th, Patna. The suit is of the year 1996, and is based on the ground of personal necessity. The learned Execution Court is hereby directed to ensure execution of the decree to the full satisfaction of the decree-holders

within a period of four months from today and report compliance to this Court.

18. Put up on 12.1.2011, under the heading "For orders" awaiting compliance report.