
(2011) 03 JH CK 0070
In the Jharkhand High Court
Case No : C.R. No. 98 of 2005

Sarju Prasad Bhagat

APPELLANT

Vs

Lai Babu Prasad Bhagat and Others

RESPONDENT

Date of Decision : 10-03-2011

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 11, 15
Civil Procedure Code, 1908 (CPC) — Section 10
Transfer of Property Act, 1882 — Section 53A

Citation : (2011) 2 JCR 409

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Poonam Srivastav, J.—The instant revision is preferred by the tenant challenging the judgment and Decree dated 16.07.2005 and 21.07.2005 respectively passed by Sub Judge - 6th, Dhanbad in Title Eviction Suit No. 10/92 whereby and where under, the Defendant/tenant (Petitioner herein) has been directed to handover vacant possession of the tenanted premises to the land lord/opposite parties within a period of three months failing which, the Plaintiff/land lord shall be at liberty to get vacant possession in the suit premises.

2. The disputed accommodation is Municipal Holding Nos. 262 and 263 in Ward No. 23 of Dhanbad Municipality situated on Plot Nos. 4024, 4025, 4026, 4027, 4028, 4029, 4030 and 4031, Mohalla - Purana Bazar, Marwari Patti, P.S. - Bank More, Dhanbad. The accommodation in occupation of the revisionist which is in dispute, consists of two rooms measuring 50" x 6" and 10" x 6". The entire holding consists of an area 76" x 431/2."

3. The eviction suit was instituted by the landlord on the ground of his personal and bonafide need and that he requires the accommodation in possession of the revisionist for his and use of his family members. The tenant/revisionist contested the suit and denied that the opposite parties were his landlord.

4. The case of the revisionist was that one Kamta Prasad Bhagat, son of Late Madho Prasad Bhagat was the original tenant and he let out different portions of the disputed premises to a number of tenants and the tenancy commenced according to the English Calendar month to month. The submission on behalf of the revisionist is that Kamta Prasad, original landlord entered into an agreement to sale different portions to the respective tenants as he was not able to maintain the property. The revisionist had also entered into an agreement to sale.

5. Similarly, the original landlord/owner Kamta Prasad Bhagat had entered into an agreement to sale with Plaintiff Nos. 1 and 2 for a consideration of Rs. 30,000/-. Consequent thereto, Sale Deed was registered on 10.08.1987. The Sale Deed was executed immediately after withdrawal of the suit for specific performance instituted by the Plaintiff/ opposite party vide T.S. No. 24 of 1988 against Kamta Prasad. It appears that during the pendency of the Suit No. 24/1988, some private arrangement was arrived at and the suit was withdrawn on 21.01.1989. Subsequent thereto, sale deed was executed in favour of the Plaintiff on 5th February, 1991. The revisionist has brought to my notice that he was also arrayed as one of the parties in the aforesaid suit. He objected to the withdrawal of the suit but his objections were rejected.

6. It is also stated on behalf of the revisionist that another suit for specific performance vide T.S. No. 126/1988 [Sarju Prasad v. Babu Bhagat and Ors.] instituted and the same is pending till date. The first submission on behalf of the revisionist is that since the Plaintiff got the Sale Deed executed with full knowledge that there is already an agreement to sale in existence in favour of the tenant/revisionist, therefore, the Sale Deed should not be given effect to in view of the provisions of Section 53A of the Transfer of Property Act and, therefore, the opposite parties are not entitled to step in the shoes of Late Kamta Prasad and they cannot be termed to be the landlord and valid owner. Subsequent to the execution of the Sale Deed in the year 1991, the instant eviction suit was preferred by the landlord in the year 1992.

7. Learned Counsel states that the principles laid down by the Apex Court is that in a case where the suit for specific performance is pending, eviction suit is not maintainable. Reliance has been placed by Counsel for the revisionist on a decision of the Apex Court in the case of Joseph Kantharaj and Anr. v. Attharunnisa Begum S. reported in AIR 2010 SCW 1411. The submission on the basis of this decision is that since the Defendant/revisionist has filed the suit for specific performance, which was pending, the eviction proceedings were liable to be deferred till the suit for specific performance was decided by the Civil Court.

8. The submission is that till the pendency of the suit for specific performance of the tenant/Revisionist vide T.S. No. 126/1988 [Sarju Prasad v. Lal Babu Prasad Bhagat and Ors.], the proceedings of the eviction case is liable to be kept pending specially in view of Section 53A of the Transfer of Property Act.

9. I have perused the said judgment in details and apparently, the submission

made on behalf of the revisionist is on a wrong interpretation of the said decision. Paragraph-10 of the judgment cited on behalf of the revisionist shows that the Apex Court clarified that a mere assertion by a tenant that he is in possession of part performance of an agreement for sale or the mere filing of the suit for specific performance by itself will not lead to deferment of the eviction proceedings. A word of caution has been given, further stating that a Defendant should be wary of coming forward with defense of agreement for sale, least that becomes a stock defense in such petition unless the Court is satisfied prima-facie that the agreement is genuine and the defense is bonafide, it should not defer the proceedings for eviction under the Rent Act.

10. I am of the view that the suit for specific performance was against the erstwhile landlord who has executed two agreements for sale - one in favour of the Defendant/revisionist and the other in favour of the Plaintiff/Respondent. The Sale Deed was executed in favour of the Plaintiff/Respondent.

11. The subsequent landlord (Vendee of the erstwhile landlord) brought the suit for eviction and. therefore, the suit which was pending since 1988, against the erstwhile landlord, who is no more alive, cannot be made a ground to defer the proceedings under the Rent Act, which was instituted in the year 1992 after the Sale Deed was executed in his favour in the year 1991. In the circumstances, in my view, this citation relied upon by the counsel for the revisionist is for no help to the tenant.

12. I do not agree with this arguments of the learned Counsel. In fact, the Sale Deed was executed as far back in the year 1991. So, at that time, the suit for specific performance at the instance of the revisionist was already filed but a Deed for Agreement to Sale do not grant any right in favour of the person who has entered into the agreement unless a Sale Deed is executed. Admittedly, a Sale Deed was executed subsequent to another agreement to sale in favour of the landlord and the vendee perfected his right. He has an absolute right in respect of the properties shown in the aforesaid Sale Deed and he stepped into the shoes of the owner/landlord.

13. The tenant did not file any suit for cancellation of the Sale Deed till date and he admits that he continued to reside in the said house without payment of any rent. Thus, in my view, unless there was any step taken by the tenant for getting the Sale Deed cancelled or any other step against the original landlord, Section 53A of the Transfer of Property Act will not come to his aid. The present proceeding arose out of the suit for eviction on the ground of personal need u/s 11(c) of the Bihar Building (Lease, Rent and Eviction) Control Act and, therefore, the only question that has to be examined is whether the need of the accommodation for the landlord and his family members is bonafide or not and the eviction suit is preferred in good faith and also that whether the partial release of the accommodation in question can suffice the need of the landlord?

14. After the eviction suit was instituted, written statement was filed and the

only objection raised by the tenant was regarding the pendency of the suit for specific performance at the instance of the revisionist as well as the fact that the landlord has no right and claim to the accommodation in question as owner and landlord and the suit is liable to be dismissed. Existence of landlord - tenant relationship was denied but no specific denial about the number of family members of the landlord and the extent of accommodation in his possession and also requirement demonstrated in the plaint was correct or not? No assertion on the part of the tenant in his written statement to discredit the claim of the landlord is made and therefore, the Court has no other option. No evidence was produced by the revisionist either to disbelieve the claim made in the plaint.

15. There is yet another aspect which cannot be overlooked. An application by the opposite party was moved u/s 15 of the Bihar Building (Lease, Rent and Eviction) Control Act for payment of rent as admittedly, tenant was not paying any rent. A direction was given that payment of rent @Rs.200 per month as well as to deposit current rent, which the tenant failed to do so and his defense was struck off on 28.06.1997. This order was challenged in the High Court but the order striking off the defense stood confirmed. In view of these circumstances, the defense of the revisionist could not be taken into consideration.

16. I have perused the impugned judgment which is a well discussed and lengthy Judgment. Point No. 3 was framed on the question as to whether there exists a landlord - tenant relationship between the parties or not? and the finding and conclusion recorded by the Court below was that there does exist relationship of landlord - tenant after taking into consideration the entire oral arguments as well as the documentary proof. On perusal of the Judgment, it appears that in spite of the fact that tenant's defence was struck off yet the Court below has considered the oral evidence of the defence witnesses as well as the documents brought on records vide Exts.-A, A/1, B to B/7, C and D.

17. The Plaintiff has specifically asserted in his plaint that the father, mother, sisters are all living as a joint family and there are as many as 17 to 18 family members.

18. In paragraph-14 of the plaint, it is specifically pleaded that the Plaintiffs are facing an acute shortage of accommodation. Plaintiff No. 1 is married, having three children but sitting idle. The other two brothers - Plaintiff. Nos. 2 and 3, they are college students, who are also in need of starting a business of grocery shop. They require some portion of the building for the residential use and to start their business in the remaining portion. It has specifically been asserted that because of shortage of accommodation, the Plaintiff has already instituted five eviction suits vide Suit No. 30/1991 against Jamuna Ram, Suit No. 31/1991 against present Defendant/revisionist, Suit No. 32/1991 against Banarsi Pandey, Suit No. 33/1991 against Jhari Modi and Suit No. 34/1991 against Moti Saw.

19. The evidence of P.W.-7 before the Court has also supported the assertion of the plaint and thus, the findings on the question of bonafide need and good faith

also appears to be fully justified and well considered. The appreciation of evidence does not call for any interference.

20. Counsel for the Plaintiff/Respondent has cited a decision of Patna High Court in the case of Dr. N.P. Tripathi Vs. Smt. Dayamanti Devi and Another, in support of his contention that in a suit for eviction of tenant under the Rent Control statutes cannot be sought to be stayed u/s 10 CPC on the ground that the tenant had earlier filed suit for specific performance against the landlord on the basis of an agreement for sale of the demised premises in favour of the tenant. He cannot resort to Section 53A of the Transfer of Property Act as a weapon of defense by claiming title alleging that by virtue of the agreement to sale, he continued in possession not as a tenant but as a transferee. It is well settled that Section 53A of the Transfer of Property act can be used as a shield and not as a sword.

21. Another decision cited on behalf of the Plaintiff/Respondent is Shanti Devi v. Mahabir Mistry reported in 1993 (2) PLJR 367 and also the case of Dinesh Kumar Purbey v. Mahesh Kumar Poddar reported in 1991 (1) PLJR 650 to support the contention that in an eviction suit on the ground of personal need upon transfer of interest, attainment is not a necessary condition to create landlord - tenant relationship between the parties. Attainment has no bearing whatsoever in case of eviction on the ground of personal necessity.

22. I have considered all these aspects, facts and circumstances and also the arguments of the respective counsel and I am satisfied that for the reasons detailed hereinabove, there is no good ground for interference or ground for relief to the revisionist with the aid of Section 53A of the Transfer of Property Act or to stay the eviction proceedings till the disposal of the suit for specific performance being T.S. No. 126 of 1988, pending before the Court below.

23. The counsel has not been able to even substantiate that what is the stage of the proceedings in the said suit or it is lying in cold storage since the year 1988 even after lapse of 23 years. The prayer of the revisionist for deferring the decision in the present case till eternity cannot be accepted. The landlord has sufficiently substantiated claim of bonafide need and that the eviction suit was filed in good faith and the accommodation is required by the landlord for his personal use. Even taking into consideration the fact that certain accommodation were vacated by the other tenants, but the small tenancy consisting of either one or two rooms and the size of the family members and their requirements, cannot be fulfilled. Therefore, the landlord needs the entire premises and "partial release" will not suffice his needs and it is always open for the tenant to approach the Court in case it is found that the landlords have misused the liberty of release of accommodation and let out to a third person.

24. In the facts and circumstances, the instant revision lacks merit. There is no good ground for interference and is accordingly dismissed. However, in the facts and circumstances, there is no order as to costs.

25. At the end, counsel appearing on behalf of the tenant made a request that the revisionist is a very poor person and he has no alternative accommodation to shift and, therefore, some reasonable time be given to him to search for another accommodation otherwise, he and his family members will be on road. The prayer was objected by counsel appearing on behalf of the landlord and he stated that the revisionist has already constructed his own house and they can very well shift. This assertion is however against the record and therefore, I decline to take into notice that the revisionist has constructed another house.

26. It is correct that in case the tenant is thrown out of the accommodation, he will suffer great hardship and, therefore, I am of the considered view that a period of eight months from today is sufficient time for the revisionist to look for an alternative accommodation. He shall file an undertaking in form of an affidavit before the executing Court that he will vacate the disputed house on or before 12th November, 2011. He shall pay damages at the rate of rent fixed by the Court i.e. Rs. 200 per month during this period and in the event of default, the landlord will be at liberty for execution. The damages to the tune of Rs. 200/- per month shall be paid by the 10th of each succeeding months. This liberty is being granted on humanitarian considerations and not on merits of the case.