
(2012) 12 PAT CK 0001
In the Patna High Court
Case No : Civil Revision No. 87 of 2011

Satya Narain Mishra @ Barkuji	Vs	APPELLANT
Sudhanshu Anand and Others		RESPONDENT

Date of Decision : 05-12-2012

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 14, 14(8)
Civil Procedure Code, 1908 (CPC) — Section 115
Transfer of Property Act, 1882 — Section 52

Citation : (2013) 2 PLJR 491

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Advocate : Naresh Chandra Verma, Natraj Verma and Lakshmi Kant Tiwary, for the Appellant; Birendra Kumar Sinha and Abinash Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Jyoti Saran, J.—Heard learned counsel for the parties. This civil revision application is directed against the judgment and order dated 15.3.2011 passed by the Munsif, Muzaffarpur (East) in Eviction Suit No. 41 of 2005 whereby the suit has been decreed in favour of the plaintiffs and the defendants have been directed to hand over the vacant possession of the suit property to the plaintiffs within a period of two months failing which it would be carried out through the process of the court.

2. The suit property is a building standing on Holding No. 5, Ward No. 24 in the town and district of Muzaffarpur owned by one Raj Kumar Choudhary having fallen in his share by reason of a decree passed in Partition Suit No. 139 of 1989. The said Raj Kumar Choudhary had given the building on rent to the father of the petitioner late Bhaskar Prasad Mishra who was running a Homoeopathic Medical Store on the ground floor whereas the upper floor was being used for residential purpose. The default in payment of the rental by the original tenant late Bhaskar Prasad Mishra led to filing of the eviction suit at the instance of the erstwhile

owner of the property Raj Kumar Choudhary giving rise to Eviction Suit No. 29 of 2002 on the grounds of personal necessity. The original tenant Bhaskar Prasad Mishra deceased during the pendency of the suit and was substituted by the petitioner and his brothers who are opposite party nos. 3 and 4 in the present proceedings.

3. While the eviction suit was pending, the property in question was vended in favour of the plaintiff-opposite party nos. 1 and 2 through a registered sale deed. Consequent upon the purchase, the opposite party nos. 1 and 2 gave notice to the petitioner and his brothers requiring them to vacate the premises on grounds of bona fide requirement and personal necessity and upon their failure to do so, the suit in question was filed giving rise to Eviction Suit No. 41 of 2005. The suit having been decreed in favour of the plaintiffs, hence the present application.

4. Mr. Naresh Chandra Verma has appeared on behalf of the judgment debtor-petitioner no. 1 and while not disputing the facts of the case, has contended that the transaction under which the decree-holder purchased the property, itself is fraudulent. It is further argued that the judgment-debtors are not the tenant of the plaintiff rather the tenant is one Prem Lata Mishra who incidentally happens to be the wife of the petitioner. It is thus submitted that in absence of any relationship of landlord and tenant between the parties, and a suit already having been filed by the owner of the property Raj Kumar Choudhary, which is yet pending, the second suit was not maintainable.

5. In context of the issue of bona fide requirement and personal necessity of the plaintiffs, it is stated that the plaintiffs have their own house and a Medical Store and hence, there is no personal necessity requiring eviction of the tenant. It was sought to be contended that even the notice issued upon them was not valid. It is further the case of the petitioner that although the learned trial court has observed at para-31 of the judgment that Prem Lata Mishra was the tenant and even though she is not made party in the suit but yet the decree has been passed. It is thus submitted that as the tenant is not a party to the proceeding, hence, the decree is not binding on her.

6. On the issue of partial eviction, it is stated that although a finding to this effect has been recorded in para-33 of the judgment, but the trial court has merely discussed the issue in the backdrop of the shop existing on the ground floor without dealing with the matter as regarding the residential portion situated on the upper floor. It is submitted that in absence of any finding on the issue of partial eviction as regarding the residential portion, the judgment suffers from serious infirmity.

7. Mr. Verma, next dealing with the issue of personal necessity, has submitted that no evidence had been led by the plaintiffs in this regard rather it is the petitioner who had led evidence regarding the other shop available with the plaintiffs and which relevant aspect has not been considered by the trial court. It is further stated that an amount of Rs. 57,000/- had been spent by the

petitioners on repairs of the building but the learned trial court having noted the contention in para-37 of the judgment, has not appreciated the issue.

8. Mr. Verma, on the strength of the submissions, submits that there being absence of landlord-tenant relationship, the judgment and decree being silent on the issue of partial eviction and personal necessity, suffers from material irregularity and thus the judgment and decree is unsustainable.

9. The submission of Mr. Verma has been contested by Mr. Birendra Kumar Sinha, learned Senior Counsel appearing for the decree holder. While admitting the pendency of Eviction Suit No. 29 of 2002 filed by the vendor of the decree holders, it is submitted that following the purchase made by decree holders through a registered sale deed dated 18.8.2005, an application was filed by the vendor in Eviction Suit No. 29 of 2002 for withdrawal of the suit. Learned counsel has referred to the deposition of the vendor Raj Kumar Choudhary who has deposed as plaintiff-witness no. 5 in support of this contention. It is submitted that the opposite parties after purchasing the suit property by a registered sale deed dated 18.8.2005 for a consideration amount of Rs. 10.97 lacs, requested the defendants to vacate the premises as they bonafidely required the same for their personal necessity and which was followed by a legal notice but the same was not honoured. It is stated that it is in these circumstances that the suit in question was filed by the opposite parties seeking eviction of the defendants on grounds of personal necessity and bona fide requirement. It is the case of the plaintiffs that since after the death of the father of the petitioner late Bhaskar Prasad Mishra, his Homoeopathic Hall was rarely functioning. It is further their case that the defendants owned a house at Mohalla-Motijheel in the town of Muzaffarpur and which was vacant. It is also the case of the plaintiffs that since after completion of education, they are sitting unemployed and since the defendants were not vacating hence they had taken shops on rent in which they have started their business and which itself is sufficient to show their bona fide requirement and their personal necessity.

10. The learned court below, after hearing the parties, had framed six issues for consideration of which Issue Nos. 4 and 5 are the issues germane to the matter in contest and are relatable to the landlord tenant relationship existing between the parties and whether the plaintiffs required the suit premises bona fide and for their personal necessity.

11. It is by now well settled that the scope of a revision arising under the provisions of Section 14(8) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982, though is wider than the scope of a revision as provided u/s 115 of the CPC but is not to be adjudicated as a First Appeal. This court cannot be weighing the evidence led by the parties during the suit. The revisional power of this court under the present provision is merely to see whether the trial court has followed the statutory procedure provided u/s 14 of the Act and whether the judgment and decree passed by the court below is supported by the evidence on records. In other words, until such time that the aggrieved party is able to

demonstrate that the judgment and decree under challenge is perverse or has been passed in violation of statutory provisions or de hors the evidence on record, this court, in exercise of revisional power, would not interfere with the same. Reference in this regard is made to the principles settled under the following judgments:--

(a) Chandrika Prasad (D) Thr. Lrs. and Another Vs. Umesh Kumar Verma and Others,

(b) Smt. Sushila Devi and Others Vs. Sri. Lakhan Lai Sah and Others, .

(c) Ravi Atal and Another Vs. Smt. Ganga Devi .

12. The scope of revisional jurisdiction having been discussed, it is to be seen whether the conclusion drawn by the learned trial court suffers from any infirmity so as to warrant interference. As already stated, Issue Nos. 4 and 5 of the issues framed by the trial court are the issues germane to the matter in contest.

13. The learned trial court noted that a landlord-tenant relationship existed between the original owner of the property Raj Kumar Choudhary and the father of the petitioner late Bhaskar Prasad Mishra and that an Eviction Suit No. 29 of 2002 had been filed by Raj Kumar Choudhary against Bhaskar Prasad Mishra. As Bhaskar Prasad Mishra deceased during the pendency of the eviction suit, by operation of law, the petitioner and his brothers became the tenants under Raj Kumar Choudhary and it is on this account that they were substituted in Eviction Suit No. 29 of 2002.

14. Learned trial court has also taken note of the fact that whereas the petitioner and his brothers by operation of law became tenants under Raj Kumar Choudhary, no evidence had been led by them to demonstrate as to how the wife of the petitioner Prem Lata Mishra became a tenant. The trial court has also while taking note of the objection of the defendant-petitioner relying upon Section 52 of the Transfer of Property Act, held that as the defendants had not claimed title to the property, hence, the objection was not legally tenable.

15. In any view of the matter, the pendency of the eviction suit did not create any bar for the landlord Raj Kumar Choudhary, the owner of the property, to transfer the same in favour of the plaintiffs nor any such bar can be found in the provisions of the Transfer of Property Act. The learned trial court has taken note of the documents of ownership of Raj Kumar Choudhary which were marked as Exts.-6, 7 and 8 as also the transfer of title in the suit property on the plaintiffs, by virtue of the sale deed dated 18.8.2005. Ext.-3 is a legal notice served upon the defendants informing them regarding the purchase made by the plaintiffs. Whereas the tenancy of Bhaskar Prasad Mishra has not been disputed by the defendants but they have tried to raise a bogie by putting forward the name of Prem Lata Mishra who happens to be the wife of the petitioner as a successor tenant without placing on record any document to support this statement. The trial court has also taken note of the fact that no evidence was led by the

defendants on the issue of partial eviction and in fact, when confronted, it was contested by learned counsel that as the defendants had denied the very landlord-tenant relationship between the parties, hence there was no occasion for leading evidence on this aspect. The learned trial court considering the circumstances and the transaction dated 18.8.2005, has upheld the landlord-tenant relationship between the parties and thus held the suit maintainable.

16. On the issue raised regarding the status of the present suit in view of pendency of the earlier suit filed by the vendor of the plaintiffs, the learned trial court taking note of the submission of the vendor who was the plaintiff in the earlier suit that he had filed a petition seeking withdrawal of the said suit, rejected the contentions of the defendants. The trial court after rejecting the objection has further clarified in para-31 of the judgment with reference to several judgments of this court and the Supreme Court that the plaintiffs having stepped into the shoes of the landlord by virtue of transaction dated 18.8.2005 and the defendants being the legal heirs of the original tenant, the landlord-tenant relationship continued by operation of law.

17. The only other issue(s) which thus remained for adjudication was whether or not there was a bona fide requirement for the plaintiffs to seek eviction; whether there existed personal necessity as also whether the personal necessity and their bona fide requirement could be satisfied by partial eviction.

18. The issue of personal necessity has been discussed in para-32 of the judgment. The plaintiffs have claimed that they require the suit property for their personal use and also for conducting business. The trial court has discussed the evidence led by the plaintiffs in support of their claim of their bona fide requirement of the property in question and has concluded in their favour. Once the issue of bona fide requirement and personal necessity is drawn in favour of the plaintiffs, the onus shifts upon the defendants to prove that the bona fide requirement and personal necessity of the plaintiffs could be satisfied by partial eviction. The failure on the part of the defendants to lead any evidence in this regard, the issue stood decided in favour of the plaintiffs. The finding of the trial court is well supported by the judgments of this court reported in 1993 (1) PLJR 87 also taken note of in a recent judgment reported in Hanuman Prasad Gupta Vs. Shankar Choudhary, .

19. In the aforesaid view of the matter, the finding of the trial court affirming the claim of bona fide requirement of the plaintiffs in the suit property on grounds of personal necessity does not warrant any interference.

20. The last issue raised by the learned counsel is regarding the finding of the trial court on the expenditure incurred by the defendants on the repair of the building. The learned trial court in para-37 of the judgment has discussed the issue and while affording liberty to the defendants to raise the issue before the Rent Controller in this regard, it has been held that as the defendants had failed to lead any evidence in this regard and as the issue was beyond the statutory

powers of the court, hence it did not warrant consideration.

21. The judgment and decree under challenge has been passed by the learned trial court after observance of the procedure provided in Section 14 of the Act; is supported by reasons and upon consideration of the evidence led by the plaintiffs as also upon failure of the defendants to dislodge the claim and does not warrant interference. Learned counsel for the petitioner despite his efforts failed to substantiate any legal infirmity, perversity or material irregularity in the judgment and order under challenge, requiring any interference. For the reasons aforesaid, this application is dismissed but without any order as to cost.