

(1995) 03 PAT CK 0015

In the Patna High Court

Case No : Appeal from Appellate Decree No. 399 of 1993

Smt. Sudha Devi and Another

APPELLANT

Vs

Smt. Shanti Devi

RESPONDENT

Date of Decision : 29-03-1995

Acts Referred:

Citation : (1995) 03 PAT CK 0015

Judgement

B.L. Yadav, J.—This is a defendant's Second Appeal preferred u/s 100 of the Civil Procedure Code, 1908 (hereinafter to be called as "The Code" for short) against the decree dated 24.5.1993 passed by Shri Bhukhal Prasad, 7th Additional District Judge, Patna in the Title Appeal No. 4 of 1991, affirming the judgment and decree dated 13.12.1990 passed by Sri Indu Bhushan Dwivedi, Munsif, Patna City in Title Eviction Suit No. 42 of 1985. The suit was filed by the plaintiff-respondent for eviction of the defendant-appellants from the suit premises bearing Holding No. 222 consisting of six rooms on the ground floor and one room at the first floor with court-yard, stair-case, two latrines, bath room situate at Mohalla Bari Patandevi within Alamganj Police Station in the District of Patna.

2. The averments in the plaint were that the plaintiff was the owner and in possession of the pucca house situate at Bari Patandevi Colony bearing Holding No. 222/A/20 and Ganga Bridge Colony under Plot No. 20/A. The plaintiff inducted defendants Nos. 1 and 2 as tenant on payment of monthly rental of Rs. 100/- and the defendants undertook to vacate the suit premises in the month of June, 1985, but they failed to do so and also stopped payment of rent from January, 1983 till the date of the suit, which comes to Rs. 3,200/-. It is further stated that the house in question was constructed by the plaintiff for her own purpose and the plaintiff required the suit premises for her personal necessity. A legal notice was also sent but the defendants did not vacate the suit premises. Hence the present suit was filed.

3. The defendants also contested the suit alleging that the plaintiff's husband was, no doubt, the owner of Plot No. A/20. After his death the plaintiff and her

son gave the land in question to defendant No. 1 by an oral deed of gift dated 19.4.1976 (Ext. A) and thereafter the defendants raised construction. It is further alleged that neither the plaintiff is owner of the land in question nor she is entitled to the relief claimed.

4. The trial court decreed the suit and the defendants-appellants preferred First Appeal before the lower appellate court and the same was also dismissed. Hence the present Second Appeal has been filed. The appeal was listed for hearing under Order 41 Rule 11 of the Code on 28-9-1993 before Hon''ble Nagendra Rai, J and after hearing the learned Counsel for the appellants the appeal was directed to be heard on merits. The substantial question of law formulated, was whether the judgments of the courts below were vitiated on the ground of non-consideration of partial eviction as contemplated under the Proviso to Section 11 of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (for short "the Act"). It was further directed that the Munsif, Patna City would decide the question of partial eviction, after affording opportunity to the parties to be heard and to lead evidence in support of their cases. In pursuance of the said order the Munsif, Patna City heard the parties and permitted them to lead evidence and after hearing them, passed order on 28.2.1994, which is on the record. The operative portion of that order, so far as it is relevant for the purpose of disposal of the present appeal, reads as follows:

...I am of the view that reasonable requirement of the plaintiff will be satisfied substantially by eviction of the defendants from four rooms of the suit premises adjoining to the Khaparpose house of the plaintiff. In event of partial eviction of the defendants from four rooms of the suit premises, the plaintiff will then amalgamate, four rooms of the disputed premises into her present Khaparpose house and will make separate unit by raising wall dividing the disputed premises into two separate units as mentioned above. In this way, both the plaintiff and defendants will use their respective separate units conveniently. After eviction of the defendants from four rooms of the disputed premises proportionate fair monthly rent of the suit premises is fixed as Rs. 150/- per month for the portion in occupation of the defendants.

In view of the discussion made above and conclusion arrived at it is hereby held that the necessity of the plaintiff will be reasonably and-substantially satisfied by partial eviction of the defendants from four rooms of the disputed premises.

Sd/- Pandey Anil Kumar Munsif, Patna City. 28.2.94.

6. Thereafter the appeal was listed for hearing before me and it was suggested to the parties that as in view of the Proviso to Section 11 of the Act, the findings of the court below have been received about partial eviction, hence in view of that finding the appeal would be decided, but the learned Counsel for the appellants was not prepared for the same and he urged the points in support of this Second Appeal. The first point was that the gift deed dated 19.4.1976 for the value of more than Rs. 100/- was an unregistered document which was

inadmissible in evidence but it can be read for collateral purposes, but the courts below committed an error in not relying upon the deed of gift, as the same was unregistered. According to the learned Counsel, the collateral purpose of the unregistered gift deed dated 19.4.1976 was the possession. In other words, even though the gift deed was inadmissible, but it can be relevant to prove the appellants' possession.

7. The Learned Counsel for the respondent refuted the submissions of the learned Counsel for the appellants and contended that the Second Appeal was continuation of the suit and it was to be decided in pursuance of the Proviso to Section 11 of the Act. The Proviso was mandatory and so the submission of the appellants was untenable, inasmuch as, the Proviso has to be interpreted in correct perspective, keeping in view the intention of the legislature. Once the court chose to decide the suit or appeal in accordance with the mandate of the Proviso, there remains nothing to be decided in suit or appeal. Even assuming, though not cancelling, that the defendants were in possession of the suit premises on the basis of the oral gift deed (Ext. A), that would be of no legal consequences, inasmuch as, the possession of the defendants as tenant was already admitted, as the suit was filed by the plaintiff for eviction of the defendants as tenants. Hence unless the defendant-appellants prove their hostile possession, the possession simpliciter would be of no assistance to the appellants and that the appeal would be decided in pursuance of the order consistent with the Proviso to Section 11 of the Act

8. Having heard learned Counsel for the parties, the principal question for consideration is what is the correct interpretation of the Proviso, keeping in view the Intendment nature and object of the legislature and what is probative value of the oral unregistered gift deed of the defendant-appellants.

9. As regards the first point, the legislature in its collective wisdom has very cleverly engrafted the first Proviso to the effect that when the court thinks that reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only of the building, it can pass an order. To some extent this Proviso indicates variation to the object of legislature as contained in Sub-section (1) of Section 11 of the Act, The main function of the Proviso is to carve an exception to the main enactment. But it need not be so interpreted as to set at naught the main enactment. The object of the Act is to regulate the letting of buildings and the rent of such buildings and to prevent unreasonable eviction of the tenants therefrom, some provisions of the Act fall under the category of beneficial legislation with regard to the tenant (i.e. present defendant appellants) and others with regard to the landlord. The Act is a Beneficial Legislation It must be given a wider interpretation. Broadly speaking, while interpreting such provisions, the court ought to apply social beneficent rule of construction. Even in such matters, if the provision is capable of two constructions, that which fulfils the policy of the Act and is more beneficial to the persons in whose interest the Act has been passed, must be adopted; keeping in

view, however, the language employed. (See A.N. Sehgal and others Vs. Raje Ram Sheoram and others, ; S. Sundaram v. Pattabhiram AIR 1985 S.C. 588 at page 592; Rhodde Urban District Council v. Taff Vale Railway Co. (1909) A.C. 253; and Gopal Chandra Ghosh v. Smt. Renu Bala Majumdar-Judgment (today 1994 (1) S.C. 80). The first Proviso to Section 11 of the Act is quite emphatic and is mandatory in nature. In case the court is of the opinion that by partial eviction of the tenant, the suit can be decreed to the advantage of the landlord and the tenant, the court could order for partial eviction of the tenant, the rent would also be reduced proportionately. The findings of the learned Munsif clearly indicates that by giving four rooms to the plaintiff and reducing the rent to Rs.. 50/- per month, the requirements of both would be met. This is what has been done. It is equitable adjustment of the claim of both sides.

10. The power of the court under the first Proviso is somewhat similar to Order 23 Rule 3 of the Code to pass an order for compromise provided it is based on lawful agreement. In the instant case both parties were permitted to lead evidence and heard by the learned Munsif and the mode of partial eviction was suggested. Against those findings both sides were heard again here. I adopt the findings of the learned Munsif and direct the partial eviction of the appellants by permitting the land-lady, the respondent to occupy the four rooms and the rent was proportionately reduced.

11. As the oral gift deed in respect of the property of he value of more than Rs. 100/-allegadly created right but was not registered and according to the defendant-appellants, it was inadmissible in evidence. Even taking it to be relevant for collateral purposes to indicate the possession of the defendant-appellants, but it would be of no substantial benefit to the appellants, inasmuch as their possession as tenants was already admitted to the plaintiff-respondent. Unless the defendant-appellants prove their legal or adverse possession, they would not get any benefit even if the gift deed was treated to be relevant lor collateral purposes. It may be specified that the relevance of the gift deed for collateral purposes was not pressed and argued by the defendants either before the trial court or before the lower appellate court. It is for the first time that this argument has been made in this present appeal. In case it was pressed and argued before the courts below, relevant findings would have been recorded. As the case of the defendants and their possession as tenants was already admitted, hence even though the gift deed was accepted for collateral purposes, but that would not constitute a substantial question of law.

12. On the date of hearing under Order 31 Rule 11 of the Code of Munsif, Patna City was directed to record a finding about the partial eviction, alter permitting the parties to lead evidence and that appellants was also heard against the same and equitable adjustment on the basis of the evidence on record, adduced by the parties, has been made that four rooms adjoining to the Khaparpose house would be vacated by the defendant-appellants in favour of the plaintiff and the rent of the house in question has been reduced to Rs. 50/-per month. This

appears to be a reasonable and equitable adjustment as contemplated by the Proviso to Section 11 of the Act.

13. The matter can be angulated from other perspective. Both the courts below have recorded findings that the plaintiff was the owner of the accommodation and the plot in dispute; whereas the defendants were tenants and that there was relationship of the landlord and the tenants between the parties. It was denied by the defendants that whether there was relationship of the landlord and the tenants and whether the defendants were tenants of the house in question, are the questions of fact, and not the question of law, much less the substantial question of law involved justifying interference in this Second Appeal.

14. In view of the premises aforesaid, this Second Appeal lacks merit and the same is dismissed, but the findings and the order of the Munsif, Patna City dated 28.2.1994 shall be given effect to and the appellants will immediately vacate the four rooms, as indicated in the findings of the teamed Munsif dated 28.2.1994. The plaintiff would amalgamate those four rooms into her present Khaparpouse house and the rent of the house would be reduced to Rs. 50/- per month, and the arrears of rent shall also be paid by the defendant-appellants within a period of two months from the date of receipt of the copy of this judgment. In the circumstances of the case, however, there shall be no order as to costs.