
(2003) 02 PAT CK 0091

In the Patna High Court

Case No : Civil Revision No. 1435 of 2001

Smt. Sushila Devi and Others

APPELLANT

Vs

Sri. Lakhan Lai Sah and Others

RESPONDENT

Date of Decision : 14-02-2003

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 11(1), 14, 14(8)

Citation : (2003) 2 PLJR 345

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Nagendra Rai, J.—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) has been filed against the judgment and decree dated 23rd June, 2001 passed by Execution Munsif, Patna in Eviction Suit No. 56 of 1993 whereby the suit filed for eviction against the Defendants/Petitioners on the ground of personal necessity from the suit premises situate in Mohalla Machhuatoli, P.S. Kadam Kuan in the district of Patna described in Schedule I of the plaint has been decreed.

2. The case of the Plaintiffs/opposite parties is that they constitute a joint Hindu family and Plaintiff/opposite party No. 1 is the Karta. The property described in Schedule I was allotted to them in Partition Suit No. 311 of 1978 disposed of on 7.2.1979. The suit premises were let out to Mahangu Ram on monthly rental of Rs. 250/- and after his death his two sons are tenants, namely, the original Defendant Rameshwar Prasad who died during pendency of the suit and substituted by his heirs and legal representatives and Defendant No. 2/Petitioner No. 6 Vijoy Kumar. The other two sons of the Defendant though they were not tenants but were also added as party Defendants to avoid any technical objection with regard to maintainability of the suit. Plaintiff Nos. 1 and 3, namely, Lakhan Lai and Bijoy Kumar are unemployed and they required premises reasonably and

in good faith for their occupation as they want to open a Kirana Shop and they have no other place to start the said business. Their further case is that partial eviction will not meet their requirement. They requested the Defendants to vacate the same but they refused. Hence the suit was filed.

3. The case of the Defendants/opposite parties is that tenancy was not monthly tenancy, on the other hand, it was agreed that the Defendant will pay as and when demanded. Their father Mahangu Ram had taken the premises on rent for running a hotel and the Plaintiffs had agreed that they shall not disturb them till they wanted to run their hotel and as such the landlord was only enhancing the rent from time to time which was originally Rs. 50 only. They were regularly paying the rent. At present, the monthly rent is Rs. 250/- per month. When the Plaintiffs refused to accept the rent then the same were being sent through Money Order. They were interested in enhancing the rent and on refusal they filed the suit. Their case is that the Plaintiffs have no reasonable requirement of the premises. East of the suit premises they had one Katra which they have got vacated from the tenant and made three katra and two of them are still vacant and Plaintiffs can open Kirana shop in the same. Their further case is that the Plaintiff/opposite party No. 1 is engaged in money lending business and Plaintiff/opposite party No. 3 is running a Saloon and Plaintiff/opposite party No. 2 is a house wife and as such there was no reasonable and bonafide need for eviction of the suit premises.

4. The suit was tried by adopting special procedure u/s 14 of the Act. Both parties led oral and documentary evidence. The Court below having found that tenancy is admitted held that the Plaintiffs/opposite parties required the premises reasonably and in good faith for their own occupation and the Plaintiffs have no other suitable place to run Kirana shop. The Court below also held that the partial eviction will not meet the substantial requirement of the Plaintiffs/opposite parties and accordingly decreed the suit.

5. Learned Counsel appearing for the Defendants/Petitioners submitted that the finding of the Court below that the Plaintiffs required the premises for their own occupation for running a Kirana shop is not according to law in as much as the evidence on record shows that the Plaintiffs/ opposite parties have other vacant shops also for running business and the present suit, was filed only with a view to evict them. Their requirement cannot be termed as reasonable and bonafide. He further submitted that the question of partial eviction in terms of proviso to Sub-Section 1 (c) of Section 11 of the Act has not been considered in accordance with law as the Court below has not considered any evidence and in one line has stated that the partial eviction will not meet the requirement of the Plaintiff. Without considering the length and width of the suit premises and without considering the question as to whether the landlords requirement will be substantially fulfilled or not by partial eviction it has decreed the suit for eviction.

6. Learned Counsel appearing for the Plaintiffs/opposite parties on the other hand submitted that the Court below after having considered the evidence in

detail have found that in partition between the Plaintiffs/opposite parties and their family members the suit premises have been allotted to the Plaintiffs/opposite parties No. 1 to 3 and there was no other suitable shop available to run Kirana shop. The said finding is based on evidence and as such there is no infirmity in law with regard to finding regarding reasonable and bonafide requirement of the Plaintiffs/opposite parties. The Court below also considered the question of partial eviction according to law.

7. The order passed u/s 14 of the Act is not subject to First Appeal or Second Appeal and only power of revision has been vested in this Court to see as to whether the order passed by the Court below is according to law or not in terms of proviso to Section 14(8) of the Act. To consider this question the Court cannot reappraise the evidence as an appellate forum but can interfere only if it finds that there is no consideration of evidence at all or the finding is based on no evidence or based on inadmissible evidence or the finding arrived at by the court below is in ignorance of the requirement of the provision or is perverse in the sense that no reasonable man could come to the conclusion which has been arrived at by the Court in passing the order of eviction.

8. Tenancy is admitted. There is no dispute about the rate of rent also. The only controversy between the parties is as to whether the requirement of the Plaintiffs is reasonable and bonafide or not.

9. According to the Plaintiffs, the suit premises have been allotted to them in partition suit. The decree has been brought on record and the Court below after having perused the decree of the Civil court and having considered the oral evidence and other documentary evidence came to a definite finding that the suit premises have been allotted to the Plaintiffs/opposite parties. The other shops where STD is being run by another son of the Plaintiffs/opposite parties No. 1 and 2 have been allotted to them and not to the Plaintiffs/opposite parties. It is admitted position that there were three kataras in the same building. The Court below have found that in two katras already tenants are there and third katara is small one which will not meet the requirement of the Plaintiffs/opposite parties for opening shop as it is not on the front side of the building facing road. Thus the findings are based on evidence. Learned Counsel appearing for the Defendants/tenants/Petitioners has not been able to assail these findings on any of those grounds. Thus, the finding given by the Court below that the Plaintiffs/opposite parties required the premises reasonably and in good faith does not suffer from any legal infirmity and no case for interference in revision on the said ground is made out.

10. According to proviso to Sub-Section 1(c) of Section 11 of the Act the Court has to consider as to whether partial eviction from the suit premises will substantially satisfy the reasonable requirement of the landlord or not. According to the said proviso where the Court thinks that the reasonable requirement of the landlord's occupation may be substantially satisfied by evicting the tenant from a part only of the building and allowing the tenant to continue occupation of

the rest and the tenant agrees to such occupation, the Court will pass decree with regard to partial eviction. While dealing with the question of partial eviction, the Court has to consider the reasonable requirement of the landlord and then to see as to whether the same would be substantially satisfied by evicting the tenant from a part only of the premises. The Court has to first determine the extent of the premises which is required reasonably and bonafide by the landlord. This has to be decided objectively and not merely on the saying of the landlord to occupy in as much area as he wants and thereafter the Court has to apply the test whether the requirement which the Court considers reasonable will be substantially satisfied or not (not fully satisfied) by issuing partial eviction. In paragraph 17 of the judgment, the Court below has considered the question of partial eviction. It has noticed that suit premises is 16" east to west and 31"-32" north to south and thereafter observed that the partial eviction will not meet the reasonable requirement of the landlord. In my view, the Court below has not considered the question of partial eviction at all in accordance with law. The Court below after having noticed the length and width of the shop should have considered as to whether the partial eviction will substantially satisfy the requirement of the landlord or not. In other words, it should have considered as to whether the entire premises is needed by the Plaintiffs/opposite parties to run Kirana Shop or partial eviction will meet the substantial requirement.

11. Accordingly, the finding given by the Court as to reasonable and bonafide requirement of the Plaintiff of the suit premises is not interfered with but the finding with regard to partial eviction which is not according to law is set aside and the matter is remitted to the trial Court to consider the question of partial eviction afresh. If the parties want to lead evidence then opportunity should be given to them and the said question has to be decided within four months from the date of receipt/production of a copy of this order.

12. In the result, the Civil revision application is allowed in part.