

(1998) 03 PAT CK 0037

In the Patna High Court

Case No : Civil Revision No. 447 of 1993 and F.A. No. 639 of 1995

Subodh Kumar @ Subodh Kumar Gupta

APPELLANT

Vs

Sita Ram Prasad and Others
 Sita Ram Prasad and
Others Vs Subodh Kumar @ Subodh Kumar Gupta

RESPONDENT

Date of Decision : 26-03-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Transfer of Property Act, 1882 — Section 106

Citation : (1998) 2 BLJR 1220

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Judgement

Gurusharan Sharma, J.—The plaintiffs, Sita Ram Prasad and his wife Indu Devi filed Title Suit No. 146 of 1982 for eviction of the defendant, Subodh Kumar @ Subodh Kumar Gupta, from the suit premises u/s 14 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as "the Act").

2. The suit was decreed in part by the impugned judgment and decree dated 23.12.1992. The defendant was directed to vacate half area of the suit premises. It was held that the plaintiffs established their bona fides and reasonable personal necessity, but at the same time applying the proviso to Section 11(1)(c) of the Act, the trial Court found that the plaintiff's requirement would substantially be satisfied by the defendant's eviction from half area of the suit premises.

3. Both parties were dis-satisfied with the said decision. The plaintiffs preferred Eviction Appeal No. 1 of 1993 before the District Judge, Mazuffarpur. against dismissal of his suit for eviction in respect of part of the suit premises, whereas the defendant filed Civil Revision No. 447 of 1993, u/s 14(8) of the Act in this Court.

4. However, this Court was of the view that since Revision as well as Appeal

arose out of a common judgment, it was desirable that the two be heard together to avoid any contradiction and hence by order dated 13.5.1993 passed in the Civil Revision Eviction Appeal No. 1 of 1993 was withdrawn and transferred to the Court to be heard along with the Revision. Accordingly the records of the said appeal was transferred to this Court and here it was registered as First Appeal No. 639 of 1995, u/s 96 of the Code of Civil Procedure.

5. Both the Appeal and Revision have been heard together and are being disposed of by a common judgment.

6. According to the plaintiffs, originally the house detailed in Schedule 1 to the plaint belonged to Gulzar Mian. It is a double storied building on the ground floor there are three shops rooms, which were let out to tenants and the owner was living with his family on the first floor. Gulzar Mian had inducted the defendant firstly in the middle shop but later on the eastern shop room was also let out to him. Subsequently, both the shop rooms together constituted one tenancy.

7. The plaintiffs were residing in a tenanted house and were/are carrying bullion business in a shop room measuring 13" ? 10", a few steps west to the Schedule 1 house. By two registered sale deeds dated 11.1.1982 and 13.1.1982, the plaintiffs purchased Schedule 1 house and shifted their residents to its first floor, wherein their vendor Gulzar Mian was living with his family. The Landlord of the shop premises, wherein the plaintiff was doing bullion business started pressing hard to vacate the same.

8. On 16.2.1982 by a notice under registered cover, the plaintiffs informed the defendant about their purchase of Schedule 1 house and requested to pay rent to them and also to vacate the premises occupied by them, detailed in Schedule 2 to the plaint on the ground of personal necessity for which they purchased it. Earlier to it Gulzar Mian also informed the defendant about transfer by registered post notice dated 2.2.1982 and directed him to pay rent to the purchasers hereinafter. The defendant sent reply dated 23.2.1982 and claimed Rs. 8000.00 to have been paid to Gulzar Mian to be adjusted in future rent and continue to occupy the premises till adjustment in full. Thereafter the plaintiffs served a notice dated 21.5.1982 u/s 106 of the Transfer of Property Act on the defendant and determined and terminated his tenancy on 30.6.1982. It was replied on 25.6.1982.

9. The plaintiffs pleaded that their need can not be satisfied unless the entire Schedule 2 premises was vacated. The defendants got his own double storied house, holding No. 309 adjacent west to the suit holding which was more spacious and suitable for his commercial purpose. The measurement of Schedule 2 premises was given therein as 12" ? 11".

10. The defendant filed written statement and contested the suit. He denied the alleged personal necessity of the plaintiffs. According to him his father was running a gold smith shop near the shop of the plaintiff and so on account of business rivalry they went to evict the defendant from the suit shop. The

plaintiffs have not disclosed the nature of business they want to carry. In holding No. 309 the defendant's father was running shop along with his other sons, whereas in the suit shop he was running his separate stationary business and he had no concern with his father's shop or business. The third western shop was in occupation of Burnwal Stores but the plaintiff has not taken any step to evict him.

11. The defendant claimed that the area of the shop room where the plaintiff No. 1 was doing his business was only 7' x 10' and not 13' x 10' as alleged by the plaintiffs. He also claimed two separate tenancy for each of the two shop rooms. The plaintiff's assertion that their need cannot be satisfied unless the whole of the suit premises was vacated, was also denied by the defendant and their need, if any, can be fully satisfied from one of the two shop rooms in occupation of the defendant. The measurement of each shop room was 8' x 12' and a wrong measurement was given by the plaintiff in Schedule 2 of the plaint.

12. The ownership of the plaintiff's over the suit premises as well as relationship of landlord and tenant are not in dispute. It is also the admitted position that the plaintiff No. 1 was doing his business in a rented shop in the vicinity of the suit premises after a few steps towards west and the shop rooms in question are situated at a commercial place.

13. From the recitals of the sale-deeds, Exts. 2 and 2/A by which the plaintiffs purchased Schedule 1 house it is clear that purchase was made with an intention to carry on business therein as also for their residence. Their purpose can be served by evicting the defendant from the premises in question, which was beneficial to their need. The plaintiffs got examined the landlord of the shop, wherein the plaintiff No. 1 was the tenant, as P.W. 4 in the suit, who supported the plaintiff's case that there was very hard pressure on the plaintiff No. 1 to vacate after the plaintiffs purchase Schedule 1 premises and to shift his business in Schedule 2 premises immediately, as the Landlord himself required the same for his personal need. In my opinion, in such situation, the plaintiff's need of the suit premises cannot be said to be merely a wish and not the dire need. They cannot be deprived of the use of their own building and personally occupy it for a genuine requirement, and the tenant cannot be allowed to continue therein ignoring the plaintiffs' claim. The trial Court in paragraph 17 of the impugned judgment after considering the material brought on record by both sides, therefore, rightly came to conclusion that the plaintiffs have got personal necessity of the Schedule 2 premises. I affirm the said finding and held that the plaintiff's need to shift the business from the rented shop to Schedule 2 premises as bona fide and reasonable as required u/s 11(1)(c) of the Act.

14. Proviso to Section 11(1)(c) of the Act provides that where the Court thinks that the reasonable requirement of such occupation of the landlord 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 a decree for partial eviction may be passed. Here the Court is not exercising its powers as to partition the property in suit between the two co-owners/co-sharers.

15. In the present case the trial Court considered the plaintiffs' assertion that the defendants can very well shift their business into his own house, wherein his family members were doing business and the defendants' reply thereto that he had no concern with his father's business of goldsmith and that he was doing stationary business, so he has not in a position to shift to his own building and held accordingly. In my opinion, the Court while considering the question of partial eviction under the Act was not required to decide the defendants' convenience or inconvenience in leaving the suit premises and shifting to his own premises, rather such consideration was confined only to the plaintiffs' accommodation as per their requirement.

16. I find that admittedly the plaintiff No. 1 was already doing his bullion business in a rented premises and now after shifting his business to his own premises he wanted to do "SONA CHANDI KA RAJGAR", which cannot be made confined to only the making and repairing of ornaments and scope of the proposed business of the plaintiffs cannot be minimised by the Court at the instance of the defendants. In my view, in the facts and circumstances of the case, comparison of the area of the tenanted premises, wherein the plaintiff No. 1 was doing his business under compulsion, as if was not within his control to increase the area suited to his purpose, with the area in his own building for doing his business after shifting it from the said rented premises, as here there was no compulsion or hinderance, was not a relevant consideration.

17. Though there was a little difference in the area of the suit premises as per the assertion of the parties, as according to the plaintiffs it was 12' x 11' where as according to the defendant each of the two shop rooms were 8' x 12', there is no difference so far as the depth of the shop was concerned. In the opening only there was a difference, but to ascertain the actual position no Commissioner was examined, who had taken measurement thereof. I find that only oral evidence was adduced by the parties. In this regard D.Ws. 7, 18, 19, 23 and 35 (the defendant) gave out only approximate opening of the said premises between 6' to 7'. They have not said about any partition wall in the middle. Admittedly, originally there were two small shops, which were amalgamated by the defendant after removing the partition wall and as such if there was a partition wall in the middle the same must cover some space. On the other hand P.Ws. 4, 6 (the plaintiff No. 1) and 8 gave out its opening as 11'. The opening of the third shop (Barnwal stores) has come on record to be 5' to 6' and there was no case that there was any difference in the opening of the three shop rooms on the ground floor of Schedule 1 house.

18. In my opinion the trial Court, in the facts and circumstances of the case and on the materials on record erred in holding that the plaintiffs requirement would be satisfied on partial eviction of the defendant from the premises in suit. In my considered opinion, the plaintiff's requirement would not have been satisfied unless the defendant was evicted from the entire suit premises.

19. I, therefore, do not find any reason to interfere with the findings of the trial

Court in respect of the bona fide and reasonable requirement of the plaintiff in respect of the suit premises. Further I set aside the finding of partial eviction and hold that the defendant is liable for eviction from the entire suit premises (Schedule 2).

20. In the result First Appeal No. 639 of 1995 is allowed and Civil Revision No. 447 of 1993 is dismissed. However, the parties shall bear their own costs.