

(2010) 04 PAT CK 0190
In the Patna High Court

Vijay Kumar Srivastava

APPELLANT

Vs

Shri Premchnad Prasad and Shri Akhilesh Kumar Singh

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Citation : (2010) 04 PAT CK 0190

Final Decision : Dismissed

Judgement

S. Nayer Hussain, J.—Civil Revision No. 317 of 2009 has been filed by the sole defendant- petitioner challenging the order of his eviction vide judgment dated 12.01.2009 by which Munsif III, Patna decreed Eviction Suit No. 48 of 2005 on contest with cost.

2. The aforesaid eviction suit was filed by the sole plaintiff-opposite party for eviction of the defendant- petitioner from the suit premises detailed in Schedule II of the plaint namely ground floor flat containing three bed rooms, a verandah, a dining space, a kitchen, a latrine, a bath room as well as open space with frontage bearing Holding No. 2911/1, Circle No. 8A Ward No. 4 (new 3) of Patna Municipal Corporation situated in Mohalla Azad Nagar, Kankarbagh Road No. II, within Kankarbagh police station in the Town and District of Patna on the sole ground of bonafide personal requirement, reserving his right to file another suit for eviction of the defendant on other grounds of default in payment of rent and breach of terms of tenancy etc. The following reliefs were sought by the plaintiff in his plaint.

- i) A decree of eviction of the defendant in favour of the plaintiff from Schedule II property;
- ii) a decree for the cost of the suit in favour of the plaintiff;
- iii) Any other relief or reliefs to which the plaintiff is deemed entitled.

3. Originally, the said eviction suit was filed by Sri Premchand Prasad along with his wife Smt. Meena Devi claiming that original owners of the suit property were

Sri Kameshwar Prasad Singh and his wife Smt. Meri Singh who sold the entire house detailed in Schedule I of the plaint, a portion of which is the suit premises detailed in Scheduled II of the plaint, by registered deed dated 19.06.2003 to the plaintiffs. It was also claimed that the plaintiffs had three sons and a daughter and plaintiff No. 1 Sri Premchand Prasad having retired from a government post was living in the non-rented portion of the house which was not sufficient for his large family and hence he required the suit premises so that his entire family can be adjusted.

4. Subsequently, the plaintiffs filed an application for amendment of the plaint which was allowed by the trial court on 13.02.2008. As per the said amendment the name of plaintiff No. 2 Smt. Meena Devi was deleted and paragraph 6(a) was added in the plaint. By the said amendment, it was claimed that during the pendency of the suit there was a litigation bearing Lok Adalat Case No. 307 of 2006 filed by a son of the plaintiff against other members of the family, but subsequently there was amicable settlement between all the members of his family and a joint compromise petition was filed in the said case which was allowed by the Patna Lok Adalat vide its order dated 13.02.2007 making the compromise petition part of the said order. According to the said compromise, the suit premises detailed in Schedule II of the plaint was allotted to plaintiff No. 1 whereas other portions of the said house as well as of the other house were allotted to the share of other members of the family. Hence it was claimed by plaintiff No. 1, who remained as sole plaintiff of the suit, that having no other property left he required the suit premises for his own residence as he had already retired from his service.

5. The defendant appeared in the suit and contested the claim of the plaintiff stating that defendant was the tenant in the suit premises since much prior to the plaintiff's purchase and after his purchase he had been paying rent to the plaintiff regularly. It was also claimed that the electric charges were included in the rent of Rs 2,300.00 per month and had to be paid by the plaintiff to the Electricity Department but the plaintiff did not deposit the said electric charges to the Electricity Department due to which the electricity of the suit premises was disconnected. Hence the defendant had to file BBC Case No. 60 of 2005 before the House Controller who vide his order dated 25.02.2006 allowed the said case and directed the plaintiff to pay the electric bills of the suit premises and the said order of the House Controller was affirmed by the Collector and the Commissioner in appeal and revision filed by the plaintiff and immediately thereafter Lok Adalat Case was instituted merely for the purpose of ousting the defendant, as the plaintiff had no intention to pay the electricity bills and wanted to oust the defendant for getting higher rent. It was also stated that Lok Adalat Case was showy and the plaintiff and his family had sufficient accommodation in the house detailed in Schedule I of the plaint as well as in the adjacent house and the requirement alleged by the plaintiff was not genuine and bonafide.

6. Considering the respective pleadings of the parties and also considering the

issues suggested by them the trial court framed following issues for deciding the suit:

- i) Whether the suit filed by the plaintiff is maintainable?
- ii) Whether the plaintiff has got any cause of action or right to sue?
- iii) Whether the suit has been filed within the time of limitation?
- iv) Whether there is relationship of landlord and tenant between the plaintiff and the defendant?
- v) Whether the plaintiff has got personal necessity of the suit premises which is bonafide?
- vi) Whether the defendant is liable to be evicted from the suit premises? vii) Whether partial eviction will satisfy the plaintiff or not?
- viii) Whether the plaintiff is entitled to any other relief or not?

7. In support of his claim, the plaintiff produced six witness, out of whom PW 5 was the plaintiff himself, PW 4 was his son and PW 1 was his wife, whereas PW 6 was formal in nature, apart from whom there were two independent witnesses namely PW 3 who was his neighbour and PW 2 who was his other tenant and both of them fully supported the claim of the plaintiff.

8. The plaintiff also produced several documentary evidence out of which exhibit 1 series were Municipal receipts; exhibit 2 was legal notice sent by the plaintiff to the defendant; whereas exhibits 3, 4 5 and 6 were UPC, receipt, envelope and acknowledgement due showing service of the said notice; exhibit 7 was the sale deed dated 19.06.2003 executed by the original owner in favour of the original plaintiff; exhibit 8 was salary certificate; exhibit 9 was Malguzari receipt of the original owner; exhibit 10 series were counter foils of Kirayanama; exhibit 11 was marriage card; exhibits 12 and 13 were ordersheet and award of Lok Adalat Case No. 307 of 2006.

9. On the other hand, the defendant produced three witnesses, out of whom DW 1 was the defendant himself, DW2 was his brother who supported the case of the defendant and DW3 was a petty contractor through whom the defendant took work. Apart from the aforesaid witnesses, the defendant produced documentary evidence, namely exhibit A series which were rent receipts showing payment of rent by the defendant to the plaintiff and exhibit B series which were money order A/d sent by the defendant to the plaintiff.

10. Considering the respective pleadings and evidence of the parties, Munsif III, Patna vide his judgment dated 12.01.2009 decreed the suit on contest with cost and ordered for eviction of the defendant after arriving at following findings:

- a) Defendant has accepted that he was a tenant of the plaintiff. Hence there is relationship of landlord and tenant between the plaintiff and the defendant.

b) Plaintiff has got personal necessity of the suit premises which seems to be bonafide and the defendant is liable to be evicted from the suit premises

c) Partial eviction of the defendant from the suit premises is not possible as it is a flat consisting of three bed rooms, dining space, one kitchen, one latrine, one bathroom, which can not be partitioned.

11. Against the aforesaid judgment and order of eviction the sole defendant filed the instant civil revision under the Proviso to Sub-section (8) of Section 14 of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (hereinafter referred to as "the Act" for the sake of brevity) and the said civil revision was admitted for final hearing vide order of this Court dated 06.07.2009. The sole opposite party who was the plaintiff in the trial court also appeared in the instant revision and filed Caveat No. 14 of 2009 contesting the claim of the defendant- petitioner.

12. At the time of final hearing of the case, the petitioner has raised two points for consideration and this Court has formulated the said two points raised by the petitioner for deciding the instant civil revision, which are as follows:

i) Whether the grounds set forth by the plaintiff-opposite party for eviction of the defendant- petitioner on the ground of personal necessity was reasonable?

ii) Whether application filed by son of the plaintiff-opposite party before Lok Adalat for partition of the entire property and compromise petition filed therein were bonafide or were merely to defeat the claim of the defendant- petitioner?

13. So far the first point raised by learned Counsel for the defendant- petitioner is concerned, it is claimed that originally eviction suit was filed by two plaintiffs namely Premchand Prasad and his wife Smt. Meena Devi, claiming necessity of the entire family including their children with respect to the suit premises. But the defendant claimed that there was no documentary evidence at all to prove the said personal necessity as plaintiffs had two houses , out of which house detailed in Schedule I of the plaint was a double storied house over two kathas ten dhurs of land having two flats on each floor whereas the adjacent house was a triple storied house over two kathas of land having two flats on ground floor and on first floor whereas there was a fifth flat on the second floor from where the said house was also connected to Schedule I house. Hence it was claimed that the plaintiff-opposite party had totally nine flats situated exactly at the same place and out of them only two flats occupied by the defendant as well as PW2 were on rent whereas remaining seven flats were vacant which were sufficient for the requirement of the plaintiff and his family. It is also claimed that existence of the said facts were admitted by the plaintiff's witnesses themselves.

14. It was further claimed by the defendant- petitioner that one son of the plaintiff was working in Bihar Sanchar Nigam Limited and had gone to Faizabad for training, whereas second son of the plaintiff was in Research work in Delhi and third son of plaintiff was doing Management in S.P. Jain College, Mumbai whereas the plaintiffs' daughter was married and was living with her husband. It was also averred that the said facts were admitted by the plaintiff's witnesses

themselves. Hence it was claimed that plaintiff had no bonafide and genuine personal requirement of the suit premises.

15. So far the second point raised by learned Counsel for the defendant-petitioner is concerned, it is claimed that Lok Adalat Case No. 307 of 2006 was filed for partition of the entire joint family property including the suit premises before Lok Adalat Patna in the year 2006 immediately after passing of orders dated 25.02.2006 and 28.06.2006 by the House Controller and the Collector in BBC Case No. 60 of 2005 and BBC (Appeal) No. 05 of 2005-06 directing the plaintiff to pay electric charges of the suit premises . Hence it was claimed that the said order and award of Lok Adalat was not bonafide and was prepared due to collusion of the parties in Lok Adalat who were all family members of the plaintiff of this eviction suit and was filed merely with a view to some how defeat the claim of the defendant- petitioner in the eviction suit so that he may be ousted from the suit premises.

16. On the other hand, learned Counsel for plaintiff-opposite party has stated that earlier suit for eviction was for the personal necessity of the plaintiff's family but after order of partition passed by Lok Adalat dated 13.02.2007, only the suit premises was left in the share of the plaintiff and hence it remained the only place where the plaintiff could reside and which he required genuinely for himself. It was also claimed that monthly rental of the suit premises was Rs 2,300/- which excluded electric charges. It was also stated that although the defendant- petitioner had claimed that the said electric charges were not included in the rent but he had failed to produce order of the House Controller and the Collector regarding payment of electric dues.

17. It was also claimed by the plaintiff-opposite party that subsequent event namely partition of the property by Lok Adalat vide order and award dated 13.02.2007 (exhibits 12 and 13) had to be considered in such case and the trial court after hearing all the parties rightly passed the impugned order. It was also claimed that paragraph 6 (a) was added in the plaint by amendment at the instance of the plaintiff, in which the statement with regard to the aforesaid subsequent event i.e. order and award of Lok Adalat was detailed and the said amendment was allowed by the trial court vide order dated 13.02.2008, but the said order was never challenged by the defendant. Hence it was claimed by the plaintiff -opposite party that in the said circumstances, no case of the defendant-petitioner is made out and the civil revision is fit to be dismissed.

18. After considering the arguments of learned Counsel for parties as well as their pleadings and evidence on record, it is quite apparent that the relationship of landlord and tenant between the plaintiff and the defendant with respect to the suit premises is admitted. The only dispute between the parties is with regard to the genuineness of plaintiff's claim of personal necessity as the defendant had claimed that the plaintiff and his family had got nine flats in the vicinity including the house in question as well as its adjacent house and out of those nine flats only two flats were in occupation of the tenants including the

defendant whereas remaining seven flats were vacant which could have been used by the plaintiff and his wife as his sons were in service and his daughter was married and was living with her husband.

19. In this regard the defendant- petitioner had two fold objections; firstly, that the order and award of partition passed by Lok Adalat was not bonafide; and secondly that on the basis of subsequent event the suit for eviction can not be decreed as crucial date to determine personal necessity was the date of filing of the suit.

20. From the pleadings of parties specially the claim of the defendant, it is quite apparent that all the properties concerned belonged to joint family of the plaintiff but his children were living separately. Hence any of the said children of the plaintiff were quite justified in filing a case for partition of the joint family property rather it was quite natural for a member of the joint family in such circumstances to seek partition of the joint family property. Hence, no malafide can be attributed to the son of the plaintiff or to any other member of the family including the plaintiff in the filing of the said Lok Adalat Case or in the filing of the compromise petition therein on the basis of which order was passed and award was prepared for partition of the joint family property. Although onus was squarely upon the defendant- petitioner to prove the claim of malafide but from the evidence on record it transpires that he had miserably failed to prove the same by any piece of evidence in as much as exhibit A series and exhibit B series produced by him were only rent receipts and money order A/d sent by the defendant to the plaintiff which had no concern with the said issue whereas three witnesses have been produced by the defendant including himself as DW 1 and his brother as DW 2 as well as his contractor as DW 3 who also could not prove any such malafide.

21. It may be noted here that much importance has been placed by the defendant- petitioner on the order of the House Controller and the Collector passed in BBC Case and BBC Appeal directing the plaintiff to pay electric charges but the said orders were not even exhibited in the suit. However, the defendant has annexed the said orders as annexures 4 and 4/A to the civil revision petition but a perusal of the same does not show that there was any bar in filing Lok Adalat Case for partition. From the said materials on record there appears to be no connection between the said BBC Case and Lok Adalat Case or the orders passed therein as in any view of the matter, the plaintiff is bound to comply the said orders of the House Controller and Collector if not reversed by any higher court. Furthermore, the order and award of the Lok Adalat is final and binding on all persons concerned. Law is also well settled in this regard that in a suit for eviction on the ground of personal necessity, a tenant has no locus standi to challenge landlord's title over the suit property on the ground of validity of a partition decree specially when the relationship of landlord and tenant is not denied. Reference in this regard may be made to a decision of this Court in the case of Abdul Rashid v. Smt. Kishori Singh Sikriwal reported in 2000 (I) PLJR 438.

22. The crucial date for determining the requirement of the plaintiff is also in dispute as the defendant- petitioner relying upon a decision of a Division Bench of this Court in the case of Madhusudan Prasad Agarwal Vs. Smt. Shusma Bala Dasi and Another, has claimed that crucial date to determine the requirement of the plaintiff is date on which suit is filed and hence the trial court had to see the situation on the date of filing of eviction suit in the year 2005 when there was no such partition in the family and had no authority or jurisdiction to look into the subsequent event of partition in the family and award prepared by Lok Adalat. From a reading of the aforesaid case law, it is quite apparent that it was passed absolutely in a different set of facts as in that case it was the defendant tenant who was claiming that although on the date of filing of the suit the plaintiff landlord had no other vacant premises but subsequently he was able to take possession of another portion of the same building. Here in the instant case matter is absolutely different as it is the plaintiff who has claimed subsequent event during the pendency of the suit itself claiming that during the pendency of the suit there was an award of partition by Lok Adalat, according to which the suit premises was the only premises left for the plaintiff. In the instant case, the said subsequent event was pleaded by the plaintiff in the eviction suit by way of amendment in the plaint which was allowed by the trial court and the said order allowing amendment having not been challenged by the defendant has attained finality. Thus the said case law relied upon by the petitioner namely Madhusudan Prasad Agarwal (Supra) is not applicable in this case.

23. In the facts involved in this case the cause of action as to personal necessity of the plaintiff with respect to the suit premises has to be in existence on the date on which order of eviction was passed as has been held by a bench of this Court in the case of Tapsendra Nath Lal v. Norodh Baran Haldar reported in 1986 PLJR 734 relying upon a decision of the Apex Court in case of Hasmat Rai and Another Vs. Raghunath Prasad, . Recently also a bench of this Court in case of Sachendra Kumar Singh v. Vinod Nandan Sinha reported in 2007 (2) PLJR 488 while considering a similar matter held that from the start to the ultimate termini a lis takes several years and during this long interval many events are bound to take place in relation to parties as well as subject matter of the lis and if such subsequent events on account of the malady of the system is submerged with the cause of action, it shall shatter the confidence of the litigant in the judicial system and hence subsequent event had to be taken into account by the court hearing such matter. This view had been succinctly put forth by the Supreme Court in the case of Shakuntala Bai and Others Vs. Narayan Das and Others, .

24. In the said circumstances, the court below was quite justified in considering the aforesaid subsequent event which was fully proved by the plaintiff not only by his oral evidence but also by his documentary evidence including certified copies of order and award of Lok Adalat (exhibits 12 and 13) dated 13.02.2007 passed in Lok Adalat Case No. 307 of 2006. The said order and award are legal and binding on all parties concerned and the defendant had failed to prove that it was not bonafide as has been discussed earlier. The said award of partition is

subsequent event as it was passed during the pendency of the suit and the plaintiff got his plaint amended by way of adding a separate paragraph giving detail of the said award. The said amendment having been allowed by the trial court and having not been challenged by the defendant it has attained finality and hence the defendant can not legally raise any such objection with respect thereto at this stage.

25. From perusal of the said order and award of Lok Adalat (exhibits 12 and 13), it is quite apparent that all properties of the family mentioned above were subject matter of the said case and order has been passed and award has been prepared on the basis of compromise with respect to all the aforesaid properties giving specific portion thereof to each of the member of the joint family, out of whom the plaintiff was allotted only the suit flat and no other premises. Hence the claim of the defendant that the plaintiff had so many premises can not be upheld as the plaintiff had no property left except the suit premises. The plaintiff can not legally have any claim over the property allotted to his children by the court nor he wants to live with his wife in the flat allotted to her in the first floor in Schedule I as they have been living separately. Since the plaintiff has retired from his service and has now only one flat namely the suit premises, it is quite apparent that his requirement is bonafide and reasonable and can not be termed as a mere desire as he has been able to prove his personal necessity and need for the suit premises. Thus on the said basis defendant is liable to be evicted from the suit premises.

26. So far question of partial eviction is concerned, the court below has framed specific issue No. (vii) with respect thereto and has decided the same in paragraph 17 of the impugned order considering the available space, the plaintiff's requirement and also the possibility of partial eviction from flat containing only one toilet, one bathroom and one kitchen etc and rightly came to the specific finding that order of partial eviction can not be justifiably passed in the instant case. This Court finds the said reasonings to be correct and justified.

27. In the said circumstances, this Court does not find any illegality or jurisdictional error in the impugned order of the court below and accordingly, this civil revision (C.R. No. 317 of 2009) is hereby dismissed and the judgment and order of eviction dated 12.01.2009 passed by Munsif III, Patna in Eviction Suit No. 48 of 2005 is affirmed. However, in the facts of this case there would be no order as to cost.

28. MJC No. 880 of 2010 has been filed on behalf of the defendant-petitioner for initiating a proceeding of contempt against the plaintiff-opposite party as well as against Execution Munsif III, Patna before whom the impugned decree was pending for execution. It is claimed by the petitioner that for execution of the impugned order of eviction the plaintiff had filed Execution Case No. 2 of 2009 which was pending before Execution Munsif III, Patna but this Court vide order dated 06.07.2009 passed in C.R. No. 317 of 2009 stayed further proceeding of the said execution case, whereafter in spite of the said order the defendant-

petitioner was dispossessed from the suit premises on 09.02.2010 on the order of Execution Munsif III, Patna in the aforesaid execution case.

29. Similarly, I.A. No. 2042 of 2010 has been filed by the petitioner under the provision of Sections 144 and 151 of the CPC for restitution of possession as he was dispossessed by the executing court during the pendency of the civil revision although execution proceeding was stayed by this Court vide order dated 06.07.2009 passed in Civil Revision No. 317 of 2009.

30. Although notices were sent to both the opposite parties of the MJC case but only opposite party No. 1, namely the plaintiff, appeared and filed his rejoinder to the MJC case as well as to the interlocutory application tendering unqualified apologies, but claiming that neither any order has been violated nor any of the opposite parties disobeyed any order of this Court as vide order dated 06.07.2009 stay was granted only till 31.07.2009 and it was never prayed to be extended after 31.07.2009 by the petitioner although the case was placed before the court on several occasions and hence much thereafter on 09.02.2010 delivery of possession was effected in the execution case.

31. Considering the averments made by learned Counsel for the parties as well as the materials on record, it is quite apparent that vide order dated 06.07.2009, Civil Revision No. 317 of 2009 was admitted wherein it was observed as follows:

Considering the urgency of the matter let this civil revision be placed for hearing within top ten cases on 31st of July, 2009. Till then let further proceeding of Execution Case No. 02 of 2009 pending before the learned Execution Munsif III, Patna shall remain stayed.

32. In view of the specific wording of the said order, it is quite apparent that the civil revision was directed to be placed for hearing on 31st July, 2009 and till then further proceeding of the execution case was directed to remain stayed. The words "till then" were clearly used in relation to the words "31st July 2009" which were used just before it and hence the order of stay was effective only till that date and not thereafter. It further transpires that thereafter the civil revision was heard on several dates i.e. 19.08.2009, 06.01.2010 and 13.01.2010 but no prayer was made on behalf of the defendant- petitioner to extend the order of stay any further after 31.07.2009 and hence delivery of possession was admittedly effected more than six months thereafter on 09.02.2010.

33. In the said circumstances, it is quite apparent that there was no fault either of the plaintiff-opposite party-decree holder or of the executing court nor there was any violation or disobedience of any order of this Court and delivery of possession was effected as per the due process of law. Accordingly MJC No. 880 of 2010 as well as I.A. No. 2042 of 2010 both are hereby dismissed as this Court does not find any occasion either for punishing the opposite parties for contempt or for restitution of possession in favour of the petitioner.