

(1999) 08 PAT CK 0075

In the Patna High Court

Case No : Appeal From Appellate Decree No's. 335 of 1996 and 16 of 1997

Yousuf Bhai

APPELLANT

Vs

Narayan Prasad Niyara
 Narayan Prasad Niyara Vs
Yousuf Bhai

RESPONDENT

Date of Decision : 26-08-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 11

Citation : (1999) 3 PLJR 694

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Advocate : Najmul Hoda for Yousuf Bhai, for the Appellant; Ramesh Kumar Agrawal for Narayan Prasad Niyara, for the Respondent

Final Decision : Allowed

Judgement

Gurusharan Sharma, J.—These two Second Appeals have been heard together and are being disposed of by a common judgment. Yousuf Bhai filed Eviction Suit No. 6 of 1992 against Narayan Prasad Niyara, for eviction from suit holding No. 65(59) situated in ward No. 10 of Kishanganj Municipality, under the provisions of Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982. The suit was decreed ex-parte on 16.4.1993. On 3.5.1993, defendant filed Misc. Case No. 5 of 1993, under Order 9, rule 13 of the CPC for setting aside the ex-parte decree, which was dismissed for default on 11.2.1994. Thereafter, another Misc. Appeal No. 10 of 1994 was filed, which was allowed and ex-parte decree was set aside. Defendant thereafter filed written statement, but did not contest the suit.

2. Defendant, however, has moved the District Judge for transfer of Eviction Suit to any other court, but his prayer was rejected. He, thereafter, filed M.J.C. No. 1358 of 1995 in this Court against the order of District Judge. It was converted into a Civil Revision on 23.8.1995 and was ultimately dismissed on 16.10.1995.

3. Since Eviction Suit was not stayed either by District Judge or this Court, it

proceeded, but the defendant did not adduce any evidence either oral or documentary. Ultimately on 27.9.1995 the suit was decreed on the basis of plaintiff's evidence, holding that defendant was a defaulter within the meaning of the said Act and was liable for eviction.

4. Defendant, thereafter, filed Eviction Appeal No.5 of 1995 against trial court's decree, which was also dismissed. Hence Second Appeal No.16 of 1997 has been preferred by the defendant in this Court.

5. In the meantime, plaintiff also filed Money Suit No. 1 of 1993 against the defendant for realisation of arrears of rent for the period from January, 1992 to March, 1993. The defendant appeared, filed written statement and contested the suit. It was decreed on 16.6.1994. Defendant filed Title Appeal No. 4 of 1994 against the said money decree, which was allowed by the judgment and decree dated 21.9.1996 and Money Suit No. 1 of 1993 was dismissed. Hence, plaintiff has filed Second Appeal No. 335 of 1996.

6. Undisputedly, for whatever reason it may be, the defendant did not contest Eviction Suit No. 6 of 1992, though in his written statement he had denied to be defaulter in payment of rent. According to him, in December, 1991 the plaintiff took a sum of Rs. 5500/- from the defendant, in advance to be adjusted towards future rent, in presence of three witnesses, named in the written statement itself, and so there was no occasion for his being a defaulter in payment of rent for the period in question. Title Appeal No. 4 of 1994 and Eviction Appeal No. 5 of 1995 were heard simultaneously and both were disposed of on the same day, i.e. 21.9.1996.

7. Plaintiff in his evidence as P.W. 1 in the Money Suit No.1 of 1993 denied alleged payment of Rs. 5500/- to him by the defendant. On the other hand, defendant examined D.Ws.1, 2 and 3, who were said to be present on 30th December, 1991 in the plaintiff's school, where in their presence, defendant had made advance of Rs. 5500/- on plaintiff's assurance of adjustment in future rent.

8. The court of appeal below considered evidence of those witnesses in detail, including cross-examination part and found that actually defendant had made payment of Rs. 5500/- to the plaintiff in advance for being adjusted in future rent. I am unable to interfere with this finding of fact, recorded by final court of fact.

9. In Money Suit, on the specific issue regarding arrears of rent, both parties adduced evidence and considering the same court of appeal below recorded finding of fact that there was no arrear and plaintiff had already received rent in advance from defendant. On the other hand, in the eviction suit finding of default in payment of rent by the defendant was recorded ex-parte only on the basis of plaintiff's negative evidence.

10. The basic principle underlying Section 11 of the CPC is that once the parties have undergone adjudication of an issue in suit, that would be final in between

the parties, irrespective whether that suit was filed earlier at point of time or later and no court can try that issue any further in another suit even if that suit has been instituted at an earlier point of time. It is the finality of the decision which creates the bar and such finality is not dependent on the fact whether the suit in which the issue has been decided had been filed before or after the suit in which the same issue has arisen.

11. After all, the principles of resjudicata is meant to avoid conflicting decision. It is true that even ex parte decisions deconstitute resjudicata if the issue involved is one which constitutes the basis or foundation of the decree.

12. I, therefore, hold that decree passed in money suit operated as resjudicata between parties and the plaintiff can not take advantage of the decree passed in eviction suit in respect of default in payment of rent, which is set aside.

13. So far question of defendant's eviction from the suit premises on the ground of personal necessity is concerned, trial court found that bonafide necessity of the plaintiff was proved and partial eviction of the defendant could not have satisfied his need. It was not interfered with the final appellate court. I find no reason to interfere with the trial court's finding in this regard. Accordingly, decree for eviction on the ground of personal necessity is maintained. In the result, Second Appeal No.395 of 1996 is dismissed and Second Appeal No. 16 of 1997 is allowed in part. However, parties shall bear their own costs.