
(1997) 03 PAT CK 0064

In the Patna High Court

Case No : Appeal from Appellate Decree No. 283 of 1988

Zila Chitragupta Association

APPELLANT

Vs

Ram Bilas Sahni and Others

RESPONDENT

Date of Decision : 03-03-1997

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (1999) 3 CivCC 296 : (1997) 2 PLJR 831

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Advocate : Arun Bihari Mathur and Ajoy Kumar Mathur, for the Appellant; Ashok Priyadarshi, for the Respondent

Final Decision : Dismissed

Judgement

Gurusharan Sharma, J.—The Plaintiff-Appellant filed Title Suit No. 7 of 1982 for eviction of the Defendants-Respondents from the suit premises described in Schedule 1 to the plaint and for realisation of arrears of rent amounting to Rs. 440/- detailed in Schedule 2 to the plaint and for damages.

2. According to the Plaintiff, the suit premises was let out to the original Defendant (since dead) on monthly rental of Rs. 20/-. The Defendant paid rent upto the month of February, 1980 and thereafter stopped and rendered himself liable for eviction. It was further pleaded that the premises was required for personal occupation of the Association for doing business in order to earn substantial income for the fulfilment of its aim and objects.

3. On 4.7.1981 a registered notice u/s 106 of Transfer of Property Act was given to the tenant demanding arrears of rent and eviction from the suit premises, determining the tenancy after midnight of 31.7.1981.

4. In his written statement the Defendant challenged the description of the premises, as given in the plaint to be wrong. According to him he was inducted as a tenant over a vacant piece of land and subsequently a Tatti house and

Gumati thereon were constructed by him. The Defendant claimed to have paid rent upto December, 1981. There was no personal necessity to occupy the premises, as the Plaintiff has got enough land to do business and fulfill its aims and objects, if any.

5. The Defendant admitted that the said notice u/s 106 of the Transfer of Property Act was received by him on 18.7.1981 and the same was replied suitably.

6. The trial Court by judgment and decree dated 21.2.1986 dismissed the suit holding that the Defendant was inducted over a piece of land and not in a constructed house or building. Subsequently Gumati and Marai were constructed by the Defendant over the said land. The trial Court further held that since a notice u/s 106 of the Transfer of Property Act was served on the Defendant on 18.7.1981, it was not sufficient for terminating the tenancy. In accordance with the provisions of Section 106 a valid notice by giving clear fifteen days" time to vacate the premises was not served. Besides this, the Plaintiff failed to prove its personal necessity for the purpose of evicting the Defendant from the suit premises. However, Defendants were found to be defaulter in payment of rent.

7. On appeal, at the instance of the Plaintiff, the learned Second Additional District Judge affirmed the findings of the trial Court and held that the Plaintiff failed to prove that the Defendant was inducted as tenant in a building, rather the tenancy in question was created over a vacant piece of land and the Defendant made certain constructions thereon. On the validity of notice u/s 106 of the Transfer of Property Act, it was held that for want of clear fifteen days" interval from the date of service of notice on 18.7.1981 and the date of determination of tenancy (31.7.1981) mentioned therein, it was not a valid notice.

8. In view of the concurrent finding of facts recorded by the Courts below and in view of the Plaintiff's document Ext. 4(a), I do not find any reason to go into the question as to whether the Defendant was inducted as a tenant in a "Building" within the meaning of Bihar Buildings (Lease, Rent and Eviction) Control Act, and it stood finally determined that the Defendant was inducted as a tenant over a vacant piece of land.

9. This is also not in dispute that the notice u/s 106 of the Transfer of Property Act, sent on 4.7.1981 to the Defendant, was served on him on 18.7.1981 and as such definitely fifteen day"s clear time was not provided from the date of service of the notice and the date on which the tenancy was determined. In my opinion the concurrent finding of the two Courts below that it was ineffective as it did not fulfil the requirements of Section 106 and, therefore, was " not a valid notice was quite correct and needs no interference.

10. Further I find that the finding with respect to the invalidity of the notice u/s 106 of the Transfer of Property Act is also supported by a Constitution Bench decision of the Apex Court in Mangilal Vs. Suganchand Rathi, , wherein it was

held that the benefit of a minimum period of fifteen days in a notice u/s 106 of the Transfer of Property Act, evidently intended to confer the facility on the tenant must, therefore, be so construed as to enable him to have the fullest benefit of that facility. It was further held that in calculating fifteen day's notice the day on which the notice was served has to be excluded and even if the day on which it expired was taken into account it must be clear that the Defendant had fifteen day's clear notice. In the present case the notice was served on 18.7.1981 and the last date determining the tenancy as mentioned in the notice was 31st day of July 1981, therefore, after excluding the date of service of notice (18.7.1981) and taking into account the day on which it expired (31.7.1981) it was clear that the Defendant had only thirteen clear days notice. Therefore, the period of notice fall short of that provided u/s 106 of the Transfer of Property Act by two days.

11. In this view of the matter, I do not find any reason to interfere with the impugned judgment and decree.

12. In the result, this appeal is dismissed, but without costs. However, It goes without saying that the Plaintiff is not estopped to file a fresh suit for eviction, if necessary in accordance with law.