

GAHC010194762022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/103/2022

PRADIP BARUAH

S/O. LT. SURYA KANTA BARUAH, R/O. VILL. GARAL BHAKTA BORI, P.O. BHATTAPARA, P.S. AZARA, DIST. KAMRUP (M), ASSAM, PIN-781017 AND CARRYING ON HIS BUSINESS IN THE NAME AND STYLE OF A FIRM NAMELY (BARUAH STORES) SITUATED AT DHARAPUR CHARIALI, P.O. DHARAPUR WITHIN AZARA POLICE STATION, DIST. KAMRUP (M), ASSAM, PIN-781014.

VERSUS

ON THE DEATH OF NAGEN CHANDRA DAS HIS LEGAL HEIRS TRIPTI DAS AND ANR
LEGAL HEIRS -

1:b) RATAN DAS

S/O. LT. NAGEN CHANDRA DAS
R/O. GODHULIBAZAR
NEAR AZARA POLICE STATION
P.O. AZARA
DIST. KAMRUP
ASSAM
PIN-781017.

1:c) MRS MALAVIKA DAS

D/O. LT. NAGEN CHANDRA DAS
R/O. GODHULIBAZAR
NEAR AZARA POLICE STATION
P.O. AZARA
AZARA
DIST. KAMRUP
ASSAM
PIN-781017.

1:a) MRS TRIPTI DAS

W/O. LT. NAGEN CHANDRA DAS
R/O. GODHULIBAZAR
NEAR AZARA POLICE STATION
P.O. AZARA
AZARA
DIST. KAMRUP
ASSAM
PIN-781017.

2:JAGADISH THAKURIA
S/O. LT. BHABEN CH. THAKURIA
VILL. MAJORBAHAR DHARAPUR
P.O. DHARAPUR
P.S. AZARA
DIST. KAMRUP
ASSAM
PIN-781017

Advocate for the Petitioner : MR. S R GOGOI

Advocate for the Respondent : MR H K SARMA (r-2)

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT

Date : 09-08-2023

1. Heard Mr. S. R. Gogoi, learned counsel for the petitioner. Also heard Mr H.K. Sarma, learned counsel for the respondent.
2. The present petition is filed assailing the judgment and decree dated 30.06.2014 passed by learned Munsiff No.1, Kamrup (M), Guwahati in Title Suit No. 1126/2006 whereby the counter claim filed by respondent No.2 was decreed. Further challenge is the judgment and order dated 20.06.2022 passed by the learned Civil Judge No. 1 Kamrup (M) Guwahati in Title Appeal No. 76/2014

whereby the judgment passed by the learned Munsiff No. 1 was affirmed and appeal was dismissed.

3. **Case of the Plaintiff:**

(i) The plaintiff/petitioner preferred a suit for declaration that the plaintiff is a lawful tenant and cannot be evicted from the suit premises without following due process of law and for declaration that the actions of the defendant in directing the plaintiff to vacate the suit premises is illegal and contrary to law.

(ii) It is the case of the plaintiff that the plaintiff to carry out his business has taken the schedule premises on rent from the defendant No.1 situated at Dharapur Chariali in the district of Kamrup, Assam in the year 1988. He is carrying out the business of stationery and wholesale from the said premises in the name and style of a Firm namely 'Barua Stores'.

(iii) He has taken license to run such business from Dharapur Gaon Panchyat and also got electricity connection in his name. The monthly rent was fixed at Rs. 300/- per month and the plaintiff has been regularly paying the said rent to the satisfaction of defendant No. 1.

(iv) On 07.12.2006 the defendant No.1 at the time of collection of rent informed the plaintiff that the plaintiff has to vacate the suit premises immediately. On such demand the plaintiff requested the defendant that he has been carrying out business for the last 18 years in the said premises by

paying regular rent and his eviction would cause immense difficulty and hardship.

(v) Thereafter, on 11.10.2006 the defendant alongwith 2/3 person came to the suit premises and threatened the plaintiff with dire consequences. The defendant threatened the plaintiff that if the plaintiff failed to vacate the suit premises within seven days, the defendant would forcefully throw away the belongings of the plaintiff from the suit premises and ensure that the plaintiff cannot enter the suit premises again.

(vi) Specific statement was made in the plaint that the plaintiff is a tenant and therefore is protected by relevant laws of land. Accordingly, the aforesaid suit was filed.

4. **The case of the Defendant:**

(i) As the defendant No. 1 in the meantime sold the premises to the defendant No.2, the defendant No.2 filed a written statement taking a stand that the suit premises alongwith adjoining shops situated over a plot of land measuring 2 kathas belonging to the defendant No.1 has been purchased by defendant No.2. It is within the knowledge of the plaintiff that the defendant No. 1 was proposing to sale the schedule property to the defendant No.2. It was also stand that the plaintiff defaulted in payment of rent from the month of December, 2006 and therefore, such defaulter cannot claim bonafide tenancy right against the defendant No.2. It was also pleaded that the defendant

No 2 is having bonafide requirement to raise RCC market structure in place of the present G.I Sheet structure and the defendant No. 2 is also desirous of taking loan from financial institution in order to raise new RCC market over the schedule land. Accordingly, a bonafide requirement was pleaded.

(ii) Another stand was taken to the effect that as the plaintiff has violated tenancy agreement of 1988 with the erstwhile landlord, they are liable to be evicted from the suit premises by the defendant No. 2. The defendant No.2 also filed a counter claim for ejectment of the plaintiff. The basic ground for seeking such eviction was bona fide requirement by the defendant No.2/counter claimant. It was a specific stand by the counter claimant that the suit premises now fall within the greater Guwahati city areas having jurisdiction of Guwahati Metropolitan Development authority. The plaintiff filed a written statement similar to that of the stand made in his claim. Additional and specific stand was taken that the Assam Urban Areas Rent Control Act, 1972(the Act, 1972) is not applicable to the suit premises for the reason that the suit premises do not fall under the area of Guwahati Municipal Corporation. It was a stand taken as the defendant land owner refused to take rent from the plaintiff, the plaintiff has been depositing the rent in the court by way of challan .

5. The learned trial court below framed as many as 8 issues which are as follows:

- (i) *Whether the suit is maintainable?*
- (ii) *Whether the plaintiff is entitled to the relief prayed for ?*
- (iii) *Whether the plaintiff is a defaulter in payment of rent?*
- (iv) *Whether the suit premises is bona-fidely required by the defendant counter claimant?*

Additional Issues

- (v) *Whether the counter claim of the defendant No.2 is maintainable?*
- (vi) *Whether the defendant No.2 has right, title and interest over the suit premises?*
- (vii) *What relief(s) the defendant No.2 is entitled to ?*
- (viii) *Whether the suit land falls in urban area or rural area ?*

6. **Findings of the learned Trial Court:**

- (i) The learned trial court while dealing with the issue of bonafide requirement came to a conclusion that the defendant No.2 requires the suit premises in order to raise new RCC market complex. Such requirement is a genuine one of landlord and the landlord is the best judge to decide what to do in respect of his land where the tenanted premises is situated. The court also came to a conclusion that the building is a 26 years old building. Under such circumstances, the claim of the defendant No.2 for construction of a new building on the ground that the said tenanted premises is in a bad shape cannot be out rightly

rejected.

(ii) The vital issue as to whether the suit land falls under urban areas or rural areas, the learned court below came to a conclusion that the question of the Act, 1972 is not applicable to the suit premises, as the suit premises is not situated under Guwahati Municipal Corporation authority is immaterial even the fact that the plaintiff has admitted that he is a tenant under the defendant. Such decision was challenged before the learned appellate court by the plaintiff tenant and learned appellate court came to the following findings:

(I) The learned appellate court concurred with the view of the learned court of first instance and held that for construction of a building which is not in a good condition and required by the landlord is a bonafide requirement inasmuch as it was also a finding of the learned appellate court that the plaintiff has failed to show that the defendant No.2 was having any other alternative plot of land to construct separate building thereof.

(ii) Regarding the applicability of urban and rural area, the learned trial court came to a conclusion that as the suit premises is situated within the Dharapur area, no further proof is required whether it is in rural or urban areas in view of the Section 58 of the Evidence Act, 1872(the Evidence Act) and accordingly, it was held that the suit premises does not fall in the rural area. Further conclusion of the learned

trial court is that as the plaintiff himself has admitted that he is a tenant under the defendant, no further proof is required whether the suit land comes under the provision of the Act, 1972.

(iii) Regarding the issue of want of notice u/s 106 of the Transfer of Property Act, 1882(the Act, 1882), the learned appellate court came to a conclusion that as the new owner i.e defendant No.2 has already filed a counter claim, no further notice is required for eviction inasmuch as such counter claim itself is deemed to be a notice to the tenant. Accordingly the judgment of learned trial court was affirmed.

7. Argument advanced by Mr. S. R. Gogoi, learned counsel for the petitioner:

(I) Mr. Gogoi, learned counsel basically argues that the plaintiff has proved through trade license which was issued by the Dharapur Gaon Panchayat to show that the suit premises is situated in rural area under Gaon Panchayat . Therefore, the Act, 1972 cannot be made applicable and the petitioner cannot be evicted without following due process, as provided, under the Transfer of Property Act, 1882 inasmuch as admittedly no notice as mandated under the said provision of law has been given to the plaintiff petitioner. It is also contended by Mr.Gogoi that defendant No.2 during his cross- examination has admitted that the land of which he is owner is situated under the rural areas. Therefore the learned courts below have committed

perversity in not entering into the issue of applicability under the Act, 1972.

(II) Mr. Gogoi also submits that the plaintiff by a certificate Ext.3, issued by Dharapur Gaon Panchayat certified that the suit land falls under the Dharapur Gaon Panchayat has remained unshaken and accordingly, has been able to prove that the area falls under rural area and therefore, the same is excluded from the Act, 1972. Therefore, in that view of the matter the finding of both the courts below are perverse. It is also contended by Mr. Gogoi that though the issue of default was framed by the learned trial court below, however the said issue was not decided.

(III) Mr. Gogoi, learned counsel in support of his contention relies on the following judgments:

(a) ***Jotsna Bala Das legal heirs of Binod Ch.Das andors Vs Upen Medhi*** reported in **2004(1) GLT 208**

(b) ***Assam Cycle Company Vs Motilal Bothra and anr*** reported in **2003(1) GLT 435**

(c) ***Haren Barua Vs Lalit Bhuyan*** reported in **1991 1 GLR 255 etc.....**

8. Mr. H. K. Sarma, learned counsel for the respondent argues the followings:

(i) The plaintiff has lost his right to continue as a tenant in the suit premises for the reasons that they have

denied the right of the landlord at Para 8 of the written statement to the counter claim inasmuch as they have not accepted the defendant No.2 who has purchased the suit land from defendant No.1 to be their landlord though they are well aware of the factum of the transfer of the suit premises by the defendant No. 1 to the defendant No.2. Therefore, such tenant is not entitled for any equitable right inasmuch as at the behest of such tenant the issue whether the suit premises is situated in urban areas or rural area is not material and should not be entertained.

(ii) Further Mr. Sarma, learned counsel submitted that the defendant themselves have admitted that they are paying rent taking recourse to the provision of sub-Section 4 of Section 5 of the Act, 1972 and therefore they cannot be allowed to approbate or reprobate, at the same time, raising a question that the tenanted premises does not fall under the Rural areas and therefore the Act, 1972 is not applicable.

(iii) Mr. Sarma further submits that the plaintiff in his plaint has not denied the status of landlord of defendant No.2. However they have at the same time, not accepted the defendant 2 as their landlord.

(iv) Mr. Sarma further contended that plaintiff has failed to adhere to the duties of the tenant inasmuch as immediately after sale the erstwhile landlord i.e defendant No.1 by his communication dated 1.5.2007 with A/D post

informed the plaintiff about such sale and requested the plaintiff to attorn as new landlord and to make all dealings with the new landlord defendant No.2 in respect of the tenanted premises, however the tenant has admittedly not paid any rent to defendant No.2 or that they have made any communication with defendant No.2, thus that amounts to denial of title to the landlord itself and in such background the plaintiff has lost their right to continue as tenant.

(v) It is also contended that even after the receipt of the counter claim which was filed on 17.11.2007, the plaintiff tenant has not paid a single penny as rent to the defendant No.2 or he has deposited any rent before any authority under the Act, 1972 and has also failed to exhibit any document to prove his contention that he is paying the rent. Therefore, the tenant is a rent defaulter and this Court should not give equitable relief to such rent defaulter more in a case filed u/s 115 of the CPC.

(vi) Mr. Sarma, learned counsel for the respondent contends that the Hon'ble Apex Court in time and again has held that even if the default is made during the trial or appellate stage, such default is also to be treated as default. In view of such contention, Mr. Sharma relies on the following judgments of Hon'ble Apex Court:

(i) ***Kedar Nath Agarwal(dead) and another vs Dhanraji Devi(devi) by Lrs and another*** reported in ***(2004) 8 SCC 76***

(ii) ***Darshan Singh & ors Vs Parag Gogoi***
reported in 2018(4) GLT 403

(iii) ***Swapan Kumar Saha Vs Biswa Nath Sureka*** reported in ***2014(1) GLT 252***

(iv) ***Sobha Biswas and ors vs Ranjit Lodh***
reported in ***2006 (1) GLT 479*** etc.

(vii) Both the courts on appreciation on evidence came to a concurrent finding that defendant No.2 is having a bonafide requirement. Finding of fact regarding bonafide requirement on proper appreciation of evidence may not be interfered in exercise of revisional power of a court inasmuch as it is well settled that the revisional court will interfere the concurrent finding when such findings are perverse or the learned court below has committed patent illegality.

(viii) Mr. Sarma contends that in the case in hand there is no patent illegality or any perversity. Therefore, the present revision petition is liable to be dismissed. In support of such contention, Mr. Sarma relies on the decision of this court in ***Sarawagi Trading Vs. Gini Devi Agarwala*** reported in ***(2014) 4 GLT 49***

(ix) While concluding the argument, Mr. Sarma submits that in the aforesaid factum and evidence of this case, wherein it has been proved without any doubt that the plaintiff is a rent defaulter and there is a bonafide

requirement of landlord to construct the house, the question as to whether it is in the urban area or in the rural area has lost its relevancy.

9. This Court has given anxious consideration to the arguments advanced by the learned counsel for the parties. After perusal of the materials available on record including the evidence as produced by Mr. S.R. Gogoi and as discussed herein above, it is an admitted position that the petitioner was a tenant under the deceased vendor (predecessor in interest) of respondent No.1a to 1c. It is also not in dispute that the litigation was also initiated by the present petitioner by filing the suit in question with a prayer that the petitioner should not be evicted without due process of law and at the same time it is also an admitted position that the defendant No.2 who purchased the suit premises from deceased defendant No.1 filed a counter claim seeking eviction of the plaintiff on the ground of bona fide requirement and default in payment of rent.

10. Both the courts below as discussed herein below on the appreciation of evidence concluded that the landlord; requirement of the tenanted premises is bona fide and that the petitioner was a defaulter. This Court does not find any perversity or infirmity in such finding to reverse the decision of learned courts below in exercise of its revisional jurisdiction. The law is well settled that the revisional court while exercising jurisdiction, more particularly, adjudicating litigation under Rent Control Act is to confine itself only to perversity of evidence and cannot re-appreciate and re-examine the facts of the case.

11. The Word "Perverse" in the legal parlance is defined to mean "against the weight of evidence".

12. Such finding of fact, in the considered opinion of this Court cannot be reversed by a revisional court by re-appreciation of evidence inasmuch as this Court finds no perversity in appreciation of such documents and evidences.

13. The hon'ble Apex Court in the case of ***Sri. Raja Lakshmi Dyeing Works And Others vs Rangaswamy Chettiar*** reported in **(1980) 4 SCC 259** while dealing with the power of a court under appellate and revisional jurisdiction held that the expression revision is meant to convey the idea of much narrower jurisdiction than that conveyed by the expression appeal. It is trite law that the High Court cannot re-appreciate the evidence to come to a different conclusion but its consideration is confined to find out legality, regularity and propriety of the order made. Thus, the High Court in exercise of its revisional jurisdiction is to look into or to find out whether the facts ascertained by the courts below suffer from any error of law.

14. Having so determined, now let this Court deal with the main and vital issue as urged by Mr. Gogoi is issue No.VIII i.e., whether the suit itself was maintainable under the provision of Assam Urban Areas Rent Control Act, 1972 inasmuch as according to Mr. Gogoi the tenanted premises fall within the rural area and therefore, in absence of a notice under section 106 of the Transfer of Property Act, 1882 the suit could not have been decreed.

15. To substantiate such claims the petitioner/plaintiff exhibited

his trade license issued by Dharapur Gaon Panchayat dated 04.05.2006. Though the trade license issued by Gaon Panchayat Secretary was exhibited, however, no notification or any other relevant materials etc including notification issued under sub section (2)(b) of the Section 1 of the Assam Urban Areas Rent Control Act, 1972 was either produced or exhibited.

16. Law is by now well settled that it is the plaintiff who is to prove his case and lay the foundational facts and prove thereof. In ***Birendra Sankar Sanyal & Ors Vs. Dinesh Chandra Sarma reported in (2015) 5 GLT 147***, this Court after considering the decision of the Hon'ble Apex Court in the case of ***Anil Rishi –Vs- Gurbaksh Singh*** reported in ***2006 5 SCC 558*** and the Full Bench decision of the Hon'ble Andhra Pradesh in the case of ***Nelluru Sundararamareddi & Ors –Vs- State of Andhra & Ors*** reported in ***AIR 1959 AP 215*** and decision of the Hon'ble Apex Court in the case of ***Narayan Govind Gavate & Ors –Vs- State of Maharashtra & Ors*** reported in ***1977 1 SCC 133***, and the decision of this Court in the case of ***Moslem Mondal & Ors –Vs- Union of India & Ors*** reported in ***2010 2 GLT 1*** culled out certain principle of law which are as follows:-

- I. The “burden of proof” cast under Sections 101 and 102 of the Indian Evidence Act, 1872 is the persuasive burden or the onus probandi.
- II. The persuasive burden to prove and establish the case always lies upon the plaintiff and the said burden never

shifts upon the defendant.

III. Once the plaintiff side succeeds in prima facie establishing his pleaded case by leading evidence, the onus will then shift upon the defendant side to lead evidence so as to disprove the case.

IV. The parties may also have to discharge the burden of establishing the admissibility of the evidence by leading evidence in respect thereof.

V. The initial burden to establish the basic allegations made in the plaint constituting the foundational facts, undoubtedly lies upon the plaintiff whether such assertion is couched in the affirmative or negative.

17. In the present case, it was the specific pleading of the plaintiff that the suit premises does not fall under urban areas however, to prove such contention and pleading no tangible material has been produced or proved except the certificate issued by the Gaon Panchayat Secretary and on the basis of such certificate such vital issue cannot be concluded and determined. The fact also remains that admittedly the plaintiff/petitioner deposited rent under the provisions of section 5(4) of Assam Urban Areas Rent Control Act, 1972. It is also an admitted fact that the plaintiff had filed the suit admitting himself to be tenant inasmuch as only on the basis of a certificate of President of Gaon Panchayat and a trade license, it can't be concluded that tenanted premises fall under rural area and not under urban

areas, until and unless other tangible evidence like notification of Govt./competent authority under Municipal Act, 1956 or Assam Panchayat Act, 1994 or Gauhati Municipal Corporation Act, 1969 under Assam Urban Areas Rent Control Act, 1972 are exhibited and proved. The foundational fact in this regard was not laid by the plaintiff/petitioner.

18. The argument of Mr. Gogoi that there is no determination of lease under section 111 of the Transfer of Property Act also does not find favour of this Court inasmuch as the plaintiff firstly failed to prove that the tenanted premises do not fall under urban area though the tenant opted his right to pay rent under the provision of Urban Areas Rent Control Act, 1972. Secondly, the plaintiff has himself admitted to be the tenant and it was within his notice that he is sought to be evicted by filing counter claim. Thus, in absence of any proof by the tenant adducing cogent tangible evidence to establish that the tenanted premises falls under urban area, this Court is not inclined to hold that the area falls under rural area only on the basis of a certificate exhibited by the plaintiff. Even if the land falls under rural area the plaintiff had sufficient notice that he is sought to be evicted by the landlord. Above all, it has been duly proved that the landlord is having a bona fide requirement of the suit premises as well as the plaintiff is a defaulter in payment of rent.

19. In view of the aforesaid reasons and discussions, in the considered opinion of this court the issue raised regarding the maintainability of the counter claim has been rightly decided by both the courts below in the given facts of the present case. Such findings

of the both the courts below are based on the material evidence available on record and the admission of the plaintiff that the deceased landlord has sold the property to the defendant No.2 and the fact that no rent has been paid to the defendant No.2 since the transfer of the property from the deceased defendant to the defendant No.2.

20. In view of the aforesaid discussions and decision, this Court finds no merit to interfere with the order in exercise of its revisional power and the same is accordingly dismissed.

21. No order as to costs.

JUDGE

Comparing Assistant