

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.514 of 1978

(Against the judgment and decree dated 28.03.1978 passed by the learned 2nd Additional Sub Judge, Darbhanga in Title Suit No.227 of 1967).

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Arun Kr. Singh & Ors

.... .. Plaintiffs-Appellants

Versus

Smt Radha Devi

.... .. Defendant-Respondent

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Appearance :

For the Appellant/s : Mr. Dilip Kumar Sinha, Advocate

For the Respondent/s : Mr. Bimal Kumar Dutt, Advocate

For the Intervener: Mr. Kaushlesh Choudhary, Advocate

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL JUDGMENT

Date: 22-07-2015

1. The plaintiffs have filed this First Appeal against the judgment and decree dated 28.03.1978 passed by the learned 2nd Additional Subordinate Judge, Darbhanga in Title Suit No.227 of 1967 dismissing the plaintiff's suit for eviction of the defendant.

2. The plaintiffs filed the aforesaid suit under the Bihar Building(Lease, Rent & Eviction) Control Act, 1947 alleging that the plaintiffs have purchased the suit house from the defendant by registered sale deed dated 18.10.1962 and came in possession. A registered Kirayanama dated 02.11.1962 was executed by which the defendant was inducted as tenant for a period of three years on monthly rent of Rs.133 i.e. from



November, 1962 to November, 1965. The defendant did not pay the rent from the date of inception as tenant and the defendant instead of vacating the suit premises after expiry of three years, inducted sub tenants. Notice was sent to the defendant demanding the rent and for vacating the suit premises. The plaintiffs also pleaded that the plaintiffs required the suit premises for own occupation. On these grounds, the plaintiffs filed the suit for eviction.

3. The defendant-respondent appeared and filed contesting written statement alleging that in fact, the defendant approached the plaintiffs for advancing the loan of Rs.37,000/- and it was agreed between the parties that if the said amount is returned within two years, the plaintiffs will again retransfer the property. The defendant was allowed to occupy the house as tenant on a monthly rent of Rs.133 and accordingly, a registered sale deed and a registered agreement was executed between the parties. So far default is concerned, the case of the defendant is that when the husband of the plaintiff refused to accept the monthly rent, the rent of Rs.130 was remitted through postal money order after deducting the cost for money order of Rs.3 per month. So far subletting is concerned, the defendant's case is that in fact, the husband of the defendant was in need of money, therefore, he



entered with Bhola Prasad in partnership business and, therefore, in fact, Bhola Prasad is not a sub lessee of the defendant. So far the personal necessity is concerned, according to the defendant, the necessity pleaded by the plaintiffs is not at all personal necessity because the suit premises is required by the plaintiff for their relatives. The further defence of the defendant is that when within two years, the amount of Rs.37,000/- could not be paid by the defendant, the defendant paid Rs.10,000 towards the consideration amount and requested the plaintiffs to extend the time fixed for repayment of the consideration amount and accordingly, the time was extended. Accordingly, the defendant denied all the points raised by the plaintiffs.

4. On the basis of these pleadings of the parties, the learned court below framed the following issues:

- I. Is the suit as framed maintainable?
- II. Have the plaintiffs got any cause of action or right to sue?
- III. Is the suit bad for want of proper notice under Section 106 T.P.Act?
- IV. Did the defendant make any default in payment of monthly rent and became liable for eviction?
- V. Is Bhola Prasad defendant No.2 a sub lessee?
- VI. Is the defendant liable for eviction on the grounds of alteration, or by afflux of time or by striking of defence for ejectment or on the ground of personal necessity of

the house by the plaintiffs?

VII. Are the plaintiffs entitled to a decree for arrears of rent and for eviction?

VIII. To what relief or reliefs, if any, are the plaintiffs entitled?

5. The learned court below on the basis of the evidences and materials produced by the parties recorded the finding that the notice under Section 106 T.P. Act is not valid. The registered deed of agreement, Exhibit 2 is also not valid. So far default is concerned, the learned trial court recorded a finding that the defendant had already paid municipal tax under compulsion and that, amount of Rs.10,000/- was deposited towards consideration amount, therefore, the defendant is entitled for adjustment of the said amount towards the rent, as such, the defendant is not a defaulter. The court below also held that the personal necessity is not in existence and further that Bhola Prasad is not a sub lessee. Accordingly, the court below dismissed the plaintiff's suit for eviction.

6. The learned counsel for the appellants submitted that the defendant admitted the relationship of landlord and tenant between the parties but the court below held that Exhibit 2 is invalid document which is registered document and nobody ever challenged the said registered agreement between the



parties i.e. the Kirayanama. So far the notice under Section 106 T.P. Act is concerned, according to the learned counsel, since the suit was filed under the Building Tenancy Act, notice under Section 106 of T.P. Act was not necessary but the court below has dismissed the plaintiff's suit on this ground also. According to the learned counsel, so far the default is concerned, the court below has wrongly relied upon the remittances made by the defendant through Exhibit C series particularly when for 55 months only three remittances were made by the defendant. According to the learned counsel, the defendant is defaulter because admittedly for two consecutive months, the defendant never remitted any rent to the plaintiffs. So far the adjustment of the amount deposited by the defendant to the plaintiff towards the consideration amount and the amount paid as municipal tax is concerned, the learned counsel submitted that the defendant never demanded the adjustment towards the rent and in fact, the defendant pleaded that he had deposited the amount of Rs.10,000/- towards consideration amount. In law, there cannot be any automatic adjustments towards the loan. So far subletting is concerned, learned counsel submitted that the court below has wrongly held that Bhola Prasad is a partner of the husband of the defendant without there being any documentary evidence. Moreover, the court below itself held

that Bhola Prasad has been inducted as tenant by defendant and, therefore, the rent deposited by him can be withdrawn by the defendant only. On these grounds, the learned counsel submitted that the First Appeal be allowed and the impugned judgment and decree be set aside and the plaintiff's suit for eviction be decreed.

7. On the other hand, the learned counsel appearing on behalf of the respondent submitted that the court below has rightly held that the defendant had remitted the entire dues amounting to Rs.7,334 and in support of the said fact, Exhibit C series were produced. When all the dues had already been paid by the defendant, there is no question of any default arises. So far subletting is concerned, the learned counsel for the respondent submitted that Bhola Prasad was only a partner of husband of the defendant, therefore, there is no question of subletting. The learned counsel further submitted that the plaintiffs pleaded that after the purchase, they came in possession and thereafter they inducted the defendant as tenant but the court below found that this pleading of the plaintiffs is incorrect and in fact, the defendant never vacated the suit premises and continued therein because in fact, the agreement between the parties was that after expiry of two years on repayment of the consideration amount of Rs.37,000, the plaintiff will reconvey the property. So far personal necessity is

concerned, according to the learned counsel, the requirement pleaded by the plaintiffs is not at all personal necessity. Therefore, the finding recorded by the court below on all these points cannot be interfered with in First Appeal.

8. It appears that in this First Appeal I.A. No.5247 of 2015 has been filed by Suresh Kumar Pansari for adding him as respondent under Order I Rule 10(2) C.P.C. The learned counsel for the intervener submitted that the intervener is one of the sons of the defendant-respondent and is residing in 1/4th portion of the suit premises. The intervener has got no other accommodation to live and, therefore, he is interested and is necessary party in this First Appeal and if he is not added as party, his right, title, interest and possession will be affected.

9. In view of the above submissions of the learned counsel for the appellants and the learned counsel for the respondent, the points arises for consideration in this First Appeal are as to “whether the plaintiffs have been able to prove the relationship between the parties and the plaintiffs have been able to prove that the defendant is a defaulter and that the plaintiffs required the suit premises for personal necessity” and “whether the defendant has inducted sub lessee and, as such, the plaintiffs are entitled to a decree for eviction under the B.B.C. Act” and

“whether the impugned judgment and decree is sustainable in the eye of law”?

10. From the written statement of the defendant, it is clear that the defendant herself admitted the fact that a registered Kirayanama was executed between the parties wherein the parties agreed that the defendant will pay Rs.133/- as rent per month to the plaintiffs for occupation of the suit premises for three years. The defendant also admitted the fact that a registered sale deed was executed by her in favour of the plaintiffs. It is also admitted fact that on the basis of the agreement between the parties to the effect that within two years if the amount of Rs.37,000/- is returned to the plaintiff, the plaintiff will reconvey the property to the defendant and accordingly, after expiry of two years, the defendant filed suit for specific performance of contract being Title Suit No.74 of 1975/43 of 1981. The suit was decreed in the court below. The present plaintiffs-appellants then filed First Appeal No.190 of 1983 challenging the judgment and decree passed in the suit for specific performance of contract. This Court by terms of judgment dated 15.04.2015 passed in First Appeal No.190 of 1983 has allowed the First Appeal and set aside the judgment and decree passed by the court below decreeing the suit for specific performance of contract and the plaintiff's suit was



dismissed. Now, therefore, it is admitted fact that the plaintiffs are the landlord and the defendant is the tenant. So far this question is concerned, there is no dispute raised either in the pleading or in the evidence. It is also admitted fact that the defendant had never made any demand that the amount deposited by the defendant with the plaintiff be adjusted towards rent. From perusal of the judgment also, I find that this was not the submission before the court below. Further, admitted fact is that the defendant remitted the rent of Rs.130 only after deducting the cost of money order i.e. Rs.3 per month. From perusal of Exhibit C series, which are three in number, it appears that money order was sent through post office by the defendant for 55 months.

11. It is settled principles of law that the Bihar Building (Lease, Rent & Eviction) Control Act is a self-contained Act and Section 11 provides that where the amounts of two months rent lawfully payable by the tenant is not having been paid within the time fixed by the contract the tenant will be held to be a defaulter. A tenant, therefore, has to prove the fact that within the period prescribed by the law or the contract between the parties had in fact, paid the rent due. The acceptance of rent by the landlord does not extinguish the cause of action for filing eviction suit. If there is contract the period of payment of rent month to



month shall be governed by the contract and in absence of such contract by the last day of the succeeding month. In the present case, it is reiterated that there is no contract between the parties that the rent will be paid at intervals of such and such year or month. There is no contract between the parties that the amount will be remitted after deducting the money order cost. Monthly rent as has been admitted has been fixed Rs.133 per month. Exhibit C series is clear that rent from the month of November, 1962 to May, 1967 amounting to Rs.7,334 was remitted through the postal money order.

12. From perusal of the judgment of the court below, it appears that the court below has given much emphasis on the point that the defendant had already deposited Rs.10,000/- towards the consideration amount for reconveyance of the property and, therefore, that amount was with the plaintiff which he could have adjusted towards the rent payable by the defendant but the plaintiff has not adjusted the same. So far this approach of the court below is concerned, it cannot be accepted as it is settled principles of law that there cannot be an automatic adjustment. Admittedly, according to the defendant's case also, the amount was not deposited in advance. According to the defendant, the defendant could not pay the consideration amount of Rs.37,000/-



within two months for repurchasing the suit property, therefore, she approached the plaintiff to extend the period and deposited Rs.10,000/-. It may be mentioned here that defendant had filed suit for specific performance of contract on the basis of the agreement between the parties that on repayment of Rs.37,000/- within two years the plaintiff will reconvey the property and, therefore, unless the defendant demanded for adjustment of the said amount which was paid by her towards the consideration amount for adjustment in the future rent automatically that cannot be adjusted.

13. In view of the above facts and circumstances of the case and from the admitted documentary evidences, it is clear that defendant is a defaulter in payment of rent.

14. The learned counsel for the respondent submitted that the court below has recorded a clear finding that the plaintiff failed to prove that the suit premises was vacated by the defendant and then after coming into possession of the suit premises the plaintiff inducted the defendant as tenant and moreover, the agreement between the parties was that the property was to be reconveyed by the plaintiff to the defendant and, therefore, in fact, the suit property was in mortgage with the plaintiff. So far this submission of the learned counsel is

concerned, this question relates to the title between the parties.

Admittedly, the present suit has been filed under the B.B.C. Act.

15. So far the submission of the learned counsel for the intervener is concerned, it may be mentioned here that this is a suit for eviction under B.B.C. Act. He is not claiming to be the tenant of the plaintiff. In such circumstances, unless his title is declared in a properly constituted suit, his presence in the present eviction suit is not at all necessary. In other words, he is not a necessary party in this eviction suit and moreover, at the time of hearing of this First Appeal, he has filed this intervention application. Therefore, there is no pleading nor any evidence is there adduced by the intervener. In view of the above facts and circumstances of the case, the intervention application has got no merit and the intervener is not at all a necessary party for deciding this First Appeal.

16. The Hon'ble Supreme Court in the case of **Rajendra Tiwary v. Basudeo Prasad and Another, A.I.R. 2002 Supreme Court 136** has held that "the sine qua non for granting the relief in the suit, under the Rent Act, is that between the plaintiff and the defendant the relationship of 'landlord and tenant' should exist. The scope of the enquiry before the Court was limited to the question as to whether the grounds for eviction of



the defendant have been made out under the Act. The question of title of the parties to the suit premises is not relevant having regard to the width of the definition of the term 'landlord' and 'tenant'. Therefore, this question regarding any title between the parties or the intervener cannot be decided in this suit or in this appeal. Accordingly, the intervention application filed by the intervener is hereby rejected.

17. From perusal of the judgment of the court below, it appears that the court below has given much emphasis on the service of notice under Section 106 of the T.P. Act and has dealt with many decisions of the High Court as well as the Supreme Court. The court below has then concluded that the plaintiff's notice under Section 106 of the T.P. Act is invalid. It may be reiterated here that the suit has been filed by the plaintiff under the B.B.C. Act.

18. The seven Judges Bench of the Hon'ble Supreme Court in the case of **V. Dhanapal Chettiar v. Yesodai Ammal, A.I.R. 1979 Supreme Court 1745** has held that "in order to get a decree or order for eviction against a tenant under any State Rent Control Act it is not necessary to give notice under Section 106 T. P. Act." Now, therefore, on this ground that no notice under Section 106 T.P. Act has been issued or that the

notice issued under Section 106 T.P. Act is invalid, the plaintiff's suit cannot be dismissed.

19. So far personal necessity is concerned, the learned counsel for the appellants submitted that he is not pressing this ground, therefore, I am not discussing the personal requirement of the plaintiff.

20. So far sub lessee is concerned, it is admitted fact that Bhola Prasad is doing business in the suit premises. The only defence of the defendant is that the financial condition of the husband of the defendant was weak, therefore, the husband of the defendant entered into partnership business with Bhola Prasad. So far this defence of the defendant is concerned, it is only a statement made in the written statement and in the evidences. In support of this fact, no documentary evidences have been produced. Moreover, from perusal of the impugned judgment, it appears that the learned court below has clearly held that Bhola Prasad has been inducted as tenant by the defendant, therefore, defendant is entitled to withdraw the rent deposited by Bhola Prasad. Now, therefore, admittedly Bhola Prasad has been inducted by the defendant as has been found by the court below also. In view of the above facts, now it becomes clear that the defendant has defaulted in payment of rent and also has sublet the

suit premises and inducted Bhola Prasad as tenant in the suit premises.

21. In view of the above discussion, I find that the plaintiffs have been able to prove that the defendant is a defaulter and are guilty of subletting the suit premises and are therefore, entitled to a decree under the B.B.C. Act, 1947. The finding of the court below on this point is hereby reversed.

22. In the result, this First Appeal is allowed. The impugned judgment and decree are set aside and the plaintiff-appellant's suit is decreed with cost of Rs.10,000/- to be paid by defendant-respondent to the plaintiffs-appellants within two months failing which the plaintiffs-appellants are entitled to realize the same through the process of the Court.

(Mungeshwar Sahoo, J)

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