

THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.83 of 2016

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1. Sardar Harbhajan Singh
2. Sardar Gurumukh Singh, Both sons of Late Sardar Darshan Singh and residents of Boring Canal Road, P.S.- Buddha Colony, District- Patna

.... Appellants.

Versus

1. Smt. Leela Rai Wife of Late Darwari Singh
2. Sri Deyendra Lal Rai, Son of Late Darwari Singh, Both residents of Mohalla-Punaichak, P.S.- Shastri Nagar, District- Patna

.... Respondents.

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Appearance :

For the Appellant/s : Mr. S.S.Dwivedi, Sr.Adv with Mr.J.S.Arora, Adv.

For the Respondent/s : Mr. T.N.Maitin, Sr.Adv with Mr. Binod Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 26-08-2016

Heard Mr.S.S.Dwivedi, learned senior counsel appearing for the appellants and Mr.T.N.Maitin, learned senior counsel appearing for the respondents.

The defendants in the suit for eviction are the appellants in this appeal against the judgment and decree of affirmance granting the eviction decree to the plaintiffs as prayed.

The material facts necessary for consideration in the context of the present appeal are that the appellants were inducted in the suit premises as monthly tenant by the predecessor of the plaintiffs. It was the case of the plaintiffs as pleaded in the plaint that the suit premises which was let out to the defendants comprised of

two rooms, one big shed and vacant land and the monthly rental was Rs.2,000/-. It was further case of the plaintiffs that the defendants committed default in payment of rent from the month of April 1992. The plaintiffs further asserted that the plaintiff no.2 was an unemployed engineer and the suit premises was required for starting his own business therein. On the other hand, the defendants' case as pleaded was that the tenancy was created with regard to only vacant piece of land for the purpose of establishing saw mill by the defendants and the defendants after filling up the ditch constructed a shed , temporary room, boundary wall, gate etc and started their business. The defendants further claimed that there had been agreement for sale between the defendants and the original landlord (predecessors of the plaintiffs) for sale of the suit premises to the defendants for Rs.4,55,000/- and total Rs.60,000/- was paid by way of advance on 28.07.1986 and also subsequently. It was also the case of the defendants that the sale deed as agreed could not be executed due to the death of the original landlord but the said agreement for sale was acknowledged by the plaintiffs who were the heirs of the original landlord and who also received Rs.50,000/- through cheque on 05.05.1992 as part of the consideration money with further agreement that no rent would be payable by the defendants from April 1992. The defendants also questioned the maintainability of the

eviction suit under the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 (hereinafter referred to as B.B.C.Act) on the base that the tenancy was with regard to vacant land.

The trial court returned the findings on the material issues in favour of the plaintiffs and granted the decree for eviction against the defendants as prayed. The defendants filed the title appeal challenging the judgment and decree passed by the trial court. During the pendency of the said appeal, the plaintiff-respondents therein sold away the suit premises by registered sale deed dated 08.08.2008. This sale deed was adduced as additional evidence by the defendant-appellants who on that basis also submitted before the appellate court below that the plaintiff-respondents after having transferred the title over the suit premises had now lost the cause of action and could not resist the appeal.

The appellate court below, on reappraisal of evidence and materials on record, affirmed the findings of the trial court and further also turned down the objection as raised by the defendant-appellants therein on the basis of the transfer of title over the suit premises by the plaintiff-respondents during the pendency of the appeal.

Criticizing the impugned judgment and decree by both the courts below, Mr. Dwivedi, learned senior counsel for the



appellants has firstly dwelt upon the fact of the admitted transfer of title over the suit premises by the plaintiffs during the pendency of the appeal in the court below emphasizing that the eviction decree passed in favour of the plaintiffs by the trial court could not have been affirmed by the appellate court below ignoring the fact that the plaintiffs no more remained the title holder of the suit premises. It has been contended that the cause of action on the basis of which the suit for eviction was filed definitely did not survive after the admitted sale of the suit premises by the plaintiff but the appellate court below has ignored this aspect. It has been further canvassed that admittedly the plaintiffs did not assign the decree for eviction which was in their favour at the time of sale, in favour of the purchasers and therefore the benefit of the eviction decree cannot now be allowed to accrue to the purchasers. Referring to the definition of landlord under Section 2 (f) of the B.B.C.Act, it has been submitted that the plaintiffs no more remained the landlord of the defendants after the transfer of the title and therefore also they have ceased to be entitled to an eviction decree and precluded from taking delivery of possession of the suit premises in execution of the eviction decree as affirmed by the appellate court below which can be granted only to a landlord. Strong reliance has been placed on behalf of the appellants in support of the above submissions on a bench decision of this Court in the case of

Ram Tahal Modi Vs. Ratan Lal , 1998 PLJR 950.

It has been next argued that the appellate court below has failed to consider that the tenancy in favour of the defendants was created with regard to only vacant land to which the provisions of the B.B.C.Act was not applicable but by misconstruing the law in this regard the appellate court below has wrongly held that the suit was maintainable as the suit premises was a building on the date of the filing of the suit. It has also been submitted that the defendant appellants have no more remained defaulter in payment of rent after the deposit of the entire arrears of rent by them in pursuance to the order of the court as condition for grant of stay of the proceeding of the execution case. The learned senior counsel for the appellants though has further submitted that the appellate court below has committed error of jurisdiction in considering the finding on the issue of personal necessity in absence of any cross objection by the plaintiffs against the finding on the issue recorded by the trial court against them but did not press this point any further in view of the affirmance of the said finding on personal necessity against the plaintiff by the appellate court below. It has been finally submitted by the learned senior counsel that the above mentioned aspects lead to substantial questions of law arising for consideration in this appeal. No other submission has been made on behalf of the appellants.



Mr.T.N.Maitin, learned senior counsel for the respondents, in reply, has submitted that the courts below have recorded the findings of facts upon scrutiny of evidence and in accordance with law and as such the same are not open to challenge in second appellate jurisdiction. It has been further submitted that the appellate court below has rightly relied upon the decision by the apex court in *Sharadamma Vs. Mohammed Pyrejan, (2016) 1 SCC 730* holding that the plaintiffs continued to have the right to sue even after the transfer by them of the suit premises. It has also been contended that undisputedly the suit premises comprised two rooms, a big shed and vacant land which were under occupation by the defendant-appellants on the date of filing of the suit or even prior to that and as such it is far fetched submission on their behalf that they are tenants over only a vacant piece of land. It has been finally submitted that the judgments by both the courts below are well reasoned and no substantial question of law arises in this appeal.

After considering the submissions and perusal of judgments of both the courts below, it is pellucid that the suit was filed for eviction on the ground of default in payment of rent and personal necessity as envisaged respectively in Section 11 (1) (c) and (d) of the B.B.C. Act. There is no dispute between the parties to the existence of relationship of landlord and tenant in between them and

the fact also stands admitted that no rent for the suit premises has been paid by the defendant-appellants since April 1992.

It is now well settled by the full bench decision of this Court in the case of ***Ladu Gopal Kedia Vs. Bibi Jaibunissa, 1991 (2) PLJR 1*** that the provisions of Civil Procedure Code is applicable to such eviction suit and only in case of a suit filed for eviction on the ground of personal necessity as envisaged under Section 11(1)(c) and/or expiry of lease as envisaged under Section 11(1)(a), the special procedure as laid down in Section 14 of the B.B.C. Act is to be followed. As such, this Court does not find that any distinction can be legally drawn between the procedure to be followed in such a suit like present one and a regular suit filed under the general law and the application of the provision as contained in Order 22 Rule 10 C.P.C. can be excluded on this basis as submitted. The legal impact of transfer of title over the suit premises by a plaintiff during the pendency of the suit on his right to sue has directly fallen for consideration before the apex court in ***Sharadamma*** (Supra) and in view of the provision of Order 22 Rule 10 C.P.C. it has been ruled by their lordships as follows:

“... Merely due to the assignment or release of the rights during the pendency of the appeal, the appellant did not in any manner

lose the right to continue the appeal. Merely by transfer of the property during the pendency of the suit or the appeal, the plaintiff or appellant, as the case may be, ordinarily has a right to continue the appeal.

It is at the option of the assignee to move an application for impleadment...”

5. “... A bare reading of the provisions of Order 22 Rule 10 makes it clear that the legislature has not envisaged the penalty of dismissal of the suit or appeal on account of failure of the assignee to move an application for impleadment and to continue the proceeding. Thus, there cannot be dismissal of the suit or appeal, as the case may be, on account of failure of assignee to file an application to continue the proceedings. It would be open to the assignor to continue the proceedings notwithstanding the fact that he ceased to have any interest in the subject matter of dispute. He can continue the proceedings for the benefit of assignee ...”.

(emphasis supplied)

The legal conundrum so strenuously sought to be raised, on the base of the transfer pendente lite of the suit premises by the plaintiffs as above mentioned, on behalf of the appellants stands completely answered by the dictum as above laid down by the apex court. There remains, therefore, no legal impediment in holding that the plaintiffs not only could have pursued the appeal defending the decree in their favour even after transferring their title over the suit premises but could have also done so for the benefit of their transferee (s). In sequence, this Court also does not find substance in the submission on behalf of the appellants that the plaintiffs, having ceased to have title over the suit premises, would not be entitled to execute the eviction decree and take delivery of possession. The appellate court below has also elaborately referred to the observations of their lordships in *Sharadamma* (Supra) and has rightly concluded that even after transfer of the title and interest in the suit premises the plaintiff-respondents had the right to contest the appeal.

At this juncture, however, it is condign to take into notice the bench decision of this Court in *Ram Tahal Modi* (Supra) which has been strongly relied upon by learned senior counsel for the appellants. It transpires from the decision that in the said case the main issue for consideration was the entitlement of the transferee



pendente lite to take advantage of the default in payment of rent, alleged to have been committed by the tenant before the filing of the suit when the owner-transferor was the landlord. It has, in that context, been laid down that a transferee pendente lite cannot take advantage of default in payment of rent by the tenant as he was neither the owner nor the landlord when the cause of action for eviction accrued to the owner-landlord. It has, however, been also observed that the landlord in relation to whom the tenant defaulted in payment of rent may get decree for eviction. It would be apt here to take into notice the observation by the bench as follows:

“...The right of the transferees commenced with the assignment. They were neither the owners nor landlords when the cause of action accrued. They cannot continue the suits for breaches which became complete before the suit were filed, i.e. default in payment of rent. Landlord alone in relation to whom tenant defaulted in payment of rent may get a decree for eviction and not his transferee.

(emphasis supplied)

It is thus evincible from the above that in **Ram Tahal Modi** (Supra) also the right of a landlord to seek a decree for



eviction against the tenant for the default committed before the assignment as abovementioned has been recognized. The reliance on behalf of the appellants on this decision is therefore clearly misplaced. This Court, therefore, holds that the question pertaining to the right of the plaintiffs to continue the suit even after they ceased to have title over the suit property is no longer *res integra* in view of the decision by the apex court in *Sharadamma* (Supra) and such a question is thus not a substantial question of law.

It has been next submitted that the tenancy which was created in favour of the defendant-appellants by the landlord (predecessor of the plaintiffs) was with regard to only a vacant piece of land over which the constructions of two rooms, a shed and boundary wall for the purpose of business has been done by the defendant-appellants therein and on this basis it has been submitted that the provisions of B.B.C. Act could not be attracted for the purpose of seeking a decree for eviction against the defendant-appellants. It is evident, however, from the pleadings and the finding by the appellate court below that on the date of filing of the suit, the suit premises consisted of two rooms, a big shed and vacant land. The evidence has been adduced on behalf of the plaintiffs that the municipal corporation has created a holding for the suit premises and the rent was being paid by the plaintiffs with regard to the said



holding much prior to the filing of the suit. The defendants have also accepted the existence of the two rooms and a shed alongwith vacant land over the suit premises but with assertion that the said construction has been made by them. It is also their case that initially the rent of the suit premises initially Rs. 175/- per month but in due course the same was enhanced and it was Rs.1,000/- per month on the date of the filing of the suit. But it is no where the case of the defendants that the rent or the enhanced amount of rent was being paid by them only with regard to vacant land rather to the contrary , it is apparent that the defendant-appellants have been paying rent for the suit premises. Manifestly therefore, it is not a simple case of tenancy over a vacant land on payment of rent for use of that vacant land. The rent was being paid in respect of the entire suit premises admittedly consisting of two rooms, shed etc which according to the defendant-appellants were later constructed but according to the terms of the tenancy. It is thus demonstrably clear that the suit premises cannot be accepted to be only a vacant piece of land and excluded from the definition of 'building' under the B.B.C.Act. This view is also supported by the decision of this Court in the case of *Shri Binay Kumar Maheshwari Vs. Fanindra Prasad Mishra, 2000(2)PLJR 865*. The finding by the courts below in this regard is in accordance with the settled principles of law.

The submission on behalf of the appellants that after the payment of arrears of rent by them subsequently upon the order of the court, they no more remained defaulter for the purpose of eviction is apparently a submission made in desperation. The law in this regard has already been settled by the full bench decision of this Court in ***Raj Kumar Prasad Vs. Uchit Nr. Singh , 1980 PLJR 495*** and there is thus no infirmity in the findings of the courts below on this issue.

For the aforesaid reasons and discussions, this Court comes to the conclusion that there is no substantial question of law arising for consideration in this appeal.

Ex consequenti, this appeal is dismissed.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
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