

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.99 of 2002

=====

Waliur Rahman, son of Late Moiur Rahman, resident of Mohalla Chandi, P.S. Barh, Ward No. 1 and at present Dakbunglow, Barh Station Road side Market, Ward No. 14, Barh Municipal Area P.S. Barh district Patna Plaintiff....Respondent

.... Appellant

Versus

1. District Board, Patna, represented through D.D.C. cum Chief Executive Officer, Zila Parishad, Patna
2. Secretary, Zila Parishad, Patna
3. District Engineer, Zila Parishad, Patna
4. Assistant Engineer
5. Junior Engineer, both District Board Office, Neat at Barh Thana, district Patna Defendant Appellants

.... Respondents

=====

Appearance :

For the Appellant/s : Mr. Vishwanath Choudhary, Advocate
Mr. Madan Prasad Singh II
Mr. Arvind Kumar Singh

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 28-07-2017

Heard Mr. Vishwanath Choudbary, learned Counsel appearing for the appellant.

2. The plaintiff is the appellant in this appeal against the judgment and decree of reversal dismissing the suit.

3. The plaintiff filed the suit for declaration that the plaintiff was entitled to hold and occupy the suit premises on the basis of letter dated 16.4.1984 issued by the defendant No. 3. The further relief was sought for declaring that the tender dated 10.4.1991 issued by defendant No. 1 was *null* and *void* and not binding upon the plaintiff and a decree for injunction was also prayed for restraining the defendant not to demolish the suit premises.



4. From the averments made in the plaint it transpires that the plaintiff claimed himself to be in occupation of the suit premises (a katra shop) of the defendant District Board on payment of rent. It was the case of the plaintiff that he had been in occupation of the suit premises for more than 20 years but the defendants with *mala fide* intention were threatening the plaintiff to vacate the suit premises even in spite of the fact that the plaintiff had been regularly paying rent to the defendants. The plaintiff had come out with the case of entitlement to occupy the suit shop as tenant until any breach of contract was raised and proved on the part of the plaintiff.

5. It transpires from the records that the plaintiff prayed for grant of interim injunction restraining the defendants from demolishing the suit premises during pendency of the suit. The defendants appeared and filed their show cause. The prayer for injunction was declined. The defendants later on prayed to accept the show cause filed on their behalf in the injunction matter as written statement, but the said prayer was rejected. The defendants, however, participated in the trial.

6. The trial court decreed the suit. In appeal by the defendants, the appellate court on reappraisal of evidence came to the conclusion that the suit was barred under the provisions of Section 80 CPC and also under Section 146 of the Bihar Local Self Government Act. It was also concluded that the plaintiff was in occupation of the suit premises as licensee and not as a tenant on the basis of tenancy agreement. Accordingly, the appeal was allowed and the finding of the trial court was reversed and the decree passed in the suit was set aside.

7. This appeal has been admitted for hearing on the following



substantial questions of law:-

- i) Whether the defendants in the suit can raise objections to the maintainability of the suit without filing any written statement?
- ii) Whether Section 146 of the Local Bodies Act is applicable in an area where the Bihar and Orissa Municipal Act is in force specially after repeal of Section 342 of the Bihar and Orissa Municipal Act?
- iii) Whether the removal of the plaintiff-appellant by demolishing the Katra shop in question without notice can be said to be a bonafide Act in exercise of powers conferred on the authority by law?

8. Mr. Choudhary, learned Counsel appearing for the appellant, has submitted that the suit premises is a small Katra shop in occupation of the appellant since long and the said Katra shop is the only source of livelihood of the appellant who is a poor person. It has been contended that according to letter No. 18 dated 16.4.1984 issued by defendant No. 3 the appellant along with other persons were allotted shops on payment of monthly rent. It has been submitted that the appellant has never committed default in payment of rent to the defendant, but without taking steps for termination of his tenancy the defendants started threatening and making preparation for demolition of the suit shop which compelled the appellant to file the suit. During the



course of submission, however, it has been accepted after examination of the lower court records that letter dated 16.4.1984 though filed in the court below but was not adduced in evidence and marked as exhibit. The learned Counsel, however, has emphasized that the appellant's possession over the suit premises is in the capacity of tenant under the defendants and he cannot be evicted or dispossessed from the suit premises without adopting the procedure prescribed by law.

9. Nobody has appeared on behalf of the respondents though the notice of this appeal has been validly served upon all the respondents.

10. After considering the submission on behalf of the appellants and perusal of the judgments of both the courts below it is apparent that the suit has been filed by the plaintiff-appellant for declaration of his status over the suit premises as monthly tenant under the defendants on the basis of letter No. 18 dated 16.4.1984. The other reliefs prayed in the suit are by way of consequential reliefs. It is, however, manifest and also accepted on behalf of the appellant that the said letter No. 18 dated 16.4.1984 was not adduced in evidence by the plaintiff-appellant and was not marked as exhibit in the suit. It is noteworthy that the said letter dated 16.4.1984 was the basis of the suit of the plaintiff. It also does not appear from the records that any documentary evidence has been adduced on behalf of the appellant. By way of oral evidence the plaintiff-appellant has examined two more witnesses besides himself.

11. Both the courts below have come to the concurrent findings of fact, on the basis of evidence on record, that the plaintiff was



in possession over the suit premises as licensee of the defendants and not as a tenant. It has also been held by both the courts below that right to occupy the suit premises was not conferred upon the plaintiff on the basis of any *patta*. It is apparent from the appellate court judgment that the learned court below has examined in detail the rights of the licensee to maintain a suit against a licensor and thereafter the conclusion has been recorded that the plaintiff-appellant was not entitled to the decree as prayed. It is also significant to notice that prayer for grant of temporary injunction restraining the defendants from demolishing the suit premises was rejected by the trial court by its order dated 30.7.1992. It does not appear from the records, nor it is the case on behalf of the appellant, during course of submission, that the said order of rejection of the prayer of injunction was reversed by the superior court.

12. The appellate court below has further also held after taking into notice the provisions of Section 80 CPC and Section 146 of the Bihar Self Government Act that no notice was served upon the defendants as required before filing the suit. It has also been found by the appellate court below that Deputy Development Commissioner was a necessary party being the head of the defendant District Board, but was not added as party in the suit. It has, thus, been concluded by the appellate court below that the suit was not maintainable and also suffers from the defect of parties.

13. During the course of submission on behalf of the appellant, this Court has not been persuaded to find illegality in these conclusions by the appellate court below. Further this Court has also not been persuaded to hold that the findings by the appellate court below suffers



from non consideration of evidence or are dehors the settled principle of law.

14. For the aforesaid reasons and discussions, this Court answers the substantial questions of law in negative.

15. In the result this appeal sans merit is dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	31.07.2017
Transmission Date	N/A

