

Smt. Bela Das and Others

Vs

Samarendra Nath Bose

Civil Appeal No. 425 of 1970

(K. K. Mathew, P. N. Bhagwati, N. L. Untwalia JJ)

11.12.1974

JUDGMENT

UNTWALIA, J. -

1. This appeal by the plaintiffs filed by special leave of this Court against the defendant respondent arises out of a suit for eviction instituted by the former against the latter from the suit premises situated in the town of Patna. According to the case of the plaintiffs the defendant had been inducted as a monthly tenant of the premises on a rent of Rs. 135 per month. Subsequently, as a result of a decree in a partition suit between the plaintiffs and their co-sharers the property was allotted to the former and they became the absolute owners thereof. Plaintiffs wanted to evict the defendant on the ground of non-payment of rent, breach of the conditions of the tenancy and on account of their bona fide personal requirements of the suit premises. The defendant in his defence took the plea that he was not the tenant of the premises, the tenant was Liberty & Co. and that the plaintiffs were not the absolute owners thereof, as the decree for partition had been set aside in a first appeal filed in the Patna High Court, there were others who also were the landlords. Some other pleas were also raised to resist the suit for eviction.

2. The suit was instituted on September 27, 1962. On December 18, 1963 the plaintiffs filed a petition under Section 11A of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 - hereinafter called the Act - for directing the defendant to pay the arrears of rent as also the current and future rent. The defendant resisted the claim of the plaintiffs under Section 11A of the Act on the ground that besides them there were other landlords of the building in question. But an order under Section 11A of the Act was made against the defendant by the trial Court on February 6, 1964. To safeguard the interest of the defendant the Court directed that the plaintiffs would not withdraw the amounts deposited in pursuance of the order made under Section 11A of the Act until the disposal of the suit. The defendant defaulted in compliance with the order. Hence his defence as against ejection was struck out by an order of the trial Court made on July 8, 1964. The suit was eventually taken up for ex parte hearing on July 1, 1967. The defendant wanted to obstruct the hearing of the suit proceeding ex parte be failed.

3. At the ex parte hearing plaintiff No. 3 was examined as plaintiff's witness No. 1. He supported their case in toto including their claim that they were the absolute owners of the building of which the defendant was the tenant. The Munsif, Third Court, Patna believed the evidence adduced on behalf of the plaintiffs and passed an ex parte decree directing eviction of the defendant. The latter went up in appeal which was dismissed by Subordinate Judge, First Court, Patna on April 21, 1969. All arguments raised on behalf of the defendant appellant to challenge the ex parte decree failed. He preferred second appeal No. 262/1969 in the High Court of Judicature of Patna. A learned Judge of

that Court sitting singly allowed the appeal and remitted the case back to the trial Court for a fresh trial and decision after allowing opportunity to the parties to adduce their evidence in the light of the judgment of the High Court. The plaintiffs appellants challenge the propriety and legality of the High Court judgment passed in the second appeal.

4. The High Court rejected some of the contentions raised on behalf of the defendant to challenge the legality of the order made under Section 11A of the Act as also the order striking out his defence as against ejection. But it has taken the view following the Full Bench decision of the Patna High Court in the case of Mahabir Ram v. Shiva Shanker Prasad (AIR 1968 Pat 415 : 1968 BLJR 447 : ILR 47 Pat 233) that since the defendant had not admitted the plaintiffs to be his 16 annas landlord there was a denial of relationship of landlord and tenant between the parties and as such the order striking out the defence as against ejection of the defendant qua tenant could not prevent him from contesting the suit on the question of title. In our opinion the High Court has fallen into an error of law in applying the ratio of the Full Bench decision of the High Court referred to above to the facts of the instant case.

5. The defence set up by the defendant that he was not the tenant but the tenant was Liberty & Co. was a mere pretence. The High Court has also not thought it fit to remit the case back because of this defence. The defendant was carrying on the business in the assumed name of Liberty & Co. which not any legal entity or a person different from the defendant.

6. The defendant had admitted that he was the tenant under the plaintiffs but was merely asserting that there were some more landlords of the premises in question. It was not a case of denial of relationship of landlord and tenant between the parties. In the case of Mahabir Ram (supra) the tenant had denied the title to the plaintiffs and set up a title in himself. In the instant case the plea of the defendant has been that the plaintiffs being landlords of the suit premises for a moiety of share could not alone claim a decree for eviction against him. Such a plea set up by the defendant to resist the suit for eviction was a plea qua tenant and not de hors it. The striking out of the defence on July 8, 1964 had the effect of striking out all defence raised by the defendant qua tenant including his defence that the plaintiffs alone being co-sharer-landlords were not entitled to maintain the suit for eviction. It may also be added that the learned Munsif in his order dated July 8, 1964 striking out the defence, which order was confirmed by a Bench of the High Court in Civil Revision No. 824 of 1964 decided on April 21, 1965, had pointed out on the basis of the defendant's statements in his written statement as also in his rejoinder to the plaintiffs petition under Section 11A of the Act that the defendant had admitted that he was paying rent to the plaintiffs and had recognised them to be their landlords. In that view of the matter also the plaintiffs were the landlords of the suit premises occupied by the defendant within the meaning of clause (d) of Section 2 of the Act. In either view of the matter there is no escape for the defendant in this case that his entire defence in the suit was in his capacity as a tenant and on its striking out, it was struck out as a whole. The hearing of the suit ex parte was, therefore, legal and valid. The contrary view taken by the High Court is erroneous in law.

7. Mr. H. B. Datar, learned Counsel for the respondent endeavoured to persuade us to remit back the case to the High Court for the rehearing of the second appeal in order to find out whether the ex parte decree passed on the evidence adduced was sustainable in law. We did not feel persuaded to accede to this request of the Counsel as on perusal of the judgment of the trial Court as also of the first appellate Court we found no error of law in them. The suit for eviction was rightly decreed.

8. In the result this appeal is allowed but without costs. The judgment of the High Court is set aside.

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