

M/s. Dutta Cycle Stores and Others

Vs

Gita Devi Sultania and Others

Civil Appeal No. 652 of 1982

(K. Jagannatha Shetty, Dr. T.K. Thommen JJ)

25.01.1990

JUDGMENT

THOMMEN, J. -

1. This civil appeal by special leave is brought by the defendants against the judgment of the Patna High Court, Ranchi Bench, in Second Appeal No. 125 of 1977 dismissing in limine their appeal against the judgment of the learned District Judge in Title Appeal No. 2/5 of 1977 where by the decree for eviction granted by the learned Munsiff in Title Suit No. 3 of 1975 was in part affirmed.
2. The plaintiffs (respondents) instituted the suit against the defendants (appellants) for eviction under Section 11(1) (d) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 on the ground that the defendants were in arrears of rent for the months of February 1974 and May 1974 to August 1974. The defendants contested the suit on various grounds. Their main defence was that they were not in arrears of rent as alleged by the plaintiffs. Decreeing the suit, the learned Munsiff found that rent for the months of February 1974 and May 1974 to August 1974 had not been paid by the defendants. This decree was affirmed by the learned District Judge in part, that is, in respect of the alleged arrears for the months of May and June 1974, and not for any other period. The finding of the first appellate court was affirmed by the High Court by dismissing the defendants appeal in limine.
3. The question which arises for consideration is whether the courts below were justified in coming to the conclusion, which they did, and whether the impugned judgment of the High Court is liable to be interfered with the present appeal brought by special leave under Article 136 of the Constitution.
4. Whether or not rent for the two months in question had been duly paid by the defendants is a question of fact, and with a finding of such a fact, this Court does not ordinarily interfere in proceedings under Article 136 of the Constitution, particularly when all the courts below reached the same conclusion. But where the finding of fact is based on no evidence or opposed to the totality of evidence and contrary to the rational conclusion to which the state of evidence must reasonably lead, then this Court will in the exercise of its discretion intervene to prevent miscarriage of justice.
5. The suit was instituted by the widow of Rameshwarlal Sultania. The plaint was verified by Rameshwarlal Sultania's nephew on behalf of the plaintiffs, and he deposed as PW 4. Neither the first plaintiff, the widow nor the other two plaintiffs, her children testified in support of the plaint allegations. The nephew, PW 4 frankly admitted in the box that he had no personal knowledge of the facts alleged in the plaint. He did not know if the defendants were in arrears of rent or whether his aunt, the first plaintiff or anybody else had demanded rent from the defendants. None of the

witnesses on the side of the plaintiffs had any personal knowledge of the facts alleged by the plaintiffs in regard to the arrears of the rent. PW 4 is, amongst the plaintiffs, witness, the only person who speaks to this fact, but admittedly speaks without any claim of personal knowledge. In the circumstances, there is no reliable oral evidence on the side of the plaintiffs to support the plaintiff allegation regarding the arrears of rent. Nor is there any documentary evidence in support of their case.

6. On the other hand, the defendants categorically stated that they had paid the rent for the two months in question to the first plaintiff. At that time her husband was alive, but he was in no condition, on account of poor health, to give a receipt for the rents paid. The defendants, in view of their personal relationship with him, did not insist upon a receipt.

7. DW 8 is one of the defendants. He categorically stated that for the months of May and June 1974 he paid the rent in June 1974 by handing over the amount to the first plaintiff's daughter when she went to his shop to collect the rent. Since she was a minor he accompanied her to her house to make sure that the amount was received by her mother, the first plaintiff. His evidence on the point is in the following words :

"It is incorrect to say that I have not paid the rent for May-June 1974. In June, the daughter of Rameshwar Babu had come to demand Rs. 200 towards the rent for May-June 1974 and I had given the (illegible) at that time. I had demanded the receipt, but he was unwell and as such did not give it."

"Rameshwar Babu was not living in his senses in June 1974. His brain was not in proper condition. In June 1974 I gave Rs. 200 to his wife (plaintiff), after taking the same to his house. Even subsequently my brother had gone to pay the rent to the plaintiff, Gita Devi for two-three times.

This evidence is supported by DW 7. He is the Accountant of the first defendant-firm of which defendants 2 and 3 who are brothers are partners. Referring to these partners, and a neighbour by name Nandi (DW 6), this is what he says :

"In June 1974, the defendants, Bibhuti and Prahalad Chandra Dutta had given Rs. 200 (two hundred rupees) to the daughter of Rameshwar Babu. Nandini Babu, Bibhuti Babu and I were (present) in the shop, at that time. This money was paid towards the rent of the house".

Nandini (DW 6) also speaks on this point :

"The defendants always used to pay the rent in my presence In June 1974, they had given Rs. 200 as rent to the younger daughter of Ramesh Babu in my presence. I told (them) that as she was a small girl, they should also accompany her. Then Bibhuti Bhusan Dutta reached the girl".

8. The evidence of these three defence witnesses is that the rent for the months of May and June 1974 had been duly paid in June 1974 in the sum of Rs. 200 by the second defendant (DW 8) to the landlord, Rameshwarlal Sultania by handing over the amount to his minor daughter who went to the defendant's shop to collect the same and by accompanying her to her house to see to the safe delivery of the same to the first plaintiff, her mother who obviously received it on behalf of her husband, the landlord. The evidence seems to be clear on the point and we see no contradiction in

this.

9. The courts below did not appreciate that this much evidence was staring in the face, and there was total absence of evidence on the point on the side of the plaintiffs to contradict the defence evidence. The plaintiff allegation regarding arrears was not spoken to on the plaintiffs side by any person having personal knowledge. The plaintiffs side by any person having personal knowledge. The plaintiffs made no attempt to let in any reliable evidence on the point. The evidence of PW 4 who admittedly had no personal knowledge on the point is no evidence at all. On the other hand, the evidence of DW 8, supported by the evidence of his Accountant (DW 7) and his neighbour (DW 6) is categoric and clear.

10. The learned District Judge disbelieved this evidence on the assumption that DW 6 contradicted himself when he stated that the amount was paid to the daughter and also to her mother. In his written statement he stated that the amount had been paid to the landlord, Rameshwarlal Sultania.

11. In the light of what we have stated above, we see no contradiction in these statements. The amount was, in our view, rightly stated to have been paid to Rameshwarlal Sultania when it was handed over to the daughter to be paid over to her mother, viz, the first plaintiff who was reasonably understood to have received it for and on behalf of her husband. If this statement is true, there is no contradiction in it and it is categoric and clear. We see no reason to suspect that it is not true for there is no evidence on the side of the plaintiffs to the contrary. As stated earlier, there is no evidence at all on the side of the plaintiffs that rents were in arrears. In the absence of any reason to disbelieve the clear and categoric testimony of the defence witnesses on the point, we see no reason to suspect that the rents remained in arrears. In the circumstances, we of the view that the courts came to the conclusion, as they did, without any evidence whatsoever to support it and contrary to the available evidence whatsoever to support it and the contrary to the available evidence let in by the defence. Their conclusion was, therefore, perverse, irrational and totally unjustified. For this reasons, we set aside the impugned decree and judgment of the courts below. The appeal is allowed with costs.

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