

Sita Ram Pandit

Vs

Mohan Lal and Another

Civil Appeal No. 3289 of 1981

(P. B. Sawant, B. P. Jeevan Reddy JJ)

03.02.1992

JUDGMENT

B. P. JEEVAN REDDY, J. –

1. This appeal is preferred against the judgment of a learned Single Judge of the Patna High Court partly allowing the second appeal preferred by the appellate herein.
2. Appellant is the defendant. Respondent filed a suit for eviction of the defendant from the suit property and also for recovery of arrears of rent. Plaintiff's case was that his father had purchased the land, over which the suit house stands, under a registered sale deed dated May 2, 1952 and constructed a building thereon. In June, 1958 it was let out to the defendant on a monthly rental of Rs. 15. The defendant paid the rent till 1963 but from January 1964 he stopped paying rent, whereupon he gave a notice of termination of tenancy, also calling upon the defendant to pay a sum of Rs. 85 towards arrears of rent. Since the defendant neither vacated the house nor paid the rent, he instituted the present suit. Defendant denied the relationship of landlord and tenant between him and the plaintiff. According to him, the land over which the suit house stands formerly belonged to one Ahmadi Begum from whom the defendant's ancestors obtained it on settlement on payment of Rs. 50 as salami and 10 annas as annual rent. He, thus, claimed the ownership in himself.
3. The trial court dismissed the suit upholding the defendant's case. On appeal, however, the lower appellate court reversed the findings. The appellate court held that the land was acquired by the father of the plaintiff as alleged by the plaintiff and that the plaintiff's father had constructed a building thereon which he gave to defendant on rent in the year 1958. Defendant's plea of title was negated. Accordingly, he allowed the appeal and decreed the suit for eviction as well as arrears of rent.
4. On second appeal, the learned Single Judge opined in the first instance that the finding of title recorded by the appellate court is a finding of fact which is not open to question in the second appeal. So far as the finding relating to existence of landlord and tenant relationship is concerned, the learned Single Judge was of the opinion that the finding recorded by the appellate court is not based on any evidence and must, therefore, be set aside. He then posed the question what should be done in such a case ? In other words, the situation before the learned Judge was : the suit was instituted by the landlord against the tenant wherein the tenant had denied the plaintiff's title and set up title in himself; relationship and tenant was not established but the plaintiff's title was held proved. In such a case, should the suit be dismissed or should it be decreed on the basis of the title ? Following certain decisions of the Patna High Court, the learned Judge upheld the appellate court's decree insofar as it granted eviction of the defendant but set it aside insofar as it decreed arrears of

rent.

5. Sri Tarkunde, learned counsel for the defendant/appellant submitted that in a suit for eviction between landlord and tenant, question of title does not really fall for consideration. The main and only question that arises in such a suit is the existence of relationship of landlord and tenant and the right of the landlord to evict the tenant and recover the rent. Once the relationship of landlord and tenant was found not established, the only course open to the learned Judge was to dismiss the suit leaving the plaintiff to file a fresh suit for possession based upon its title, if he is so advised. He submitted further that a mere suit between landlord and tenant cannot be converted into a title suit and cannot be decreed on the basis of plaintiff's title even after the plaintiff fails to establish that defendant is his tenant. On the other hand it is contended by the learned counsel for the respondent/plaintiff that the learned Single Judge was not right in holding that the finding of the appellate court regarding the existence of relationship of landlord and tenant was based on no evidence. He brought to our notice the evidence relevant on the said aspect which according to him sustains the finding recorded by the appellate court.

6. We have persuaded the judgment of the learned Single Judge and also of the appellate court. We find that the judgment of appellate court does refer to certain material - in particular the admission allegedly contained in a Sanah lodged by the defendant - which, according to the appellate court establishes the relationship of landlord and tenant between the parties. Evidently, the attention of the High Court was not adverted to this part of the appellate court's judgment. It is for the High Court to look into its relevancy and decide the issue.

7. On a consideration of all the facts and circumstances of the case we are of the opinion that the matter should go back to the High Court for rehearing of the second appeal afresh. Accordingly the judgment of the learned Single Judge of the High Court is set aside the matter is remitted to the High Court, for a fresh disposal of the second appeal in accordance with law, uninfluenced by the findings recorded or the opinions expressed in the judgment under appeal. We make it clear that we intend no reflection upon the case of either party and it is for this reason that we have desisted from referring to the evidence or to the law. We make no orders as to costs.

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