

In the Court of Munsif II

Patna

District : Patna

Patna, dated the 15th Dec., 2014

Eviction Suit No. 08/2004

Ajay Kumar s/o Late Sarbanand Singh, R/O village- Dhandhana Chak, P.S. Phulwarisharif, P.O. Nisarpura, District -Patna at present residing at New Paharpur opp. Police Colony P.O. Anisabad , P.S. Gardanibagh, District Patna.....Plaintiff

VERSUS

Tajuddin Fakra s/o Mohammad Ayub Hussain, R/O Alinagar colony, P.S. Gardanibagh, District-Patna..... Defendant

Present :
ANIL KUMAR RAM
Munsif II
Patna

Lawyer for the plaintiff : Shri Birendra Kumar

Lawyer for the Defendant: Shri Binod Kumar

JUDGEMENT

(1) The present suit has been filed by Plaintiff for passing the decree of Eviction against the defendant from the premises detailed in Schedule -II of the plaint on the ground of personal necessity and default of payment.

(2)The case of plaintiff is that plaintiff is the owner and landlord of the suit property mentioned in schedule-II of the plaint purchased by the plaintiff on 03-08-1989 and later on, the plaintiff has made construction of various shops and katras on it for commercial purpose and the defendant has been inducted in the shop on oral agreement and later on there has been an eleventh month tenancy between the plaintiff and the defendant which stands from 08-06-1993 and before this date the tenancy runs on oral basis. According to plaintiff the rent of the shop is fixed at Rs. 1250 per month with Rs. 50 increase on every year of tenancy and the defendant has to pay the rent in the first week of every month and the suit property which was let out to the defendant is on a month to month tenancy and after the expiry of the agreement on 08-05-1994 no fresh kirayanama has been come into force and

the tenancy has become a month to month tenancy. The further case of the plaintiff is that due to certain alteration, addition is the shop premises against the permission of the landlord by defendant verbal exchange of words arose between the parties.

(3) The further case of the plaintiff is that in the year of 1998 and 1999 the defendant did not pay even a single rupees to the plaintiff even after several request made by the plaintiff and thus defendant was neither paying the rent nor vacating the suit premises. According to plaintiff he is in urgent need of money for his house hold expenses and he also want to run his own business in the shop katras which suit the requirement of the plaintiff. The further case of the plaintiff as averred in the plaint is that the plaintiff along with the mohalla people several times requested the defendant to vacate the shop because suit premises is urgently being needed by the plaintiff for his personal use because the plaintiff requires the suit premises bonafidely reasonably and in good faith.

(4) That the cause of action of the suit arose on various dates such as the year 1989,1999,2000 and on 18-04-2001, 11-02-2002, 13-06-2002, 17-01-2003, 27-06-2003, 17-12-2003m 27-01-2004, 17-01-2004, 17-02-2004 and finally on 25-04-2004 when the defendant flatly refused to vacate the suit premises and to pay the arrears of rent which is due for the past several years and when the defendant refused to vacate the suit premises situated at Dhandhara chak, P.S. Phulwarisharif, P.O. Anisabad , District Patna within the jurisdiction of this court.

(5) The plaintiff has prayed for the following reliefs :-

(I) That the suit premises which is fully described in schedule no. II of the plaint be vacated by the defendant and handed over to the plaintiff.

(ii) That the defendant must be evicted from the suit premises through the process of law.

(iii) That the plaintiff be delivered peaceful possession through the process of the court of the suit premises described in schedule II of the plaint.

(iv) That the cost of the suit be awarded to the plaintiff.

(vi) Any other relief or reliefs which your honour may deem fit and proper may granted in favour of the plaintiff.

(6)The case of defendant filed on behalf of Tajuddin Fakhar is as follows :- That the suit as framed and filed is not maintainable, premature, the plaintiff has no cause of action or right to sue, the court fee paid is not sufficient for eviction and suit is barred by estoppel, waiver,acquiescence.

(7) The further case of the defendant is that the plaintiff out of greed wants to illegally enhance the rent of the suit premises as the plaintiff is well aware of the facts that the defendant is earning his livelihood by doing business in the suit premises and is maintaining his family and he has filed the present suit to enhance the rent illegally. The further case of the defendant is that it is not correct that the defendant took the suit premises on monthly rent for a fixed period of eleven months only and the alleged document is not registered and agreement to let out the suit premises was not signed on 08-06-1993 rather an invalid agreement was got signed on 05-07-1994. According to defendant the rent of the suit premises was not payable in the first week of next month as alleged by the plaintiff and the landlord has accepted the rent of the suit premises of two or more months as well as at times without any objection and the defendant has not done any addition or alteration in the suit premises and it is wrong to allege that the intention of the defendant is not fair.

(8)The further case of defendant is that defendant is not defaulter of rent and has been paying the monthly rent of the suit premises to the landlord every month from September 1991 to December 1997 and the amount of advance of Rs. 9000/- was given to the landlord at the time of agreement and the said amount is due to be adjusted towards the rent and further the defendant has been paying the monthly rent through cheque as well as by cash to the plaintiff directly or through money order and has also supplied building materials up to 12-09-2002 on credit and that amount has to be adjusted towards the rent. According to defendant the rent upto May 2004 comes to Rs. 62790/- where as Rs. 67500 has already been paid to the landlord by the defendant and thus defendant is not defaulter and so the question of vacating the suit premises does not arise. The further case of the defendant is that plaintiff has no bonafide personal necessity for the suit premises for running any business and he has many vacant rooms and the case of personal necessity alleged by the plaintiff has been made out by the plaintiff to press-rise this defendant and to enhance the rent arbitrarily at his sweet will and it is not perfect that defendant has not paid rent for two consecutive year I.e. 1998

and 1999 and the abovesaid two years rent have been paid in cash and the amount of price of building materials supplied to the plaintiff by the defendant is also due from the plaintiff payable to the defendant and is adjustable towards future rent of suit premises. Thus defendant is neither defaulter nor plaintiff requires the suit premises and thus plaintiff is not entitled to relief as prayed and hence the suit is fit to be dismissed with cost.

(9) On the basis of pleading of both the parties the following issues were framed by the court for the determination of the suit :

(i) Is the suit as framed maintainable?

(ii) Is the suit barred by law of estoppel, waiver and acquiescence?

(iii) Has the plaintiff got valid cause of action to file this suit?

(iv) Is the plaintiff entitled to decree for eviction of the defendant from the suit premises on grounds of default and personal necessity?

(v) Is the plaintiff entitled for any other relief or reliefs?

(10) In order to prove his claim as averred in the plaint the plaintiff has got examined altogether four witnesses .The witness examined on behalf of the plaintiff is PW-1 Shailesh Prasad , PW-2 Pankaj Kumar, PW-3 Ajay Kumar and PW-4 Nishant Kumar. Besides the oral evidence, the plaintiff has also produced some documents which has been marked as exhibits. Ext.1 is PMC receipt dated 31-03-2006. Ext. 1/A is also PMC receipt dated 16-04-2012, Ext. 2 is original rent agreement. Identification mark X is letter issued by Vyawsayic Sangh, Anisabad Patna.

(11) The defendant has also got examined ten witnesses. The witnesses examined on behalf of defendant are Baijnath Prasad singh -DW1, Akbar Imam- DW2, Sunil Kumar -DW3, Naresh Kumar Sharma-DW4, Shailesh Prasad Shailesh Kumar- DW5, Uma Prasad -DW6, Ram Pravesh Paswan-DW7, Devendra Kumar Sharma -DW8, Prabhat Kumar -DW9 and Tajuddin Fakra -DW10. The defendants besides the oral witnesses have also produced some documents marked as exhibits which are as follows: Ext. A is Kirayanama. Ext. B is Vakalatnama, Ext. C to C/10 are money order acknowledgement receipt marked with objection, Ext. D and Ext. D/1 are shop card, Ext. E is passbook in name of M/S Raj Traders. Ext. F to F/10 are money order coupon with initial of Ajay Kumar marked with objection. Ext. G is note book related to transaction of goods.

FINDINGS

(12) First of all I take issue no. -iv. Issue No.-iv "Is the plaintiff entitled to decree for eviction of the defendant from the suit premises on ground of default and personal necessity?" The landlord tenant relationship, and the rate of rent Rs. 1250 is admitted facts. DW10-Tajuddin Fakra who is the defendant of this case has said clearly in para -10 of his deposition that he had paid to the plaintiff Rs. 6420/- on 29-07-2003, Rs. 3000/- on 30-09-2003 and Rs. 4500 on 27-07-2004 through cheque which was not deposited by the plaintiff. DW10 further says in para -11 of his deposition that from 08-08-2002 to 12-09-2002 he has supplied cement and breaks to plaintiff of Rs. 10080/- and which was not adjusted in rent. The defendant has also stated in para -14 of his written statement and para-12 of his deposition that the rent of May 2004 comes to Rs. 62790 whereas Rs67500 has already been paid to the landlord by the defendant which amount is more than the amount payable to the landlord. DW10 in para 35 of his deposition has made contradictory statement and has himself admitted that no paper to make the payment for three or four or five months was ever made . Thus from the above facts it is clear that defendant tenant is not paying the monthly rent Rs.1250/- regularly and has defaulted in payment of rent. It is settled principal of law as held in Ram Chand Gupta versus Raj Kumar 2012(2) P.L.J.R page 867 and also held in Gullab Chand Prasad versus Budhwanti and another (A.I.R 1985 Patna 327) that neither land lord nor tenant is entitled to claim for refund or adjustment of any amount against the subsequent default in payment of monthly rent. Also from perusal of section 3 and section 4 of the Bihar Building (Lease, Rent and Eviction) Control Act 1982 it is evident that payment of any sum in addition to the rent or payment of any sum exceeding one month has been declared unlawful. Thus defendant is defaulter in payment of rent.

Further from perusal of para -8, 33 of PW3 and para -5 of PW4 it appears that the suit premises is required for the personal necessity of the plaintiff for starting business. Hence based on documentary and oral evidence and law laid by legislature u/s 11(1)(c) and 11(1)(d) of Bihar Building (Lease, Rent and Eviction) Control Act and judicial pronouncement as mentioned above issue no. iv is decided in favour of the plaintiff with observation that plaintiff is

required the suit property for his bonafide personal necessity and defendant has defaulted in payment of rent and the plaintiff is entitled to a decree for eviction from the suit premises.

(13) Issue No. iii "Has the plaintiff got valid cause of action to file this suit?" On the basis of above discussion now this issue get settled by itself that plaintiff does have a cause of action and right to sue the defendant tenant for eviction from the premises let to the defendant on the ground of personal necessity in terms of section 11(1)(c) of the Bihar Building (Lease , Rent and Eviction) Control Act, 1982 and u/s 11(1)(d) of Bihar Building (Lease , Rent and Eviction) Control Act, 1982.

(14) Now I take issue no. I and ii jointly , Issue No. i "Is the suit as framed maintainable?" Issue No. ii "Is the suit barred by law of estoppel, acquiescence and waiver?" On the basis of above discussion I find and hold that suit is maintainable and not barred by estoppel, acquiescence, waiver and above said both issues are decided in favour of Plaintiff.

ORDER

(15) This eviction suit is decided and decreed in favour of plaintiff without cost on contest. The defendant is directed to vacate the suit premises and hand over its vacant possession to Plaintiff within 30 days from today. Further the defendant will pay arrears if any along with due which will accrue to the credit of the plaintiff till vacation of the suit premises at the rate of Rs. 1250/- per month. The arrear, if any not paid within 30 days from the date of decree the defendant will be liable to pay interest @ 6% per annum on the amount due. Office is directed to draw decree in accordance with judgment and consign the case record in Record Room.

Written and corrected by me

(ANIL KUMAR RAM)

Munsif II

Patna

15.12.2014

(ANIL KUMAR RAM)

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Patna

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