



GAHC010172542016



2019:GAU-AS:81

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/261/2016

ON THE DEATH OF CHANDAN BARAN GHOSH, HIS LEGAL HEIRS SMTI.
ANIMA GHOSH AND ANR. REP.
S/O LT. NIROD BARAN GHOSH, CHALANTIKA SHOE SHOP, W/NO. IX,
HAILAKANDI TOWN, BATA POINT, HAILAKANDI, ASSAM

1.1: SMTI. ANIMA GHOSH
W/O. LATE CHANDAN BARAN GHOSH.

1.2: SRI JAHAR GHOSH
S/O. LATE CHANDAN BARAN GHOSH.

1.3: SRI RAJAT BARAN GHOSH
S/O. LATE CHANDAN BARAN GHOSH.
ALL ARE R/O. WARD NO. IX
HAILAKANDI TOWN
BATA POINT
HAILAKANDI
ASSAM.

1.4: SMTI. MILI PAUL PURKAYASTHA
D/O. LATE CHANDAN BARAN GHOSH
C/O. SRI SUBRATA PAUL PURKAYASTHA
R/O. SASAN ROAD
SILCHAR
ASSAM

VERSUS

SMT SHIBANI DASGUPTA and 4 ORS
W/O SRI BIDHAN DASGUPTA, C/O RAJA DAS, ASHAR NEER, 36, SEBADAL
ROAD, PURBA PARA, P.O. NIMATA, BELGARIA, KOLKATA-49, WEST
BENGAL

2:SABITA SEN



W/O LT. RANJIT KR. SEN
DHARMANAGAR
RAJBARI
NORTH TRIPURA

3:ANITA DAS
W/O SRI SHNEHAMOY DAS
SIB BARI ROAD
HAILAKANDI

4:MADHUMITA DEY
W/O LT. NARAYAN CH. DEY
SIB BARI ROAD
HAILAKANDI

5:JUMA KOIRI @ MONIDIPA KOIRI
W/O LT. BABUL KOIRI
JHUM BASTI
BADARPUR
KARIMGAN

Advocate for the Petitioner : Mr. G.N. Sahewalla, Sr. Adv

Advocate for the respondents: Mr. P.K. Deka

BEFORE

HONOURABLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved: 10.02.2026

Date of pronouncement of judgment: 16.02.2026

Whether the pronouncement is of

the operative part of the judgment?: No

Whether the full judgment has been pronounced: Yes

JUDGMENT AND ORDER (CAV)

1. Heard Mr. G.N. Sahewalla, learned senior counsel assisted Ms. S. Agarwal, learned counsel for the petitioners. Also heard Mr.P.K. Deka, learned counsel for the respondents.

2. This revision is directed against the concurrent findings recorded by the



learned courts below, decreeing the eviction suit of the plaintiff respondent.

3. The instant Respondents as Plaintiffs instituted a Title Suit being T.S. No. 08/11 before the Learned Court of Munsiff No. 1, Hailakandi against the instant Appellant wherein the instant Proforma Respondents along with their mother, namely, one Gita Rani Shome, since deceased were designated as Proforma Defendant No. 4, 5 & 6 respectively.

4. The Plaintiffs/Respondents case in brief is that they are the Landlords of a premise, as mentioned in the schedule of the Plaint, the whole 1 floor and 2/3rd portion of the ground floor of a Two Storied building measuring about 22 x 16ft situated at Pargana Hailakandi, Mouza Hailakandi Town, covered by Dag No. 1931 under 2m R.S. Patta No.1 of Dist. Hailakandi. The ownership of the said premise has emerged through inheritance from their predecessor one Late Rohini Kr. Shome. The instant petitioner is a Tenant under the Plaintiffs/Respondents.

5. The claim of the Plaintiffs, as averred in the Plaint, was that the Defendant/ Petitioner did not pay the monthly rent since the month of Kartik, 1416 despite several demands made by the end of the Plaintiffs/ Respondents and accordingly, since the month of Kartik, 1416 the Defendant/ Petitioner was a defaulter. The further case of the Plaintiffs/ Respondents was of the claim of bona fide requirement of the schedule premise for reconstruction and improvement of the suit building keeping pace with the present time and the development made in the said locality. Again, the Plaintiffs/Respondents pleaded that the probable monthly rent of the Suit premise would be at least of Rs.7,000/- while the Defendant/Respondent had been paying a sum of Rs. 105/- only and on that account the Plaintiffs/Respondents time and again made requests to the Defendant/Respondent but got no positive action on that count.



The Plaintiffs/ Respondents prayed for ejectment of the Defendant/ Petitioner from the suit premise on account of "defaulter" and "bona fide requirement".

6. The Defendant/ Petitioner contested the suit by way of filling Written Statement and raised objection stating, inter alia, that the Suit was not maintainable in its present form and also there is no cause of action as the Defendant/ Petitioner was never a defaulter. The Defendant/ Petitioner admitted in his Written Statement that he was a Tenant under the Plaintiffs/ Respondents but never defaulted to make payment of the monthly rents. The further pleading of the Defendant/ Appellant was that the Suit was barred by the Principle of Res judicata as the Plaintiffs/ Respondents had already brought a Title Suit being T.S. No.113/1980 against the Defendant/ Petitioner in the similar ground and prayer thereof but failed to succeed even after preferring a Civil Revision Petition before the Gauhati High Court. The Defendant/ Petitioner again stated that he had been depositing the monthly rent before the Hon'ble Court in accordance with the provision of the Assam Urban Areas Rent Control act, 1972. Moreover, the Plaintiffs /Respondents did not have any bona fide requirement of the suit premise Urban Areas Rent Control act, 1972. Moreover, the Plaintiffs /Respondents did not have any bona fide requirement of the suit premise and thus the said suit was instituted just to evict the Defendant/ Petitioner from the suit premise and as such a prayer for dismissal of the suit was incorporated thereunder.

7. That, the Learned Court below after hearing of both the Parties was pleased to pass a Judgment and Decree dated 07/03/14 holding that the Defendant/Petitioner was a defaulter on the one hand, and on the other hand, the issue of the bona fide requirement was also decided in favour of the Plaintiffs /Respondents. Consequently, the suit was decreed in favour of the



Plaintiffs/ Respondents with cost.

8. The Defendant/ Petitioner being aggrieved and dissatisfied with the Judgment and Decree so passed by the Learned Court below in T.S. No. 08/11, preferred a Title Appeal being No. 15/14 before the Learned Civil Judge, Hailakandi.

9. The learned Appellate Court, while disagreeing with the finding of the learned trial Court, with regard to the issue of default in payment of rent, agreed with its finding that the defendant/petitioner was liable to be evicted on the ground of bona fide requirement of the landlord. Hence, in the present petition, we are concerned only with the question of bona fide requirement of the landlord, and as to whether the learned Courts below have acted with any material irregularity in deciding the said issue in favor of the plaintiff respondent, or as to whether the concurrent findings of the learned Court below in this regard suffer from perversity.

10. In this regard, we may first look into the findings recorded by the learned trial Court, which are as follows:-

“P.W.1, Anita Das, the plaintiff No.3 deposed that her son, Sourav Das is an educated unemployed youth and hence, they need the suit premises for his business. She further deposed that the suit premises being at the heart of the Hallakandi town in a business area surrounded by buildings, the plaintiffs also intend to upgrade the Assam Type old suit house into R.C.C. building and for that too, they need the suit premises.

During her cross-examination, she specifically denied to the suggestions of the defendant side that she has no requirement for the suit premises.

P.W.2 to 6, specifically stated in their examination-in-chief that the plaintiff needs the suit premises for employment of the son and also for construction of R.C. C. Building but none of them was even suggested by the defence during cross-examination about non-requirement of the suit premises by the plaintiffs.

P.W.7, Sourav Das, deposed that he is an educated unemployment person and he needs the suit premises to start his business therein. He



further deposed corroborating his mother, the P.W.1 that the suit premises situate at the Heart of the Hailakandi Town, in a business area and hence, the old house needs reconstruction.

During cross-examination he specifically admitted they have a shop in front of their house at Sivbari Road which is given on rent. He denied to the suggestion that he has a Xerox shop in the Municipal Complex and thus, has no requirement for the suit premises.

The defendant examined himself as D.W.1 but failed to prove any of the suggestions regarding non-requirement of the suit premises by the plaintiffs.

During cross-examination, the D.W.1 admitted that the premises surrounding the suit premises have R.C.C. buildings. He specifically admitted that the houses on the adjacent north and south are multi-storied R.C. C. Buildings and the suit premises in Assam Type with C. I. Sheet roofings. He also admitted that he has his own shops elsewhere being run by his sons and a shop belonging to him is lying vacant at Sarada Road.

Further, the defendant stated that Sourav Das, the son of the plaintiff No.3, has a shop in the Municipality Complex and adduced Photocopy of a Fee receipt which shows that the shop is given on lease. Even if this fact is taken to be true; a person having a shop on his own land in the heart of the town cannot be justifiably suggested to continue business in a leased room only because he has given his house on rent. The D. W.1 further admitted during his cross-examination that the plaintiffs have competent sons, who are in need of business."

11. The learned trial Court relied upon the following decisions of the Apex Court:-

- **Ragavendra Kumar vs. Firm Prem Machinery & Co** reported in **AIR 2000 SC 534;(2000) 1 SCC 679.**
- **Sait Nagjee Purushottham & Co. Ltd. Vs. Vimalabai Prabhulal & others** reported in **(2005) 8 SCC 252 And**
- **Dinesh Kumar Vs. Yusuf Ali** reported in **(2010) 12 SCC 740**

12. It was the further finding of the learned Court below that even if the son of the respondent No. 3 runs business in a leased out room of the Municipal Board,



it only emphasises the fact that he requires his own premises bona fide for the purpose of business. Furthermore, , the premises belonging to the plaintiffs in front of their house has been leased out and is not available to the son of the plaintiff to conduct business.

13. The learned trial Court also referred to the decision in ***Mohd. Ayub & Anr Vs. Mukesh Chand***, reported in **(2012) 2 SCC 155**, wherein it was held by the Apex Court that although the rent control acts are formulated for the benefit of the tenant, that should not be at the cost of hardship upon the landlords and that the hardship of the landlords by not occupying their own premises would be far greater than the one suffered by the tenant by moving to another place. After discussing the entire material on record including the evidence of the defendant, the learned trial Court came to the opinion that the plaintiff is in bona fide need of the tenanted premises and if his claim is rejected, he would suffer more hardship than would the defendant.

14. The learned Appellate Court discussed the issue of bona fide requirement as follows:-

“As regards the issue of Bonafide Requirement i.e. Issue No. 4, in the evidence the plaintiffs stated that the suit room is bonafidely required for the plaintiffs for the business of his unemployed son of the plaintiff No.3. The plaintiffs further stated that they planned to convert the Assam Type House into RCC building. Ld. Advocate for the plaintiff submitted that the suit premises is in the market place within the heart of Hailakandi Town having RCC buildings by its side and as such he also plans to build a RCC building and extend his business. He also submitted that suit room is more than 50 years old and in dilapidated condition, reconstruction is essential. Just contrary is the submission put forwarded by the Id. Counsel for the defendant/appellant. Nevertheless, it has come to fore from the evidence on record that PW-1, Anita Das, the plaintiff No.3 has a son, Sourav Das who is an educated unemployed youth and as such need the suit premises for his



business. The suit premises being at the heart of the Hailakandi Town in a business area surrounded by buildings, the plaintiffs also intend to upgrade the Assam Type old suit house into RCC building and for that too, they need the suit premises. Moreover, the suit house is an old dilapidated condition. That being the established position in the evidence on record, I am of the considerate opinion that the plaintiff has bonafide requirement of the suit premises. Though the defendant/appellant denied the same but it does not hold good. He cannot incur loss to the Land lord by paying Rs. 105/- per month through court whereas the present rent in that locality is 7, 000/- to 8,000/- per month. It is the land lord who is the best judge of his requirement for residential or business purpose and has complete freedom in the matter. (Relied on Ragavendra Kumar Vs. prem machinery & Co. (2000) 1 Scc 679.) The Id. Court below rightly discussed the evidence on record in right perspective and thus I am of the conformity opinion that the plaintiff/land lord has bonafide requirement of the suit premises."

15. From the above, it is seen that while arriving at the finding, regarding bona fide requirement, the Appellate Court has also discussed the relevant parts of the evidence on record and in that regard has agreed with the findings of the learned trial Court by assigning reasons.

16. However, Mr. Sahewalla, learned Senior Counsel submits with reference to the impugned appellate judgment that the evidence of the defendant was not at all discussed by the learned Appellate Court, though he has conceded that the same was discussed by the learned trial Court, which in the submission of learned Senior Counsel is a material irregularity warranting interference by the Revisional Court.

17. Learned counsel has referred to the provisions of Order 41 Rule 31 CPC to urge that the first Appellate Court is also the final Appellate Court as no second appeal lies against an appellate order passed in a proceeding under the concerned rent control Act and therefore, it was incumbent upon the Appellate



Court to discuss the entire evidence on record before coming to its findings. In this regard learned counsel has referred to the decision of our High Court in ***Atul Chandra Khargharia, Secretary, Aided Model Commercial Institute, Jorhat, Vs. Lutfur Rahman*** reported in **(1992) 1 GLR 341** wherein it has been held by a learned single Judge as follows:-

“As regard the plaintiff’s case for eviction off the defendants on the ground of bonafide requirement of the suit premises, I find that the learned courts below have arrived at the decision on Issue No.3 arbitrarily without sitting the evidence adduced by the plaintiffs in support of the contention. On issue No.3 the decision of the decision of the learned Munsiff is as follows:-

“It is stated that the suit house is required for bona fide use and occupation of the plaintiffs especially for the education of the children of the plaintiffs. In his cross-examination the D. W-1 has admitted that the plaintiffs have no other accommodations at Jorhat Town. The issue can be decided in favour of the plaintiffs.”

The learned appellate court below affirmed the said decision arbitrarily without at all discussing the evidence on records adduced by the plaintiffs. In a case for ejectment, of tenant on the ground bonafide requirement, burden lies on the plaintiff landlord to satisfy the court by adducing evidence that the suit premises is bona fide required by him. Mere desire of the landlord to got possession of the suit premises is not bonafide requirement. Court must snift evidence adduced by the plaintiffs and arrive at the satisfaction that, the plaintiff and land-lord bonafide requires, the tenanted premises. In the instant case, plaintiffs vague statement that for education of their children they need the suit premises is not sufficient, Evidence adduced by the plaintiffs should also establish that education of children would suffer if they do not start a residential establishment at the suit premises, to the satisfaction of the Court. The learned courts below have failed to exercise jurisdiction duly vested in law in not considering the evidence of plaintiffs to derive satisfaction that the suit premises was really required by the plaintiff. The decision the learned courts below on Issue No. 3, therefore, cannot be sustained.



18. Reference is also made to the decision of this High Court in ***Jatish Chandra Paul and Others versus Manjurani Paul and others*** reported in ***(1992) 2 GLR 36***, wherein it was held as follows:-

“23. Bonafide requirement of the Landlord should be genuine and honest, conceived in good faith and the court must also consider it reasonable to gratify that need. The Landlords desire for possession however, honest it might otherwise be as inevitably a subjective element in it that desire to become a requirement of law must have an objective element of a need.”

19. In the said decision reference was made to the decision of the Hon'ble Apex Court in ***Mattulal Vs. Radhe Lal*** reported in ***AIR 1974 SC 1596***, wherein the Apex Court held that mere assertion on the part of the landlord that he requires accommodation in occupation of the tenant for the purpose of starting his own business is not decisive and that the burden is upon the landlord to establish that he genuinely requires accommodation for the purpose of starting his business by adducing evidence. Also referred was the decision of ***Madhabi Lata Debi Vs. Graurpada*** reported in ***(1984) 1 GLR 392***, wherein it was held that a vague assertion of expansion of business is not enough.

20. Learned counsel has referred to another decision of this Court in ***Haren Barua versus Lalit Bhuyan*** reported in ***1990 (2) GLR 461***, wherein it has been held that it is not sufficient to establish bona fide requirement by asserting that the building in question is in a dilapidated condition in the absence of any means or funds for the reconstruction for which the landlord has to lead evidence.

21. Learned counsel for the respondent has taken the Court through the evidence on record to submit that the learned trial Court has fully discussed the entire evidence and the Appellate Court has also done the same and both have arrived at a concurrent finding that the premises in question are bona fide required by the landlord/respondent and there is no perversity or material



irregularity in the aforesaid findings, warranting interference by the Revisional Court.

22. With regard to the submission of learned Senior Counsel for the petitioner to the effect that the learned Appellate Court did not consider the evidence of the defendant, learned counsel submitted that what the defendant had said in his evidence in fact supports the case of the landlord inasmuch as, the defendant clearly stated that the landlord had competent sons who are in need of business. The defendant as DW1 also admitted that the premise is surrounded by RCC buildings and specifically admitted that the houses on the adjacent north and south are multistoried RCC buildings and the suit premises are Assam type houses house with CI sheet roofing and he also admitted that he has his own shops elsewhere being run by his sons and the shop belonging to him is lying vacant at Sharada Road. Therefore, it is submitted that the alleged non-consideration of the evidence of the defendant has not prejudiced the defendant in any manner as his cross-examination only supports the claim of the plaintiff.

23. Learned counsel has referred to the decision of the Apex Court in ***Ragavendra Kumar Versus Firm Prem Machinery & Co***, reported in ***(2000) 1 SCC 679*** wherein the Hon'ble Apex Court has held that it is the settled position of law that the landlord is the best Judge of his requirement for residential or business purpose and he has got complete freedom in the matter. In the case in hand the plaintiff landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted.

24. Another decision relied upon by the respondent is ***Sait Nagjee Purushottham & Co. Ltd. Versus Vimalabai Prabhulal & others*** reported



in **(2005) 8 SCC 252**, wherein it has been held that it cannot be said that a person who is already having a business at one place cannot expand his business at any other place in the country. It is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business there is no ground to say that the landlords are already having their businesses elsewhere and therefore, the same is not a genuine need and that it is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not do. It is always the privilege of the landlord to choose the nature of the business and the place of business.

25. Learned counsel for the respondent has also referred to a decision of the Hon'ble Apex Court in ***Shyamlal Agarwal Vs. Ratanlal Malviya (Dead) By Lrs*** reported in ***AIR 1991 SC 353***, wherein in the Apex Court in the facts of the case held that the Courts have considered relevant facts and circumstances in upholding the landlord's claim for reconstruction of the accommodation and that there is no requirement under the concerned Act that the building should have been in a dilapidated condition. It is also submitted on behalf of the respondent that in the event that the new construction takes place the respondent is willing to rent out a portion thereof to the petitioner provided he is agreeable to pay the market rent.

26. I have given my anxious considerations to the respective submissions.

27. In ***Atul Chandra Kharghoria (Supra)*** this High Court had interfered with the appellate order as the said Appellate Court had affirmed the decision of the trial Court arbitrarily without at all discussing the evidence on record adduced by the plaintiffs. However, as already indicated herein before, the present is not a case where the evidence was not at all discussed by the learned



Appellate Court. In ***Haren Barua (Supra)*** this Court had interfered with the decree of ejectment on the ground that the learned Appellate Court had not given a finding whether the requirement is bona fide and that apart, assuming that the house is in a dilapidated condition, the landlord has not led evidence to show that he has the means or funds for reconstruction.

28. It has come in the evidence in the present case that the suit premises are located in the heart of Hailakandi town in a business area surrounded by other RCC buildings and in the event the plaintiffs intend to demolish the existing Assam type house and construct an RCC building, having regard to the location it would not be difficult for the plaintiff respondent to arrange for finance in the form of bank loan which could amount to 80% of the total cost as per prevailing as also advance deposit from intending tenants desirous of setting up their business in the newly constructed suit premises.

29. In the facts of the present case, merely because no evidence has been led to establish the financial capacity of the landlord, it cannot be said that the need is not bona fide.

30. There is of course, no cavil with the proposition that the bona fide requirement of the landlord should be genuine and honest and conceived in good faith and that the Court must also consider it reasonable to gratify that need as held in ***Jatish Chandra Pal (supra)*** cited by landlord counsel for the senior counsel for the petitioner.

31. In the instant case, the plaintiff has led sufficient evidence to establish his genuine need as the existing premises are 50 years old and in a dilapidated condition, and also the fact that the son of the plaintiff intended to set up a business after constructing the news building. In the present case it is not merely the assertion of the plaintiff that he bona fide requires the premises but



the same has been substantiated by the evidence on record. This court while exercising revisional jurisdiction under Section 115 CPC is not required to minutely dissect the evidence on record but only to see that the learned courts below have not acted with any material irregularity or has passed or has recorded findings which are perverse in the light of the evidence on record, as already observed herein before. Keeping in view the limited scope of the present proceedings, this Court would refrain itself from assuming the role of a second Appellate Court by resorting to a minute and detailed examination of every piece of evidence, particularly in view of the concurrent findings of the learned courts below with regard to the issue of bona fide requirement. It is also to be noted that despite the fact that the learned Appellate Court did not make any reference to the evidence of the defendant as DW1, the trial Court had extensively discussed the same and this Court upon perusing the said evidence of DW1 is also of the view that the same, rather than refuting the claim of bona fide requirement would have the opposite effect, inasmuch as the DW1 had admitted that the son of the plaintiff had a bona fide requirement to conduct business. Therefore, no prejudice has been caused to the petitioner nor any consequent failure of justice has been occasioned by reason of such omission and merely on that ground and considering the fact that the case is already a decade old, no case for remand in exercise of its discretionary powers under Section 115 CPC, in the opinion of this court, has been made out.

32. For the aforesaid reasons, the impugned order requires no interference and consequently the petition stands **dismissed**.

33. Send back the TCR.

JUDGE

Comparing Assistant