

CASE NO.:
Appeal (civil) 3226 of 1999

PETITIONER:
Akhileshwar Kumar & Ors.

RESPONDENT:
Mustaqim & Ors.

DATE OF JUDGMENT: 12/12/2002

BENCH:
R.C. LAHOTI & BRIJESH KUMAR

JUDGMENT:

J U D G M E N T

R.C. Lahoti, J.

A decree for eviction upholding availability of ground under clause (c) of sub-Section (1) of Section 11 of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (hereinafter 'the Act', for short) was passed in favour of the appellant-landlords and against the tenant-respondents by learned Munsif, Biharsharif. A revision preferred under Section 14(8) of the Act has been allowed by the High Court and decree of trial court set aside. The aggrieved landlords are in appeal by special leave.

It would suffice to briefly sum up and notice the facts, as alleged and found proved by the trial Court. Out of the four plaintiff-appellants, three are brothers and fourth is the sister. They are all sons and daughter of Ram Chandra Sao. Ram Chandra Sao has been running a business of dealing in onions and potatoes. Out of his three sons, plaintiff No.1 passed B.Sc. in 1984, plaintiff No.2 passed B.A. Hons. in 1994 and plaintiff No.3 passed matriculation in 1988. All the three sons are educated unemployed. The three brothers are in need of non-residential premises for running business, each of his own and separately from each other. The suit premises consist of two shops combined together which were let out to the respondent-tenants by one Dr. Bhuvnesh Kumar, the predecessor in title of the plaintiffs. The plaintiffs have purchased the suit premises through registered deed of sale for satisfying the requirement of Akhilesh Kumar, plaintiff No.1, who wants to start his own retail business of clothes with capital made available by the financial assistance from the father. The trial Court found the requirement to be reasonable and in good faith. However, the trial Court formed an opinion that partial eviction would satisfy the requirement of Akhilesh Kumar and, therefore, by decree dated 21.12.96 directed part of the suit premises, as specified in the decree of the trial Court, to be vacated. The respondent-tenants preferred a revision. The High Court has not dislodged the essential findings arrived at by the trial Court that Akhilesh Kumar is an educated unemployed and is in need of settling himself independently in business. However, what has prevailed with the High Court in reversing the decree of the trial Court may be noticed. The High Court holds that all the plaintiffs are engaged in supporting the father in potato and onion business which is being carried on in another premises and, therefore, it is difficult to believe that plaintiff No.1 wants to start any business of his own. Secondly, there are two other shops available to the plaintiffs wherein plaintiff No.1 could have started the business if at all he intended bona fide to do so. But that was not done. The High Court summed up its conclusion by observing that the requirement pleaded by the plaintiffs was not genuine; it was rather mere desire, the element of need being absent.

In our opinion, the approach adopted by the High Court cannot be countenanced and has occasioned a failure of justice. Overwhelming evidence is available to show that the plaintiff No.1 is sitting idle, without any adequate commercial activity available to him so as to gainfully employ him. The plaintiff No.1 and his father both have deposed to this fact. Simply because the plaintiff No.1 is provisionally assisting his father in their family business, it does not mean that he should never start his own independent business. What the High Court has overlooked is the evidence to the effect, relied on by the trial Court too, that the husband of plaintiff No.4, i.e. son-in-law of Ram Chandra Sao, was assisting the latter in his business and there was little left to be done by the three sons.

So is the case with the availability of alternative accommodation, as opined by the High Court. There is a shop in respect of which a suit for eviction was filed to satisfy the need of plaintiff No.2. The suit was compromised and the shop was got vacated. The shop is meant for the business of plaintiff No.2. There is yet another shop constructed by the father of the plaintiffs which is situated over a septic tank but the same is almost inaccessible inasmuch as there is a deep ditch in front of the shop and that is why it is lying vacant and unutilized. Once it has been proved by a landlord that the suit accommodation is required bona fide by him for his own purpose and such satisfaction withstands the test of objective assessment by the Court of facts then choosing of the accommodation which would be reasonable to satisfy such requirement has to be left to the subjective choice of the needy. The Court cannot thrust upon its own choice on the needy. Of course, the choice has to be exercised reasonably and not whimsically. The alternative accommodation which have prevailed with the High Court are either not available to the plaintiff No.1 or not suitable in all respects as the suit accommodation is. The approach of the High Court that an accommodation got vacated to satisfy the need of plaintiff No.2, who too is an educated unemployed, should be diverted or can be considered as relevant alternative accommodation to satisfy the requirement of plaintiff No.1, another educated unemployed brother, cannot be countenanced. So also considering a shop situated over a septic tank and inaccessible on account of a ditch in front of the shop and hence lying vacant cannot be considered a suitable alternative to the suit shop which is situated in a marketing complex, is easily accessible and has been purchased by the plaintiffs to satisfy the felt need of one of them.

We find it difficult to sustain the observation of the High Court that the requirement pleaded by the plaintiffs falls short of felt need and is merely a desire. The judgment of the trial Court is a detailed and exhaustive judgment which has taken into consideration each and every available piece of evidence and relevant circumstances, assessed with objectivity, consistently with the relevant principles of law and hence the finding is one which could not have been upset by High Court in exercise of its revisional jurisdiction. Moreover, as we have pointed out, the manner in which the High Court has proceeded to form an opinion at variance with the findings of the trial Court is wholly unsustainable.

The appeal is allowed. The impugned judgment of the High Court is set aside. Instead, the decree passed by the trial Court is restored with costs throughout. The tenant-respondents are allowed four months' time from today for delivering vacant and peaceful possession to the landlord-appellants and in between clearing and continuing to clear the arrears of rent but subject to his filing the usual undertaking within a period of three weeks from today in the executing Court.

JUDIS