

CASE NO.:
Appeal (civil) 3406 of 1998

PETITIONER:
RAJENDRA TIWARY

Vs.

RESPONDENT:
BASUDEO PRASAD & ANR.

DATE OF JUDGMENT: 09/11/2001

BENCH:
S.S.N.Quadri, S.N.Phukan

JUDGMENT:

Syed Shah Mohammed Quadri, J.

This appeal, by special leave, is from the judgment and order of the High Court of Judicature at Patna in Second Appeal No.304 of 1990 passed on September 09, 1997.

The parties are referred to as they are arrayed in the trial court. The respondents-plaintiffs filed Title Suit No.167 of 1982 (12 of 1985) for eviction of the appellant-defendant from holding No.1600 (new) (old holding No.95) in Ward No.1 having an area of 7-1/2 dhurs, Muhalla Waya Bazar, P.S. Siwan town P.S.No.231, Siwan, Bihar (for short, the suit premises) on three grounds -- (1) default of the defendant in payment of rent from August 14, 1981 under clause (d) of sub-section (1) of Section 11; (2) reasonable personal requirement in good faith for the sons of the plaintiffs under clause (c) of sub-section (1) of Section 11, and (3) damage to the suit premises under clause (b) of sub-section (1) of Section 11 of The Bihar Building (Lease, Rent & Eviction) Control Act, 1982 (for short, the Act). The plaintiffs averred that they purchased the suit premises under three registered sale deeds of March 17, 1981, April 09, 1981 and April 14, 1981 from one Kedar Nath Sinha and immediately thereafter let them out to the defendant on monthly rent of Rs.300/-; the defendant did not pay the rent from the date of the commencement of the tenancy. The plaintiffs have six sons; three of them are major. The plaintiffs wanted to set up their children in business as they are unemployed; they, therefore, require the suit premises in good faith. The defendant contested the suit denying that he took the suit premises on rent from the plaintiffs. He stated that he had taken the suit premises on rent from the said Kedar Nath Sinha about 33 years back. He, however, alleged that he entered into an agreement for purchase of the suit premises and a Mahadnama (agreement for sale) was executed by the said Kedar Nath Sinha in his favour on September 14, 1980 and from that date he has been in possession as owner of the suit premises. The defendant also filed Title Suit No.232 of 1983 in the Court of Sub-Judge, Siwan praying the Court to grant specific performance of the said Mahadnama dated September 14, 1980. The said suit is pending. He denied that the ground of personal requirement of the plaintiffs was either reasonable or bonafide.

On April 30, 1985 the trial court after appreciating the evidence on record dismissed the suit for eviction holding that there was no relationship of landlord and tenant between the plaintiffs and the defendant; it found that the plaintiffs had title to the suit premises; however, finding was recorded on the question of reasonable personal requirement in favour of the plaintiffs. Against the judgment of the trial court, the plaintiffs filed Title Appeal No.96 of 1985 in the court of 5th Addl. District Judge, Siwan. On May 26, 1990 the appellate court affirmed the judgment of the trial court and dismissed the appeal. The plaintiffs then agitated their claim in Second Appeal No.304 of 1990 before the High Court of Judicature at Patna. On September 09, 1997 the High Court allowed the appeal taking the view that an equitable decree of eviction could be passed against the defendant on the basis of the title of the plaintiffs and remanded the case to the first appellate court on the ground that it did not record any finding on the question of title of the parties. That judgment of the High Court is brought under challenge in this appeal by the defendant. Mr.P.S.Misra, the learned senior counsel appearing for defendant, contended that provisions of Order VII Rule 7 of the Code of Civil Procedure would not be attracted to the suit as the court was exercising limited jurisdiction under the Act. Mr. Misra argued that in a suit for eviction under the Act the question of title to the suit premises could not be decided and that had to be done by a civil court in its ordinary jurisdiction and, therefore, the High Court erred in law in remanding the case to the first appellate court for deciding the question of title of the plaintiffs and passing an equitable decree for eviction of the defendant.

Ms.Asha Jain Madan, the learned counsel for the plaintiffs, argued that admittedly the suit premises belonged to the said Kedar Nath Sinha and the plaintiffs purchased the same under three registered sale deeds from him; they had, therefore, prima facie title and as admittedly the said Kedar Nath Sinha had let out the same to the defendant, an equitable decree for his eviction ought to have been passed by the courts below. Inasmuch as the trial court on the basis of the sale deeds and statement of the vendor of the plaintiffs recorded the finding that the plaintiffs were the owner but the first appellate court did not go into that question, the High Court was right in directing the first appellate court to record a finding as to the title to the suit premises. Once the plaintiffs established their title to the suit premises, argued Ms.Madan, even if the defendant was held not to be the tenant, an equitable decree could always be passed against the defendant for eviction of the suit premises.

On the above contentions the question that arises for consideration is : whether on the facts and the circumstances of the case the High Court is right in law in holding that an equitable decree for eviction of the defendant can be passed under Order VII Rule 7 of C.P.C. and remanding the case to the first appellate court for recording its finding on the question of title of the parties to the suit premises and for passing an equitable decree of eviction against the defendant if the plaintiffs were found to have title thereto.

It is evident that while dealing with the suit of the plaintiffs for eviction of the defendant from the suit premises under clauses (c) and (d) of sub-section (1) of Section 11 of the Act, courts including the High Court were exercising jurisdiction under the Act which is a special enactment. The sine qua non for granting the relief in the suit, under the Act, is that between the plaintiffs and the defendant the relationship of landlord and tenant should exist. The scope of the enquiry before the courts was limited to the question : as to whether the

grounds for eviction of the defendant have been made out under the Act. The question of title of the parties to the suit premises is not relevant having regard to the width of the definition of the terms landlord and tenant in clauses (f) and (h), respectively, of Section 2 of the Act.

Inasmuch as both the trial court as well as the first appellate court found that the relationship of landlord and tenant did not exist between the plaintiffs and the defendant, further enquiry into the title of the parties, having regard to the nature of the suit and jurisdiction the court, was unwarranted.

As the High Court remanded the case to the first appellate court to decide the question of title of the parties and grant a decree under Order VII Rule 7, it will be necessary to quote the said provision here:

R.7. Relief to be specifically stated.

Every plaintiff shall state specifically the relief which the plaintiff claims either simply or in the alternative and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

A plain reading of Order VII Rule 7 makes it clear that it is primarily concerned with drafting of relief in a plaint. It is in three parts -- the first part directs that the relief claimed by the plaintiff simply or in the alternative shall be stated specifically. It incorporates in the second part the well settled principle that it shall not be necessary to ask for general or other relief which may always be given as the Court may think just on the facts of the case to the same extent as if it has been asked for. The third part says that in regard to any relief claimed by the defendant in his written statement, the same rule shall apply.

In *Firm Srinivas Bam Kumar vs. Mahabir Prasad & Ors.* [A.I.R. 1951 S.C. 177] it is laid down by this Court :

Ordinarily, the Court cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings & which the other side was not called upon or had an opportunity to meet. But when the alternative case, which the plaintiff could have made, was not only admitted by the defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes. A demand of the plaintiff based on the defendants own plea cannot possibly be regarded with surprise by the latter & no question of adducing evidence on these facts would arise when they were expressly admitted by the defendant in his pleadings. In such circumstances, when no injustice can possibly result to the defendant, it may not be proper to drive the plaintiff to a separate suit.

In that case the plaintiff filed the suit for specific performance of the contract for sale. He alleged that he paid part of the consideration under the contract to the defendant. The defendant denied the execution of the contract. However, he pleaded that he took money from the plaintiff as a loan. The plaintiff failed to prove the contract for sale though the plaintiff did not claim alternative relief for recovery of the amount paid under the contract. The Court passed a decree for recovery of

the amount alleged to have been taken by the defendant as a loan under Order VII Rule 7.

In Bhagwati Prasad Vs. Chandramaul [A.I.R. 1966 S.C. 735] the plaintiff laid the suit for ejectment of the defendant on the ground that he let out the building to the defendant on rent in different portions on completion of construction of each portion. The defendant pleaded that he constructed the house on the land which belong to the plaintiff. The agreement between them was that he would remain in possession of the house until the amount spent by him in construction the house would be repaid by the plaintiff. The agreement of tenancy pleaded by the plaintiff and the case set up by the defendant were disbelieved by the trial court; nonetheless the trial court held that there existed the relationship of landlord and tenant, fixed a reasonable rent and decreed the suit for ejectment of the defendant and also for recovery of the rent at the rate fixed by it. The High Court set aside the decree of the trial court with regard to the agreement of tenancy but confirmed the decree for ejectment of the defendant. On appeal to this Court on a certificate granted by the High Court, Gajendragadkar, C.J. speaking for a four-Judge Bench observed :

The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another.

Where the relief prayed for in the suit is a larger relief and if no case is made out for granting the same but the facts, as established, justify granting of a smaller relief, Order VII Rule 7 permits granting of such a relief to the parties. However, under the said provisions a relief larger than the one claimed by the plaintiff in the suit cannot be granted.

These are cases where the courts which tried the suits were ordinary civil court having jurisdiction to grant alternative relief and pass decree under Order VII Rule 7. A court of Rent Controller having limited jurisdiction to try suits on grounds specified in the special Act obviously does not have jurisdiction of the ordinary civil court and therefore cannot pass a decree for eviction of the defendant on a ground other than the one specified in the Act. If, however, the alternative relief is permissible within the ambit of the Act, the position would be different.

In this case the reason for denial of the relief to the plaintiffs by the trial court and the appellate court is that the very foundation of the suit, namely, the plaintiffs are the landlords and the defendant is the tenant, has been concurrently

found to be not established. In any event inquiry into title of the plaintiffs is beyond the scope of the court exercising jurisdiction under the Act. That being the position the impugned order of the High Court remanding the case to the first appellate court for recording finding on the question of title of the parties, is unwarranted and unsustainable. Further, as pointed out above, in such a case the provisions of Order VII Rule 7 are not attracted. For these reasons the aforementioned cases are of no assistance to the defendant. In this view of the matter we cannot but hold that the High Court erred in remanding the case to the first appellate court for determination of the title of the parties to the suit premises and for granting the decree under Order VII Rule 7.

However, we make it clear that this judgment does not preclude the plaintiffs from filing a suit for declaration of title and for recovery of the possession of the suit premises against the defendant. If such a suit is filed within three months from today we direct that the same shall be tried along with suit filed by the defendant, Title Suit No.232/1983, in the court of Sub-Judge, Siwan (Exbt.11) for specific performance of the contract against the said Kedar Nath Sinha and the plaintiffs.

In the result the judgment of the High Court under challenge is set aside. The suit of the plaintiffs (respondents) is dismissed. The appeal of the defendant (appellant) is allowed accordingly but in the circumstances of the case without costs.