

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2098 OF 2000

Bibi Zafira Khatoon and others

... Appellants

Versus

Mohammed Hussain and another

... Respondents

J U D G M E N T

G.S. Singhvi, J.

1. This is an appeal for setting aside order dated 31.7.1998 passed by the learned Single Judge of Patna High Court whereby he dismissed the civil revision preferred by the appellants against dismissal of the application filed by them for execution of the decree of eviction.

2. Appellant No.1, Bibi Zafira Khatoon and her husband Syed Mohammed Jalaluddin (since deceased) filed suit for eviction of respondent No.2, Mohammed Manzurool Haque from a portion of their residential

house situated at Motihari on the grounds of personal and bonafide necessity and default in payment of rent. In the plaint, it was averred that appellant No.1 and her husband were influenced by the claim of respondent No.2 that he possessed spiritual powers and will bring peace in their family and, therefore, allowed him to occupy a portion of the house at a monthly rent of Rs.190/-. It was further averred that Syed Mohammed Jalaluddin was going to retire from service very soon and he was desirous of living in his own house. The ground of default was elaborated by stating that respondent No.2 did not pay rent for the period from January, 1981 to December, 1983. In the written statement filed by him, respondent No.2 denied the very existence of the landlord-tenant relationship between the parties. He claimed that he never occupied the house belonging to appellant No.1 and her husband or any portion thereof as a tenant. While admitting that he possessed spiritual power, respondent No.2 pleaded that appellant No.1 and her husband sought his blessings and they were immensely benefited by his association. According to respondent No.2, appellant No.1 and her husband felt that their house was haunted by evil spirits who killed their two sons and requested him with folded hands to use his spiritual power to drive away the evil spirits and, therefore, he agreed to occupy one room in the year 1978. Respondent No.2 further pleaded that Syed Mohammed Jalaluddin requested

him to find out some purchaser and after some talks, the sale of house was finalized with respondent No.1, Mohammed Hussain. Thereafter, agreement (mahadanama) dated 9.1.1982 was executed between appellant No.1, her husband and respondent No.1 and the latter was given possession of the house. Respondent No.2 also made a mention of the suit filed by respondent No.1 for specific performance of the agreement for sale. Respondent No.1, who had already filed Title Suit No.76/1983 (renumbered as 196/1987) for specific performance of the agreement, got himself impleaded as intervenor defendant in the eviction suit and filed written statement supporting the case set up by respondent No.2.

3. The title suit filed by respondent No.1 and the eviction suit filed by appellant No.1 and her husband were clubbed because the subject matter of both the suits was common. On the pleadings of the parties, the trial Court framed 12 issues, including the following:

3. Whether the alleged Mahadanama dated 9.1.1982 valid, legal and admissible document and can be basis of any suit?
5. Whether plaintiff of T.S. No.76/1983 was put in possession of the suit house by defendant Syed Md. Jalaluddin?

6. Whether the alleged Mahadanama is enforceable in law and the plaintiff is entitled to a decree for specific performance of contract?
4. After detailed analysis of the pleadings of the parties and the evidence produced by them, the trial Court dismissed the suit for specific performance of the agreement for sale and decreed the one filed for eviction of respondent No.2. The trial Court held that the so-called agreement (mahadanama) dated 9.1.1982 is not a legally admissible document and the same cannot be made basis for passing a decree for specific performance. The trial Court further held that the plaintiff of Title Suit No.76/1983 was not put in possession of the suit house by Syed Mohammed Jalaluddin. In the eviction suit, the trial Court returned the finding that respondent No.2 was tenant in the suit premises and the same was required by the landlords for their personal and bonafide need. Appeal preferred by respondent No.2 against the decree of eviction was dismissed by the 4th Additional District Judge, Motihari, who confirmed the finding recorded by the trial Court that need of the landlords was bonafide. The appellate judgment became final because respondent No.2 did not challenge the same by filing second appeal.

5. After dismissal of the appeal filed by respondent No.2 against the decree of eviction, the appellants filed an application for execution thereof impleading the respondents herein as parties. On notice, respondent No.1 filed objection petition under Section 47 read with Section 151 of the Civil Procedure Code. He pleaded that decree cannot be executed against him because the trial Court had ordered eviction of respondent No.2 only and also because First Appeal No.33/1989 filed by him against the judgment and decree of the trial Court in the suit for specific performance was pending before the High Court.

6. By an order dated 28th November, 1997, the Executing Court allowed the objection petition and dismissed the execution application by observing that the decree of eviction was passed only against respondent No.2 and not against the objector. The Executing Court referred to the evidence produced by the parties and held that the judgment-debtor left the room and the applicant is residing in the suit house along with his family. Civil Revision No.395/1998 filed by the appellants was dismissed by the High Court by observing that even though Section 12 of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982 [for short, “the Act”] has overriding effect qua the provisions of other enactments, the same cannot be invoked against

a person who is not a tenant within the meaning of Section 2(h) of the Act. The High Court noted that as per respondent No.1, he was living in the house in his own right, i.e., on the basis of the agreement for sale and that the appeal filed by him against dismissal of the title suit was pending and held that during pendency of the appeal filed against dismissal of the suit for specific performance of the agreement for sale, respondent No.1 cannot be treated as a tenant of the suit premises.

7. Shri Ranjan Mukherjee, learned counsel for the appellants pointed out that First Appeal No. 33/1989 filed by respondent No.1 against the decree passed by the trial Court in the title suit was dismissed by the High Court vide its judgment dated 18.5.2007 and Special Leave Petition (C) No. 6471/2008 filed by him was dismissed by this Court on 12th August, 2009. He then argued that in view of the *non obstante* clause contained in Section 12 of the Act, the Executing Court was duty bound to order eviction of respondent No.1 because the title suit filed by him was dismissed and he was never inducted as a tenant in the suit premises with the express written permission of the landlords.

8. Shri H.L. Agarwal, learned senior counsel appearing for respondent No.1 submitted that the trial Court and High Court rightly refused to order eviction of his client because the decree was passed only against respondent No.2. Learned counsel further submitted that even though in the suit for specific performance of agreement for sale filed by respondent No.1, the trial Court recorded a finding that he was not put in possession by Syed Mohammed Jalaluddin (husband of appellant No.1) and the said finding was confirmed by the High Court, he cannot be evicted from the suit premises by invoking Section 12 of the Act because he does not fall within the definition of the term “tenant”.

9. We have thoughtfully considered the respective submissions and carefully scrutinized the records. Undisputedly, the judgment and decree passed by the trial Court in Title Suit No. 76/1983 have become final because the first appeal and special leave petition filed by respondent No.1 have been dismissed by the High Court and this Court, respectively. While dealing with issue No.5, which has been reproduced in the earlier part of this order, the trial Court took cognizance of the pleadings and evidence produced by the parties and held:

“Mere execution of an agreement for sale does not confer title and possession without title cannot be treated as legal

possession in the eye of law. The plaintiff has not established the permission of defendant no.1 to possess the suit land and, therefore, possession of the plaintiff cannot be maintained as permissive possession.”

10. In the appeal preferred by respondent No.1, the High Court framed as many as seven questions including the following:

“Whether the defendants had ever handed over possession of the suit premises to the plaintiff as part performance of the contract.”

11. The High Court answered the aforementioned question in negative by recording the following observations:

“26. The claim of the plaintiff is that he was put in possession of the suit premises by defendant No.1 in part performance of the agreement for sale. Although some witnesses of the plaintiff stated that they had seen him in possession of the suit premises. But only P.W. 3 and P.W. 5 apart from P.W. 7 the plaintiff himself, stated that defendant No.1 handed over possession of the suit premises to the plaintiff as part performance of the agreement for sale. Whereas on the other hand several witnesses of the defendants stated that the defendants had throughout been in possession of the suit premises and the plaintiff never came in possession thereof but out of them D.Ws. 3, 5 and 6, apart from D.W.9 defendant No.1, specifically stated that the plaintiff was never put in possession of the suit premises by the defendants as part performance of the agreement for sale.

27. So far the question of onus is concerned, it was squarely upon the plaintiff to prove that he was put in possession of the suit premises by the defendants as part performance of the

agreement for sale. But he miserably failed to support his claim by any valid evidence whatsoever. Even in the alleged written agreement for sale produced by the plaintiff as Ext.4 as well as in the receipt of Rs.17,000/- executed by defendant No.1 produced by the plaintiff as Ext. 3 no statement is made that the plaintiff was ever put in possession of the suit premises by the defendants either in part performance of the agreement for sale or otherwise. Furthermore after proper evaluation of the evidence, both oral and documentary, adduced by both the parties, the learned trial court has rightly reflected the claim of the plaintiff as he miserably failed to prove that he was ever put in possession of the suit premises by the defendants.”

12. We shall now consider whether Section 12 of the Act should have been invoked by the Executing Court for ordering eviction of respondent No.1 from the suit premises. That section reads as under:

“12. Binding nature of the order of the Court on all persons in occupation of the building – Notwithstanding anything contained in any other law, where the interest of tenant, in any premises is determined for any reason, whatsoever, and any order is made by the Court under this Act, for the recovery of possession of such premises, the order shall be binding on all persons who may be in occupation of the premises and vacant possession thereof shall be given to the landlord by evicting all such persons therefrom:

Provided that nothing in this section shall apply to any person who has an independent title to such a premises or to tenant who has been inducted with the express written permission of the landlord himself personally.”

13. By enacting the above reproduced provision, the legislature has ensured that an order made by the court for recovery of possession should be executed in a wholesome manner and the landlord should not be compelled to enter into further prolonged litigation for the purpose of getting possession of the suit premises simply because the tenant may have, without the knowledge or permission of the landlord, inducted some other person in the tenanted premises. This is the reason why Section 12 begins with a *non obstante* clause and lays that where the interest of tenant is determined and an order is made by the court for recovery of possession of the premises, such order shall be binding on all persons, who may be in occupation of the premises, and vacant possession thereof shall be given to the landlord by evicting all such persons therefrom. The use of the words “all persons” in the substantive part of Section 12 signifies the legislative intendment that the order passed by the court for the recovery of possession of the tenanted premises should bind everyone who may be occupying the premises irrespective of his status. To put it differently, Section 12 seeks to ensure delivery of vacant possession of the premises to the landlord by evicting not only the tenant but any other person who may be occupying the premises. The proviso to Section 12 protects the person who has independent title to

such premises or the tenant who has been inducted with the express written permission of the landlord himself personally.

14. If the case in hand is examined in the light of the plain language of Section 12 and keeping in view the fact that while deciding the suit for specific performance filed by respondent No.1, the trial Court recorded an unequivocal finding that Syed Mohammed Jalaluddin had not put respondent No.1 in possession of the suit premises and the said finding has been confirmed by the High Court, his continued occupation thereof has to be treated as unauthorized and Section 12 of the Act is clearly attracted in his case. Respondent No.1 cannot take benefit of first part of the proviso to Section 12 because the suit for specific performance of the agreement for sale filed by him was dismissed by the trial Court and challenge to the judgment and decree of the trial Court has been negatived by the High Court and this Court. Respondent No.1 cannot take advantage of second part of the proviso to Section 12 because it is neither his pleaded case nor any evidence was produced before the trial Court to show that he was inducted as a tenant in the suit premises with express permission of the landlords, i.e., appellant No.1 and her husband.

15. In view of the above discussion, we hold that the Executing Court committed an error by refusing to execute the decree of eviction against respondent No.1 and the view taken by the High Court on the applicability of Section 12 of the Act qua respondent No.1 is clearly flawed and untenable. As a corollary to this conclusion, the appeal is allowed, the impugned order is set aside and the execution application filed by the appellants is allowed. Respondent No.1 and his family members who are occupying the suit premises are allowed three months' time to vacate the same and hand over physical possession thereof to the appellants herein. This will be subject to the condition of filing of usual undertaking within four weeks from today.

.....J.
[Tarun Chatterjee]

.....J.
[G.S. Singhvi]

.....J.
[R.M. Lodha]

New Delhi
September 17, 2009.