Rita Lal vs Raj Kumar Singh on 13 September, 2002

Equivalent citations: 2002 (9) SRJ 283, AIR 2002 SUPREME COURT 3341, 2002 AIR SCW 3887, 2002 AIR - JHAR. H. C. R. 1165, 2002 (3) BLJR 2387, 2002 (5) SLT 385, 2002 (6) SCALE 564, 2002 (7) SCC 614, 2002 SCFBRC 679, (2003) 1 ALLINDCAS 96 (SC), (2002) 7 JT 296 (SC), (2002) 3 JCR 221 (SC), 2002 BLJR 3 2387, (2002) 4 PAT LJR 118, (2002) 2 JCR 586 (JHA), (2002) 2 RENCR 463, (2002) 6 SCALE 564, (2002) 6 SUPREME 487, (2003) 1 WLC(SC)CVL 142, (2002) 3 JLJR 192, (2002) 49 ALL LR 599, (2003) 1 BLJ 273

Bench: R.C. Lahoti, Brijesh Kumar

```
           CASE NO.:
Appeal (civil)  5837 of 2002

PETITIONER:
RITA LAL

RESPONDENT:
RAJ KUMAR SINGH

DATE OF JUDGMENT: 13/09/2002

BENCH:
R.C. LAHOTI & BRIJESH KUMAR

JUDGMENT:
```

JUDGMENT 2002 Supp(2) SCR 403 The following Order of the Court was delivered : Leave granted.

The appellant, a widow and having undergone a kidney transplant, initiated an eviction petition under Section 14 of the Bihar Buildings (Lease Rent and Eviction) Control Act, 1982 (hereinafter "the Act", for short). According to the appellant, the respondent an employee of the appellant, was inducted into possession of the premises under an agreement of lease dated loth February, 1997. The grounds on which eviction is sough for are more than one and include the genuine requirement of the premises for landlord's self occupation and the respondent being a defaulter in payment of rent.

The respondent-tenant sought for leave to defend under sub- section (4) of Section 14 of the Act denying the landlord-tenant relationship and submitting that the suit property was owned by one R.N. Chakraborty, whose title on his death had devolved upon his son, Dr. Rajat Chakraborty and from the latter the respondent had purchased the property under registered deed of sale dated 24th February, 1998. It was submitted that as there was no landlord-tenant relationship between the parties, the respondent was not liable to pay rent and certainly not liable to be evicted. In the

submission of the respondent, the pleading raised a triable issue and, therefore, leave to defend ought to have been granted.

The learned Trial Court having taken into consideration the pleadings of the parties, the contents of the affidavits and the supporting documents formed an opinion that the pleas raised by the respondent-tenant were false and frivolous and wholly unsustainable in law and hence no prima fade case was made out worth consideration for granting leave to defend. Leave to defend was, therefore, refused. Feeling aggrieved by the order of the Trial Court, the tenant preferred a revision in the High Court which revision has been allowed by the learned Single Judge forming an opinion that a triable issue within the meaning of sub- sections (4) and (5) of Section 14 of the Act did arise on the pleadings of the parties and, therefore, the leave to defend deserves to be granted to the respondent- tenant.

The pleadings, affidavits and the documents available on record go to show that the respondent was an employee under the appellant. On loth day of February, 1997, an agreement to lease was executioned between the parties. Though the execution thereof is disputed but what is not disputed are the signatures of the respondent- tenant on each of the pages of the agreement on which the agreement is inscribed. In the year 1993, a title suit was filed by this very appellant against Rajat Chakraborty and therein this very respondent had appeared as a witness for the plaintiff. He was examined on oath on 29th June, 1994 the Court of Munsif, Hazaribag. In his deposition he has traced the source of title of the plaintiff therein (i.e. the appellant herein) narrating the chain of sale deeds by successive owners of the property including the last one of the year 1998 whereby the property was purchased by the appellant hereinfrom one Sanjay Kumar Sinha, the then owner of the property. The land having been purchased, the respondent went on to depose, the appellant constructed two houses on the land surrounded by the boundary wall. The respondent very clearly stated that the defendant (that is Rajat Chakraborty) had no title or interest in the property and the suit had to be filed by the plaintiff (i.e. the appellant herein) because Rajat Chakraborty and other defendants were trying to take forcible possession of the property.

There is a very clear admission made by the respondent of the title of the appellant in his deposition made on oath in judicial proceedings. Not a word he has stated on the pleadings showing how and under what circumstances the statement came to be made and how does the respondent wriggle out of a clear admission made in his deposition? So also the respondent does not furnish any explanation worth being considered, muchless accepted, as to how his signatures appear at more than one places, that is, on every page of the rent note dated loth February, 1997 he cannot escape the consequences flowing from execution of rent note. The tenant having been inducted by the landlord so long as he remains in possession cannot deny the title of his landlord in view of the rule of estoppel contained in Section 116 of the Evidence Act. Recently in Vashu Deo v. Balkishan, [2002] 2 SCC 50, we had an occasion to sum up the law as to estoppel of tenant and as to eviction by title paramount and we have held:

> "The rule of estoppel between landlord and tenant enacted in Section 116 of the Evidence Act has three main features: (i) the tenant is estopped from disputing the title of his landlord over the tenancy premises at the beginning of the tenancy, (ii)

> such estoppel continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord, and (iii) Section 116 of the Evidence Act is not the whole law of estoppel between the landlord and tenant, The principles emerging from Section 116 can be extended in their application and also suitably adapted to suit the requirement of an individual case."
>
> ".....the rule of estoppel ceases to have applicability once the tenant has been evicted. His obligation to restore possession to his landlord is fulfilled either by actually fulfilling the obligation or by proving his landlord's title having been extinguished by a paramount title- holder"

The trial court rightly formed the opinion that no triable issue was raised.

The learned counsel for the respondent has placed reliance on the law laid down by this Court in the case of Charan Daas Duggal v. Brahma Nand. [1983] l SCC 30 and two decisions of Patna High Court in Md. Fahimuddin v. Godhan Pd. Singh, (1992) 2 PLJR 352 and Bijoy Kumar Singh v. The State of Bihar & Ors., (1992) l PLJR 123. There can be no quarrel with the proposition laid down in these decided cases relied on by the learned counsel for the respondent. The law is settled that if the tenant has made out a prima fade case raising such pleas that a triable issue would emerge then that would be sufficient to grant leave. The case law cited at the Bar itself goes to show that even at that stage the Trial Court is not precluded from forming an opinion whether on the material available on record, a triable issue, that is, issue worth being tried arises or not. Raising a triable issue, as sub-section (5) of Section 14 suggests is disclosing by tenant in his affidavit such facts as would disentitle the landlord from obtaining an order of eviction. If the Court is satisfied that though in the pleadings an issue is raised but that is not a triable issue than the Court is justified in refusing the leave to defend. A defence, which is practically moonshine, sham or illusory cannot be held to be raising a triable issue. Else the whole purpose behind enacting a provision for granting leave to defend, and not permitting a contest unless leave was granted, would stand defeated.

In the facts and circumstance of the case, noticed hereinabove, it is clear that the defendant is raising a plea which he is estopped form raising and, therefore, the plea raised by him in his affidavit seeking leave to defend does not amount to raising a triable issue, In our opinion, the High Court, in exercise of revisional jurisdiction, ought not to have interfered with the well considered and reasoned order of the Trial Court.

For the foregoing reasons, the appeal is allowed. The impugned order of the High Court is set aside and that of the Trial Court restored. The respondent shall pay the costs incurred by the appellant