

Kanahaiya Lal Arya vs Md. Ehshan on 25 February, 2025

Author: Pankaj Mithal

Bench: Pankaj Mithal

2025 INSC 271

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(Arising out of SLP (C) No. 21965 OF 2022)

KANAHAIYA LAL ARYA

...APPELLANT(S)

VERSUS

MD. EHSAN & ORS.

...RESPONDENT(S)

JUDGMENT

PANKAJ MITHAL, J.

1. Leave granted.

2. Heard Smt. Reshmi Rea Sinha, learned counsel for the appellant-landlord and Shri Ardhendumauli Kumar Prasad, learned senior counsel for the respondents-tenant.

3. The dispute in this appeal is for the eviction of the respondents-tenant from the premises in dispute i.e., a house existing on Holding No. 80, New Ward No. X, (Old Ward No. IV, Old Holding No. 211) of Chatra Municipality, 16:57:03 IST Reason:

Jharkhand.

4. The appellant, as the owner and landlord of the said house, filed Eviction Suit No.25/2001 against the respondents- tenant on the ground of default in payment of rent and refusal to vacate; and for personal need of the suit premises for establishing an ultrasound machine for his two unemployed sons.

5. The suit after contest was decreed by the court of first instance vide judgment and order dated 15.07.2006 on the ground of bona fide need of the appellant-landlord holding that the oral and

documentary evidence proves the bona fide need of the appellant-landlord to install the ultrasound machine for his two unemployed sons. The appellant-landlord had established his capability to purchase such a machine and had proved his annual income to be Rs.4,00,000/-. He had also proved that the suit premises is the most appropriate place for the installation of such machines as there is a medical clinic and a pathology center adjacent to it. The suit was, however, dismissed on the ground of default in payment of rent.

6. The aforesaid judgment and order of eviction passed by the court of first instance was reversed by the First Appellate Court and the same was also affirmed by the High Court in Second Appeal. Thus, aggrieved by the impugned judgment and order of the High Court of Jharkhand at Ranchi dated 18.08.2022 passed in Second Appeal No.317/20061, the appellant-landlord herein has preferred this appeal.

7. It may not be out of context to mention here that the appellant-landlord had not assailed the dismissal of the suit on the ground of default in payment of rent and as such the decree to that effect passed by the court of first instance has become final and conclusive. The appellant- landlord is, thus, confining his case for the decree of eviction only on the ground of bona fide need of establishing an ultrasound machine for the benefit of his two unemployed sons.

8. The submission of Smt. Reshmi Rea Sinha, learned counsel for the appellant-landlord, is that the First Appellate Court and the High Court manifestly erred in law Kahanaiya Lal Arya vs. Md. Ehshan & Ors.

in holding that he has failed to prove his bona fide need.

No evidence was adduced by him to prove that his two unemployed sons have any expertise in handling the ultrasound machine. The establishment and running of the ultrasound machine is ordinarily done by the doctors or the technicians employed and for that purpose it is not necessary that the sons themselves should have any expertise in running the same. Secondly, the partial eviction of the respondents-tenant in an earlier eviction Suit No.11/1981 from a portion under their tenancy and re-letting it to another person does not affect the bona fide need of the appellant-landlord. The aforesaid partial eviction was for the need of the brother-in-law of the appellant-landlord and not for his two unemployed sons. Also, the said eviction was in respect of a different portion and was much prior to the institution of the present suit or when the cause of action for the present suit arose.

9. To counter the above arguments, Shri Ardhendumauli Kumar Prasad, learned senior counsel for the respondents-tenant, submitted that in an earlier proceeding of their eviction from the suit premises, i.e., Eviction Suit No.11/1981, a compromise was arrived at between the parties whereunder the respondents-tenant were allowed to occupy the premises with respect to three pucca rooms constructed by appellant-landlord as tenant in perpetuity. Therefore, the suit for eviction is not maintainable. Secondly, the appellant-landlord has sufficient accommodation available with him to start any new business either for himself or for his two unemployed sons and does not require the suit premises bona fide. The appellant-landlord has misused the partial

eviction order passed earlier by letting out the said vacated premises to another person at a higher rent instead of using it for the purpose it was got vacated.

10. The law with regard to eviction of a tenant from the suit premises on the ground of bona fide need of the landlord is well settled. The need has to be a real one rather than a mere desire to get the premises vacated. The landlord is the best judge to decide which of his property should be vacated for satisfying his particular need. The tenant has no role in dictating as to which premises the landlord should get vacated for his need alleged in the suit for eviction.

11. In the case at hand, the appellant-landlord may be having some other properties under tenancy of various persons but once he has decided to get the suit premises vacated for the bona fide need of establishing an ultrasound machine for his two unemployed sons, he cannot be forced to initiate such a proceeding against the other tenants. It is for the appellant-landlord to take a decision in this regard and once he has decided to get the suit premises vacated, no error or illegality could be pointed out in his decision. Secondly, it has come on record by clear finding of the court of first instance that the suit premises is the most suitable accommodation for establishing an ultrasound machine. The reason being that it is situated adjacent to a medical clinic and a pathological centre and is the most appropriate place for establishing any medical machine. Moreover, the appellant-landlord has also proved his capacity to invest in purchasing/establishing an ultrasound machine and that his two sons are unemployed and as such the suit premises is required to establish them in business and to augment the family's income. Therefore, the bona fide need of the appellant-landlord stands duly established.

12. Insofar as the issue that his two unemployed sons do not have any expertise/training to run the ultrasound machine, the argument is without any substance. It is common knowledge that these days medical devices such as ultrasound machines are installed and established and are ordinarily run by the technicians or the medical experts who are engaged for the said purpose. The person establishing such devices or ultrasound machines himself need not have any expertise in running the same. Therefore, the Appellate Court and the High Court were not justified in disbelieving the bona fide need of the appellant- landlord solely on the ground that his two sons do not possess any expertise for running an ultrasound machine.

13. It may be important to note that the appellant-landlord had earlier filed Eviction Suit No.11/1981 for the eviction of the respondents-tenant from the part of the premises. The said suit travelled up to the High Court by way of Second Appeal No.40/1983. In the said appeal, a compromise dated 20.03.1988 was arrived at between the parties and the suit was decided in terms of the said compromise. The compromise reveals that the appellant- landlord had agreed that the respondents-tenant shall continue to be a tenant of the appellant with respect to three pucca rooms which have been re-constructed by the appellant-landlord after demolishing the portion under tenancy. There is no clause in the compromise deed which stipulates that the appellant-landlord will not initiate any proceeding for eviction against the respondents-tenant in future. Naturally, there cannot be such a clause inasmuch as such a compromise does not intend to take away the right of the landlord to initiate eviction proceedings against the tenant if he defaults in payment of rent, makes material alterations damaging the property or otherwise ceases to use the same for his benefit

and lets it out to an outsider. The aforesaid clause in the compromise that the respondents-tenant would continue to be a tenant of the appellant-landlord with respect to the said portion does not mean that the appellant-landlord has given up his right to initiate proceedings for eviction against him for all times to come.

14. Therefore, on the strength of the above compromise decree, it cannot be said that the present proceedings for eviction are not maintainable.

15. As would be evident from the above compromise, the decree for partial eviction from the premises occupied by the respondents-tenant was partially decreed in Second Appeal No.40/1983 on 31.03.1988 for the bona fide need of the appellant-landlord to establish his brother-in-law. The said need was altogether a different need. The said decree of the year 1988, even if not used for the purpose intended, it would not affect the rights of the appellant- landlord which accrues to him in the year 2001. The need of the appellant-landlord for getting the suit premises vacated for establishing his two sons has to be seen on the date of filing of the suit i.e., 28.11.2001. On the said date, the need of the appellant-landlord stands established. The said need would not get eroded by any earlier decree of eviction of the year 1988.

16. Accordingly, in view of the facts and circumstances of the case, the appellant-landlord has proved his bona fide need for the suit premises. The appeal is allowed and the impugned judgment and order dated 18.08.2022 and 25.09.2006 of the High Court and the First Appellate Court respectively are set aside. The suit of the appellant- landlord stands decreed.

..... J.

(PANKAJ MITHAL) J.

(NONGMEIKAPAM KOTISWAR SINGH) NEW DELHI;

FEBRUARY 25, 2025