

Supreme Court of India

Ashok Kumar Sahay vs Rama Shankar Prasad on 13 January, 1994

Equivalent citations: 1994 SCC, Supl. (2) 638

Author: S Mohan

Bench: Mohan, S. (J)

PETITIONER:

ASHOK KUMAR SAHAY

Vs.

RESPONDENT:

RAMA SHANKAR PRASAD

DATE OF JUDGMENT 13/01/1994

BENCH:

MOHAN, S. (J)

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MOHAN, S. (J)

MUKHERJEE M.K. (J)

CITATION:

1994 SCC Supl. (2) 638

ACT:

HEADNOTE:

JUDGMENT:

1. Though the appellant-landlord succeeded in the trial court, that success was actually short-lived. The High Court reversed the decree. The landlord obtained a decree for eviction on the ground of bona fide need. His plea in the plaint was that he was a Karta of the joint family of two branches, namely, Sureshwar Sahay and Madheshwar Sahay. However, as PW 1 he deposed as under :

" The disputed-house stands in the names of Sureshwar Sahay and Madheshwar Sahay. Prior to them, this house belonged to their mother, namely, Indramani Kunwar. She has a daughter, namely, Girja Devi. The name of Girja Devi was not entered in mutation because she did not raise any objection. In 1982, Indramani Kunwar had died. I am a Karta of the family of Madheshwar Sahay. The disputed land belongs to both of the brothers. I am a Karta Khandan of half share. There is no written partition but verbal partition has been made. I have not instituted a case on behalf of all the landlords of the house as I am not a Kart a Khandan of all the landlords. From the very childhood, I knew the defendant. Formerly, the defendant

had opened a shop of radio by covering asbestos on my parti land which is by the side of the present shop. He used to pay rent therefore but I cannot say whether he got receipts thereof or not."

2. Unfortunately, this aspect of the matter has not been properly appreciated by the trial court which ended in a decree in favour of the landlord. The High court, finding that the landlord does not represent the branch of Sureshwar came to the view that he does not represent the entire body of co-sharers and partition had not been proved, so as to establish that the suit property had been allotted in favour of the branch represented by the landlord. In assailing these findings two contentions are urged before us :

(1) Section II (1)(c) of the Bihar Buildings (Lease, Rent and Eviction) Control Act whereunder the landlord is enabled to seek eviction, not only on his own behalf, but on behalf of any person for whose benefit the building is held by him, and (2) Section 116 of the Evidence Act raising a presumption in favour of the landlord.

3. We find neither of these contentions could be held to be tenable. No doubt, Section 11 (1)(c) enables the landlord to seek eviction on the ground that he reasonably and in good faith requires

(a) for his own occupation or for the occupation of any person; or

(b) for the occupation of any person for whose benefit the building is held by him.

4. But in this case, having regard to the deposition extracted above, the landlord does not represent the branch of Sureshwar Sahay. Therefore, not the person holding the building on behalf of that branch. As regards Section 116 of the Evidence Act, no doubt, the tenant is estopped from denying the title of the landlord, but the case proceeded on bona fide need and, therefore, this will not affect the finding in relation to that bona fide need. The civil appeal will stand dismissed. No costs. The dismissal will not preclude the other remedies of the landlord seeking eviction.