

GAHC010019882023



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : CRP/38/2023

NRIPEN DAS
S/O- LATE BHRAMAR DAS ,
R/O- BOKAKHAT TOWN, WARD NO-4,
P.O AND P.S- BOKAKHAT, NEAR ASTC BUS STAND, DIST- GOLAGHAT,
ASSAM, PIN-785612

VERSUS

RATNA DEY AND 3 ORS.
W/O- LATE BINOV RANJAN DEY

2:BIRAJ DEY
S/O- LATE BINOV RANJAN DEY

3:BIKASH DEY
S/O- LATE BINOV RANJAN DEY

4:RANJITA DEY
D/O- LATE BINOV RANJAN DEY

ALL ARE RESIDENTS OF BOKAKHAT TOWN
BALIJAN WARD NO-4
MOUZA - BOKAKHAT

DIST- GOLAGHAT
ASSAM
PIN- 785612

AND ALL ARE SUBSTITUTED DEFENDANTS OF LATE BINOV RANJA

Advocate for the Petitioner : MR F KHAN

Advocate for the Respondent : MR G BHARADWAJ (r-2,3,4)

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT & ORDER

Dated: 11.03.2024

The instant application under Section 115 of the Code of Civil Procedure, 1908 (for short, the Code) is directed against the judgment and decree dated 04.11. 2022 passed by the Court of the learned Civil Judge, Golaghat in Title Appeal No.2/2021 whereby the learned 1st Appellate court had affirmed the judgment and decree dated 01.02.2021 passed by the Court of the learned Munsiff Bokakhat in Title Suit No.6/2016.

2. The materials on record reveals that the respondent herein who was the plaintiff had filed a suit being Title Suit No.06/2016 before the Court of the learned Munsiff at Bokakhat. The said suit was for eviction of the defendant and recovery of khas possession; for removal of the illegally installed post in the suit house by the defendant; for arrear rent and mesne profit and for other reliefs.

3. It was the specific case of the plaintiff in the suit that the plaintiff had acquired the sole ownership of the suit property which has been specifically described in Schedule-A to the plaint in the year 2006 and had requested the defendant to attorn to the plaintiff as his landlord. Thereupon, the defendant duly attorned to the plaintiff and was paying the rent regularly till March 2016 @

Rs.600/- per month. Taking into account that the said suit house was in a dilapidated condition and may easily collapse or destroy, the plaintiff had decided to rebuild the said suit house by demolishing the old dilapidated house. Under such circumstances, a notice was issued asking the defendant to vacate the suit house and the defendant agreed to vacate the suit house with a condition that the said suit house would be vacated immediately after the Durga Puja festival 2015. However, the defendant failed to do so. It has also been mentioned that the plaintiff has also obtained the permission from the Bokakhat Town Committee for construction of the building over the suit land. The defendant thereupon continued to occupy the possession of the suit house described under Schedule A plaint. In the month of April 2016, it has been alleged that the defendant failed to tender the rent and it is under such circumstances, a suit was filed seeking the aforementioned reliefs primarily on the ground of defaulter in payment of rent as well as for bona fide requirement.

4. The defendant herein filed a written statement taking various preliminary objections. Perusal of the written statement reveals that the defendant had duly accepted that the plaintiff is his landlord. In fact, in paragraph 16 of the said written statement the defendant unequivocally have stated that the plaintiff intentionally refused to receive the monthly rent of the house for which the defendant has been regularly paying the rent of the suit house through the learned Court. It is also seen that along with the said written statement, the defendant has also filed a counter claim seeking declaration that the defendant is a protective tenant under the Assam Urban Areas Rent Control Act, 1972 (for short, the Act of 1972) that the defendant is not liable to be evicted without recourse to law; to affirm possession of the defendant over the suit property

and other reliefs.

5. On the basis of the pleadings, the learned trial court framed as many as 10 issues. Amongst the said 10 issues, it surprises this Court to take note that there is no issue of bona fide requirement. Be that as it may, the issue No.9 pertains to defaulter in payment of rent. Taking into account that the pleadings were available, the learned trial court decreed the suit in favour of the plaintiff vide judgment and decree dated 01.02.2021 by deciding both the issue of bona fide requirement as well as defaulter in favour of the plaintiff. It was categorically observed in paragraph 47 of the said judgment of the learned trial court that the plaintiff failed to produce any evidence to show that for the month of April 2016, the plaintiff had tendered the rent or deposited the rent in the Court. At paragraph 52, the learned trial court had come to an opinion that the plaintiff had bona fide requirement for the purpose mentioned in the pleadings and in his evidence.

6. This Court finds it relevant at this stage to observe that though there was the requirement of framing the issue pertaining to bona fide requirement, but taking into account that the parties all along knew the said issue as the same was apparent from the pleadings and had adduced evidence in that respect, in the opinion of this Court, the non-framing of the said issue of bona fide requirement could not have rendered the judgment and decree passed by the learned trial court fatal.

7. Be that as it may, the learned trial court vide judgment and decree dated

01.02.2021 decreed the said in favour of the plaintiff, thereby directing the defendant to be evicted from the Schedule A premises and to deliver khas possession of the suit house to the plaintiff. Apart from that the plaintiff was also held entitled to payment of the monthly rent from April 2016 till the date of the filing of the suit and also post filing of the suit.

8. Being aggrieved, the defendant as Appellant preferred an Appeal before the Court of the learned Civil Judge at Golaghat which was registered and numbered as Title Appeal No.2/2021. The learned 1st Appellate court vide judgment and decree dated 04.11.2022 dismissed the said appeal thereby upholding the judgment and decree passed by the learned trial court. It is against the said, the instant revision petitioner has been initiated.

9. The learned counsel for the petitioner submitted that both the courts below failed to take into account the issue of defaulter in payment of rent in the proper perspective and also the aspect pertaining to bona fide requirement was also not taken into consideration. The learned counsel for the petitioner further submitted that the suit house is situated in 22 lechas of land, whereas the land which fell into the share of the plaintiff was only 13.3 lechas and as such, without joining the other co-owners who were owners of the remaining portion of land, the suit was not maintainable. The learned counsel for the petitioner further submitted that both the learned courts below failed to take into consideration that for the month of April, 2016 the defendant had duly tendered the rent to the plaintiff and this aspect of the matter was not taken into consideration in the proper perspective by the learned trial court as well as the

1st appellate court.

10. Mr. G Bharadwaj, the learned counsel appearing on behalf of the respondent/plaintiff has submitted that from a perusal of the materials on record, as well as the judgment which had been delivered by both the courts below, there is a concurrent finding of the fact that the petitioner herein is a defaulter in payment of rent and that the plaintiff has a bona fide requirement. This concurrent finding of fact unless there is a perversity ought not to be interfered with in exercise of jurisdiction under Section 115 of the Code.

11. This Court has duly taken into account the submissions made by the learned counsel for the parties.

12. The submissions made that the suit was not maintainable without the other co-owners of the land in question on the ground that only 13.3 lechas of land fell into the share of the plaintiff whereas the suit house was situated on 22 lechas of land in the opinion of this Court is totally misconceived in as much as neither in the written statement nor in the counter claim filed by the defendant there is any mention whatsoever about the said aspect. Further to that, a perusal of paragraph 16 of the written statement categorically shows that the defendant have duly admitted that the plaintiff is the landlord of the suit house and was tendering the rent to the plaintiff. Under such circumstances, the said submission is totally misconceived.

13. The second submission relates to that both the Court below failed to

appreciate that the petitioner/defendant is not a defaulter in payment of rent for the month of April 2016. This Court has duly taken into account the pleadings and more particularly, the written statement cum counter claim wherein there is no whisper that the defendant had deposited the rent for the month of April, 2016. Taking into account the well settled principles of law that there cannot be any evidence beyond the pleadings, and it was the burden on the part of the defendant who was the tenant to show before the Court that the rent was duly paid, the said submission on the part of the learned counsel appearing on behalf of the petitioner is also misconceived.

14. Another submission was made to the effect that the learned trial court as well as the 1st appellate court have decided the issue pertaining to bona fide requirement, without the issue of bona fide requirement being framed. This Court had in the previous segments of the instant judgment held that there were specific pleadings made and evidence lead by the parties, for which the parties knew all about the said issue. This Court finds no infirmity in the findings arrived as regards bonafide requirement, more so, taking into account that the plaintiff had also taken permission for construction of the building which as per the plaintiff was in a dilapidated condition.

15. Considering the above, this Court, therefore, does not find any infirmity in the judgment and decree rendered by both the courts below. Consequently, this Court finds no merit in the instant revision petition, for which the instant petition stands dismissed.

16. The Registry is directed to forthwith return the LCR.

JUDGE

Comparing Assistant