

IN THE HIGH COURT OF JHARKHAND AT RANCHI
S.A. No.18 of 2019

Vinod Kumar Singh @ Binod Kumar Singh, son of late Kamta Prasad Singh, aged about 63 years, resident of Village-Baru, P.O.-Baru, P.S.-Baru, Dist.-Jaunpur, Uttar Pradesh, at present residing at Thana Chowk, Panchgarh Bazar, P.O. & P.S.-Katrasgarh, Dist.-Dhanbad

.... Appellant

Versus

Dan Singh, son of late Baban Singh, resident of Rani Bazar, P.O.-Katras Bazar, P.S.-Katras, Dist.-Dhanbad

... Respondent

For the Appellant : Mr. Birendra Kumar, Advocate

PRESENT

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the learned counsel for the appellant.

2. This second appeal has been preferred under Section 100 of Code of Civil Procedure against the judgment and decree of affirmance dated 21.12.2018 passed by the learned Principal District Judge, Dhanbad in Civil Appeal No.118 of 2018 whereby and where under, the learned first appellate court has dismissed the appeal on contest.
3. The brief fact of the case is that the plaintiff-respondent filed Title (Eviction) Suit No.09 of 2015 in the court of Civil Judge (Jr. Division)-II, Dhanbad with a prayer for a decree of eviction of the defendant and recovery of *khas* possession under Section 11 of Jharkhand Building (Lease, Rent & Eviction) Control Act.
4. The case of the plaintiff in brief is that the plaintiff is the absolute owner of the suit premises. The defendant occupied a small portion of the suit premises as a tenant on a monthly rent of Rs.500/- payable as per the English Calendar month and the rent

of each month is payable within ten days of succeeding month. The defendant was also inducted as a tenant in schedule 'B' premises in pursuance of a tenancy agreement dated 26.07.1985. The defendant failed and neglected to pay the monthly rent to the plaintiff from the month of January, 1999 and he last paid the rent in the month of December 1998. The defendant obtained electric connection in schedule 'B' premises of the suit in his own name with the consent of the plaintiff. The defendant did not even pay the charges of the electric energy consumed by him, resulting an outstanding electric energy dues of Rs.1,01,416/- and the electric energy connection was disconnected. The suit schedule 'A' premises is old and dilapidated one with damaged rooms and that requires reconstruction. The plaintiff himself is also in need of suitable commercial building for his personal necessity. The plaintiff requested the defendant to vacate the schedule 'B' premises of the suit for demolition of the entire structure of the suit land for construction of a new building. The defendant committed breach of the terms of tenancy as he failed to pay the electric energy dues. The plaintiff requires the entire schedule 'A' land which includes the schedule 'B' land of the suit for his personal necessity of starting his own business in a portion of proposed new building.

5. In his written statement, the defendant besides challenging the maintainability of the suit on various technical grounds further pleaded that the building is not dilapidated nor requires reconstruction. The defendant denied default of payment of rent

from January, 1999. The defendant also denied that he ever defaulted in payment of electric energy bill and the plaintiff illegally got the electric energy connection of the defendant disconnected in connivance with the staff of Jharkhand State Electricity Board. The defendant admitted initiation of proceeding under Section 135/167 of Indian Electricity Act for theft of electricity by the son of the defendant even though the son of the defendant is not residing there. The defendant claimed that he paid Rs. 45,000/- in the year 2012 and also paid Rs.1,00,000/- in the chamber of Mr. S.N. Bhattacharjee, Advocate and the matter was resolved and it was agreed that the plaintiff will execute and register a sale deed on receiving the amount. The defendant never promised to vacate the tenanted premises.

6. On the basis of rival pleadings of the parties, the learned trial court settled the following six issues:-

- (I) *Is the suit maintainable as framed?*
- (II) *Has the plaintiff valid cause of action for the suit?*
- (III) *Whether there is relationship of landlord and tenants between the parties?*
- (IV) *Whether the suit premises is reasonably and in good faith and acquired by the plaintiff for his own occupation?*
- (V) *Whether the defendant defaulted in payment of rent within the meaning of Jharkhand Building (Lease, Rent & Eviction) Control Act and the plaintiff is entitled to, decree for realization of Rs.96,500/- as arrears rents from January, 1999 to January, 2015?*
- (VI) *To what relief or reliefs, the plaintiff is entitled to?*

7. In support of his case, the plaintiff examined altogether four witnesses and proved the documents which have been marked Ext. 1 to Ext. 8. On the other hand from the side of the defendant, the defendant examined altogether three witnesses but no

document was proved by the defendant.

8. The learned trial court first took up issue nos. III, IV and V together and after considering the material in the record came to the conclusion that the arrears of rent due from January, 1999 to January, 2015 at the rate of Rs.500/- per month amounting to Rs.96,500/- thus, the defendant is defaulter and therefore, the plaintiff is entitled for eviction of the defendant from the suit premises and decided the issue nos. III, IV and V in favour of the plaintiff. The learned trial court next took up issue nos. I, II and VI together and in view of the finding of facts arrived at in respect of issue nos. III, IV and V came to the conclusion that the suit is maintainable in its present form, there is requirement of the suit premises to the plaintiff for his personal necessity, the plaintiff has got valid cause of action for the suit and the plaintiff is entitled to the relief as claimed and decreed the suit.

9. Being aggrieved by the judgment and decree passed by the learned trial court, the defendant-appellant filed Civil Appeal No.118 of 2018 in the court of Principal District Judge, Dhanbad which was ultimately heard and disposed of by the learned first appellate court by the impugned judgment and decree.

10. The learned first appellate court on the basis of the materials in the record and submissions before it, framed the following four points for determination :-

“(i). Whether the appellant/defendant has defaulted in not making payment of rent to the respondent/plaintiff for more than two months continuously?

(ii) Whether the respondent/plaintiff is in requirement of suit premises reasonably and in good faith?

(iii) Whether the appellant/defendant has breached the condition of

the tenancy agreement?

(iv) Whether the judgment and decree passed and prepared by the court below is just and proper or it requires any interference by this Appellate Court?"

11. The learned first appellate court firstly took up point for determination no. (i) and considered that the relationship of landlord and tenant is admitted by the parties and that it is also admitted that the defendant was inducted as a tenant to the suit premises as a monthly tenant of monthly rent of Rs.500/- and that the defendant admitted the genuineness of the agreement of tenancy. The learned first appellate court made independent appreciation of the evidence in the record and came to the conclusion that the defendant has defaulted in making payment of monthly rent of Rs.500/- since January, 1999. In respect of (ii) point for determination, the learned first appellate court after considering the materials in the record came to the conclusion that as the plaintiff is an unemployed person and he intends to open a general store in the suit premises and the said plea has not been rebutted by the defendant by adducing any cogent evidence, hence, came to the conclusion that really the plaintiff requires the suit premises bonafide and in good faith for reconstruction of the suit premises; so that he can start the business from the new building. The learned first appellate court next took up the point for determination no. (iii) and came to the conclusion that the defendant has committed breach of agreement of tenancy by defaulting in payment of electricity dues for a long time amounting to Rs.1,01,416/-. Lastly, the learned first appellate court took up point for determination no. (iv) and after considering the

materials in the record, confined the relief of arrear of rent to only three years ending with the date of institution of the suit and further directed that the defendant will pay future rent and *pendent lite* to the plaintiff and dismissed the appeal on contest.

12. It is submitted by the learned counsel for the appellant that both the courts below have failed to consider that as the parties have entered into a new contract of purchase thus, the suit for eviction is not maintainable. It is next submitted by the learned counsel for the appellant that the finding of fact arrived at by both the courts below on the ground of personal necessity of the suit premises by the plaintiff is not sustainable in law. It is further submitted by the learned counsel for the appellant that both the courts below have failed to take note of the suppression of material facts by plaintiff. It is next submitted by the learned counsel for the appellant that both the courts below have erroneously discarded the evidence of D.W.2. Hence, it is submitted that the judgment and decree passed by both the courts below be set aside and the suit of the plaintiff be dismissed after formulating appropriate substantial question of law.

13. Having heard the submissions made at the Bar and after carefully going through the materials in the record, so far as the contention of the appellant regarding there was an agreement for sale is concerned, this Court finds that it is not the definite case of the defendant that he entered into any agreement for sale with the plaintiff. What all the defendant has stated in paragraph no.6 of his written statement is that the defendant invested huge amount to

renovate structure and paid handsome amount to the landlord with an understanding that the defendant will purchase the property to the extent the plaintiff agreed but there is no bilateral document binding the plaintiff to sale the suit premises to the defendant and in the absence of the same, since this ground is not having been specifically agitated before the learned first appellate court, this Court has no hesitation in holding that both the courts below have not committed any error in returning to the concurrent finding of facts that the defendant was defaulter in payment of arrear of rent.

14. So far as the contention of the appellant regarding personal necessity of the land by the plaintiff is concerned, P.W.4 has categorically stated in his testimony that he requires the suit premises reasonably and bonafide and the defendant who deposed in the case as D.W.2 has failed to brought on record any evidence regarding such agreement. The learned first appellate court considered that the suit premises is quite old and its condition has deteriorated hence, the reconstruction of the building is essential and for the same eviction of the defendant is required.

15. Considering the un-rebutted evidence of the plaintiff that he being an unemployed person intends to open one new general store in the suit premises, no illegality has been committed by both the courts below in arriving at the concurrent finding of facts that the entire suit premises is required by the plaintiff for demolition of the old structure and to start a business from the new building. Similarly, the learned first appellate court considered that the

defendant breached the policy condition.

16. Under such circumstances, this Court is of the considered view that there is no substantial question of law involved in this appeal.
17. Accordingly, this second appeal being without any merit is dismissed but under the circumstances without any costs.
18. Let the copy of the Judgment be sent to the learned court below forthwith.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 6th August, 2024
AFR/ Sonu-Gunjan/-