

Heard Mr. S.K. Ghosh, the learned Counsel appearing for the petitioners (defendants). Also heard the learned Senior Counsel Mr. G.N. Sahewalla appearing for the respondent (plaintiff).

2. The respondent filed the Title Suit No.107/2000 for ejectment of the two defendants from the shop room No.5 measuring 10 ft. x 22 ft., more fully described in the schedule of the plaint and for realization of Rs.7200/- as compensation for wrongful occupation from 1.1.2000 to 31.8.2000. The defendants in the W.S. stated that rent for the haircutting saloon was raised to Rs.231/- p.m. from June 1999 and due rent was collected regularly by the plaintiff uptill April, 2000. Thereafter the plaintiff accepted the rent for the month of May 2000 on 5.6.2000 but refused to issue any receipt thereof and instead demanded that an agreement be executed for the shop room @Rs.5000/- p.m. or otherwise, the defendants will be forced to vacate. Since the plaintiff failed to collect the rent for June 2000, the defendants tendered the same through the defendant No.2, but the plaintiff refused to accept the rental payment and consequently the rent for the due month was deposited in Court.

3. After pleadings were exchanged, the learned Civil Judge No.1, Dibrugarh initially formulated 6 Issues and subsequently the additional Issue No.7 was also framed. The Issues are extracted hereinbelow for ready reference :

1. Whether suit is maintainable in law and facts ?
2. Whether the suit is bad for non-joinder of necessary parties ?
3. Whether the defendants are defaulter on payment of rent ?
4. Whether the plaintiff has any bona fide requirement of the suit premises ?
5. Whether the plaintiff is entitled to decree as prayed for ?
6. What relief or reliefs if any parties are entitled to ?
7. Whether the defendants are tenants under the plaintiff or the illegal occupier of the suit premises ?

4. To prove his case, the plaintiff examined himself as P.W.1 whereas the defendants' side adduced 3 witnesses i.e. Tarkeswar Thakur (D.W.1), Sunil Thakur (D.W.2) and Bachalal Thakur (D.W.3)

5.1 On the additional Issue No.7, the Trial Court after considering that rent was received from the defendants by plaintiff opined that the plaintiff accepted the defendants as tenants.

5.2 The defaulter issue was next examined and the Court considered the evidence of the plaintiff (P.W.1) himself who stated that he accepted the rent till May 2000 but refused to provide the receipt for the same. In the same line, the D.W.1, stated that the plaintiff after regularly accepting the rent upto May 2000, refused to accept further rent and the same was then deposited in Court. The D.W.1 and D.W.2 denied the suggestion that they did not go to pay the May 2000 rent to the plaintiff. On the basis of these evidences, after considering the rent receipts (Exbt.82 & Exbt.83) and the Exbt.85 to Exbt.99, the Court opined that the plaintiff refused to accept the tendered rent from June 2000 and thereafter the same was duly deposited in Court by the defendants and therefore they are not defaulter.

5.3 On the issue of bonafide requirement, the evidence of P.W.1 disclosed that he owns several other shops and accordingly the plea of bona fide requirement for the small shop where the defendants were running a hair cutting salon, was rejected by the Trial Judge.

5.4 On the basis of the above finding on the two key issues, the ejectment suit was dismissed on 8.7.2005 (Annexure-3) by the learned Civil Judge No.1 (Jun

ior Division), Dibrugarh.

6.1 The aggrieved plaintiff then filed the Title Appeal No.41/2005 where the learned Civil Judge, Dibrugarh gave a concurrent finding on the additional Issue No.7 to the effect that, the plaintiff having received rent from the defendants have accepted them as his tenants and therefore they are not illegal occupiers of the suit premises.

6.2 The Appellate Judge then considering the rent receipts i.e. Exbt.82 and Exbt.83 which indicates that the rent was received by the plaintiff upto April 2000. But since the defendants failed to adduce any rent receipt for May 2000, they were declared to have defaulted in paying rent for the month of May 2000 and proceeding on the principle that once a defaulter is always a defaulter, the finding of the Trial Court was reversed and was answered in favour of the plaintiff.

6.3. The plea of bona fide requirement was also considered and although evidence indicated that the plaintiff has other tenanted premises, the Civil Judge held that the landlord is the best judge of his requirement and therefore the plea of bona fide requirement for the plaintiff and his two young sons was answered against the tenants.

6.4 On the basis of the above findings on the Issue No.3 & 4, the Trial Court's verdict was reversed and the ejectment decree was granted by the learned Civil Judge, Dibrugarh, through the impugned judgment dated 16.6.2008 (Annexure-4) in the Title Appeal No.41/2005.

7.1 The petitioners assail the legality of the Appellate Court's verdict by contending that the same is not based on the available evidence and Mr. S.K. Ghosh, the learned Counsel submits that the Civil Judge misread the evidence and reached an erroneous conclusion on the default.

7.2 The petitioners further contend that the defendants are operating a hair-cutting salon in the tenanted premises and since the plaintiff is owning several other similar shop rooms in the market area, the bona fide requirement for this particular shop room can't be arbitrarily answered in favour of the plaintiff when the landlord's requirement for this specific premises couldn't be established by him.

8.1 Supporting the verdict of the Appellate Court, Mr. G.N. Sahewalla, the learned Senior Counsel submits that the defendants as rent defaulter can't claim protection under the Assam Urban Areas Rent Control Act, 1972 (hereinafter referred to as the Rent Act) and in this case, the defendants failed to prove that the rent was deposited lawfully in Court, in accordance with Section 5(4) of the Rent Act..

8.2 The further submission of Mr. Sahewalla is that it is for the landlord to decide which of the tenanted premises is needed by him and just because other shop rooms are also let out by the plaintiff, the landlord's bona fide requirement can't be negated on this score.

9. In order to determine whether the Court misread the evidence in the case, the plaintiff's evidence is perused from the case records with the assistance of the learned Counsel for the parties.

10. The plaintiff in his cross-examination as P.W.1 stated that the tenanted shop room is located in the D.P. Market and he has 11 other shop rooms in the Ajit Market, for which rent is collected by him. Therefore it is apparent that the plaintiff could have evicted any of his numerous tenants for his requirement. In this backdrop, the specific requirement for the 10 ft. x 22 ft. shop room occupied by the defendants in the D.P. Market must be proved to establish that this particular shop and not any other premises, will only serve the need of the plaintiff and his two growing sons. While the freedom of the landlord to secure possession of any of the tenanted premises can't be undermined, some evidence ought

to have been adduced by the plaintiff to indicate what sort of business is proposed and whether for the proposed business, the suit premises is the best or the only option for the landlord. But unfortunately no such evidence on the particular need for the suit premises was adduced in the case. But merely because of the plea of the landlord of his requirement, the Appellate Court considered that to be sufficient and on this basis the finding of the Trial Court was reversed.

11. On the key Issue of the rent default, the evidence of P.W.1 is significant. The P.W.1 in his cross-examination stated that he accepted Rs.210/- p.m. as rent from April 1997 to May 1999. Thereafter rental dues was hiked to Rs.231/- from June 1999 onwards and he received the rent from the defendants till April 2000. Thereafter the plaintiff received rent from the defendants for the month of June 2000 but the witness refused to give any receipt for the said month. The relevant cross evidence of P.W.1 is translated in Court itself and extracted hereinafter for ready reference :

& & & & & & & & & .

& & & & & & & & & I collected rent @Rs.210.00 per month from April 1997 to May 1999. After, from June 1999, I began to collect rent @Rs.231.00 per month and collected rent from him till April, 2000. Later I collected rent from the defendants on 5th June 2000, but refused to issue a receipt therefor & & & & & & & & & .

12. When the plaintiff himself has testified that he collected rent from the defendants in June 2000 but refused to issue receipt, the defaulter finding of the Appellate Court for May 2000 is contrary to the evidence and such conclusion is a perverse decision.

13. The rent receipts marked as Exbt.82 and Exbt.83 shows that rent for March was tendered respectively by the defendants on 26.4.2000 and rent for April was tendered on 25.5.2000 and the plaintiff issued the rent receipts for those months as per usual practice. The cross-examination of the landlord (P.W.1) further shows that he collected rent for June 2000 but did not issue any receipt, as was done earlier. This adequately accounts for the missing rent receipt for rent dues of May, 2000. The Exbt.84 is the rent deposit Challan which shows that rent for the month of June 2000 was deposited in Court on 13.7.2000. If we take these exhibits into account together with the cross-evidence of P.W.1, it is clear that the defaulter finding for the month of May 2000, is an erroneous finding and it is apparent that the Appellate Court misread the evidence on record.

14. According to the defendants, they deposited the rent from June 2000 onwards in Court and the Exbt.85 to Exbt.99 establishes the rent was being regularly deposited in Court by the tenants. Whether this was done through due process after being tendered first to the landlord is an aspect which may require consideration. But in this case at no stage of the proceeding in the Trial Court or before the Appellate Court, the eviction was sought on the ground of non-payment of monthly rents which fell due during the trial of the suit and such a case was never pleaded by the plaintiff. If this be the position, a defaulter finding on this count can't be given for the unpleaded case of the plaintiff. Therefore the additional ground of irregular mode of rent deposit now urged by Mr. G.N. Sahewalla, is not accepted and the same is rejected.

15. For the forgoing discussion and having noticed that a perverse finding was given by ignoring the evidence on record, the impugned verdict dated 16.6.2008 (Annexure-4) in the Title Appeal No.41/2005 is set aside and the Trial Court's verdict dated 8.7.2005 (Annexure-3) is restored. The ejectment suit is accordingly dismissed.

16. With the aforesaid order, the case is allowed by leaving the parties to bear their own cost.