

GAHC010126482014



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

Case No. : CRP 281/2014

1:MD. RIZAUDDIN AHMED and ANR.

2: SALEHUDDIN AHMED
BOTH S/O- LT. HAZARUDDIN AHMED
R/O- SIVASAGAR TOWN
JENGONIKOTIA
WARD NO. 1
P.O.
P.S. and DIST.- SIVASAGAR
ASSAM

VERSUS

1:MD. IMRAN SHAH
S/O- LT. KHIRAZATDDIN AHMED, R/O- SIVASAGAR TOWN,
JENGONIKOTIA, WARD NO. 1, P.O., P.S. and DIST.- SIVASAGAR, ASSAM.

Advocate for the Petitioner : MR.S N TAMULI

Advocate for the Respondent : MR.B K SEN

:: BEFORE ::

HON'BLE MR. JUSTICE PRASANTA KUMAR DEKA

For the Petitioners : Mr. SN Tamuli
Advocate

For the Respondent : Mr. BK Sen
Advocate

Date of Hearing : 31.01.2019

Date of delivery of
Judgment and Order : 31.01.2019

∴ JUDGMENT & ORDER ∴
(ORAL)

Heard Mr. SN Tamuli, learned counsel appearing for the petitioners and Mr. BK Sen, learned counsel appearing for the respondent.

2. In this revision petition, judgment and decree dated 28.05.2014 passed in Title Appeal No. 14/2013 by the court of learned Civil Judge, Sivasagar is put under challenge.

3. The respondent is the plaintiff in Title Suit No. 4/2007 filed against the present petitioners for khas possession of the rented rooms and two locked rooms of the first floor of the building by evicting the defendants/petitioners, arrear rent compensation etc. The plaintiff/respondent is the absolute owner of a plot of land measuring 1 K 13 L covered by Dag No. 454 (new), PP No. 794 (new) upon which the rooms are situated. The defendants/petitioners are occupying two rooms as tenants under the plaintiff/respondent since 23.08.2005. The joint lease agreement was executed for both the rooms between the plaintiff and the defendants under the terms and conditions mentioned therein. Monthly rent payable is stipulated at Rs. 1000/- per room. Accordingly, Rs. 2,000/- is the total rent to be paid to the plaintiff/respondent on or before 6th day of each month against proper receipt. The period of lease was 11 months w.e.f. 23.08.2005 and expired on 22.07.2006. The defendants/petitioners failed to pay the monthly rent not even for a single month and as such, they are defaulter and liable to be evicted. The defendants/petitioners were let out only two rooms but they illegally and with ill motive forcibly kept under lock and key two rooms of the plaintiff/respondent on the first floor of the building. Complaint was lodged before the Sivasagar police station. The keys of the locks of the said rooms are with the defendants/petitioners. A complaint was also lodged before the Masjid Committee but to no effect. Advocate notice demanding to vacate the tenanted rooms were issued on 12.10.2006 but the defendants/petitioners refused to accept the same. Accordingly, the suit was filed with the reliefs mentioned hereinabove and the suit premises along with the two rooms on the first floor of the building are described in the schedule of the plaint as follows:-

SCHEDULE OF THE ROOMS

Two R.C.C. rooms measuring 13 ft x 12 ft each standing on Dag No. 454 of P.P. No. 794,

situated at Jengonikotia Chariali under Nagar Mohal Mouza, Sibsagar town, P.O/P.S. and Dist. Sibsagar Assam which is bounded by –

On east : P.W.D. Road,
West : Municipal drain,
North : House of Halimuddin Ahmed and
South : House of Late Umed Ali AND two rooms on
the 1st floor of the building kept under lock
and key by the defendants.

4. The defendants/petitioners filed their joint written statement and took the plea that they have been possessing the schedule land since the lifetime of their father. They denied execution of the alleged lease deed dated 23.08.2005 disputing the relationship of landlord and tenant. They never forcibly kept under lock and key the alleged two rooms on the first floor but they have been possessing the same since the lifetime of their father. It is their contention in their written statement that the plaintiff/respondent after failure to dispossess/evict them by applying all other means and tactics, managed to obtain the said lease deed dated 23.08.2005 fraudulently and deceitfully from the defendants/ petitioners in order to evict them illegally from the suit premises as well as the other two rooms. Accordingly, they sought for dismissal of the suit.

5. The learned trial court on the basis of the pleadings framed the following issues:-

1. *Whether there is cause of action for the suit?*
2. *Whether the suit is bad for the non-joinder of the necessary parties?*
3. *Whether the suit is barred by limitation?*
4. *Whether the defendants are tenants under the plaintiff and executed any lease agreement?*
5. *Whether the defendants are defaulters in respect to payment Rs. 32,000/- as arrear rent and is liable to be evicted from the suit land?*
6. *Whether the plaintiff is entitled to the decree of khas possession of the suit rooms and locked two rooms of the 1st floor of the same building?*
7. *Whether the plaintiff is entitled to the decree as prayed for?*
8. *To what other relief or reliefs the plaintiff is entitled?*

6. The plaintiff/respondent examined himself as PW 1 and two other witnesses. On the

other hand, the defendants/petitioners examined themselves as DW 1 and DW 2. The learned trial court decreed the suit by deciding all the issues in favour of the plaintiff/respondent.

7. The learned trial court while deciding the issue no. 4 took into consideration the evidence of the plaintiff/respondent, PW 1. In support of his evidence, the PW 1 exhibited the lease agreement as Exhibit 2 proving his signature along with the signatures of both the defendants/petitioners. The attesting witness of the lease deed Md. Mafizur Rahman, PW 2 deposed and proved his signatures along with the fact of execution of the lease deed by the defendants/petitioners. A plea was raised before the learned trial court that the lease deed consists of total three numbers of pages and the signatures of the defendants/petitioners are purportedly shown in the third page of the agreement only there being no other signatures on the rest of the two pages. The learned trial court holding that there is no legal requirement of signing each and every page of an agreement, considered the Exhibit 2. Further, considering the evidence of PW 2, the court below believed the contention of the pleadings of the plaintiff/respondent and accepted Exhibit 2 as a genuine tenancy agreement between the parties and accordingly held the said issue in favour of the plaintiff. The issue no. 5 is also decided by the learned trial court by holding that the defendants/petitioners are occupying two rooms at monthly rent of Rs. 1,000/- per room. Considering the pleading of the plaintiff/respondent that the defendants/petitioners did not pay any rent to him since the commencement of tenancy, accordingly, the plaintiff/respondent was found to be entitled to get the arrear rent. While deciding issue no. 6 the learned trial court held in favour of the plaintiff/respondent that he is entitled to the relief of recovery of khas possession after evicting the defendants/petitioners not only from the two rooms covered by the tenancy agreement but also from the rooms under their illegal occupation. While granting the said relief it was held by the trial court that the defendants/petitioners are occupying two rooms of the said building without having any legal character and consent of the plaintiff/respondent and as such, they were termed as trespassers and liable to be evicted therefrom. The said judgment and decree of the trial court dated 20.03.2013 was challenged in Title Appeal No. 14/2013 which was dismissed by the court of learned Civil Judge, Sivasagar vide judgment and decree dated 28.05.2014.

8. Being aggrieved by the said judgment the petitioners filed this revision petition on

30.08.2014. But there was defect in filing which was rectified on 02.09.2014. The petitioners also, as an abundant caution, filed RSA No. 232/2014 on 03.09.2014 which was admitted vide order dated 12.09.2014 by formulating substantial question of law. The learned first appellate court upheld the findings of the learned trial court on each and every issues framed and decided by the trial court.

9. Mr. Tamuli, learned counsel for the petitioners, submits that the court below was wrong in deciding the issue as to whether the relationship of landlord tenant exists between the parties to the suit. There was specific denial on the part of both the defendants/petitioners in their evidence so far the signatures in the Exhibit 2 tenancy agreement are concerned. The two rooms in the first floor allegedly kept under lock and key by the defendants/petitioners were not mentioned in the schedule of the suit property mentioned in the plaint. Even then the court below decreed the suit. Mere existence of the Exhibit 2 cannot give status of tenant to the defendants/petitioners inasmuch as there is a specific pleading in the written statement that the same was executed fraudulently. Accordingly, it is submitted that there is jurisdictional error on the part of the courts below while passing the impugned judgment.

10. Mr. Sen, learned counsel for the respondent, on the other hand, vehemently opposed the submission of the learned counsel for the petitioners. It is his specific submission that the fact of playing fraud is an issue raised by the defendants/petitioners but they failed to prove such fraudulent act moreso, there is no specific pleading in regard to the manner in which the plaintiff/respondent played fraud on them. Opposing the submission of the learned counsel for the petitioner he submits that the said two rooms under lock and key by the defendants/petitioners, are specifically mentioned in the plaint and also in the schedule forming the suit property. Such contention of the learned counsel for the petitioners cannot be accepted inasmuch as both the court below applied its mind while decreeing the relief of recovery of khas possession of the two rooms on ground floor and also the other two rooms on the first floor. There is no error apparent on the face of the judgment for interference by this court.

11. The main contention of the learned counsel for the petitioners is the denial of the landlord tenant relationship between the parties. In order to verify the findings of the courts below I have perused the case records, more specifically, the evidence on record of the witnesses in the suit. The plaintiff/ respondent as the PW 1, in his cross, deposed that the

two rooms under the tenancy agreement were under his possession from 2003 till 2005 wherein he was running his retail outlet of Cement. The total area of land covered by the building is 1K 13L and out of the said land he purchased 16½ Lechas at first and thereafter he constructed the RCC building. Later on he purchased the other 16½ Lechas of land and the two ground floor rooms are situated on the land which he purchased earlier and the two rooms under lock and key are situated on the land which was purchased later on. The subsequent land was purchased from the father of the defendants/petitioners. He proved the Exhibit 2 tenancy agreement in original. He proved the signatures in the third page of the Exhibit 2 which as per his deposition was put by the defendants/petitioners in front of him. The PW 2 is Mafizur Rahman who in his cross supported the fact that the Exhibit 2 was signed in the tenanted room of the defendants/petitioners and he signed there itself. He wrote his name only in the said Exhibit 2 as witness but the name of his father and address was not written. The defendants/petitioners put their signatures in front of him.

12. The DW 1, Md. Rijauddin Ahmed in his cross admitted that his father visited the office of the Sub-Registrar and executed the sale deed transferring the land with the building to the plaintiff/respondent. He failed to produce any papers to show that he is paying any tax of the said land. He disputed the signatures in the Exhibit 2. He knew Mafizur Rahman, the PW 2. He denied that the said PW 2 did not sign in front of him. He deposed that he possessed no papers to show that the rooms belonged to him. The DW 2 is the other defendant/ petitioner. He denied the signature in the said Exhibit 2 though it is written as Exhibit 4. He knew the persons who witnessed the execution of the said Exhibit 2. The electricity supply connected in the tenanted rooms is standing in the name of the plaintiff/respondent. He even knew the Advocate who drafted the Exhibit 2 who is from his own village.

13. From the evidence on record it can clearly be inferred that the defendants/petitioners failed to demolish the PW 2 Mafizur Rahman, the witness who signed in the said Exhibit 2. Once the said tenancy agreement Exhibit 2 remains undemolished, it can very well be concluded that the defendants/ petitioners entered into the rooms on the basis of the said tenancy agreement and as such there exists a relationship of landlord and tenant between the parties to the suit. Regarding the other two rooms on the first floor which the plaintiff/respondent sought for recovery of khas possession, the defendants/ petitioners failed to substantiate the manner of entry into the said rooms and in my opinion the courts below

rightly held that the defendants/petitioners are trespassers to the said rooms moreso when the defendants/petitioners failed to disprove the fact of subsequent purchase of the land upon which the said two rooms on the first floor of the building are situated. Once the tenancy is established that too on the basis of the Exhibit 2, it is needless to say that the onus lies on the defendants/petitioners to show that they are not defaulters in payment of monthly rent as stipulated in the tenancy agreement, Exhibit 2. The said onus was not discharged by the defendants/petitioners. The suit is governed by the Assam Urban Areas Tenancy Act, 1972 and once the defendants/petitioners fail to prove the requirement under Section 5(4) of the said Act, 1972, the landlord/plaintiff/respondent has the authority to seek for ejectment of the defendants/petitioners from the suit premises including the two rooms on the first floor of the building. The said act of trespass of the defendants/respondents were done with their status as tenants and any acts which amounts to a challenge of the title of the landlord with respect to the suit premises that itself is a ground for ejectment of tenant at the initiative of the landlord. In the present case in hand the relationship of landlord and tenant is well established as discussed hereinabove. Adhering to the said principle it cannot be held that principles of equity does not favour the plaintiff/respondent for allowing the decree of recovery of khas possession by ejecting the defendants/petitioners from the other two rooms situated on the first floor of the building. Accordingly, I do not find any merit in this revision petition. The same stands dismissed. No costs.

14. Send back the LCRs.

15. Interim order passed earlier stands vacated.

JUDGE

Comparing Assistant