



THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Appellate Jurisdiction)

SINGLE BENCH: MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

R.F.A. No. 06 of 2023

Mohammed Safique
Aged about 62 years
S/o Late Abdul Wawid
R/o Tibet Road, Near Netuk House
P.O. & P.S. Gangtok, Sikkim
Pin No. 737 101.

.... Appellant

versus

Abishek Rai
S/o Dhurba Rai
R/o Lall Market
P.O. & P.S. Gangtok, Sikkim,
Pin No: 737 101.

.... Respondent

**Appeal under Order XLI, Rules 1 and 2 read with
Section 151 of the Code of Civil Procedure, 1908.**

Appearance

Mr. Rahul Rathi and Ms. Khushboo Rathi, Advocates
for the Appellant.
Dr. Doma T. Bhutia, Senior Advocate with Mr. Shakil
Raj Karki, Advocate for the Respondent.

Date of Hearing : 28.08.2024
Date of Judgment : 30.09.2024

J U D G M E N T

Bhaskar Raj Pradhan, J

1. The questions involved in this regular first appeal are whether the respondent (the plaintiff) had been able to prove that the appellant (the defendant) had defaulted in payment



of rents and whether the premises (the suit property) was required by the plaintiff *bona fide*?

2. The learned District Judge has on examination of the evidence led by the parties concluded that the plaintiff had in fact been able to prove that the defendant had defaulted in payment of rents and further that the plaintiff *bona fide* required the suit property for his personal use.

3. The learned counsel for the defendant submits that he had not defaulted in payment of rents as he continued to pay rents to the plaintiff's grandfather by sending money orders on the *bona fide* belief that the plaintiff's grandfather was the owner of the suit property (although admittedly the grandfather had not accepted the money orders). It was further submitted that the plaintiff suffered a trust deficit as previously the plaintiff's grandfather had unsuccessfully filed an eviction suit against the defendant as well.

4. The suit property is situated in Gangtok and therefore, section 4 of *the Gangtok Rent Control and Eviction Act, 1956* would govern the same. It reads as under:

“4. A Landlord may not ordinarily eject any tenant. When however whole or part of the premises are required for the bonafide occupation of the landlord or his dependents or for thorough overhauling excluding addition and alterations or when the rent in arrears amount to four month rent or more the landlord may evict the tenant on filing a suit of ejectment in the court of the Chief Magistrate. The tenant so evicted shall however have the first right to reoccupy the premises after over-hauling on such enhanced rent as may be fixed by the Sikkim Darbar before it is let out to any tenant.”



5. In the plaint, the plaintiff had averred that he had become the absolute owner of the suit property which was let out to the defendant by his grandfather; that the suit property was transferred by his grandfather by executing a gift deed dated 17.04.2018; that the tenancy was a monthly tenancy and it was earlier let out by his grandfather to the defendant at a monthly rent of Rs.4500/-; that the plaintiff's grandfather had communicated the fact of change of ownership of the suit property to the defendant in writing vide letter dated 31.05.2018 which was received by him on 02.06.2018; that he had also orally informed the defendant on 11.02.2019 about the change of ownership in the presence of his sister-in-law, i.e., Kimu Lepcha; that the defendant had however, defaulted in payment of monthly rents from 01.05.2018 and continues to do so despite intimation. It was averred that the defendant was liable to be evicted as he had failed to pay rents for more than four months from the date of intimation regarding change of ownership vide letter dated 31.05.2018. The plaintiff also pleaded that he required the suit property for his *bona fide* need to settle down and have a family, as he had attained marriageable age; that he was an *ad-hoc* employee, employed on a temporary basis and his job may be terminated at any time by the Government of Sikkim; that he received a meagre salary of Rs.18,000/- only and he was not financially



sound; that he was not in a position to purchase land and construct house for himself; and that he was embarrassed to remain dependent on his father who was a Class 'D' employee of the Government working as a mechanic in the SNT Department, Government of Sikkim, as he is currently living with his parents in a joint family; that he desires to shift to the suit property to accommodate himself. He further averred that the defendant is rich; that he owns a five and a half storied commercial-cum-residential building in a prime location in Tibet Road; that he is running a hotel business from the said building and has also let out some rooms therein for running beauty parlour etc. on exorbitant rents; that he has obtained a license from Gangtok Municipal Corporation to carry his hotel business. The plaintiff averred that a legal notice had been issued on 16.05.2019 which was replied to vide letter dated 31.05.2019 stating that the plaintiff was building a false story.

6. In the written statement, the defendant admitted that he was a tenant in the suit property since 1978 and the plaintiff's grandfather was his landlord. He admitted that the suit property was let out at a monthly rent of Rs.4,500/- by the plaintiff's grandfather. He denied knowledge about the execution of the gift deed; the mutation in the name of the plaintiff; and the registration thereof. He denied having received the letter dated 31.05.2018 from the plaintiff's



grandfather. He denied any knowledge that the plaintiff was the owner of the suit property while acknowledging that the grandfather was in fact the owner. He stated that therefore he continued to send the rents through money orders.

7. The defendant also denied that the suit property was *bona fide* required by the plaintiff as averred in the plaint. He denied that he owned the five storied building in Tibet road as alleged but stated that he had taken the property jointly with others. The defendant averred that the grandfather had sought to raise the rent exorbitantly in the year 2016 and thereafter filed an eviction suit against him which was rejected. The defendant averred that the plaintiff had filed the eviction suit sponsored by his grandfather on “artificial grounds”; the plaintiff’s grandfather had approached various businessmen to let out the suit property at a monthly rent of Rs.30,000/-.

8. The learned District Judge framed five issues:

“(i) *Whether the suit is maintainable? (opp)*

(ii) *Whether there has been any default in payment of monthly rent on the part of the Defendant/tenant? (opp)*

(iii) *Whether the suit premises are required by the Plaintiff for bona fide occupation? (opp)*

(iv) *Whether the Plaintiff’s grandfather refused to accept the monthly rent on account of which the Defendant was constrained to send it through money order/post (opd); and*



(v) Whether the Plaintiff is entitled to the reliefs prayed for by him? (opd)”

9. The learned District Judge held that the suit was maintainable; that the plaintiff was the owner of the suit property and the defendant was his tenant. It was also held that the plaintiff have been able to prove that the suit property was required *bona fide* by the plaintiff for his personal use. The learned District Judge also held that the suit property had been transferred by the plaintiff's grandfather to the plaintiff through a registered gift deed dated 17.04.2018; that the plaintiff has been able to prove that the defendant had been intimated vide letter dated 31.04.2018 by the plaintiff's grandfather and the legal notice dated 16.05.2019 on behalf of the plaintiff about the change of ownership; The defendant had sent all the money orders to the plaintiff's grandfather although he was aware about the change in ownership. The learned District Judge was also of the view that the defendant had failed to pay the rents to the plaintiff from May 2018. Accordingly, the learned District Judge decreed the suit in favour of the plaintiff.

10. The learned District Judge has correctly opined that the suit was maintainable as the defendant had himself admitted that he was a tenant of the suit property in his written statement. The only issue raised by the defendant in



the written statement as well as in the present appeal is his lack of knowledge that the plaintiff had been gifted the suit property by his grandfather and therefore he had become the owner thereof. The registered Gift Deed dated 14.03.2018 (exhibit-2) and the application for mutation dated 18.04.2018 (exhibit-3) have been proved by the plaintiff who was the donee. The defendant could not extract anything to doubt the registered Gift Deed during the cross-examination of the plaintiff. The plaintiff also proved that his grandfather had issued letter dated 31.05.2018 (exhibit-4) to the defendant which was received by him. The plaintiff exhibited the dispatch receipt (exhibit-6) dated 31.05.2018 addressed to the defendant as well as the delivery slip (exhibit-5) issued by the post master of Gangtok GPU which evidences the receipt of the letter dated 31.05.2018 by the defendant on 02.06.2018. The letter dated 31.05.2018 clearly informed the defendant that the plaintiff's grandfather had transferred the suit property to the plaintiff. Dhan Maya Rai (PW-2) and Kimu Lepcha (PW-3) - the plaintiff's witnesses, have corroborated the plaintiff's evidence as well.

11. Admittedly, the defendant did not ever offer the rent to the plaintiff. The defendant, as per the written statement, took the stand that the plaintiff's grandfather was the landlord and as he had stopped receiving rents the defendant had been sending monthly rents through postal



orders in his postal address. The postal money orders (exhibit-D3 to D56) exhibited by the defendant reflects that they were all sent to the plaintiffs grandfather and not to the plaintiff. This has been averred by the defendant in his written statement as well. The plaintiff proved that he had sent a legal notice dated 16.05.2019 to the defendant (exhibit-11) in which he had once again reiterated the fact that the plaintiff was now the owner of the suit property. Admittedly, this legal notice was responded to by the counsel for the defendant vide his reply dated 31.05.2019 (exhibit-12). The reply dated 31.05.2019 also took the same position as the defendant had taken before, i.e., that the plaintiff was not the owner of the suit property but it was his grandfather who was the landlord. The plaintiff had averred that the defendant was in arrears of rent from 01.05.2018. The letter dated 31.05.2018 (exhibit-4) issued by the plaintiff's grandfather to the defendant was received by him on 02.06.2018. The suit was filed on 12.08.2019. Even if one were to take the date of receipt of the letter dated 31.05.2018, i.e., 02.06.2018, as the date from which the defendant was in arrears of rent, the defendant would still be clearly in arrears of rent of four months. This would permit the plaintiff to seek the defendant's eviction under section 4 of *the Gangtok Rent Control and Eviction Act, 1956*. When the original landlord, i.e., the plaintiff's grandfather,



had himself informed in writing to the defendant that the plaintiff was now the owner of the suit property, the defendant who was only a tenant ought to have accepted the position.

12. The plaintiff's plea that he requires the suit property for his personal use has been proved through his evidence as well as the deposition of Dhan Maya Rai (P.W.2) and Kimu Lepcha (P.W.3). Dhan Maya Rai (P.W.2) deposed that the plaintiff is her younger son; that the plaintiff wanted to marry and settle down; that the plaintiff was working in a temporary job on a meagre salary; that they were presently living in a joint family consisting of 8(eight) members; that her husband was on the verge of retirement and a Class-IV employee who had taken huge loan for the construction of the house. Kimu Lepcha (P.W.3) – the plaintiff's sister-in-law, also confirmed that they were staying as a joint family consisting of 8 members and that the plaintiff, her brother-in-law had expressed his desire to settle in life and shift to the suit property. These facts would be known to Dhan Maya Rai (P.W.2) and Kimu Lepcha (P.W.3). The defendant could not demolish the evidence led by the plaintiff and his two witnesses. The office order dated 25.04.2018 (exhibit-7) proves that the plaintiff had been appointed as Junior Engineer on *ad hoc* basis in the project division on a pay of Rs.18,000/- (Rupees eighteen thousand) only. The plaintiff's



plea of *bona fide* requirement for his personal use does seem genuine and reasonable and not just devised to evict the defendant.

13. Both the issues of failure to pay rent and *bona fide* requirement have been dealt with by this Court in ***Karma Pintso Bhutia vs. Naresh Subba & Others***¹ on identical facts as correctly pointed out by the learned Senior Counsel for the plaintiff and therefore, the law laid down therein would be applicable. In the said case, it was noticed that the tenants in spite of being informed by their previous landlord that the property had been sold to the plaintiff they failed to acknowledge the fact and continued to send the rents to the previous landlord. This Court held that till the receipt of the letter informing the tenants about the change in ownership, the tenants' failure to pay rents may be excused but thereafter their failure would definitely be default. In the said case, it was also held that the need projected by the plaintiff for the bonafide occupation of the tenanted premises was genuine, a reasonable one and not just devised to evict the tenants. Therefore, the tenants' eviction was justified.

14. The evidence led by the plaintiff clearly establishes that the defendant had failed to pay rents since May 2018 and that amounted to arrears of rents of more than four months.

¹ 2022:SHC:210



Section 4 also permits the Court to evict the tenant on the ground of *bona fide* occupation of the landlord or his dependent. The plaintiff has been able to establish that he requires the suit property for his *bona fide* occupation as the landlord. There is no compelling evidence led by the defendant to deter the learned District Judge not to exercise the discretion in favour of the plaintiff.

15. This Court is of the view that the impugned judgment is a reasoned one and calls for no interference. It is accordingly upheld.

16. The defendant shall vacate the suit property within a period of three months from the date of this judgment. The arrears of rent deposited by the defendant in this Court pursuant to the Order dated 08.12.2023 shall be paid to the plaintiff by the Registry. The defendant shall pay the rent from the date of this judgment till the vacation of the suit property, i.e., three months as directed above to the plaintiff directly.

17. The appeal is dismissed.

18. Parties shall bear their respective costs.

(Bhaskar Raj Pradhan)
Judge