

Present

MR. JUSTICE MD. JAHANGIR HOSSAIN

CIVIL REVISION CASE No. 2004 of 2019

In the matter of :

Narayan Mohonto

----- Petitioner

Versus

Sudhangsu Kumar Banik

----- Opposite-party.

Mr. Md. Sajjad Ali Chowdhury

----- For the defendant petitioner

Mr. Subrato Saha, Advocate

-----For the plaintiff opposite party.

Heard on 2nd August, 2023

Judgment on 10th August, 2023

This Civil Revision has been filed by defendant petitioner against the judgment and decree dated 15.05.2019 (decree signed on 15.05.2019) passed by the learned Senior Assistant Judge and S.C.C Judge, Rangpur in S.S.C Suit No.01 of 2013.

The Rule was issued calling upon the opposite party to show cause as to why the judgment and decree dated 15.05.2019 (decree signed on 15.05.2019) passed by the learned Senior Assistant Judge and S.C.C. Judge, Rangpur in S.S.C Suit No. 1 of 2013 should not be set-aside and or pass such other or further order or orders passed as to this court may seem fit and proper.

Pending hearing of the Rule, let operation of the Judgment and decree dated 15.05.2019 (decree signed on 15.05.2019) passed by the learned Senior Assistant Judge and S.C.C. Judge, Rangpur in S.S.C Suit No. 1 of 2013 be stayed for a period of 06(six) months from date.

The facts leading to this Civil Revision in brief are that:-

The plaintiff opposite party filed a suit for eviction in the court of S.C.C. Court, Senior Assistant Judge, and S.C.C Judge, Rangpur being S.S.C Case No. 1 of 2013 for evicting the defendant petitioner. Plaintiff opposite party prays that the defendant petitioner is the monthly tenant of the plaintiff opposite party in respect of the suit premises mentioned in the schedule Ka of plaint at the rate of tk. 1500/00; that the shop premises became vary old and the same is in dilapidated condition which required to be constructed; that the defendant petitioner paid monthly rent up to month of December, 2012 and thereafter the defendant petitioner stopped to make payment of the rent and in spite of repeated demand he did not make payment as such the defendant petitioner became habitual defaulter; that finding no way the plaintiff served lawyer notice under section 106 of the Transfer of Property Act on 13.03.2013 requesting the defendant petitioner to hand over possession of the shop premises on 1.04.2013 which the defendant petitioner refused to accept the said lawyer notice. Hence the case.

It appears from the record that the defendant petitioner contested the suit by filling written statement denying the material allegation contending inter alia that the land of the suit premises originally belonged to Joshodamayee Bonik and during her life time constructed

shop room gave rent to different person and after the year, 1974 she went to India with her family; that at time of her going she gave oral gift the suit premises to Sontosh Kumar Sing; that Sontosh Kuamr has been possessing the suit premises by doing business in the name and style as “Sontosh Bekari” and thereafter he died leaving only son Sunil Chandra Singh and during his continuation of business thereon he sold the same to defendant petitioner on 30.05.89 and since than the defendant has been possessing the suit premises by doing business as such it can not be said the plaintiff opposite party is the owner of the suit premises and the defendant petitioner was never was the tenant of the plaintiff opposite party .

Mr. Md. Sajjad Ali Chowdhury, learned Advocate for the defendant petitioner submits that the matter under section 106 of the Transfer of property act is redundant as the defendant petitioner is not the tenant of the plaintiff opposite party rather the defendant petitioner himself is the owner of the suit premises through purchase; that this being the fact the learned court below misconceived and misconstrued the fact as such arrived at wrong decision.

Mr. Md. Sajjad Ali Chowdhury, learned Advocate for the defendant petitioner further submits that during continuation of the cross examination Sudhansu Kumar died, as it appears from judgment at page-3, but his evidence to such extent was not discussed as to certainty of fact and subsequent evidences led by PW1 does not support the plaint’s case by corroborating by the other PWS. The learned Trial Court arrived at a wrong decision in decreeing the suit and the plaintiff

petitioner fail to establish their case that the defendant petitioner was tenant as per Tenancy Act under the plaintiff. The learned Trial Court ought to have dismissed the case of the plaintiff. Lastly he prayed for absolute the rule.

Mr. Subrata Saha, learned Advocate for the plaintiff opposite party submits that in the original case plaintiff produced 4 witnesses and categorically the P.W.1 placed his statement before the Trial court and produced the documents in support of the case and proved that the defendant is the monthly tenant of the plaintiff. The other witnesses also by their oral witness of supported the case and the subject that the defendant is a really tenant under the plaintiff.

Mr. Subrata Saha, learned Advocate for the plaintiff opposite party further submits that it is admitted by the defendant by answering of the notices served by the plaintiff that defendant is the tenant of the plaintiff which is Exhibit as -2. In where the defendant make statement by his lawyer that the plaintiff receipt arrear rent money from the defendant.

Mr. Subrata Saha, learned Advocate for the plaintiff opposite party also further submits that there are another documents submits by the plaintiff which called “প্রত্যয়নপত্র” which is Exhibit as -3 in the Trial Court. In where the defendant clearly stated that he paid 43,200/- (Forty there thousand two hundred) taka for the arear rent money paid to the plaintiff.

Mr. Subrata Saha, learned Advocate for the plaintiff opposite party lastly submits that the case is clearly proved by the plaintiff in the Trial Court by adducing oral and documentary evidences that the defendant is clearly a tenant under the plaintiff. The defendant filed some fake documents before the Trial Court by demanding that he purchase the suit premises from the heirs of the owner of the suit property which was disbelief by the Trial Court. As such he prayed for discharge the Rule and upheld the judgment. In support of his submission he referred 50 DLR (AD), page-112 and 9 BLC (AD), Page-270.

I have carefully examined the record and annexure papers and the judgment with the record. We have elaborately examined the L.C.Rs. It transpires from the judgment of the learned Lower Courts i.e. S.S.C Court that he elaborately discussed about the documents submitted by the plaintiff in the case which was Exhibit as-1-5(Kha). Learned Trial Court in his discussion clearly stated that the plaintiff by producing the PWs clearly established his case and the defendant fail to shift the statement of the PWs by cross examination. He also discussed the statement of D.W.2 i.e. Shailen Banik who admit in his deposition that he heard that the owner of the shop was Sudhangsu Kumar Banik and later on son Sudhangsu Kumar Banik was in possession of the suit premises.

I have carefully examined the Exhibit 2 and 3 where from it reveals that the defendant has clear admission at on statement thereon that he paid the arear rent to the plaintiff which clearly indicates that the defendant is tenant under the plaintiffs. The documents filed by the defendant in a simple paper which was not proved properly before the Trial Court which is disbelieved by the court and the findings given by the Trial Court is reasonable and acceptable by the Court.

When it is established that a person is a tenant then he has no right to stay in a property by demanding that there is dispute of title in the land or made out any third case. It is the settle principle of our Apex Court now such tenants must quick from such suit land or property. In support of such principle learned Advocate for the plaintiff opposite party referred 50 DLR (AD), page-112 wherein it is held that:-

“It is the consistent view of this court that once it is established that a person is a tenant he cannot be permitted the continuance of the tenancy to resist a suit for eviction by his landlord as a subsequent purchaser from a co-sharer without surrendering his possession to his landlord. As, in the instant case, it is found that the petitioner was a tenant under the respondents to whom he paid rents upto December, 1990, he is debarred from setting up a claim of title in himself to resist the decree for eviction ”.

In support of his submission learned Advocate for the plaintiff opposite party referred 9 BLC (AD), page-270 wherein it is held that:-

“The law is well settled that the moment a tenant denies the title of his landlord he forfeits his right to stay in the premises. Moreso, the judgment and decree of the trial for ejection on the ground of default in payment of rent and bonafide requirement are borne out by the evidence, oral and documentary on record which need not require to be interfered.”

In present case it is clearly found from the judgment and the other documents which is Exhibit and proved by the Trial Court that there is a admission by the defendant that he is the tenant of the plaintiff opposite party in the suit premises which is clearly admitted by answering of the notice given by plaintiff to the defendant which is Exhibit-2 and proved before the Trial Court and regarding this Exhibit the Trial Court discussed meticulously regarding the admission. Further the learned Trial Court meticulously examined and discussed about the “প্রত্যয়নপত্র” which is Exhibit-3 before the Trial Court. In where it is clearly found that there is and admission as tenant by the defendant. It reveals that the Trial Court in his examination and decision find out the real picture about the signature of the defendant.

Upon such I do not find any illegality or miscarriage in the findings of the Trial Court. Trial Court rightly gave his decision in the impugned judgment. I do not find any reason to interfere upon the impugned judgment.

Hence the judgment of the Trial Court is upheld.

In the result the rule is discharged.

The order of stay granted earlier by this Court stands vacated.

Send down the L.C.Rs and a copy of this judgment be transmitted to the concerned Court at once.

Md. Majibur Rahman

Bench Officer.

