

***IN THE COURT OF CIVIL JUDGE NO. 2, KAMRUP, GUWAHAI.***

***Present*** : ***Sri S.N. Sarma , LLM. AJS,***  
*Civil Judge No. 2,*  
*Kamrup, Guwahati.*

***Reference*** : ***Title Appeal No. 92/10***

***Appellants*** : ***Smti. Rekha Agarwala & two ors.***  
vs

***Respondents*** : ***Smti. Anuroma Das & another .***

***For the appellants*** : ***Sri R.C. Sancheti , Advocate***

***For the respondents*** : ***Sri A.C. Sarma , Advocate***

***Date of hearing*** : ***8/8/12***

***Date of Judgment*** : ***22/8/12***

***JUDGEMENT***

***1.*** ***This Appeal is preferred against the Judgment and Decree dated 30/06/10 passed by the learned Munsiff No. 3 in Title Suit No. 193/05 (old) / Title Suit No. 659/06 (new) .***

2. *The plaintiffs' case in brief is that vide agreement dated 29/12/99 the defendants No. 1 and 2 took the suit premises on rent for a period of three years @ Rs. 6,800/- from Late Binod Kumar Agarwala who was the husband of plaintiff No. 1 and father of plaintiff No. 1 and 3. The said agreement expired on 30/12/02 and a fresh agreement of tenancy was entered into by the defendants and Late Binod Kumar Agarwala on 30/12/02 for a period of 3 years. Binod Kumar Agarwala expired on 29/3/1999 leaving the plaintiffs as legal heirs. Since the month of July, 2004 the defendants have stopped paying the rent. In spite of verbal request made to the defendants, the defendants have not made the payment and as such the plaintiffs sent pleader's notice to the defendants on 21/3/05 asking them to vacate the suit premises on the ground of default of monthly payment of rent and bonafide requirement of the suit premises by the plaintiffs. The plaintiffs are in bonafide requirement for the suit premises and as such prays to evict the defendant from the suit premises.*

3. *The defendant contested the suit by filing written statement . Defendant's case is that the agreement dated 29/12/99 was not executed between her and late Binod Kumar Agarwala and that both the defendants entered into an agreement of tenancy with Late Binod Kumar Agarwala on 1/4/03 for a period of 3 years and the defendants deposited a sum of Rs. 2,50,000/- with said late Binod Kumar Agarwala as security deposit with condition that the said security amount shall be returned as an when agreement expires and on cancellation of deed whichever is earlier. The defendants paid a sum of Rs. 1,00,000/- as advance amount to be deducted every month to the extent of 50% of rent payable and this amount is yet to be adjusted and the plaintiffs brought the instant suit*

*without adjustment of advance amount and without returning the security deposit. The*

*plaintiff No. 1 receipt the rent for the month of July, 2004 but did not issue rent receipt for which the defendants had to deposit the rent in Court. After the death of late Binod Kuamr Agarwala, the rent was enhanced to Rs. 7,200/- per month with effect from 1/4/04.*

4. *After hearing both sides and going through the pleadings of the parties following issues were framed .*

### ***ISSUES***

- 1. Whether there is any cause of action for the suit ?*
- 2. Whether the suit is maintainable in the present form and manner ?*
- 3. Whether the defendants are defaulter in payment of rent for the suit premises ?*
- 4. Whether the suit premises is in bonafide requirement for the plaintiffs ?*
- 5. Whether the defendants paid Rs. 1,00,000/- to the predecessor-in-interest of the plaintiffs to be deducted every month to the extent of 50% of the rent payable ?*
- 6. Whether the plaintiffs are entitled to get the decrees as prayed for ?*
- 7. To what relief/reliefs are the plaintiffs entitled ?*
- 8. Whether the defendants deposited Rs. 2,50,000/- as security to the predecessor-in-interest of the plaintiff ?*

5. *Plaintiffs side adduced evidence of two witnesses and exhibited one document vide Exhibit – 1 . Defendant side also exhibited some documents and*

*adduced evidence of two witnesses.*

6. *After hearing argument, learned Munsiff No. 3 was pleased to dismiss the suit vide his order dated 30/6/10 in T.S. No. 659/06.*

7. *Being highly aggrieved with the aforesaid judgment and order plaintiff as appellant has preferred this appeal on the following grounds :*

### **GROUNDS**

1. *For that the finding of the learned Munsiff on Issue No. 5 and 8 are erroneous and not borne out of the records and as such the impugned order is liable to be set aside.*
2. *For that the finding of the learned Munsiff on Issue No. 5 and 8 that the defendants paid Rs. 1,00,000/- to the predecessor-in-interest of the plaintiffs to be deducted every month to the extent of 50% of rent and that the defendants also deposited a sum of Rs. 2,50,000/- to the predecessor-in-interest of the plaintiff as security deposit is perverse and liable to be set aside.*
3. *For that the finding of the learned Munsiff on Issue No. 3 that as the security deposit of Rs. 2,00,000/- and some amount of Advance money was still lying with the plaintiff the defendants are not defaulters in payment of rent in respect of suit premises is contrary to the records and not in conformity with the law and as such is liable to be set aside.*
4. *For that the learned Munsiff misread and misunderstood the ratio laid down by the Hon'ble Supreme Court in the cases reported in 1986 (2) SCC 378 and 1994 (2) SCC – 289 and passed the impugned judgment and*

*decree under misconception of law. In the instant case, no advance deposit was lying in the hand of the plaintiffs/appellants and the security amount cannot be treated as an advance since the same is refundable at the time of vacating the suit premises. In the instant case the husband/father of the appellants expired on 29/9/03 after execution of the said agreement and as such the said agreement became null and void and has not binding effect. However, the said tenancy was continued in pursuance of an oral agreement between the appellants and respondents and the amount of monthly rent was fixed at Rs. 7,200/- with effect from 1/10/03 and the appellants have also agreed to continue to adjust the advance amount of Rs. 1,00,000/- paid to their deceased husband/father by 50% and in pursuance of the said oral agreement, the respondents stated to pay Rs. 3,600/- per month to the appellants by adjusting Rs. 3,600/- per month against total amount of Rs. 7,200/- the month of June, 2004 and thereafter all of a sudden, started to deposit the rent in court from the month of July, 2004 @ Rs. 3,600/- p.m. By adjusting Rs. 3,600/- p.m. Against the advance amount of Rs. 1,00,000/- . It is stated that the aforesaid advance amount on 31/07/05 got adjusted up to amounting to Rs. 99,600/- and the balance advance amount of Rs. 400/- was to b e adjusted against the monthly rent of August , 2005 but*

*the respondents instead of adjusting only Rs. 400/- adjusted excess amount of Rs. 3,200/- by depositing only the rent of Rs. 3,600/- in court for the month of August, 2005 and even continued to deposit only Rs. 3,600/- per month instead of Rs. 7200/- per month till the month of June, 2006 and as such the respondent is a defaulter in the eye of law and the learned Munsiff did not consider that aspect of the matter and wrongly decided that the*

*respondent is not a defaulter on the ground that the defendants cannot be leveled as defaulter as the advance amount and security deposit lying unadjusted in the hands of the landlord.*

- 5. For that the learned Munsiff failed to consider that the respondents failed to pay the rent to the appellants since the month of July, 2004 and as such the respondents were defaulter in payment of rent and the learned Musniff having found that no rent receipt for the month of July, 2004 was produced by the respondents to show that the rent for the month of July, 2004 was paid and also having found that the cash book (Exhibit – M) produced by the respondents to show that the rent for the month of July, 2004 was paid but in could not be clear for which month the rent was paid since in exhibit 5(1) rent is shown to be paid on 8/7/04 though as per the agreement rent is to be paid on or before the 7<sup>th</sup> day of the succeeding month, ought to have decreed the suit on the point of defaulter.*
- 6. For that the learned Munsiff failed to consider that the agreed rent of Rs. 7,200/- was subject to enhancement by 15% after expiry of each three years but the respondent did*

*not enhance the rent after the expiry of three years but the respondent did not enhance the rent after the expiry of three years and continued to deposit the rent in court @ Rs. 7,200/- only per month and as such the respondents are defaulter and are liable to be evicted.*

- 7. For that the learned Munsiff did not consider that the security amount is not the advance amount and is liable to be refunded only at the time of vacating the suit premises.*
- 8. For that the learned Munsiff failed to consider that the appellant stated that the suit premises is the fit place for her business and on that ground alone ought to have decreed the suit on the ground of bonafide requirement*

*because it is the choice of the landlord which premises it fit for her business purpose.*

*9. For that the finding of the learned Munsiff that in order to show that land lady is in bonafide requirement of the suit premises and to show that she has initiated process for which the premises is required is perverse and erroneous and is liable to be set aside.*

*10. For that the learned Munsiff failed to consider that the appellant No. 1 is a widow having two minor children i.e. appellant No. 2 and 3 and hence facing unusual hardship as the rent received for the tented premises is not sufficient to maintain her family and expenses towards educating her minor children and to meet her expenses she wanted to start a business in the suit premises which is suitable for her; but the learned Munsiff rejected the bonafide requirement of the appellants on some imaginary ground and as such impugned judgment and decree is liable to be set aside.*

*11. For that in any view of the matter the impugned judgment and decree is liable to be set aside.*

*8. I have gone through the lower court record and heard learned counsel for both sides and following points are formulated for decision and discussion .*

- 1. Whether the learned Munsiff has rightly decided the suit by way of proper appreciation of evidence on record ?*
- 2. Whether the learned Munsiff has committed any error while passing the impugned judgment and order and whether any interference is required by this appellate court ?*

## **DECISION & REASONS THEREOF**

9. Both the aforesaid points are co-related and as such both the points are taken together for consideration . Issue No. 3 relates whether the defendants are defaulter in payment of rent for the suit premises. Plaintiff in his pleadings as well as evidence stated that a room covering an area of 591 sq. ft. the details of which are given in the schedule was let out to the defendants by the husband/father of the plaintiff for a period of 3 years vide agreement dated 29/12/99 at the monthly rent of Rs. 6,800/- only along with other terms and conditions . The said agreement expired on 30/12/02 and a fresh agreement of tenancy was entered into by the husband/father of the plaintiff and the defendants on 1/4/03 commencing from the date of execution of the agreement of tenancy for a further period of 3 years along with some other terms and

conditions. The husband/father of the plaintiffs the original landlord has expired on 29/9/03 leaving the plaintiff as his legal heirs and as such the plaintiffs are now the legal owners of all the moveable and immovable properties including the suit premises and the plaintiffs have become the land lady/landlord in the above agreement of tenancy. The defendant had suddenly stopped to pay the monthly rent of the demised property from the month of July 2004 in spite of verbal requests to the defendants to pay the rent of July, 2004 but they have failed to pay the same . Ultimately, the plaintiffs had to sent a pleader's notice on 21/3/05 through her Advocate Sri Narayan Chandra Kalita to the defendants asking them to vacate the demised property and hand over the vacant possession on or before 30/4/05 on the ground of default of monthly payment of rent and bonafide requirement of the premises but they have not vacated the same.

10. Defendant No. 1 Anuroma Das in her Written Statement stated that an

*agreement for lease was executed between Binod Kumar Agarwala predecessor-in-interest of the plaintiffs and the defendants on 01/04/03 for the period of three years. The defendant No. 2 was a tenant in respect of the suit premises under the predecessor-in-interest of the plaintiffs and one lease agreement was executed on 29/12/99 for a period of three years. The defendant No. 1 and 2 thereafter entered into a fresh agreement for lease on 1/4/03 for a period of three years. The defendants had deposited a sum of Rs. 2,50,000/- only as security deposit with the condition that the said security amount shall be returned to the tenants as and when agreement expires or on cancellation of the deed which ever is earlier. The plaintiffs are silent relating to return of security money either in the plaint or in the Advocates notice. The*

*plaintiffs have filed the instant suit with malafide intention and unlawful gain without any legal and just cause. Apart from the security deposit of Rs. 2,50,000/- only as an advance amount to be deducted every month to the extent of 50 per cent of rent payable. The said amount was to be adjusted and the plaintiffs brought the suit without adjustment of advance amount and without returning the security deposit. The defendant paid the rent for the month of July, 2004 to the plaintiff No. 1 who took the said rent but did not issue rent receipt for which the defendants had to deposit the rent under the provision of the Rent Control Act. The rent was initially fixed at Rs. 6800/- per month . But after the death of Vinod Kumar Agarwala the rent was enhanced to Rs. 7200/- per month with effect from 1/4/04 . The defendants paid Rs. 3600/- in cash and remaining Rs. 3600 adjusted from the advance paid to the than landlord.*

11. *Learned counsel for the appellant has argued that defendant has not paid the lawful rent and as such he is liable to be evicted in respect of his claim . He relied on the following decisions :*

***(1988) 1 GLR 121***

***2005 (Suppl) GLT 540***

***2000 (2) GLT 75***

***2001 (2) GLT 471***

***AIR 2000 Supreme Court 534***

*He further argued that although the defendant has deposited some amount of rent in the court that has not been deposited as per Section*

*5(4) of the Assam Urban Areas Rent Control Act and as such he is a defaulter. In this connection , he relied on the decision of our own Hon'ble High Court in 2005 (Suppl) GLT 540 wherein the court held that compliance of statutory provision U/S 5(4) of Assam Urban Areas Rent Control Act is mandatory failing which the tenant becomes a defaulter. On the other hand, learned counsel for the respondent has submitted that the defendant has already paid an amount of Rs. 1,00,000/- as advance and as security of Rs. 2,50,000/- has already been paid and as such rent has to be adjusted from the advance amount . In this connection, learned counsel has relied upon the following decision :*

***(1994) 2 Supreme Court Cases 289***

***(1986) 2 Supreme Court Cases 378***

12. *He further submitted that he paid rent for the month of July , 2004 to the plaintiff No. 1 who took the said rent but did not issue rent receipt for which the defendant has to deposit the rent under the provision of Rent Control Act. I have gone through the rent deposit challan and found that rent deposit challans were duly*

*exhibited. Defendant in his evidence stated that he tendered rent to the plaintiff and while the plaintiff refused to accept the same, the same was deposited in the court. There is no mention in the pleading that the defendant has not deposited the rent in the court in accordance with Section 5(4) of the Assam Urban Areas Rent Control Act. In this regard, there is no cross-examination from the side of the plaintiff.*

13. *In (1994) 2 Supreme Court cases 289 which has been relied by the respondent, the Hon'ble Supreme Court held that adjustment from*

*deposit made by the tenant with landlord should be made even without a specific request by tenant in that behalf.*

14 *What has emerged from the foregoing discussions, the facts remains that the defendant was tenant under the plaintiff and he was regularly paying rent to the defendant and on July, 2004 while plaintiff refused to issue rent receipt the defendant deposited the rent in the court according to the provision of rent control Act . The rent was mutually fixed at Rs. 6800 p.m. But after the death of Vinod Kumar Agarwala the rent was enhanced to Rs. 7200/- with effect from 1/4/04. The defendant paid Rs. 3600/- in cash and remaining Rs. 3600/- adjusted from the advanced paid to the the then landlord. From the above discussion, it appears that defendant No. 1 was not a defaulter and as such learned Munsiff No. 3 has rightly held that the defendant No. 1 is not a defaulter. As regards the issue whether the suit premises is bonafide requirement for the plaintiffs, it is stated in the plaint as well as in her evidence as PW 1 that the income from the monthly rent of the suit premises is not sufficient to meet the expenditure and as such the plaintiff No. 1 has decided to start a business in the suit premises which is fit for any type of business. The plaintiffs have no other accommodation fit for doing business.*

15. Defendant No. 1 in his pleadings stated that the plaintiffs have one shop, adjacent to the demised premises, where the plaintiff No. 1 has a P.C.O. And Rollick Ice Cream Parlour. Plaintiff No. 1 earn handsome amount from the said business which is enough for maintenance of her family and expenses of children . Plaintiffs also let out a portion of land to a motor garage under the name and style of M/S

Supreme Automobiles. The plaintiffs have also four numbers of flats in Rangoli Apartment situated at the back side of the same compound. They have good rental income from those flats. There are also income from the other business left by the predecessor-in-interest of the plaintiffs. Thus, from the above statements it has become crystal clear that there can not be financial distress for their bread and education expenditure. PW 1 in his cross-examination stated that out of four flats , she resided on two flats and rests of the two flats had been let out . She further stated that the PCO adjacent to the suit property was conducted by his brother and as a rent of the said PCO she received an amount of Rs. 1000/- from his brother. She also admitted the fact that in the said PCO there is vodafone connection center in her name.

In order to show that the plaintiff is in bonafide requirement of the suit premises, she has to show some positive act and that she has initiated some positive step for which the premises is required. The requirement of law as regards bonafide requirement is that the requirement of the landlord is genuine and his claim is not motivated by extraneous consideration. Mere desire is not sufficient there must be an honest and genuine need. In this connection , learned counsel for the respondent has relied upon decision of our Hon'ble Gauhati High Court in (2003) 1 GLR 296 wherein it is said that there should be materials on record to prove the requirement as honest and genuine . Burden lies on the landlord to satisfy the court that accommodation was not

*suitable. In the instant case, appellant having two flats, vodafone connection centre and PCO which is let out to the brother of appellant makes the point clear that the requirement of appellant was not honest and genuine.*

*17. In such a circumstances, I am of the view that learned Munsiff No. 1 was justified while holding the issue No. 4, against the plaintiff.*

*18. Issue No. 5 and 8 co-related and as such learned Munsiff discussed the said issues together. Plaintiff in his plaint as well as evidence stated that agreement of tenancy was entered into by the husband of plaintiff and the defendants on 1/4/03 commencement from the date of execution of agreement of tenancy for further period of three years along with some other terms and conditions. In the aforesaid documents the tenancy shall remain in force for a period of three years from the date of its commencement. An amount of Rs. 1,00,000/- only as advance amount to be deducted every month to the extent of 50% rent payable and another condition as per the agreement was that the security deposit of Rs. 1,50,000/- which is still with the landlord would remain with him as a fresh security with another Rs. 1,00,000/- total Rs. 2.5 lacs deemed to be paid by the present tenant Anuroma Das and the partner on the date of execution of the deed of agreement. During the evidence and cross-examination between the parties it was not disputed by any of the parties that an advance amount of Rs. 1,00,000/- was not paid by defendant. It is also not denied by the plaintiff that defendant did not deposit an amount of Rs. 2,50,000/- as security. Under the above circumstances, I am of the view that the learned Munsiff has rightly decided in Issue No. 5 and 8 in favour of the plaintiff.*

*19. Defendant has taken the plea that the suit is not maintainable. However, there is no materials on record as to how the suit is not maintainable . Therefore, the*

*suit is very much maintainable in facts and law.*

**20.** *The plaintiff suit is for eviction of defendant from the suit property and arrear rent. The plaintiff's case is that the defendants are defaulter and the suit property is bonafide requirement to her. On the other hand, defendant has pleaded that he is not a defaulter and he regularly pay rent to the plaintiff and while plaintiff refused to issue rent receipt on the month of July, 2004 he deposited the same in the court. The pleadings of the parties it appears that there is a bonafide contention between the parties which needs adjudication and as such I am of the view that there is a cause of action for the suit and learned Munsiff has committed an error holding that there is no cause of action for the suit.*

**21.** *From the foregoing discussion, I am of the view that the learned Munsiff No. 3 has not committed error in dismissing the the suit. In view of the aforesaid discussions and decisions the appellant is not entitled for any relief.*

### **ORDER**

**22.** *In the result, the appeal is dismissed on contest without cost. The impugned judgment and order passed by the learned Munsiff No. 3 dated 30/6/10 is upheld . Send back the record of T.S. No. 659/06 along with the copy of this judgment . Prepare the decree accordingly.*

*Given under my hand and seal of this court on this the 22<sup>nd</sup> day of August , 2012 at Guwahati.*

**Civil Judge No. 2,  
Kamrup, Guwahati.**

**Dictated & corrected by me  
Civil Judge No. 2,  
Kamrup, Guwahati.**

