

2. Sanjay Sah @ Sanjay Kumar.

3. Manju Devi @ Manju Kumari , Wife of Late Sudhir Kumar Sah.

(Plaintiff in the court below)- **Petitioners.**

1. Smt. Poonam Devi , Wife of Shri Dhirendra Kumar Singh.

Both residents of Village- Mohmadpur, Sinuara, P.S.-Bahadurpur,
District-Darbhanga.

3. Smt. Poonam Devi Wife of Shri Surendra Kumar Gupta, D/o Late Kumar Kalayan Sah, resident of Mohalla-Maulaganj, P.S.-Laheriasarai, District-Darbhanga.

Appearance :

For the Respondent/s : Mr.

7 01-05-2015 Heard Mr. Ajay Kumar Sinha, learned counsel
for the petitioners and Mr. Vinay Kirti Singh, learned counsel
appearing for the respondents.

Taking exceptions to the refusal to pass a decree in terms of order XII Rule 6 CPC on the basis of admission, the plaintiff has filed this revision application against the order

dated 10.03.2010 passed in Title Suit No.23 of 2008.



The plaintiff filed the suit for eviction of the tenant defendant on the sole ground of expiry of lease. It was the case of the plaintiff that the defendant was inducted as tenant in the suit premises on the basis of the registered lease deed from 31.10.1997 for ten years up to 31.10.2007. The suit has been filed in the year 2008. The defendant appeared in the suit and denied the averments made by the plaintiff with regard to the default in payment of rent and also asserted that the plaintiff has prevented him doing his business in the suit premises since long back. However, the defendant in his written statement has accepted that the lease period has expired on 31.10.2007. In view of this admission, the plaintiff filed a petition praying for grant of decree under the provisions of order XII Rule 6 CPC. The defendant resisted the said prayer. By the impugned order, the learned court below has rejected the prayer of the plaintiff-petitioner mainly on the ground that there has been series of litigation going on between the parties for the suit property.

Mr. Sinha, learned counsel for the petitioner has submitted that the reasons assigned by the learned court below for refusing the prayer of the plaintiff for decree on the basis of



admission cannot be sustained in law and in the facts and circumstances of the case, the learned court below has failed to exercise the jurisdiction. It has been canvassed that the lease period has admittedly expired and in the suit for eviction on the sole ground of expiry of lease, the court cannot refuse the decree for eviction even when the defendant might have been pursuing his other claims against the plaintiff. The learned counsel has also placed reliance on the decision of the Apex Court in the case of **Karam Kapahi Vs Lal Chand Public Charitable Trust, 2010 (4) SCC 753** and the reliance has been placed in particular on paragraphs 45 to 48 of the decision to strengthen his submissions.

Mr. Singh, the learned counsel for the defendant-opposite party, on the other hand, has submitted that the defendant has been prevented by the plaintiff from going in the suit premises and doing business therein and a money suit has been filed by the defendant against the plaintiff claiming compensation and damages which is still pending before the competent court. It has been further submitted by the learned counsel that the present suit has been filed with malafide intention to preempt the relief which may be granted to the defendant in the money suit. It has been also submitted that the



defendant is not in possession over the suit property and therefore there is no scope for filing the suit for eviction and in particular when the earlier suit for eviction filed by the plaintiff had been withdrawn without any leave to file a fresh suit. The learned counsel, however, has submitted that the tenancy was created by the registered deed of lease and the period of lease has expired.

After careful consideration of the facts and submissions on behalf of the parties, it is manifest that the defendant has not denied his status as a tenant of the plaintiff in the suit property and has also not denied the expiry of the lease which was the basis of the tenancy. The learned court below has rejected the prayer of the plaintiff for grant of a decree on the basis of admission only on the ground that a series of litigation is pending between the parties for the suit property.

It is evident from the provision of order XII Rule 6 CPC as interpreted by the Apex Court in the case of **Karam Kapahi (Supra)**, that the said provision is meant to provide the plaintiff a right to speedy judgment and in appropriate cases the plaintiff can press for judgment as a matter of legal right, on the basis of admission of the defendant. In the present case, after the acceptance of the fact by the defendant that the tenancy



has come to an end after the expiry of the lease period, the decree for eviction can be rendered on admission by the court. The learned court below has committed material irregularity in this fact situation to hold that a proper trial is essential in the interest of justice as other litigations are pending between the parties for the suit property. The learned counsel for the defendant-opposite party has submitted that a money suit is pending against the plaintiff-petitioner before the court of Sub-Judge, Darbhanga and there is no other civil litigation pending. By no stretch, the pendency of a money suit filed by the defendant against the plaintiff can be a valid ground to resist the relief for eviction and that too when the crucial fact of tenancy and the expiry of lease period have been admitted.

In result, this Court comes to the conclusion that the court below has committed error of jurisdiction in refusing the prayer of the plaintiff for a decree on admission as envisaged under Order XII Rule 6. The civil revision application is accordingly allowed. The impugned order is set aside and the matter is remitted back to the court below to pass a fresh order on the petition filed by the plaintiff in accordance with law. It is, however, clarified that the claim of the defendant in the pending money suit shall in no manner be

prejudiced by this order.

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(V. Nath, J)

