

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.4 of 2015

- 1.1. Lalita Devi Widow of Late Satya Narayan Thakur, Permanent resident of Mohalla - Panjiyar Tola, Ward No. 11, P.S. - Rosera, District - Samastipur.
- 1.2. Raj Kishor Thakur, S/o Late Satya Narayan Thakur, Permanent resident of Mohalla - Panjiyar Tola, Ward No. 11, P.S. - Rosera, District - Samastipur.
- 1.3. Dharmveer Thakur, Son of Late Satya Narayan Thakur, Permanent resident of Mohalla - Panjiyar Tola, Ward No. 11, P.S. - Rosera, District - Samastipur.
- 1.4. Ravi Kishor Thakur, Son of Late Satya Narayan Thakur, Permanent resident of Mohalla - Panjiyar Tola, Ward No. 11, P.S. - Rosera, District - Samastipur.
- 1.5. Kalyani Devi W/o Shailendra Kumar R/o Town/ Mohalla- Jamui, P.S.- Jamui Town, District- Jamui.
- 1.6. Kalpana Devi W/o Vijay Thakur R/o Mohalla- Sonar Tola, Lal Bagh, P.S.- Darbhanga Town, District- Darbhanga.

... .. Petitioner/s

Versus

Santosh Kumar Sahu S/o Late Sukhdeo Sahu Resident of Mohalla Dagwar Toli, Ward No. 10, under Town Rosera, P.S. Rosera, District Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vinay Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Shailendra Kumar, Advocate
		Mr. Rajiv Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 29-02-2024

The instant civil revision petition has been filed under Section 14(8) of Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (hereinafter 'the BBC Act') against the judgment dated 20.11.2014 and decree dated 02.12.2014 passed by learned Munsif, Rosera in Eviction Suit No. 09 of 2001, whereby and whereunder the learned Munsif directed the defendant/petitioner to handover the vacant possession of the



suit premises to the plaintiffs/opposite party.

2. Briefly stated, the facts of the case are that the plaintiff/opposite party filed Eviction Suit bearing No. 09 of 2001 in the court of learned Munsif, Rosera seeking relief of grant of decree of eviction from the suit premises, a shop, of the original petitioner, who was defendant before the learned court below and have subsequently been substituted by their legal heirs in the present petition. In his plaint, the plaintiff set forth his case that the defendant came into possession of the suit premises in capacity of the tenant of the father of the plaintiff since 1982 and he had been running a business of repairing and making ornaments of gold and silver. The plaintiff's father died on 06.07.1996 and thereafter, the defendant approached the plaintiff on 10.07.1997 for letting out the said portion to him so that he may continue his business in the suit premises. The defendant agreed to the fresh terms and conditions including enhancement of rent to the rate of Rs.600/- per month with another stipulation that whenever the plaintiff would need the suit house for his personal necessity then he would vacate the premises. On the aforesaid terms and conditions, the defendant kept on paying rent regularly till 30.11.2001. As the plaintiff felt the necessity of the suit premises as he wanted to start his own



business, he asked the defendant to vacate the suit premises on 30.11.2001 but the defendant did not vacate the suit premises and finally refused to vacate the premises on 21.12.2001 and cause of action arose for filing the suit.

3. The defendant entered his appearance denying the claim of the plaintiff that he is tenant of the plaintiff. The defendant submitted that he was tenant of late Sukhdeo Sahu and after his death his widow Most. Bholi Devi, who inherited the property, became the landlady to whom he had been regularly paying the rent, initially at the rate of Rs.100/- per month which was subsequently enhanced to the rate of Rs.200/- per month. The defendant claimed that the plaintiff was not the son or legal heir of late Sukhdeo Sahu and as such, there was no landlord and tenant relationship between the plaintiff and the defendant. That apart there was no personal necessity of the plaintiff as he had been running his shop in the same building and only on account of business rivalry, he wanted to get the defendant evicted from the suit premises.

4. The learned Munsif, having regard to the evidence adduced on behalf of the parties decreed the suit in favour of plaintiff and directed the defendant to vacate the disputed house mentioned in Schedule of the plaint within 60



days and handover the possession in favour of the plaintiff. Aggrieved by the impugned judgment and decree, the instant civil revision has been filed by the defendant/petitioner.

5. Learned counsel for the defendant/petitioner submitted that the learned Munsif failed to appreciate the case of the parties in proper perspective and went on to record his finding on surmises and conjectures. The learned Munsif relied on such evidence of the plaintiff which *per se* is not admissible in the eye of law. Learned counsel further submitted that learned trial court wrongly recorded a finding of landlord and tenant relationship between the parties placing its reliance on Ext.1 which is an adoption deed holding that from the said document it was apparent that plaintiff was adopted son of original landlord, late Sukhdeo Sahu. Learned counsel further submitted that but the said document, if scrutinized cautiously, will show that the adoption is not legal in the eye of law and plaintiff was not legally adopted son/heir of original landlord. Hence, for this reason he was not entitled to maintain eviction suit because the widow of original landlord was alive at the time of filing of the suit and even thereafter. Learned counsel while relying to Ext.1 which is a deed of adoption pointed out that this was executed on 23rd of September, 1993 and admittedly, the plaintiff was



aged more than 15 years. Section 10 of Hindu Adoptions and Maintenance Act, 1956 provides that a person shall be capable of being taken in adoption only if he or she has not completed the age of 15 years. So the adoption was not a valid adoption under the provisions of law. If the plaintiff was not an adopted son of late Sukhdeo Sahu he has no right to maintain a suit for eviction on the ground of personal necessity against the defendant/ petitioner. Further, at the time of filing of the eviction suit, wife of the original landlord was alive and the suit ought to have been filed in her name. Moreover, it is also apparent from Ext. 5 that widow Bholi Devi was alive in 2014 but she was not examined on the point of plaintiff being her adopted son. At the same time, in Ext. 5 Bholi Devi did not talk about adoption deed. The learned trial court misconstrued Ext. 5 and placed its reliance on it ignoring the fact that it was only an affidavit sworn by Most. Bholi Devi but she did not come forward to get herself examined, as such this evidence was not admissible in the eye of law. Hence, no reliance can be placed on the said document and adverse inference must be drawn against the plaintiff. In this regard learned counsel relied on a decision of the Hon'ble Supreme Court in the case of *Mussaiddin Ahmed Vs. State of Assam* reported in *AIR 2010 SC 3813*. Learned



counsel further relied on the Hon'ble Supreme Court decision in the case of *Tribhuvanshankar Vs. Amrutlal*, reported in **(2014)2 SCC 788** on the proposition that landlord tenant relationship is sine qua non for proceeding of an eviction suit. But the learned trial court did not consider this issue in proper perspective and without sufficient evidence, considering the plaintiff as adopted son of late Sukhdeo Sahu, held that there was relationship of landlord and tenant between the plaintiff and defendant. The learned trial court ought to have held that suit was not maintainable after the death of Bholi Devi.

6. Learned counsel further submitted that the learned trial court did not consider that the plaintiff did not require suit premises for his personal necessity rather for expansion of his business, he wanted to get the defendant evicted. The learned trial court failed to record bonafide requirement by the plaintiff. The learned trial court proceeded on the premises that since the plaintiff pleaded in his case that he wanted to expand his business and the same was treated as personal necessity whereas this aspect should have been examined and finding should have been recorded.

7. Learned counsel further submitted that it is the settled principle of law that even if the partial eviction is not



pleaded, a duty is cast upon the court to frame issue of partial eviction on the basis of material available but in the present case no issue with regard to partial eviction of the suit premises has been framed and for this reason the impugned judgment cannot be sustained. The learned counsel relied on a decision in the case of *Shyambabu Sah Vs. Shyam Babu Sah* reported in **2022(6) BLJ 448** to stress this fact. Thus, learned counsel submitted that the judgment of the trial court is illegal, improper and not sustainable in the eyes of law.

8. Per contra, learned counsel appearing on behalf of the plaintiff/opposite party vehemently contended that there is no illegality or infirmity in the impugned judgment and hence, the same does not require any interference by this Court. Learned counsel further submitted that this revision is directed against the judgment of eviction suit and not a title suit and the revision is to be decided within four corners of the BBC Act. Learned counsel pointed out that Section 2(f) of the BBC Act records definition of landlord and submitted that even an agent can maintain a suit for eviction and in the present case earlier Civil Revision No. 1211 of 2004 was filed and vide order dated 03.01.2005 this Court held that even an agent who is collecting the rent can maintain a suit for eviction. Learned counsel further



submitted that Ext.1 has been assailed on the ground that when the said deed was executed, the plaintiff was aged more than 15 years. But the said contention is without any substance as adoption took place in 1973 and Ext. 1 was just recital of the same. Since the recital of adoption is by way of a registered document there would be presumption of its correctness so long as there is no rebuttal and it is for the party who disputes the adoption to prove to the contrary.

9. Learned counsel further submitted that there has been no pleadings of the defendant with regard to partial eviction. A decision of this High Court in the case of *M/s. Bata India Ltd. Vs. Dr. Qamuzzma* reported in *1993(1) PLJR 87* has held that once a landlord has proved the need of the premises, the onus shifts to the tenant to show that plaintiff's needs can be substantially satisfied by part eviction of the tenant. The court further held that the landlord cannot be saddled with the onus of proof in this regard. Learned counsel reiterated that there has been neither pleadings nor evidence on behalf of the defendant on the point of partial eviction. Learned counsel placed reliance on the decision in the case of *Hira Lal Das & Anr. Vs. Loknath Newatia*, reported in *2014(4) PLJR 476* that although the court is require to consider partial eviction even if there is no pleading



but there must be evidence available on record when onus is on the defendant to prove that need of plaintiff would be satisfied substantially by partial eviction. Further the court held that in view of evidence and pleadings of the defendant that the suit premises is a shop, it is not a rented house where the present plaintiff's requirement will be satisfied by partial eviction.

10. Learned counsel further submitted that the learned Single Judge of this Court in the case of ***Khalid Ahmad Khan @ Khalil Ahmad Vs. Prakash Kumar & Anr.***, reported in ***2017(1) PLJR 477*** considered the ambit and scope of the revisional jurisdiction and quoted paragraph 45 of the Constitution Bench decision of the Hon'ble Supreme Court in the case of ***Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh*** to stress the fact that in order to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Learned counsel submitted that in revisional jurisdiction the court may examine whether the order impugned suffers from procedural illegality or irregularity.

11. Learned counsel for the plaintiff/opposite party



further submitted that in the present case on account of default in payment of rent as the defendant was required to deposit the rent every month but the defendant deposited the rent for five years in the learned trial court and thereafter stopped paying the rent and for this reason the defence of the defendant is fit to be struck off. The Hon'ble Supreme Court in the case of ***Manmohan Kaur Vs. Surya Kant Bhagwani***, reported in ***AIR 1989 Supreme Court 291*** held that if the delay is not explained or the explanation is one which is not acceptable to the court then the court must strike off the defence. There is no discretion under Section 13 of the BBC Act and same proposition was earlier available in the previous Act Bihar Building (Lease, Rent and Eviction) Control Act, 1947 in Section 11A and this Court in the case of ***Chaganmal Jain Vs. Mali Ram Mantri & Anr.***, reported in ***BBCJ 1973 IV 157*** held that the provision contained in Section 11A is mandatory. On the aforesaid grounds, learned counsel for the plaintiff/opposite party submitted that the present petition is devoid of merit and same be dismissed.

12. By way of reply the learned counsel for the defendant/petitioner submitted and he also relies on paragraph 45 of the ***Hindustan Petroleum Corporation Ltd.*** case (*supra*) since the Hon'ble Supreme Court has held that a finding of fact



recorded by court/ authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that would if allowed to stand, would result miscarriage of justice, is open to correction because it is not treated as a finding according to law. The Hon'ble Supreme Court has further held that in that event, the High Court, in exercise of power of revisional jurisdiction, shall be entitled to set aside the impugned order such being not legal and proper. In the present case there has been no consideration of evidence and this makes the judgment of the learned trial court perverse. Further no issues were framed for partial eviction and this also makes the judgment of the learned trial court bad in the eye of law. Learned counsel rebutted the claim of the learned counsel for the plaintiff/opposite party that the defendant has failed to deposit the rent. However, he conceded that all rents were deposited prior to COVID-19 period and thereafter there has been delay in depositing the rent. Learned counsel further submitted even if the defence of the defendant is struck off he can still challenge the title of the plaintiff and relationship of landlord and tenant and relied on a decision of the Patna High Court in the case of ***Mahabir Ram Vs. Shiva Shankar Prasad***



reported in *AIR 1968 Patna 415*.

13. I have given my thoughtful consideration to rival submission of the parties. The judgment of the learned trial court has been assailed mainly on three grounds that there was no landlord tenant relationship between the plaintiff and the defendant as plaintiff was not validly adopted son of the original landlord of the defendant. Secondly, personal necessity and bonafide requirement were not considered by the learned trial court and thirdly, partial eviction was not examined.

14. The main focus of argument of the defendant/petitioner is on Ext.1 that it is not a valid adoption deed in terms of Section 10 of the Hindu Adoptions and Maintenance Act, 1956 which reads as under:-

10. Persons who may be adopted.-- No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:-

- (i) he or she is a Hindu;
- (ii) he or she has not already been adopted;
- (iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;
- (iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons



who have completed the age of fifteen years being taken in adoption.”

15. Obviously the provision says for being adopted a person should not have crossed the age of 15 years but it is not the case of the plaintiff/opposite party that he was adopted in 1993 rather he has tried to show that he was taken as adopted son way back in 1973 and a statement to this effect was made by the registered deed Ext. 1. Moreover, Section 10 nowhere says that adoption is to be in writing. However, without going into the issue of validity of adoption, it is to be taken note of that a number of documents have been filed on record including the date of birth certificate of Bihar School Examination Board of 1990 (Ext.6), registration certificate of the shop (Ext. 8), copy of admission card of Bihar Intermediate Examination, 1992 (Ext. 10) and bill of Bhart Sanchar Nigam Limited dated 16.02.2004 (Ext. 14). All these documents show that the name of the father of the plaintiff was Sukhdeo Sahu and for all purposes it seems he was being treated as son of Sukhdeo Sahu, the original landlord of the original defendant.

16. Further Section 2(f) of the BBC Act reads as under:-

(f) “**Landlord**” includes the person who for the time being is receiving or is entitled to receive, the rent of the building, whether on



his own account or on behalf of another, or on account or on behalf of for the benefit of himself and others or as an agent, trustee, executor, administrator, receiver, guardian or who would so receive the rent, to be entitled to receive the rent, if the building were let to a tenant.”

Obviously landlord includes the person, who is entitled to receive the rent as an agent, trustee, executor, administrator, receiver, guardian on behalf of others. The status of plaintiff was also admitted by the widow of original landlord in Ext. 5. In Civil Revision No. 1211 of 2004 and a learned Single Judge of this Court has occasion to consider the affidavit of widow of original landlord wherein she recorded that her son was looking after the house and collecting the rent.

Further in eviction suit the question whether the plaintiff was validly adopted son of late Sukhdeo Sahu or not could not be decided as declaration of status of plaintiff as adopted son of late Sukhdeo Sahu could be the subject matter of a Civil Court of competent jurisdiction. For the purpose of present case, I am of the considered opinion that sufficient material is available on record to show that the plaintiff would fall under the definition of landlord in Section 2(f) of the BBC Act. The Hon'ble Supreme Court in the case of ***Rajendra Tiwary Vs. Basudeo Prasad*** reported in ***AIR 2002 SC 136*** held



that enquiry into title of the plaintiff is beyond the scope of the court exercising jurisdiction under the Act. Declaration of status of plaintiff cannot be sought in a proceeding under the BBC Act. Therefore, I do not find much merit in the submission of learned counsel for the defendant/petitioner challenging the landlord tenant relationship only on the ground that the plaintiff/opposite party could not be considered as a validly adopted son of the original landlord. I do not find any perversity in the consideration of evidence made on this account by learned trial court. For the reason the decision relied on by the learned counsel for the defendant/petitioner in the case of ***Tribhuvanshankar and Mahabir Ram*** (*supra*) is not applicable in the facts of the case.

17. Regarding the personal necessity and bonafide requirement, the learned trial court framed Issue No. 6 and the learned trial court after discussion of evidence in this regard recorded its finding that the plaintiff was having personal necessity and he has sought eviction on bonafide requirement.

18. Though no issue on partial eviction was framed but from the pleadings and evidence I find that the area of disputed shop has been mentioned as 14'x9'5 1/2"= 132 1/2 sq. feet and 9'5 1/2"x 2' and considering its small size, no question



arises for its further division, the defendant/petitioner cannot claim himself to be a co-sharer so as to demand partition of even smallest disputed property. Further the defendant has failed to prove partial eviction in his favour and the submission made on behalf of the learned counsel is of no use of help to the case of defendant/petitioner. For this reason the decision relied by the learned counsel is not supportive of the case of the defendant/petitioner.

19. Further the fact is not lost sight of that this Court is not exercising the appellate jurisdiction and the instant petition has been filed under Section 14(8) of the BBC Act, which reads as under:-

“14(8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made in accordance with procedure specified in this section:

Provided that on an application being made within sixty days of the date of the order of eviction the High Court may for the purpose of satisfying itself that an order under the section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.”

Obviously the mandate of this Court is only to the extent of satisfying itself that an order under this section is



according to law. For this reason, this Court will not re-appreciate or re-assess the evidence for coming to a different finding on facts unless there is some perversity.

The Hon'ble Supreme Court in the case of **Hindustan Petroleum Corporation Ltd.** (*supra*) held in paragraph 45 which is quoted as under:-

“Para 45. ... The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity...”

So in view of the law settled by the Hon'ble Supreme Court, this Court would not like or venture in an uncharted territory if it does not finding perversity or manifest



illegality in the impugned order.

20. In the light of the aforesaid discussion, I do not find any irregularity, impropriety or illegality in the impugned judgment dated 20.11.2014 and decree dated 02.12.2014 and hence, the same are affirmed. Accordingly, the instant revision petition stands dismissed.

21. The defendant/petitioners are directed to vacate the suit premises within 180 days of passing of the orders of this Court.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	A.F.R.
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