

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.177 of 2013

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1. Dallan Prasad
 2. Babban Prasad
 3. Dadan Prasad
 4. Umesh Prasad

All sons of Late Ram Roop Sah.

All residents of Village Sukhrauli, Post office Basauli, Police Station Piro,
District Bhojpur

..... (Plaintiffs Appellants)

.... Appellants

Versus

Gopal Sah, son of Jiut Sah, residents of Village Sukhrauli, Post office Basauli,
Police Station Piro, District Bhojpur

.....(Defendant Respondent)

.... Respondent

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Appearance :

For the Appellant/s : Mr. R.K.P.Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-09-2015

Heard Mr. R. K. P. Singh, learned Counsel appearing for the appellants.

2. The plaintiffs are the appellants in this appeal against the judgment and decree of affirmance. The suit had been filed by the plaintiffs for a decree for eviction of the defendant on the ground of personal necessity.

3. The case of the plaintiffs is that the defendant had been inducted as tenant in the suit premises and the personal necessity has arisen to the plaintiffs and on that score the eviction has been sought. The defendant, in turn, contested the prayer of the plaintiffs and denied existence of any relationship of landlord and tenant with the plaintiffs.

4. The trial court returned the finding that there was no relationship of landlord and tenant in between the plaintiffs and the defendant. In appeal by the plaintiffs, the appellate court concurred with the finding of the

trial court and affirmed the judgment and decree.

5. Mr. Singh, learned Counsel appearing for the appellants, has submitted that the title of the plaintiffs has already been declared over the suit premises in the previous suit i.e. T.S. No. 11 of 1962, which was filed by father of the plaintiffs against the father of the defendant. It has been elaborated that the said suit was filed for declaration of title, eviction of the defendant of that suit as well as claiming arrears of rent. It has been further pointed out that the said suit was decreed on 21.3.1964 declaring title of father of the plaintiffs over the suit premises and the decree was also passed for recovery of possession. It has, however, been accepted that the issue of existence of the relationship of landlord and tenant was also raised in the said suit and decided against the father of the plaintiffs. Learned Counsel, however, has propounded that in view of declaration of title of father of the plaintiffs, the plaintiffs in the present suit are entitled to the grant of eviction decree on the basis of title on equitable grounds also as the defendant's title has not been found in the previous suit and it is thus clear that the defendant is in illegal possession over the suit premises. It has been canvassed by the learned Counsel for the appellants that both the courts below have erred in not granting the decree of eviction over the suit premises considering this aspect.

6. From the perusal of the judgments of both the courts below and considering the submission, it is admitted fact that the earlier Title Suit No. 11 of 1962 was filed by father of the plaintiffs against the father of the defendant with regard to the present suit property and in that suit one of the issues was also with regard to existence of relationship of landlord and tenant in between the father of the plaintiffs and the father of the defendant. The judgment of the said suit has been brought on record as Ext. 1 and the courts below have found that the issue of relationship of landlord and tenant was decided against the plaintiff of that suit but the title of the plaintiff of that suit

was declared and the decree was also passed for recovery of possession directing the defendant to hand over vacant possession of the suit premises to the plaintiff of that suit. It has however been found by both the courts below that though the plaintiffs have come out with a case that the defendant is their tenant but the plaintiffs have not stated in the plaint or adduced evidence aliunda that the father of the plaintiffs or the plaintiffs ever came in possession over the suit property in pursuance of the previous decree for recovery of possession against the defendant and thereafter the defendant was freshly inducted as tenant in the suit premises. The submission made in that regard on behalf of the appellants in the appellate court below that the possession might have been recovered amicably has rightly been not accepted by the court in absence of specific pleading in that regard.

7. Both the courts below have considered the evidence on record and have come to the concurrent finding that there does not exist any relationship of landlord and tenant between the parties. The submission that the plaintiffs could have been granted eviction decree on the basis of title and on equitable grounds has also no substance in view of the law laid down by the Apex Court in the case of **Rajendra Tiwary vs. Basudeo Prasad (2002) 1 SCC 90** and reiterated in **Tribhuvanshankar vs. Amrutlal (2014) 2 SCC 788**.

8. This Court, therefore, does not find any substantial question of law arising for consideration in this appeal. This appeal is, accordingly, dismissed.

(V. Nath, J.)

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