

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.755 of 2010

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Prem Kumar Sah, son of Late Ram Chandra Sah, resident of Village Atari
Mahrajganj (Laukahi Bazar), Police Station Laukahi, District Madhubani
(Defendant No. 1/ Respondent No. 1 in the courts below)

.... Appellant

Versus

1. Ghuran Yadav, son of Late Sattan Yadav
2. Om Prakash Yadav, son of Ghuran Yadav
3. Rama Kant Yadav, son of Ghuran Yadav, All nos. 1 to 3 are residents of
Village Singrahi, Police Station Laukahi, District Madhubani
.....(Plaintiffs/Appellants in the Courts below)

..... Respondent 1st set

4. Parbati Devi, widow of Late Ram Chandra Sah, resident of Village Atari
Mahrajganj (Laukahi Bazar), Police Station Laukahi, District Madhubani
(Defendant No. 2/ Respondent No. 2 in the courts below)

..... Respondent 2nd set

.... Respondents

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Appearance :

For the Appellant/s : Mr. Vidya Sagar,
Mr. Ashok Kumar Prasad

For the Respondent/s : Mr. Shambhu Sharan Singh

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 28-01-2015

Heard learned Counsel for the appellant.

2. The defendant – tenant is the appellant in this appeal against the judgment and decree of reversal. Admittedly, the suit property belonged to Ram Chandra Sah and admittedly the defendant was a tenant inducted in the suit premises by the owner Ram Chandra Sah. The plaintiffs' case is that they purchased the premises from Ram Chandra Sah by registered sale deed dated 13.7.1993. The defendant was continuing as tenant in possession over the suit premises but did not pay the rent to the plaintiffs and, therefore, the suit was filed for eviction of the defendants from the suit premises on the ground of default in payment of rent and also for personal necessity. The defendants



contested the relief sought for by the plaintiffs *inter alia* on the ground that though they were tenants of the original owner Ram Chandra Sah but later on there was an agreement for sale whereby the defendants agreed to purchase the suit premises from the owner Ram Chandra Sah and after the execution of the agreement of the sale (Mahada) on 20.7.1991 the defendants ceased to be the tenant of the original owner Ram Chandra Sah and continued in possession in part performance of the sale contract. The defendants have accepted in their written statement that they never paid any rent to the plaintiffs and have also stated therein that a suit for specific performance of contract (T.S. No. 32 of 2003) has been filed by the defendants seeking execution of the sale deed on the basis of the agreement for sale (Mahada).

3. It has not been disputed by the learned Counsel for the appellant that no evidence was led by the defendants in support of the averments made in the written statement. It has also been accepted by the learned Counsel for the appellant that the defendants had chosen not to cross-examine the witnesses of the plaintiffs.

4. The trial court dismissed the suit holding that in view of pendency of the suit for specific performance of contract filed by the defendants, it has no jurisdiction to take a decision affecting the rights of the parties in the pending title suit (T.S. No. 32 of 2003). In the appeal by the plaintiffs, the appellate court on re-appraisal of the pleadings, evidence and the facts and circumstances overturned the findings of the trial court, allowed the appeal and set aside the dismissal of the suit.

5. Learned Counsel for the appellant has submitted that the judgment passed by the appellate court below is unreasonable. It has

been also canvassed by placing the findings of the trial court in extenso that entire facts and evidence were appreciated and thereafter the correct finding has been recorded.

6. After perusing the judgment of both the courts below and considering the submissions on behalf of the parties it is transparent that after filing of the written statement, no evidence has been led by the defendants to establish the facts asserted therein. Even the plaint of the suit which the defendants claimed to have filed for specific performance of contract was also not brought on record. It is well settled that the pleadings are not evidence of the facts stated therein. Even otherwise also, the defendants have admitted their tenancy over the suit premises under the admitted owner Ram Chandra Sah. The said original owner Ram Chandra Sah transferred the suit premises to the plaintiffs by registered sale deed dated 13.7.1993. The defendants have admittedly not paid rent to the plaintiffs. It has also not been disputed that even after the order passed under Section 15 of the Bihar Building (Lease, Rent and Eviction) Control Act, directing the defendants to pay the arrears of rent as well as current rent, they had not chosen to do the same. The appellate court below has taken into notice the defiant attitude of the defendants in this regard and thereafter has proceeded to appraise the evidence on record for coming to the conclusion that there is relationship of landlord and tenant in between the plaintiffs and defendants and the defendants have committed default in payment of rent.

7. This Court has not been persuaded to find error in any manner in the findings of the appellate court below. The pendency of the suit for specific performance of contract and the existence of an

agreement for sale, as claimed by the defendants in their written statement, for the suit premises, cannot be sufficient for conferring the title of the suit premises upon the defendants.

8. Ex consequenti, this Court does not find any substantial question of law involved in the appeal. It is, accordingly, dismissed.

(V. Nath, J.)

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