

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.231 of 2013

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Shri Sriyans Kuer Trust @ Srians Kuer Trust Through Its Trustee Ajay Kumar Jain Son Of Subodh Kumar Jain Resident Of Devashram Mahadeva Road, Ara, Police Station- Ara Town, District- Bhojpur.

-(Plaintiff-Appellant)-Appellant.

Versus

1. Badri Prasad
2. Baidya Nath Prasad Both Are Sons Of Late Sita Ram Resident Of Shanti Nath Jain Mandir, Jail Road, Ara, P.S- Ara Town, District- Bhojpur.

-(Defendants-Respondents)-Respondents.

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Appearance :

For the Appellant/s : Mr. Suraj Narain Yadav

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

6 06-04-2015

Heard the learned counsel for the appellant.

The plaintiff in the suit for eviction is the appellant in this appeal against the judgment and decree of affirmance, dismissing the suit.

The plaintiff filed the suit for eviction of the defendants from the suit premises under the provisions of Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (hereinafter referred as B.B.C.Act) on the ground of default in payment of rent and also for decree for payment of arrears of rent. The defendants denied the assertions of the plaintiff even though the relationship of landlord and tenant was admitted. During the pendency of the suit a petition was filed on behalf of the defendants raising



objection to the maintainability of the suit in view of the provision under Section 32 B.B.C. Act, 1982. It was the case of the defendants that the suit property was the property of a public trust under Bihar State Digamber Jain Trust Board. The plaintiff contested the prayer of the defendants asserting that as the defendant no.2 was precluded from filing written statement, therefore, the petition on his behalf was not maintainable. It was also asserted that the suit was maintainable under Section 32 B.B.C.Act.

The trial court after hearing the parties and considering the materials on record came to the conclusion that the property belonged to Bihar State Digamber Jain Trust Board and the plaintiff was only its manager. The suit was, therefore, dismissed as not maintainable holding that in view of Section 32 of the B.B.C.Act, the provisions of the B.B.C.Act were not applicable over the properties belonging to Bihar State Digamber Jain Trust Board.

In appeal by the plaintiff, the appellate court has concurred with the conclusion of the trial court and dismissed the appeal.

The learned counsel for the appellant has submitted that the suit property belonged to the plaintiff and both the courts



below have wrongly held that the suit property belonged to Bihar State Digamber Jain Trust Board. It has also been submitted that both the courts below ought not to have tried the maintainability of the suit as preliminary issue and ought to have proceeded to decide this issue alongwith the other issues arising in the suit. It has also been submitted that the petition questioning the maintainability of the suit was not maintainable on behalf of the defendant nos.2 and 3 who were debarred from filing written statement and also on behalf of the defendant no.1 who had admitted the relationship of landlord and tenant. No other submission has been made on behalf of the appellant.

After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the plaintiff has accepted in the plaint itself that the suit property belonged to a public trust. It has also been found by the courts below that the plaintiff has accepted himself only to be a trustee of the suit property. The three witnesses examined on behalf of the plaintiffs have also accepted that the suit property belonged to the Trust and the plaintiff was only a Manager. It appears from the judgment of the trial court that the plaintiff has himself brought on record the letter dated 19.09.2001 (in original) issued by the President, Bihar State Digamber Jain Trust Board whereby the



demand has been made against the plaintiff for the dues. After scrutiny of this letter, the trial court has come to the conclusion that the property belonged to Bihar State Digamber Jain Trust Board and the plaintiff was only the Manager of the property on its behalf. On perusal of the municipal receipts (Ext.1 and 1/A) with regard to the suit property it has also been found by the appellate court below that the name of the landlord has been mentioned as Mandir Shanti Nath receiver Subodh Kumar Jain.

These evidence on record has not been explained away by the appellant either in the memo of appeal or during the course of submission. It therefore appears that the finding of fact has been recorded by the courts below on the basis of the evidence on record and the same could not be established to be unreasonable or perverse. In view of the provision of Section 32 B.B.C.Act excluding the applicability of the provisions of the Act to the property belonging to the Government and Trusts the suit was definitely not maintainable. Further there is no error or illegality committed by the courts below in postponing the determination of other issues and taking up the issue of maintainability of the suit first and, in fact, this is the prescribed procedure under Order 14 Rule 2 C.P.C. There is also no substance in the submission that such objection to maintainability

of the suit could not have been raised by defendants including the defendant no.1 even after the admission of the relationship of landlord and tenant.

Ex consequenti, there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

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