

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.195 of 2013

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Chandeshwar Prasad, son of Late Ratan Saw, R/o Village- Nepura, P.S.-
Silaw, District-Nalanda. Presently residing at Bhainsasur under Bihar Sharif
Nagar Palika (Nagar Parishad), P.S.-Murarpur Leheri, District-Nalanda.

-(Plaintiff/Appellant)Appellant.

Versus

1. Rajia Devi W/o Late Shivnandan Prasad.
2. Sunil Kumar.
3. Rakesh Kumar.
4. Rajesh Kumar.

All Sons of Late Shivnandan Prasad.

5. Babi Kumari, D/o Late Shivnandan Prasad.

R/o of Mohalla- Bhainsasur under Bihar Sharif Nagar Palika (Nagar
Parishad), P.S.-Murarpur Leheri, District-Nalanda .

---Defendant/Respondent)-Respondents.

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Appearance :

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

For the Respondent/s : Mr. Manoj Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

16 20-08-2015

Heard Mr.R.K.P.Singh, the learned counsel

appearing on behalf of the appellant in support of this appeal.

The plaintiff 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
defendant and for realization of the arrears of rent. The
defendant contested the assertions of the plaintiff and denied his

status as tenant of the plaintiff. Specific issues were framed with regard to relationship of landlord and tenant in between the plaintiff and defendant. Both the courts below after scrutiny of the evidence of the parties, have reached to the concurrent finding of fact that the plaintiff has failed to establish his relationship of landlord and tenant with the defendant for the suit house. The suit was, therefore, dismissed and the appeal filed by the plaintiff thereafter has also been dismissed by the impugned judgment and decree.

In order to appreciate the submission on behalf of the appellant, it would be profitable here to take into notice some more facts. The plaintiff's case is that the suit property belonged to the wife of the defendant who sold the same to the plaintiff for valuable consideration and executed a sale deed in his favour. It is further case of the plaintiff that the defendant who is husband of the vendor of the plaintiff was later on inducted as tenant in the suit house by the plaintiff. It is also admitted fact that the wife of the defendant had filed T.S.No. 98/1996 for declaration of her title and confirmation of possession over the suit house after declaring the sale deed dated 23.02.1995 (in favour of the present plaintiff) as void. The said suit was dismissed and the appeal filed thereafter was also

dismissed. However, S.A.No.131/2008 filed against the aforesaid judgment and decree has been admitted for hearing before this Court.

Mr.Singh, the learned counsel for the appellant has submitted that both the courts below have not properly appreciated the evidence on record and the findings therefore are vulnerable. It has also been submitted that the appellate court below has also failed to frame the points for determination as required under Order 41 Rule 31 C.P.C. and the judgment therefore is vitiated for non-compliance of the said provision. It has also been propounded by the learned counsel that once the title of the plaintiff over the suit properties is established then the plaintiff is entitled to equitable relief of the eviction because even if the relationship is not established then the defendant in occupation of the suit premises would either be a trespasser or a licensee. The learned counsel has also canvassed that the decree passed in the suit filed by the wife of the defendant would operate as res judicata on the issue of title against the present defendant. It has lastly been submitted that this second appeal should be admitted and be placed for hearing alongwith the S.A.No.131/2008 filed by the wife of the defendant.



After perusal of judgments of both the courts below and considering the submissions, it is manifest that the specific issue of relationship of the plaintiff with the defendant as landlord and tenant has been framed in the suit. The said issue has been decided against the plaintiff by both the courts below. It has been found by both the courts below that the plaintiff has failed to lead cogent evidence to establish the fact that the defendant is his tenant. Both the courts below have arrived at the said finding after scrutiny of evidence of the parties. The reappraisal of evidence at the second appellate stage in order to indict concurrent finding of fact on the issue is not permissible unless perversity is established.

So far as the submission with regard to grant of decree to the plaintiff on the basis of title over the suit premises which according to him has been found in the suit filed by the wife of the defendant is concerned, it is well settled by now that the decree for eviction cannot be granted only on the basis of title and if no relationship is proved, no decree for eviction under the Rent Control Act could have been granted. This principle has been well laid by the apex court in the case of ***Rajendra Tiwary Vs. Basdeo Prasad, (2002)1 SCC 90*** where the apex court has specifically repelled the prayer for grant of an

equitable decree for eviction to the plaintiff under Order 7 Rule 7 C.P.C. on the basis of title. The principle laid down in the case of **Rajendra Tiwary (Supra)** has been reiterated by the apex court in a recent decision in the case of **Tribhuvanshankar Vs. Amrutlal, (2014) 2 SCC 788** it has been held by their lordships as follows:

“... At this juncture, we may fruitfully refer to the principles stated in Ranbir Singh V.Asharfi Lal. In the said case the Court was dealing with the case instituted by the landlord under the Rajasthan Premises (Control of Rent and Eviction) Act , 1950 for eviction of the tenant who had disputed the title and the High Court had set aside the judgment and decree of the courts below and dismissed the suit of the plaintiff seeking eviction. While advertng to the issue of title the Court in Ranbir Singh ruled that in a case where a plaintiff institutes a suit for eviction of his tenant based on the relationship of the landlord and tenant, the scope of the suit is very much limited in



which a question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship the court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title if disputed, may incidentally be gone into, in connection with the primary question for determining the main question about the relationship between the litigating parties.

So far the submission with regard to Order 41 Rule 31 C.P.C. is concerned, it is transparent from the appellate court judgment that the findings have been recorded as per the issues framed in the suit. It has not been elaborated on behalf of the appellant as to how non-formulation of points for determination by the appellate court has resulted in prejudice to the appellant in the facts and circumstances when the appellate court below is manifestly alive to the issues arising between the parties and has proceeded to determine the issues upon reappraisal of evidence. The non-formulation of the point for

determination per se cannot vitiate a well considered judgment and cannot give rise to a substantial question of law at the second appellate stage.

This Court also does not find force in the submission on behalf of the appellant that the findings recorded in a suit filed by the wife of the defendant would be res judicata against the defendant when it is not the case of the appellant that the defendant was also a party in the suit. This Court also does not find merit in the submission that this appeal be admitted and heard alongwith the appeal filed by the wife of the defendant, for the simple reason that there is no identity of the issues and parties in both the appeals.

Ex consequenti, this Court holds that 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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