

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.199 of 2016

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1. Sri Krishnaji Maharaj @ Maharani Radhika Jee , Deities installed in Radha Krishna Thakurbari, through Shebait Chandra Vilash Pandey.
 2. Chandra Vilash Pandey Shebait Son of Late Dharam Raj Pandey, Shebait.
 3. Anil Kumar Pandey Shebait, Son of Kamla Pandey.
All residents of Mohalla & P.O.-New Godown Neem Tar, P.S.-Kotwali, Town Gaya, District-Gaya.
 4. Sunil Kumar Pandey Shebait, Son of Kamla Pandey, Resident of Mohalla & P.O.-New Godown Neem Tar, P.S.-Kotwali, Town Gaya, District-Gaya.
- Appellants

Versus

Raj Kumar Sharma, Son of Late Munni Thakur, R/o Mohalla-New Godown, P.S.-Kotwali, District-Gaya (Bihar).
.... Respondents

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Appearance :

For the Appellant/s : Mr. Binod Kumar Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 16-11-2016

Heard the learned counsel for the appellants.

The defendants are the appellants in this appeal against the judgment and decree of affirmance granting the decree to the plaintiff as prayed.

The plaintiff filed the suit for declaration that the decree passed in eviction suit is not binding on the plaintiff and further prayed for restoration of possession as well as decree for mesne profits from the date of possession and recovery of possession.

The plaintiff's case in short was that he was in occupation of the suit premises as tenant of the defendants on monthly rent of Rs.200/- per month and was running a hair cutting saloon in



suit premises. It has been further case of the plaintiff that the defendants forcibly evicted him from the suit premises while executing the decree for recovery of possession passed in T.S.No.101/1993 against some other persons. It was further case of the plaintiff that though the defendants initially agreed to restore possession of the plaintiff over the suit premises but later on they refused. The defendants in the written statement accepted the tenancy of the plaintiff over the suit premises but came out with the case that the plaintiff voluntarily evicted the suit premises because of heavy arrears of rent against him.

Both the courts below have come to the concurrent finding of fact that the plaintiff was forcibly dispossessed from the suit premises during the course of execution the decree passed in T.S.No.101/1993 which was being executed against some other persons in occupation of other part of the building of the defendants. Both the courts below have further come to the conclusion that the decree passed in T.S.No.101/1993 was not with regard to the suit premises and was not binding upon the plaintiff and have held the plaintiff to be entitled for restoration of possession over the suit premises. The suit was accordingly decreed and the appeal filed by the defendant has been dismissed by the impugned judgment and decree.

The learned counsel for the appellants has



firstly made the submission that the suit was barred by limitation as such suit will be deemed to have been filed under Section 6 of the Specific Relief Act which requires the filing of such suit within six months from the date of dispossession. It has been next submitted that both the courts below have misconstrued the material evidence on record and have wrongly disbelieved the case of the defendants that the plaintiff has voluntarily vacated the suit premises due to arrears of rent. No other submission has been made on behalf of the appellants.

After considering the submissions and perusal of the judgments of both the courts below, it is manifest that the suit has been filed by the plaintiff firstly for declaration that the decree passed in eviction suit (T.S.No.101/1993) is not binding upon the plaintiff and the consequential relief for restoration of possession over the suit premises has been sought. Both the courts below after considering the evidence on record have come to the concurrent finding of fact that the defendants have failed to establish by cogent evidence, their case that the plaintiff has voluntarily vacated the suit premises. Even otherwise also, it is admitted fact that the decree passed in T.S.No.101/1993 was not against the plaintiff and also not with regard to the suit property. There is no explanation on behalf of the defendants to the fact as to under what circumstances the plaintiff put his signature on the paper of delivery of possession of the

Execution Case No.47/1994 filed for execution of the decree passed in T.S.No.101/1993. The courts below have rightly come to the conclusion that this fact alone belies the case of the defendants that the plaintiff had voluntarily vacated the suit premises. The submission on behalf of the appellants that the suit was barred by limitation as the same was not filed within six months as provided under Section 6 of the Specific Relief Act has also got no substance in view of the law laid down by the apex court in ***Somnath Bermon Vs.S.P.Raju, AIR 1970 SC 846*** and also in the case of ***Nair Service Society Vs. K.C. Alexnder, AIR 1968 SC 1165*** holding that the provisions of Section 5 and Section 6 of the Specific Relief Act are not mutually exclusive. Both the courts below therefore have rightly come to the conclusion that the suit was maintainable and not barred by limitation. The findings of fact by both the courts below have been recorded on the scrutiny of evidence which was acceptable and could have been relied upon. This Court has not been persuaded to find perversity or unreasonableness in the same.

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

(V. Nath, J)

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