

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.60 of 2016

=====

Ishaque Alam, son of Razzak (39 years), Resident of at Prince Jewellery Sanmati Market, Nemchand Road, Kishanganj, Police Station & District- Kishanganj.

..... Defendant Appellant

.... Appellant

Versus

Jitendra Kumar Jain, son of Shikhar Chand Jain, Resident of at Prince Jewellery Sanmati Market, Nemchand Road, Kishanganj, Police Station & District- Kishanganj.

..... Plaintiff Respondent

.... Respondent

=====

Appearance :

For the Appellant/s : Mr. Rajendra Narain, Sr. Advocate
Mr. Alok Kumar

For the Respondent/s : Mr. Dinu Kumar
Mr. Rito Raj
Ms. Ritika Rani

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 22-08-2016

Heard Mr. Rajendra Narain, learned Senior Counsel appearing for the appellant. Mr. Dinu Kumar is present on behalf of the plaintiff-respondent.

2. The defendant is the appellant in this appeal against the judgment and decree of affirmance granting the decree for eviction as prayed by the plaintiff.

3. The suit has been filed by the plaintiff seeking eviction of the defendant from the suit premises on the ground of default in payment of rent and personal necessity. The suit premises consist of two shops described as Shop No. 1 and Shop No. 7. As there is no dispute regarding the relationship of landlord and tenant, this Court refrains from going into further case of the plaintiff regarding acquisition of title over the suit premises. Suffice it to notice that the plaintiff has alleged non-



payment of rent for the months of November-December 2008 and January-February 2009 against the defendant for the suit premises. The plaintiff has also claimed the personal necessity for the suit premises described in details in his pleading. The defendant in his written statement accepted that the rent in the usual manner was not paid for the four months as alleged, but further came out with the case that there was security deposit lying with the plaintiff with the agreement that the amount of rent, in case of arrears or non deposit, might be adjusted from that.

4. It would be also pertinent to take into notice here that the defendant had been debarred from leading further evidence in the suit and the said issue also came before this Court at the instance of the defendant in CWJC No. 1254 of 2013, whereby this Court by order dated 22.1.2013 had rejected the prayer of the petitioner therein (appellant herein in this appeal) for opportunity to adduce evidence after making adverse observation against the conduct of the petitioner in the suit as defendant.

5. The trial court returned the finding on the issues against the defendant and decreed the suit. In appeal, the appellate court on reappraisal of evidence has affirmed the finding of the trial court and dismissed the appeal by the impugned judgment and decree.

6. Mr. Narain, learned Senior Counsel, appearing on behalf of the appellant, has submitted that though there was specific pleading on behalf of the defendant-appellant regarding deposit of security money and adjustment of the same in case of arrears/default in payment of rent but no separate issue in that regard was framed in the suit and,



therefore, the finding on the issue of default in payment of rent is vulnerable. It has also been further submitted that though the defendant was not allowed to adduce evidence, but his examination in chief as DW 1 was on record and was required to be considered, which both the courts below have failed. It has been also canvassed that both the courts below have not recorded any finding on the issue of partial eviction as required under Section 11(1)(c) of the B.B.C.Act, granting a decree to the plaintiff on the ground of personal necessity also. It has also been contended that the finding on personal necessity has been recorded without considering any evidence.

7. After considering the submission and perusal of the judgments of both the courts below, it is manifest that the relationship of landlord and tenant is an admitted fact between the parties. The plaintiff has alleged non-payment of rent for the months of November-December 2008 and January – February 2009 and on the ground of default in payment of those rent has sought decree for eviction. The defendant has not denied the said fact, but has come out with the case that in view of the security money lying with the plaintiff the rent of those months could have been adjusted from the security money according to the agreement in that regard. In view of these admitted facts the burden was definitely upon the defendant to establish the fact of payment of security money and the agreement in that regard for adjustment of the due rent from the said amount. The appellate court below has rightly come to the finding that the defendant has failed to discharge such burden, as there was no evidence to prove payment of security money and the agreement for adjustment of rent as claimed by the defendant. It is also pertinent to



take into notice another argument made on behalf of the defendant-appellant that the order dated 22.11.2012 passed in the suit closing the evidence of the defendant was itself recalled by the learned court below on 8.3.2013, but the said order was again recalled in view of the order passed by this Court in the writ application as above. During the course of submission, however, the learned Senior Counsel has failed to explain as to why no petition for review of the order passed in the writ application was filed by the defendant-petitioner once after the matter of recall of the order dated 8.3.2013 was being considered. The concurrent finding of fact on the issue of default in payment of rent by the defendant is based upon the pleading and evidence, which are acceptable and could have been relied upon. As such, this Court does not find any perversity or unreasonableness in the same.

8. So far as the submission with regard to the finding on the issue of personal necessity is concerned, the appellate court below has observed in the judgment that the defendant has not questioned the said finding in the memo of appeal. The learned Senior Counsel on behalf of the appellant has failed to dispute the said finding. Even otherwise also, absence of any evidence on behalf of the defendant on the said issue contradicting the case of personal necessity as pleaded by the plaintiff could have left no option to the courts below but only to consider the pleading and evidence of the plaintiff which has been considered and thereafter finding has been recorded. This Court finds that the said finding has been recorded in accordance with law.

9. As there is concurrent finding of fact on the issue of default in payment of rent and personal necessity and this Court has not been

persuaded to find any illegality or perversity in the same in any manner, this Court holds that there is no substantial question of law arising for consideration in this appeal.

10. This appeal is, accordingly, dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	26.09.2016
Transmission Date	N/A