

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.465 of 1991

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Mohan Prasad, son of Nagina Sah, deceased, resident of Mohalla Buchar Toli, P.S.
P.O. and Town Motihari, District East Champaran

..... Plaintiff Respondent

.... Appellant

Versus

1. Kedar Prasad
 2. Suresh Prasad @ Saheb
 3. Bhola Prasad
 4. Pradeep Prasad
 5. Raj Kumar
 6. Sunil Kumar
 7. Manoj Kumar
 8. Ashok Kumar, all sons of Ramchandra Prasad, deceased
 9. Mostt. Munari Devi, wife of Ramchandra Prasad, deceased
 10. Nirmala Devi
 11. Geeta Devi
 12. Urmila Devi,
 13. Renu Kumari, all daughters of Ramchandra Prasad, deceased
 14. Sri Hanumat Prasad Srivastav, son of Sri Vishwanath Pd. Srivastav, resident of
Swami Viveka Nand Marg, P.S. Chatauni, P.O. Motihari, District Motihari
All residents of Mohalla Thakurbari, at present Mohalla Buchar Toli, P.S.
P.O. and Town Motihari, District East Champaran
- Defendants Appellants

.... Respondents

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Appearance :

For the Appellant/s : M/s Anshuman Singh, Sriram Krishna, Rakesh
Kumar, and Ram Kant Yadav

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 23-09-2016

Heard Mr. Anshuman Singh, learned Counsel for the appellant.

Nobody has appeared on behalf of the respondents. It has, however,
been submitted by the learned Counsel for the appellant that notices in
this appeal have been served upon the respondents.



2. The plaintiff is the appellant in this appeal against the judgment and decree of reversal dismissing the suit for eviction filed by the plaintiff.

3. The plaintiff filed the suit for eviction of the defendants from the suit premises which was said to be a shop on the ground of default in payment of rent and personal necessity. The defendants denied the title of the plaintiff over the suit premises and further also denied the relationship of landlord and tenant in between the plaintiff and the defendants.

4. The trial court after considering the pleadings and evidence returned the finding that there was relationship of landlord and tenant in between the plaintiff and the defendants. It has also been further found that the defendants are defaulter in payment of rent and the plaintiff has the personal necessity of the suit premises.

5. The defendants filed appeal against the aforesaid decree of eviction. The appellate court below mainly considered the issue of relationship of landlord and tenant between the parties over the suit premises and has concluded that the defendants had better title over the suit property than the plaintiff. Accordingly, the judgment and decree of eviction passed by the trial court has been reversed and the suit has been dismissed by the impugned judgment and decree.

6. This appeal has been admitted for hearing by order dated 3.9.1993 on the following substantial question of law:-

“Whether the lower appellate court was justified in taking into account only the pendency of the revision before the Commissioner, Tirhut Division, before



whom the appellant's settlement was under challenge though operation of the order passed by the Collector settling the land in question in favour of the appellant was not stayed?"

7. Mr. Anshuman Singh, learned Counsel appearing for the appellant, while criticising the impugned judgment of the appellate court below, has submitted that the order dated 12.8.1988 passed in Case No. 11 of 1986-87 by the Collector, adduced in evidence as Exhibit 10, clearly demonstrates that the suit premises has been settled with the plaintiff and the claim of settlement by the defendants was wrong. Elaborating the said contention, it has been further pointed out that the defendants had challenged the said order before the Board of Revenue but they did not succeed there and thereafter the defendants filed an appeal before the Commissioner, Tirhut Division. It has been thus submitted that the plaintiff has brought sufficient evidence on record to establish his title over the suit premises, but the appellate court below has refused to accept the same only on the specious ground that an appeal was pending before the Commissioner. The learned Counsel has also contended that even the appeal before the Commissioner eventually came to be dismissed and according to the knowledge of the appellant there was no further appeal or revision against the order passed by the Commissioner and in this manner the order passed by the Collector (Ext. 10) has attained finality. The learned Counsel for the appellant, therefore, has propounded that the findings by the appellate court regarding the absence of title of the plaintiff in the suit premises cannot be legally



sustained in the facts and circumstances of the case. It has been next argued that after the decree for eviction passed in the suit the plaintiff-appellant came in possession over the suit premises and this Court also by order dated 28.8.1995 has restrained the defendant-respondents from interfering with the possession of the plaintiff-appellant over the suit premises during pendency of this appeal. It has been canvassed that the appellant has been coming in possession over the suit premises up till now and the defendants are not in possession over the suit premises. It has, therefore, been prayed that the substantial question of law as framed in this appeal deserves to be answered in favour of the appellant.

8. During the course of submission the learned Counsel for the appellant however has failed to persuade this Court to hold that another finding recorded by the appellate court on the issue of relationship of landlord and tenant in between the plaintiff and defendants are in any manner perverse or illegal. In that backdrop, it has been submitted by the learned Counsel for the appellant that the plaintiff-appellant is entitled to maintain his possession over the suit premises on the basis of his title and liberty may be granted to the plaintiff-appellant to seek the legal remedy if circumstances so arise for protection of his possession over the suit premises on the basis of his title.

9. After considering the submission and perusal of the judgments of both the courts below, it is manifest that the suit was filed by the plaintiff seeking eviction of the defendants on the ground of default in payment of rent and personal necessity. In view of the denial by the defendants of the relationship of landlord and tenant and questioning the title of the plaintiff over the suit premises, the specific issue in that regard



was framed by the courts below. The trial court recorded the findings on issues of prima-facie title and relationship of landlord and tenant in favour of the plaintiff. However, the appellate court below has reversed those findings. From the order dated 12.8.1988 passed by the Collector in Case No. 11 of 1986-87 (Ext. 10), which has been taken into notice by the courts below, it is evident that the plaintiff's settlement over the suit land has been accepted by the Collector and the claim of settlement of the suit premises as made by the defendants was rejected. There is no evidence on record to show that the said order of the Collector Ext. 10 has been set aside or reversed by the higher forum. In that view of the matter the inevitable conclusion is that the plaintiff has *prima-facie* ownership over the suit premises. It would be seemly here to mention that the concept of ownership in general law and under the Rent Control Act is different. Under the Rent Control Act, the plaintiff has not to establish absolute title over the suit premises. This principle has been elaborately laid down by the Apex Court in ***Sheela v. Firm Prahlad Rai Prem Prakash (2002) 3 SCC 375*** and reiterated in ***M/s Boorugu Mahadev & sons and another. Vs. Sirigiri Narasingh Rao & others AIR 2016 SC 433***. The trial court after considering the evidence including the order (Ext. 10) passed by the Collector has come to the conclusion that the plaintiff has got prima-facie title over the suit premises. However, the appellate court has chosen to discard the order of the Collector (Ext. 10) only on the ground that the appeal was pending against the said order before the appellate court. There was no evidence before the appellate court that the order as contained in Ext. 10 was stayed or its operation was suspended by the appellate court. In that view of the



matter, this Court comes to the conclusion that the findings of fact by the appellate court below holding that the plaintiff has got no title over the suit premises cannot be legally sustained.

10. However, the matter does not end there. It is well settled by now that establishment of relationship of landlord and tenant is *sine qua non* for getting a decree for eviction under the Rent Control Act. Their Lordships in the case of ***Tribhuvanshankar v. Amrutlal (2014) 2 SCC 788*** has ruled that in a suit for eviction the decree cannot be passed on the basis of title only. In the present case, the appellate court below has recorded the finding of fact that there is no relationship of landlord and tenant in between the plaintiff and the defendants. These findings have been recorded on the basis of evidence which are acceptable and could have been relied upon. During the course of submission the learned Counsel for the appellant has failed to show or establish any perversity or unreasonableness in the same. In such a circumstance the said finding of fact is binding upon the second appellate court.

11. For the aforesaid reasons and discussions this Court comes to the conclusion that even after reversal of the findings by the appellate court below with regard to the plaintiff's title over the suit property, the plaintiff-appellant cannot be entitled to decree for eviction against the defendants on the grounds as prayed in absence of relationship of landlord and tenant. This Court, therefore, while answering the substantial question of law, as framed in this appeal, in favour of the appellant refuses to set aside the judgment and decree passed by the appellate court below dismissing the eviction suit filed by the plaintiff-appellant. However, the findings recorded by the appellate court below



or this Court would not operate as *res judicata* between the parties if a fresh action for possession over the suit premises on the basis of title is brought by any of the parties to the suit.

12. This second appeal is, accordingly, dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
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