

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.309 of 1994

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Smt. Mamta Devi, Wife of Chandra Bhushan Srivastava, Resident of Mohalla-Lal Bazar, Ward No.2, P.O. and P.S.-Bettiah, District-West Champaran.

.... Appellant

Versus

1. Manorma Devi @ Yashoda Devi, wife of Late Girdhari Raut.
2. Krishna Kumar.
3. Shankar Kumar.

Both are minor sons of Late Girdhari Raut through Manorma Devi @ Yashoda Devi mother and natural guardian.

4. Devki Devi, Daughter of Late Girdhari Raut.

All are residents of Mohalla-Lal Bazar, P.O. and P.S.- Bettiah, District-West Champaran.

.... Respondents

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Appearance :

For the Appellant/s : Mr. BASHISHTHA NARAYAN MISHRA
Mr. Dhananjaya Nath Tiwari

For the Respondent/s : Mr. SHIV KUMAR DWIVEDY
Mr. Siddhartha Harsh

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 21-10-2016

Heard Mr. Mishra , learned counsel appearing for
the appellant.

No body has appeared on behalf of the respondent.

This appeal has been filed by the plaintiff,
questioning the legal sustainability of the impugned judgment and
decree of reversal by the appellate court below dismissing the suit for
eviction filed by the plaintiff.

It would be suffice to take notice of the facts of the
case in brief as the questions to be determined in this appeal lie in a



narrow compass. The plaintiff filed the suit seeking a decree for eviction against the defendant on the ground of default in payment of rent and personal necessity. The plaintiff claimed to have purchased the suit premises and had averred in the plaint that the defendant was in occupation of the suit premises as tenant from before the purchase by the plaintiff as he was inducted as tenant in the suit premises by the vendors of the plaintiff. It was also the case of the plaintiff that the vendors of the plaintiff directed the defendant to make payment of rent to the plaintiff but the defendant did not pay the rent to the plaintiff. The plaintiff also claimed personal necessity of the suit premises.

The defendant in the written statement contested the assertions of the plaintiff and specifically denied the relationship of landlord and tenant with the plaintiff or her vendors. The defendant claimed independent right of possession of the suit premises and had stated that he had never been the tenant either of the vendors of the plaintiff or the plaintiff.

The trial court returned the findings on the issues in favour of the plaintiff and granted the decree as prayed. The appellate court, in appeal by the defendant, has reversed the findings of the trial court holding that the plaintiff has failed to establish the title of their vendors over the suit premises and sequentially held that



the plaintiff is not entitled to the decree for eviction as the relationship of landlord and tenant in between the plaintiff and the defendant could not be established by cogent evidence.

This appeal has been admitted for hearing by order dated 23.11.1995 on the following substantial questions of law:

“ The substantial question of law involved in this case is whether the lower appellate court could dismiss the suit without reversing the findings of the trial court. Any other question that may be raised with permission of the Court.”

During the course of submission, the learned counsel appearing on behalf of the appellant has not raised any other question.

Criticizing the impugned judgment by the appellate court, it has been submitted on behalf of the appellant that the appellate court has wrongly decided the fact that the vendors of the plaintiff had no title over the suit premises. The learned counsel has placed the findings of the trial court as well as the appellate court in that regard and has submitted that the findings by the trial court ought not to have been reversed by the appellate court on the issue of title of the vendors of the plaintiffs. It has, however, been accepted by the



learned counsel for the appellant that the appellate court has considered all the evidence led on behalf of the parties and it is not a case of omission from consideration of any evidence or the findings being de hors the settled law. The learned counsel has however propounded that the finding on the issue of title would seriously prejudice the rights of the plaintiffs.

After considering the submissions and perusal of the judgments of both the courts below, it is pellucid that after the denial by the defendant -tenant of the title of the plaintiff over the suit premises, the crucial note of discord between the parties was the issue of relationship of landlord and tenant, as the relief was for the eviction decree against the defendants on the ground of default in payment of rent and personal necessity. In such a case, the court has the jurisdiction however to incidentally go into the question of title of the plaintiff over the suit premises in view of the denial by the defendant in that regard. However the determination of the issue of title in such a suit for eviction is only for the purpose of testing the bonafides of the tenant-defendant who has come out with such denial and further it is only for the purpose of determining the main issue of relationship of landlord and tenant between the plaintiff and the defendant. The principle in this regard has been elaborately considered by the apex court in the case of *Tribhuvanshankar Vs. Amrutlal*, (2014)2 SCC



788 where their lordships have ruled as follows:

“... in a suit for eviction between the landlord and tenant, the Court will take only a prima facie decision on the collateral issue as to whether the applicant was landlord. If the Court finds existence of relationship of landlord and tenant between the parties it will have to pass a decree in accordance with law. It has been further observed therein that all that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has prima facie right to receive the rent of the property in question. In order to decide whether denial of landlord’s title by the tenant is bona fide the Court may have to go into tenant’s contention on the issue but the Court is not to decide the question of title finally as the Court has to see whether the tenant’s denial of title of the landlord is bona fide in the circumstances of the case.”

In view of the dictum, as above, by the apex court, it is apparent that the determination of the issue of title in a suit for



eviction is only incidental and that too for the purpose of finding out the existence of relationship of landlord and tenant in between the parties. It is by now well settled that the determination of such issue of title cannot be accepted to have been done in a full-fledged manner and cannot operate as res judicata between the parties, if the said issue arises in another action for recovery of possession of the premises based on title. This Court, therefore, does not find substance in the submission on behalf of the appellant that the finding on the issue of title as recorded by the appellate court below would prejudice the title of the plaintiff or the vendors of the plaintiff over the suit premises in any manner. Examining the findings by the appellate court below, it is clear that the issue with regard to relationship of landlord and tenant between the parties was framed for determination and the parties led evidence on the said issue. However, it is also transparent from the averments made in the plaint that there is no such averment that the defendant-tenant ever paid the rent to the vendors of the plaintiff. There is no corroborating evidence led by the plaintiff in the suit except the deposition by the vendor of the plaintiff on the point of payment of rent by the defendant as tenant of the suit premises to the vendors of the plaintiff. From the perusal of judgment of the trial court, it appears that after recording the finding of title in favour of the vendors of the plaintiff and thereafter in favour of the plaintiff, the



learned court has jumped to the conclusion that there exists relationship of landlord and tenant in between the parties. The appellate court below has reappraised the pleadings and evidence in that regard and thereafter has come to the conclusion that the plaintiff has failed to establish the title of their vendors and there is no relationship of landlord and tenant in between the parties.

As mentioned above, it has not been the case on behalf of the appellant that the conclusion by the appellate court below has stemmed out of non-consideration of material evidence or against the settled principle of law. Even otherwise also, it is clear that the appellate court below has considered all the material evidence on record and its findings are based upon the scrutiny of the evidence which were acceptable and could have been relied upon. This Court, therefore, does not find itself persuaded to hold those findings as perverse or unreasonable in any manner. It further also transpires that the appellate court below has also taken into notice the findings by the trial court and the reasonings assigned by it but has not affirmed the same. It is well settled now by the apex court in the case of ***Damodar Lal Vs. V. Sohan Devi, AIR 2016 SC 262*** that even if the finding of fact is wrong but based upon appraisal of evidence, the same shall be binding in second appellate jurisdiction and it is only when such finding has stemmed out of total non-consideration of material



evidence or misreading of the same, the same can be interfered with.

For the aforesaid reasons and discussions, this Court comes to the conclusion that the finding recorded by the appellate court below is in accordance with law and there is no perversity or illegality in the same. Accordingly, the substantial question of law as framed in this appeal is answered against the appellant.

This appeal is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.12.2016
Transmission Date	

