

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.209 of 2013

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1. Pramod Kumar S/O Late Ram Naresh Yadav Resident Of Village Erki, P.S. &
District Jehanabad.

.... Petitioner/s

Versus

1. Raghu Raj Sinha S/O Late Ram Prasad Singh Resident Of Village Abgilla, P.S.
Parasbigha, District Jehanabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siya Ram Sahi, Adv & Mr. Uday Narayan
Singh, Adv

For the Respondent/s : Mr. Vijay Kumar, Adv & Mr. Nagendra Dubey, Adv

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 30-09-2016

Heard Mr. Siya Ram Sahi, learned counsel appearing
for the petitioner and learned counsel appearing for the opposite
party.

This revision application has been filed under Section
14(8) of the Bihar Building (Lease, Rent and Eviction) Control Act,
1982 (hereinafter referred to as the 'BBC Act') against the judgment
and decree of eviction of the defendant-petitioner from the suit
premises on the ground of personal necessity.

The suit premises is a shop on the ground floor and a
room on the first floor which are admittedly in occupation of the



defendant-petitioner and being used for commercial purposes. The plaintiff filed the suit praying for decree of eviction of the defendant from the suit premises on ground of personal necessity for setting up his shops. The defendant denied the assertions of the plaintiff and resisted the decree as prayed.

The learned court below in view of the rival pleadings of the parties framed material issues relating to the legal entitlement of the plaintiff to get the decree for eviction as prayed on ground of personal necessity of the plaintiff for the suit premises as well as partial eviction. After considering the pleadings and evidence on behalf of the parties, the learned court below has come to the conclusion that the plaintiff has got bonafide personal necessity for the suit premises and further that the partial eviction of the defendant-tenant from the suit premises would not satisfy the need of the plaintiff.

Criticizing the impugned judgment, Mr. Sahi, learned counsel for the petitioner, has firstly submitted that the learned court below has ignored the pleadings showing that there is no relationship of landlord and tenant in between the plaintiff and defendant. Elaborating the submission learned counsel has placed the averments made in the plaint wherein the plaintiff has stated that the suit premises belonged to the three brothers including the



plaintiff, and the father of the defendant was inducted as tenant by the brother of the plaintiff. It has been contended on this basis that it was the brother of the plaintiff who was the landlord of the defendant and not the plaintiff. The next contention on behalf of the petitioner as raised by learned counsel for the petitioner has pertained to the legal acceptability of the finding on the issue of partial eviction.

The learned counsel for the opposite party has supported the impugned judgment and has submitted that the findings have been recorded on the scrutiny of the pleadings, evidence and materials on record.

The revisional jurisdiction under Section 14(8) of the BBC Act is circumscribed by the condition that the revisional court has only to examine as to whether the judgment and order of eviction is according to law. The guidelines for the exercise of this jurisdiction has now been settled by the decision of the constitution bench of the Apex Court in the case of ***Hindustan Petroleum Corporation L.T.D. vs Dilbahar Singh, 2014(9) SCALE 657***, where, their lordships have ruled that the reappraisal of the evidence for reaching to a different conclusion on the issues of fact is completely alien to the revisional jurisdiction under Rent Control Act.



In the present case from the perusal of the written statement filed by the defendant, which has been annexed with the revision petition, it does not appear that any specific plea has been raised on behalf of the defendant-petitioner denying the relationship of the landlord and tenant in between him and the plaintiff. Further from the averments made in the plaint, it is also demonstrably clear that the plaintiff is the co-sharer of the suit premises. It has further been also averred that the rent of the suit premises was occasionally paid to him also by the defendant. This fact has not been denied at all by the defendant in his written statement. Even otherwise also the law is well settled that a co-sharer can maintain a suit for eviction of the tenant. This Court therefore, does not find substance in the submission on behalf of the defendant-petitioner in this regard as the same is not substantiated by the averments made in the written statement or even by the deposition of the defendant in the suit which has also been annexed with the revision petition.

So far as the plea regarding the partial eviction is concerned, it transpires that a specific issue in this regard has been framed in the suit. The tenant-defendant has been examined as witness in the suit. The learned counsel for the petitioner has fairly accepted that there is no statement by the tenant-defendant in his deposition expressing his agreement to part occupation of the suit



premises. Though the issue with regard to the partial eviction has been framed but it has been accepted on behalf of the petitioner that no evidence in this regard has been adduced. The principle in this regard has been laid down by a Bench decision of this Court in the case of **M/s Bata India Ltd. vs Dr. Md. Qamruzzama** reported in **1993(1) PLJR Pat. 87**, holding as follows:-

"It would appear that while the main clause entitles the landlord to secure eviction of the tenant on the ground mentioned therein, the proviso mandates the court to hold enquiry as to whether the plaintiff's needs can be substantially satisfied by part eviction of the tenant from the premises. The question is who has to prove that the requirement can be satisfied substantially by part eviction. In our opinion, the landlord cannot be saddled with the onus of proof in this regard. He having proved that he requires 'the building' which means the whole suit premises, he cannot be expected or asked to prove by evidence that his need can be satisfied by part eviction. That will amount to asking him to prove the negative. In our opinion, once the landlord has proved the need of the premises, onus shifts on the tenant. The expression 'and the tenant agrees to such occupation' strengthens the view that while holding enquiry on the question of partial eviction it is the tenant who has to express his readiness and willingness for part occupation of the premises and to show that the plaintiff's need can be substantially satisfied by evicting him from only part of the premises and allowing him to continue in occupation of the rest of it. No part of the defendant's evidence on the point of partial eviction was brought to our notice. We thus fail to understand as to how the petitioner can assail the finding on the question of partial eviction on the ground that there is no specific evidence on the point."

In view of the absence of readiness and willingness of



the tenant to occupy the part of the suit premises and in view of the absence of evidence on record demonstrating that the part eviction of the defendant would satisfy the need of the landlord-plaintiff, this Court does not find that the conclusion by the learned court below on the issue of partial eviction against the defendant is illegal or perverse.

The finding on the issue of personal necessity has not been challenged during the course of submission on behalf of the petitioner.

For the aforesaid reasons and discussions, this Court holds that the impugned judgment and decree are according to law.

The revision application is, accordingly, dismissed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
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