

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.26 of 2014

=====

Perween Khatoon Wife Of Manjar Khan Resident Of Mohalla - Kasai Tola, Ara,
P.S. Ara Nagar, P.O. Ara And District - Bhojpur
..... Defendant Respondent

.... Appellant

Versus

Rashida Bano Wife Of Md. Salim Kuraishi Resident Of Mohalla - Kasai Tola, Ara,
P.S. Ara Nagar, P.O. Ara And District - Bhojpur
..... Plaintiff Appellant

.... Respondent

=====

Appearance :

For the Appellant/s : Mr. Abu Haider,
Mr. SYED EHTESHAMUDDIN

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 26-04-2016

Heard Mr. Abu Haider, learned Counsel appearing for the
appellant.

2. The defendant is the appellant in this appeal against the
judgment and decree of reversal in a suit for eviction. The suit for eviction
was filed seeking eviction of the defendant from the suit premises on the
ground of personal necessity and default in payment of rent. The
defendant denied the relationship of landlord and tenant and claimed her
own independent title over the suit premises on the basis of oral gift. The
trial court returned the finding on the issues in favour of the defendant
and dismissed the suit. In appeal, the appellate court below on
reappraisal of evidence has reversed the findings of the trial court and
granted the decree for eviction to the plaintiff as prayed.

3. Mr. Abu Haider, learned Counsel appearing for the appellant,
has submitted that a regular title suit between the parties involving the



question of title over the suit premises is already pending. It has been further submitted that the appellate court below has not formulated the point for determination and therefore also the impugned judgment is vulnerable. The learned Counsel has further submitted that in view of the claim of defendant of acquisition of title by oral gift there was no relationship of landlord and tenant and there was also no agreement of tenancy between the plaintiff and defendant. It has been canvassed that in a suit for eviction the establishment of relationship of landlord and tenant is a ***sine qua non***, but in the present case the plaintiff has squarely failed to do so. No other submission has been made on behalf of the appellant.

4. After perusal of the judgments of both the courts below and considering the submission, it is manifest that the suit has been filed for eviction of the defendant on the ground of default in payment of rent as well as personal necessity. The defendant, while resisting the relief as prayed by the plaintiff, has come out with the case of acquisition of title over the suit premises on the basis of oral gift. The appellate court below has taken into notice the pleadings and evidence in this regard and thereafter has come to the conclusion that there exists relationship of landlord and tenant in between the plaintiff and the defendant. It has been further found that the defendant has committed default in payment of rent. These findings have been arrived at by the appellate court below on scrutiny of evidence. The law is well settled that even if the finding of fact is wrong, but is based upon some evidence which are acceptable, such findings cannot be said to be perverse. This Court after perusal of the judgment of the appellate court below does not find any perversity or

unreasonableness in the same.

5. Ex consequenti, this Court finds that no substantial question of law arises for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J.)

Snkumar/-

U			
---	--	--	--