

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.77 of 2010

- =====
1. Radha Krishna Dumrewala @ Dumrewal
 2. Mantu Kumar Dumrewala both S/O Late Durga Prasad Dumrewala R/O Sakhi Chand Katra, P.O. Bhagalpur City, P.S. Kotwali, Distt.- Bhagalpur.

.... Petitioner/s

Versus

1. Jiwan Mal Kothari @ Jeevan Mal Kothari.
2. Binod Kumar Kothari both S/O Mangi Lal Kothari R/O Mohalla Kunj Lal Lane Sujaganj, P.O. Bhagalpur City, P.S. Kotwali, Distt.- Bhagalpur.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Dr. Manoj Kumar, Adv.
Mrs. Sweety Sinha, Adv.
For the Respondent/s : Mr. Praveen Kumar, Adv.
Mr. Krishna Mohan, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 26-08-2016

Heard learned counsel for the petitioners and the learned counsel for the opposite parties.

This revision application has been filed against the order dated 23.11.2009 passed in the Eviction Suit No. 07 of 1988 whereby the learned court below has decreed the suit granting the decree for eviction as prayed by the plaintiffs.

The factual expose' are that the opposite parties were admittedly the tenants in the suit premises which was a shop. The plaintiffs purchased the said shop by registered sale deed dated 02.07.1986 from the admitted owner. The eviction suit was filed



seeking eviction of the defendant-petitioners from the suit shop on the ground of personal necessity. The defendant-petitioners appeared in the suit and filed their written statement contesting the plea of personal necessity of the plaintiffs on the ground that there were other shops where the father of the plaintiffs was carrying on business and further that the plaintiffs had the option to start and establish their business in the same which was lying vacant on the upper portion. The trial court, after considering the pleadings and evidence of the parties, granted the decree, as prayed by the plaintiffs. The defendant-petitioners filed C.R. No. 2118 of 2007 before this Court challenging the said eviction decree. By order dated 15.12.2008 Annexure-1, the said revision application was allowed and the matter was remitted back to the trial court for rehearing and passing fresh judgment on the issue of personal necessity and partial eviction in accordance with law after considering the evidence on record. It would be condign to notice here that in the remand order, this Court has affirmed the other findings recorded by the trial court except the finding on the issue of personal necessity and partial eviction.

The trial court, after remand, has passed the impugned order granting the decree for eviction, as prayed by the plaintiffs, returning the findings on the issues of personal necessity and partial eviction as directed in the remand order by this Court as

abovementioned.

Learned counsel for the petitioners has submitted that the plaintiff-opposite parties have got other shop premises which are available to them to start their business as claimed and has also emphasized the fact that the father of the plaintiff-opposite parties who was said to have been carrying on business in the vacant shop is now dead. It has, thus, been contended that there exists no bona fide personal requirement as pleaded by the plaintiffs. It has also been canvassed that the suit for eviction has been filed in the year 1988 and after passage of such a long time, the personal necessity as pleaded must be deemed to have vanished. No other submission has been made on behalf of the petitioners.

Learned counsel for the other side has supported the findings in the impugned judgment and order and has submitted that the evidence on record fully substantiated bona fide and reasonable requirement of the plaintiffs in the suit premises.

After considering the submissions and the perusal of the impugned judgment, it is manifest that the relationship of the plaintiffs and the defendants now stands admitted. The plaintiffs have filed the suit for the personal necessity for starting business of their own in the suit premises which is a shop under the occupation of the defendant-petitioners, as tenants. Though the defendant-petitioners, in



their pleadings, have asserted that the other shops are available to the plaintiffs for starting their own business but from paragraph-13 of the deposition of one of the defendants examined as D.W.3, it does not appear that the said fact has been substantiated. Even otherwise also, in view of the explanation to Section 11 (1) (c) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, the tenant is not permitted to question the choice of the premises of the landlord. The Apex Court also in the case of **Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, A.I.R. 1999 S.C. 2507** has ruled that it is not for the tenant to dictate the manner in which the plaintiffs' personal necessity can be established. The trial court has also considered the facts and evidence as well as the principles of law in this regard and thereafter has come to the finding that the plaintiffs have succeeded in establishing their bona fide personal need for the suit premises.

So far the issue of partial eviction is concerned, the learned court below has taken the notice of the stand on behalf of the plaintiffs and defendants that such issue does not arise for consideration in the facts and circumstances of the case where the suit shop is a small shop.

The Constitution Bench of the Apex Court in the case of **Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh, A.I.R. 2014 S.C. 3708** has ruled that the jurisdiction of the court in

the revision application under Rent Control Act is circumscribed and can be invoked in cases where the impugned judgment/order is not in accordance with law. This Court does not find that the impugned judgment/order and the findings recorded by the learned court below are perverse or illegal in any manner.

For the reasons and discussions as above, this Court does not find any merit in this revision application which is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

U			
---	--	--	--