

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.22 of 2013

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Nawal Kishore Sah, son of Fekan Sah, resident of Muzahida Parbatta, P.O. + P.S. Parbatta, Distgrict Khagaria

..... Plaintiff Respondent

.... Appellant

Versus

1. Jhako Devi, wife of Chamak Lal Sah
2. Mahadev Sah
3. Gurudeo Sah
4. Dharamdeo Sah, all sons of Late Chamak Lal Sah
All residents of Parbatta, P.O. + P.S. Parbatta, Distgrict Khagaria
..... Defendants Appellants

.... Respondents

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Appearance :

For the Appellant/s : Mr. Rakesh Narayan Singh, Advocate

For the Respondent/s : Mr. Anil Kumar Choudhary, Advocate

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 19-12-2016

Heard learned Counsel for the appellant and also the learned Counsel for 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 defendant from the suit premises on the ground of personal necessity. The suit was decreed holding that there was relationship of landlord and tenant and further that the plaintiff had got personal necessity for the suit premises. However, in appeal, the appellate court below on reappraisal of evidence has reversed the findings of the trial court and set aside the judgment and decree passed by the trial court. The present appellant had initially filed an application under Article 227 of the Constitution of India



questioning the legal sustainability of the judgment and decree passed by the appellate court below. However, by order dated 11.1.2013 this Court after hearing the parties allowed the prayer made on behalf of the appellant to convert the said application into a second appeal. Accordingly, the present second appeal after conversion has been placed for hearing under Order 41 Rule 11 CPC.

4. The matrix of facts discloses that the suit property admittedly belonged to the defendant and his brother Newa Lal Sah. The plaintiff is purchaser from Newa Lal Sah and has come out with the case that the defendant has been in occupation of the suit premises as its tenant. The suit was filed for eviction on the ground of personal requirement of the suit premises by the plaintiff for establishing his son in business. As aforementioned the trial court granted the decree but the said decree has been reversed by the appellate court by the impugned judgment and decree.

5. The learned Counsel appearing for the appellant at the outset has submitted that no submission is being made on the jurisdiction of the appellate court below to entertain the appeal and pass the impugned judgment and decree. However, it has been strongly submitted on behalf of the appellant that the appellate court below has not properly considered the evidence led on behalf of the plaintiff-appellant, which clearly establishes that the plaintiff-appellant has got title over the suit property. It has been further also submitted that though admittedly there was no document of tenancy nor any evidence except a *Kachcha* receipt which has been produced, to establish the tenancy of the defendant in the suit premises, but the plaintiff has led oral evidence to establish the



relationship of landlord and tenant and also the personal necessity of the suit premises. It has, therefore, been submitted that the appellate court below has committed material irregularity in not correctly appreciating the evidence on record.

6. After considering the submissions and perusal of the judgments of both the courts below, it is manifest that in the suit filed for eviction of the defendant on the ground of personal necessity the relationship of landlord and tenant with the plaintiff has been denied by the defendant. There is admittedly no documentary evidence with regard to creation of the tenancy of the defendant in the suit premises. The fact has also not been denied that the vendor of the plaintiff and the defendant are full brothers being sons of Bharosi Sao who was allotted the suit property in partition. The appellate court below has taken into notice the evidence on record including the oral evidence and thereafter has come to the finding that the relationship of landlord and tenant between the plaintiff and the defendant could not be established. The emphatic submission on behalf of the appellant that the plaintiff would be entitled to a decree for eviction on the basis of title over the suit premises which is well established by oral and documentary evidence cannot now be legally sustained in view of the recent judgment of the Apex Court in the case of ***Tribhuvanshankar vrs. Amrutlal, (2014) 2 SCC 788***. It is also well settled that any finding on the issue of title between the parties in the eviction suit will not be res judicata in any subsequent action for recovery of possession with regard to the same property on the basis of title.

7. This Court further finds that the conclusions by the



appellate court below have been recorded on the basis of appreciation of evidence which were acceptable and could have been relied upon. This Court has not been persuaded to hold that the findings by the appellate court below on the issue of relationship of landlord and tenant are perverse or unreasonable.

8. Ex consequenti, this Court does not find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed. However, any finding on the issue of title in the present suit for eviction would not prejudice the claim of the plaintiff for recovery of possession in an action in accordance with law.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
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