

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.151 of 2014

Sushila Devi wife of Ram Autar Yadav Resident of Mohalla - Barmasia, Near
Madhya Vidyalaya, P.O., P.S. and District - Katihar.

.... Appellant

Versus

1. Usha Devi, Wife of Rajendra Chaudhary.
 2. Rajendra Choudhary son of Late Jaldhar Choudhary.
 3. Maya Devi, Wife of Late Ram Kishun Choudhary.
 4. Sanjeet Choudhary, Son of Late Ram Kishun Choudhary.
- All resident of Mohalla-Barmasia, P.S.-Katihar, Sohayak, District-Katihar.
- Respondents.

Appearance :

For the Appellant/s : Mr. Deepak Kumar Singh, Adv
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 30-06-2016

Heard Mr. Raghib Ahsan, learned senior counsel appearing
for the appellant.

The plaintiff in the suit is the appellant in this appeal against
the judgment and decree of reversal dismissing the suit.

The plaintiff filed the suit for a decree of eviction against the
defendant from the suit premises on the ground of default in
payment of rent. The defendant denied his relationship as tenant of
the plaintiff and also challenged the title of the plaintiff over the suit
premises. The defendant further claimed to be in possession of the
suit premises in part performance of agreement for sale as the
proposed owner and title holder of the suit premises. The defendant

in this manner also denied the allegation of having committed default in payment of rent to the plaintiff.

The trial court after considering the evidence returned the finding that the plaintiff was the owner of the suit premises. It was further held that the defendant was not the tenant of the plaintiff in the suit premises and as such there was no default in payment of rent. The court, however, further concluded that the defendant was in possession of the suit premises as a trespasser and accordingly granted the decree to the plaintiff directing the defendant to vacate the suit premises. In appeal by the defendant, the appellate court below on reappraisal of evidence has held that the plaintiff is not the title holder of the suit premises. It has been further held that as the findings regarding the status of the defendant as trespasser in the suit premises has not been challenged by the plaintiff by filing cross objection, therefore no decree for eviction can be passed against the defendant as there is no relationship of landlord and tenant. The findings of the trial court have been accordingly reversed by the appellate court below and the suit has been dismissed by the impugned judgment and decree.

Assailing the impugned judgment Mr. Raghiv Ahsan, learned senior counsel for the appellant has made the solitary submission that the appellate court below has erred in law in holding that the



plaintiff was required to file cross objection in order to assail the finding of the trial court holding the defendant to be trespasser. It has been propounded that the provision of Order 41 Rule 22 C.P.C does not require a party to file cross objection against the finding when the ultimate decree is in his favour and such finding can very well be assailed even without preferring cross objection. The learned senior counsel has extensively relied upon the decision in the case of **AIR 1955 Pat. 287, TribhuvanShankar vs AmrutLal 2014(2) S.C.C 788 and Banarsi Vs. Ram Phal, 2003(9) S.C.C 606**. It has also been contended that in view of the provision as contained under Order 41 Rule 33 C.P.C, the plaintiff was further also entitled as respondent in the court below to assail the said finding. No other submission has been made on behalf of the appellant.

After considering the submissions and perusal of the judgment of both the courts below it is manifest that the plaintiff has filed the suit for eviction of the defendant on the ground of default in payment of rent under the provisions of Bihar Building (Lease, Rent and Eviction) Control Act, 1982. The trial court after considering the evidence on record has come to the finding that the plaintiff is the title holder of the suit premises but has further found that there is no relationship of landlord and tenant in between the plaintiff and defendant. However, the trial court granted the decree

for eviction of the defendant after holding him to be a trespasser in the suit premises. In appeal, the appellate court reversed the finding of title of the plaintiff over the suit premises and has further also come to hold that no decree for eviction, as prayed, would be passed against the defendant after holding him to be a trespasser and in absence of his status as tenant in occupation of the suit premises.

It is no more res integra that the relationship of landlord and tenant is sine qua non for grant of the decree for eviction under the Bihar Building (Lease, Rent and Eviction) Control Act, 1982. The Apex Court in the case of **TribhuvanShankar (supra):-**

"12.1 The analysis made by the High Court that when the relationship between the landlord and tenant is not proven in a suit for eviction, possession cannot be delivered solely on the bedrock of right, title and interest cannot be found fault with. There is a difference between a suit for eviction based on landlord-tenant relationship and suit for possession based on title, and once the relationship of landlord and tenant is not proved there cannot be a decree of eviction. "

In view of the aforesaid dictum by the apex court there remains no doubt that the decree for eviction as passed by the trial court on the basis of finding of title of the suit premises with the plaintiff and holding the defendant to be a trespasser could not have

been sustained and the appellate court below has rightly set aside the decree for eviction as passed by the trial court on that basis.

However, the learned counsel for the appellant has pressed this appeal only on the ground that the appellate court has wrongly refused to determine the issue of relationship of landlord and tenant in between the plaintiff and defendant on the ground that in absence of cross objection against the said finding by the plaintiff, it is no more open to challenge. However, this submission on behalf of the appellant does not appear to have a solid base for its sustainability. It is noteworthy in this context that the finding by the appellate court below, even after considering it to be only incidental, regarding the absence of title of the plaintiff over the suit premises has not been challenged on behalf of the appellant during the course of submission. Even otherwise also the finding on the issue of title of the plaintiff over the suit premises has been recorded by the appellate court below on the basis of scrutiny of evidence on record which does not suffer from perversity or unreasonableness.

When in an eviction suit, the grant of decree for eviction is resisted by the defendant denying relationship of landlord and tenant, the plaintiff in order to succeed in such a suit is primarily required to establish such relationship by cogent evidence besides other legal rights. In the present case the trial court refused to grant



the decree for eviction to the plaintiff under the B.B.C. Act in view of the finding of absence of his relationship with the defendant as his landlord and instead passed a decree for ejectment on the basis of general title of the plaintiff. The reversal of finding on the said issue of relationship of landlord and tenant by the appellate court at the instance of the plaintiff, if allowed would necessarily involve alteration/substitution of the decree for eviction passed against the defendant holding him to be a trespasser over the suit premises to a decree for eviction against him under the B.B.C. Act holding him to be a tenant of the plaintiff in the suit premises which will further also attract other legal consequence. Where the reversal of the finding would result in substantial alteration of the decree at the stage of appeal, a cross objection under Order 41 Rule 22 as is necessary as held by the apex court in ***Banarsi Vs. Ram Phal, (2003) 9 SCC 606*** as follows:

10. “.....*A respondent may defend himself without filing any cross-objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree he must take cross-objection.*”

12. “...*The fact remains that to the extent to which the decree is against the respondent and he wishes*

to get rid of it he should have either filed an appeal of his own or taken cross-objection failing which the decree to that extent cannot be insisted on by the respondent for being interfered, set aside or modified to his advantage.....”

A plaintiff who files a suit for specific performance claiming compensation in lieu of or in addition to the relief of specific performance or any other relief including the refund of any money has a right to file an appeal against the original decree if the relief of specific performance is refused and other relief is granted...”

It follows as a necessary corollary from the abovesaid statement of law that in an appeal filed by the defendant laying challenge to the relief of compensation or refund of money or any other relief while decree for specific performance was denied to the plaintiff, the plaintiff as a respondent cannot seek the relief of specific performance of contract or modification of the impugned decree except by filing an appeal of his own or by taking cross-objection.....”

Tested on the anvil to the aforesaid principles as laid down by the apex court, it is demonstrably clear that the plaintiff

could not have challenged the finding on the issue of relationship of landlord and tenant recorded against him by the trial court in the appeal filed by the defendant without preferring a cross-objection against the said finding as reversal of said finding at the instance of the plaintiff would result in grant of decree for eviction in favour of the plaintiff under the B.B.C. Act.

For the aforesaid reasons and discussions, this Court does not find substance in the submission made on behalf of the appellant.

Ext consequenti, it is held that there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	05.09.16
Transmission Date	N.A.