

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.16 of 2014

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1. Laxman Rajak S/O Late Jagdhish Rajak Resident Of Mohalla Ramsar, Ram Das
Gupta Path, P.O. Naya Bazar, P.S. Tatarpur, District Bhagalpur.

.... Petitioner/s

Versus

1. Sri Kant Roy
2. Sri Ram Roy Both Sons Of Narayan Roy Resident Of Mohalla Ramsar, Ram Das
Gupta Path, P.O. Naya Bazar, P.S. Tatarpur, District Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ganpati Trivedi, Sr. Adv and Mr. Sanjay
Kumar Pandey, Adv

For the Respondent/s : Mr. Dr. Manoj Kumar, Adv

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 17-11-2016

Heard Mr. Ganpati Trivedi, learned senior counsel for
the petitioner and Dr. Manoj Kumar, learned counsel for the
respondents.

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) questioning the legal
sustainability of the judgment and decree dated 24.04.2013 whereby
the order for eviction has been passed against the defendant.

The facts are not in dispute that the plaintiff purchased



the suit premises from Kanhai Das. It is the case of the plaintiff that the defendant is the tenant in the suit premises before the purchase by the plaintiff. However, it is further case of the plaintiff that the defendant refused to pay the rent to the plaintiff for the suit premises. The suit however has been filed only on the ground of personal necessity alone seeking eviction of the defendant.

The defendant has contested the relief prayed by the plaintiff inter alia setting up title of the suit premises into himself on the basis of oral purchase of the suit premise from late Kanhai Das. It has been the case of the defendant that he was in possession of the suit premises and used to wash clothes of the owner Kanhai Das and later on purchased the suit premises from Kanhai Das for a sum of Rs. 50 in the year 1963.

The court below after considering the pleadings and evidence has come to the conclusion that the denial of title of the plaintiff by the defendant is only pretentious and not genuine. It has been further held that the defendant is in occupation of the suit premises as tenant. After finding that the plaintiff has got personal necessity of the suit premises, the learned court below has passed the impugned judgment granting decree for eviction as prayed by the plaintiff.

While criticizing the impugned judgment Mr. Trivedi



learned senior counsel for the petitioner, at the outset, has submitted that the assail in the present revision application is confined to the finding of relationship of landlord and tenant as recorded by the learned court below and other findings are not being challenged. Elaborating his submissions learned counsel has propounded that the plaintiff has failed to adduce cogent evidence establishing his relationship as landlord of the defendant for the suit premise and in this view of the matter the court below has committed error of jurisdiction in passing the impugned judgment and decree for eviction. It has been further contended that the defendant has been in possession of the suit premises not as a tenant of the vendor of the plaintiff rather he had been in possession of the suit premises initially on the permission of the vendor late Kanhai Das and was serving him as Washerman but later on he orally sold the suit premise to the defendant.

Learned counsel appearing for the plaintiff-opposite party, however, has submitted that the plaintiff has led cogent evidence to establish the relationship of landlord and tenant with the defendant and finding by the learned court below in this regard is based upon scrutiny of evidence on record.

After considering the submissions and perusal of the impugned judgment, it is manifest that in the suit for eviction filed



by the plaintiff on the ground of personal necessity, the defendant has questioned his relationship with the plaintiff as tenant and has come out with the case of acquisition of title over the suit premise on the basis of oral sale and purchase in the year 1963. It is noteworthy that the vendor of the defendant or the family members of the vendor have not come to support the case of the defendant regarding oral sale of the suit premises with him whereas the plaintiff has claimed his title over the suit premises and produced a registered sale deed executed by the said vendor in his favour for the suit premise. Significantly the tenant-defendant has also not examined himself in the suit in support of his plea of oral sale-purchase. Learned senior counsel for the petitioner has admitted that there is no explanation for non examination of the defendant as witness in the suit. However the learned senior counsel has put emphasis that the mother of the defendant has been examined and other witnesses have also been examined who have supported the case of the defendant regarding acquisition of title over the suit premises by oral sale and absence of relationship of landlord and tenant.

The learned court below has rightly relied upon a bench decision of this Court in the case of *Sarkar Sharan and Ors vs Ram Prasad Gupta & Ors*, 1999(3) PLJR 923 wherein it has



been held that the court in eviction suit under Section 14 of the BBC Act is not precluded from going into the question of title in order to find out whether the plea of title by the defendant-tenant is frivolous or otherwise. Learned court below thereafter has taken into consideration the evidence adduced by the parties and has come to the conclusion that there is relationship of landlord and tenant between the parties. Even otherwise also, the defendant-tenant cannot escape adverse inference being drawn against him under Section 114(g) of the Evidence Act for not examining him in the suit and thereby denying opportunity to the plaintiff to test the credibility of his claim of title on the basis of oral sale. In the backdrop of these facts and circumstances, this Court has not been persuaded to find that the impugned judgment and decree for eviction is not according to law. The ambit and scope of the revisional jurisdiction under the Rent Control Act has been considered by a Constitution Bench in the case of ***Hindustan Petroleum Corporation L.T.D. Vs. Dilbahar Singh, 2014 (9) SCALE 657*** and it has been laid down as follows:

Para 45. “...*The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of*



the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity...”

For the aforesaid reasons and discussions, this Court finds that the conclusions by the learned court below are according to law.

This revision application, sans merit, is accordingly dismissed.

(V. Nath, J)

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