

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.131 of 2015

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Jai Prakash Gupta, Son of Late Bishwanath Prasad, Proprietor M/S Bal Kishun Sao Kirana Stores, Machhua Toli, Bari Path, P.S.- Pirbahore, District- Patna.

.... Appellant/s

Versus

1. Smt. Harbhajan Kaur w/o Late Sardar Guru Charan Singh, resident of Machhua Toli, Bari Path, P.S.- Pirbahore, District- Patna.
2. Smt. Babbu Kaur D/o Late Sardar Guru Charan Singh and w/o Prit Pal Singh, resident of Hindustan Vastralay, Mirzapur Road, Opp- S.B.I. Bank, Ram Nagar Chauk, Varansi.
3. Sardar Ravindra Singh
4. Sardar Amrit Pal Singh Both sons of Sardar Gurucharan Singh, resident of Mohalla-Machhua Toli, Bari Path, P.S.- Pirbahore, District- Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Siddharth Harsh, Adv
For the Respondent/s : Mr. J.S. Arora, Adv

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

4 13-04-2016 Heard Mr. Siddharth Harsh, learned counsel for the appellant and Mr. J.S. Arora, learned counsel for the respondents.

2. Interlocutory application (I.A. No. 374 of 2016) has been filed on behalf of the respondent questioning the maintainability of this second appeal.

3. A suit for eviction was filed on the ground of personal necessity alone seeking eviction of the defendant (appellant in this appeal) from the suit premises. The suit was decreed in part, after considering the issue of partial eviction.



The plaintiff thereafter preferred a regular appeal against the dismissal or refusal of the relief with regard to the part of the suit premises. By the judgment and decree impugned in this appeal the appellate court has allowed the appeal resulting in the grant of decree to the plaintiff, as prayed, in entirety. The present second appeal has been filed by the defendant against the judgment and decree of the appellate court below.

4. In the abovesaid interlocutory application the respondent after referring to the decisions of this Court in the case of **Mr. Jainul Ansari and Ors vs Md. Khalil** reported in **1990(2) PLJR 378** and **Subodh Kumar @ Subodh Kumar Gupta vs Sita Ram Prasad & Ors** reported in **1999(2) PLJR 16**, has stated that the present appeal is essentially an appeal against the judgment and order of eviction and therefore, the same is not maintainable in view of the provision of Section 14(8) of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982 whereby the tenant has been allowed the remedy only by way of revision against the judgment and order of eviction. The learned counsel for the appellant in response has only prayed that an opportunity or liberty be granted to the appellant to prefer the revision against the impugned judgment and order of eviction.

5. After considering the submissions and the aforesaid facts and circumstances, this Court finds substance in the objection raised on behalf of the respondents to the maintainability of this second appeal against the judgment and decree passed by the appellate court in an eviction suit on the ground of personal necessity alone where the suit of the plaintiff has been decreed in entirety reversing the judgment and decree of the trial court granting the relief of eviction to the plaintiff only in part. This second appeal is therefore held to be not maintainable and is dismissed as such.

6. It goes without saying that the appellant shall have the liberty to pursue the remedies available to him in accordance with law against the judgment and decree impugned in this appeal.

(V. Nath, J)

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