

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.120 of 2016

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Pradeep Kumar Choudhary, Son of Late Kamleshwari Prasad Choudhary, Resident
of Khiru Chowk, Bhatta Bazar, P.S.- Khajanchi Hat, District-Purnea.

.... Appellant.

Versus

Ghanshyam Das, Son of Late Narain Das, Resident of Mohalla-Navratan Hata,
P.S.-Khajanchi Hat, District-Purnea.

.... Respondent

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Appearance :

For the Appellant/s : Mr. Gyanand Roy, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 15-11-2016

Heard Mr. Gyanand Roy, learned counsel
appearing for the appellant. Mr. Kumar Uday Singh, learned counsel
for the sole respondent is present.

The defendant is the appellant in this appeal
against the judgment and decree of reversal granting the decree for
eviction to the plaintiff as prayed.

The suit was filed seeking eviction of the
defendant from the suit premises, which was a shop, on ground of
default in payment of rent and personal necessity. The relationship of
landlord and tenant between the parties was not in dispute.

The case of the plaintiff was that the defendant



defaulted in payment of rent and it was also the further case that the plaintiff bonafidely required the suit premises for establishing his son in business. The defendant-tenant denied the assertions of the plaintiff regarding the default in payment of rent as well as the bonafides of the personal requirement of the plaintiff as pleaded.

The trial court returned the findings on the material issues against the plaintiff and dismissed the suit. The appellate court below on reappraisal of evidence has concurred with the finding of the trial court on the issue of default in payment of rent but has reversed the finding on the issue of personal necessity and has granted the decree for eviction on that ground to the plaintiff by the impugned judgment and decree.

Mr. Roy, learned counsel appearing for the appellant has submitted that the malafide nature of the case of the plaintiff is apparent when in his deposition he has admitted that he has chosen the defendant for eviction as he has defaulted in payment of rent. It has been contended that the plaintiff has admitted in his deposition that the other premises are lying vacant on the date of the filing of the suit and there is no averment that the suit premises was more suitable for settling the sons in business. It has been propounded that in view of the statement made by the plaintiff in his deposition that the defendant was chosen for eviction out of several tenants only



on the ground of default in payment of rent, the inference is inevitable that the case of personal necessity as set up by the plaintiff was not genuine. It has been canvassed that the trial court has correctly decided the said issue but the appellate court below has ignored the material evidence in this regard and has wrongly decided the issue of personal necessity and granted the decree to the plaintiff. No other submission has been made on behalf of the appellant.

After considering the submissions and perusal of the judgments of both the courts below, it is manifest that the defendant was the tenant of the plaintiff against whom the plaintiff filed the suit for eviction on two grounds firstly that the defendant had defaulted in payment of rent and secondly that the plaintiff required the suit premises for settling his son in business. The statement made by the plaintiff in his deposition that he had chosen the defendant for eviction because he had defaulted in payment of rent cannot be interpreted to the extent as to nullify the case of personal necessity as pleaded by the plaintiff. It cannot be lost sight of that the suit has been filed by the plaintiff on two grounds i.e. default in payment of rent and personal necessity and it would be going too far to non-suit of the plaintiff, once after the plea of default in payment of rent could not be established by cogent evidence, on the ground that the need as pleaded for personal necessity has thereafter become malafide.



Moreover, from the cases of the parties as mentioned by both the courts below there is nothing in the pleading by the plaintiff or by the defendant that the suit for eviction was filed on ground of personal necessity also because the defendant had committed default in payment of rent. The deposition of a party in the suit and in particular the cross examination has to be considered in entirety. This Court, therefore, does not find substance in the submission on behalf of the appellant that the claim of personal necessity of the plaintiff became vulnerable because the plaintiff had chosen to seek eviction on the ground of default in payment of rent. So far as the other submission that so many premises of the plaintiff have been lying vacant and therefore the prayer for eviction of the have been on ground of personal necessity is not bonafide cannot be accepted in view of the Explanation-II which has been added by amendment in Section 11(i)(c) of the Bihar Building (Lease, Rent & Eviction) Control Act 1982. Moreover, the apex court has also considered this aspect in the case of *Anil Bajaj vs Vinod Ahuja, (2014) 6 SCALE 572* observing that the tenant cannot dictate the plaintiff as to how his personal necessity can be best satisfied. The findings of fact have been recorded by the appellate court below on the basis of evidence which were acceptable and could have been relied upon. This Court has not been persuaded to find perversity or unreasonableness in the same.



Ex consequenti, there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

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