

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.549 of 2016**

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Ramashankar Prasad & Ors

.... Appellant/s

Versus

Most. Amita Keshari & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manoj Kumar

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

4 15-12-2016 Heard learned Senior Counsel Mr. J.S. Arora for the petitioners and learned counsel Mr. Surendra Kishore Thakur for the respondents.

2. Perused the impugned order dated 02.07.2016 passed by learned District Judge, Buxar in Title Appeal No.13 of 2016 whereby the learned court below dismissed the appeal as not maintainable on the ground that civil revision under Section 14(8) of the B.B.C. Act is maintainable.

3. It appears that the suit for eviction was filed by the plaintiffs-respondents. The suit was contested by filing written statement by the petitioners. Since the suit was filed by the plaintiffs-respondents on composite grounds, the petitioners filed title appeal before the lower appellate court being Title Appeal No.18 of 2016/13 of 2016 which was admitted. Later on the plaintiffs-respondents filed application before the court below for



dismissing appeal as not maintainable on the ground that the suit was filed for eviction only on the ground of personal necessity. The court below by the impugned order has dismissed the appeal as not maintainable.

4. At the time of hearing of this civil miscellaneous application the learned Sr. counsel Mr. J.S.Arora for the petitioners relying on the decision of the Division Bench of this Court reported in **1992 (2) P.L.J.R. 111** submitted that the cumulative effect of Sections 13 and 14 would be that if the suit for eviction is based upon any of the two grounds specified under Clause (c) and (e) of Sub-section (1) of Section 11 of the Act namely bonafide personal necessity or expiry of the period of tenancy, the same has to be tried in accordance with special procedure prescribed under Section 14 of the Act. A duty is cast upon the court itself to follow the special procedure. According to the learned counsel, in the present case, the suit was not filed only on the ground of bonafide personal necessity rather the plaintiffs filed the suit firstly for declaration of title of the plaintiffs and further for declaration that the defendant is the tenant of the plaintiffs and also prayed that the defendant be directed to pay the arrears of rent amounting to Rs.1,27,380.50 as the defendant has not paid rents, detailed in Schedule 3 of the plaint. Therefore,



according to the learned counsel, no special procedure provided under section 14 was followed by the court and the tenant-petitioner never obtained leave as required under section 14 (4) of the B.B.C. Act. In such view of the matter appeal under section 96 of the CPC was applicable but the court below wrongly dismissed the appeal holding that the revision under section 14(8) of the B.B.C. Act will be maintainable.

5. On the other hand, learned counsel Mr. Surendra Kishore Thakur for the respondents relied upon two decisions of this Court. (i) **1997 (1) B.L.J.R. 376** and (ii) unreported decision of this court passed in C.W.J.C. No.6685 of 2014 dated 27.01.2015 and submitted that in the body of the plaint the plaintiffs specifically pleaded that the suit property is required for starting of business for the grand-sons of the plaintiffs. Therefore, in fact the eviction was sought on the ground of personal necessity only. The other reliefs were not pressed before the court below and, therefore, the appeal under section 96 CPC was not maintainable and the court below has rightly therefore, held that the revision under section 14 (8) of the B.B.C. Act is applicable.

6. At the time of hearing of this civil miscellaneous application a copy of the plaint was produced by the petitioners. From perusal of the relief portion, it appears that the plaintiffs



firstly claimed the relief for declaration of title of the plaintiffs and for declaration that the defendant is a tenant. The second relief is for directing the defendant to vacate the suit premises described in Schedule 2 and the third relief claimed is that the plaintiffs are entitled to receive the arrears of rent detailed in Schedule 3 of the plaint. There is no relief claimed by the plaintiffs that the plaintiffs require the suit premises bonafidely.

7. So far the decisions relied upon by the learned counsel for the respondents i.e. **1997 (1) B.L.J.R. 376** is concerned, from perusal of the same, it appears that in that case it appears that the suit was filed for eviction only on the ground of personal necessity vide paragraph 7 of the judgment. It was found that even though there were some arrears of rent allegedly due the petitioners did not seek any relief about the arrears of rent and reserved their right to bring another suit for that relief. In my opinion, therefore, this decision is not applicable in the present facts and circumstances of the case.

8. So far unreported decision in C.W.J.C. No.6685 of 2014 disposed of on 27.01.2015 is concerned, it may be mentioned here that in that case also the suit was filed on the ground of personal necessity. The plaintiff specifically omitted the ground of default to be a ground for eviction in the suit and this court held



that the plaintiff has filed the suit for eviction only on the ground of personal necessity. Therefore, this decision is also not applicable in the present case.

9. I have already mentioned the relief claimed in the plaint in the present suit. It is admitted fact that the defendants-petitioners never obtained leave to contest the suit as required under Section 14(4) of the B.B.C. Act nor the special procedure was followed.

10. The Division Bench decision of this court has clearly stated that the special procedure can be followed only if the eviction suit is filed on the ground of 11 (1) (c) and (e) of the B.B.C. Act and if special procedure is not followed then there is no question of filing revision as provided under the special procedure under Section 14(8) of the B.B.C. Act arises.

11. From perusal of the impugned order, it appears that the court below did not consider this aspect of the matter and it further appears that the court below did not even look to the relief claimed in the plaint. In the judgment of the trial court itself it appears that an issue was framed to the effect that whether the plaintiffs are entitled to a decree for arrears of rent as claimed. The court below also did not consider the fact that the special procedure in the present case was not followed. It is also admitted



fact that the title appeal was admitted by the lower appellate court.

12. In view of the above facts and circumstances of the case and settled principles of law, in my opinion, the court below has wrongly refused to exercise the jurisdiction vested in it by law and thereby it occasioned failure of justice and if the impugned order is allowed to stand it will cause prejudice to the petitioners. The court below has passed the order in the manner not permitted by law. In fact title appeal is maintainable and the petitioners had rightly filed the appeal under section 96 CPC before the lower appellate court.

13. In the result, this civil miscellaneous application is allowed. The impugned order dated 02.07.2016 passed by District Judge, Buxar in Title Appeal No.13 of 2016 is hereby set aside. The lower appellate court is directed to decide the Title Appeal No.13 of 2016 on merit according to law.

(Mungeshwar Sahoo, J)

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