

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.1 of 2014

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Sanjeet Kumar @ Sanjeet Chandra Das @ Sanjeet Chandra Das Majoomdar, Son of Late Randhir Chandra Majoomdar, resident of mohalla-Surkhikal, Tilkamanjhi, P.O.-Tilkamanjhi, P.S.-Barari, District-Bhagalpur, at present running a Readymade Garments Business, in Shop No.3, Sundaram Sector, Surkhikal Road, Tilkamanjhi, P.O.-Tilkamanjhi, District-Bhagalpur.

.... Petitioner.

Versus

Smt. Ritu Singh, Wife of Santosh Kumar Singh, resident of mohalla-Manik Sarkar Ghat Road, Gali No.3, 1st floor, P.O.& P.S.-Adampur (Kotwali), District-Bhagalpur.

.... Respondent.

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Appearance :

For the Petitioner/s : Mr. DIWAKAR UPADHYAYA

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 23-12-2016

Heard Mr. Diwakar Upadhyaya, learned counsel appearing for the petitioner and the learned counsel appearing for the opposite parties.

The present revision application has been filed under Section 14(8) of the Bihar Building (Lease , Rent & Eviction) Control Act, 1982 (hereinafter referred to as B.B.C.Act) against the judgment and decree of eviction against the defendant. At the outset, it is required to be noticed that the learned counsel for the parties have not disputed the fact that the defence of the tenant was struck off in accordance with the provision of Section 15 of B.B.C. Act by order dated 17.08.2012. The effect of striking off the defence of the tenant in a suit for eviction is well explained in two Bench decisions of this



Court firstly in Shri ***Sachidanand Singh Vs. Smt. Tarawati Mishrain, 1992(2)PLJR195*** and another ***Sri Dinesh Nandan Sahay Vs. Ram Kripal Singh, 1996(1)PLJR 234***. It is, therefore, evident that after the defence was struck off, the defendant-tenant was not entitled in law to lead evidence, and his evidence against the ejectment as prayed by the plaintiff, if any, cannot be looked into in the proceeding for eviction.

The matrix of facts discloses that the suit for eviction was filed by the plaintiffs on the ground of expiry of lease and personal necessity of the suit premises. It is, however, again not disputed on behalf of the plaintiff-opposite parties that the lease deed was not adduced in evidence in accordance with law in the eviction proceeding and only the signature appearing on the said lease deed has been adduced in evidence and marked as exhibit. With regard to personal necessity the plaintiff adduced oral evidence in support of the contention that the suit premises is required for setting up a business by the plaintiff.

The learned court below has returned the findings on issue against the defendant and granted the decree for eviction as prayed.

Mr. Upadhyay, learned counsel appearing for the petitioner has submitted that though the claim of eviction by the plaintiff was based upon the expiry of lease but the said document of



lease was not adduced in evidence in accordance with law. It has been contended that the Order 7 Rule 14 C.P.C. requires that the document upon which the plaintiff has placed reliance for the claim, must be entered into a list and presented with the plaint but the same has not been done in the present case. It has, therefore, been propounded that the learned court below has committed error of jurisdiction in looking into the said document of lease and accepting the same to be the lease on the basis of which the plaintiff can maintain the claim for eviction of the defendant on the expiry of the period stipulated therein. It has been next submitted that even the case of personal necessity has also not been established on behalf of the plaintiffs on the basis of evidence which has been adduced. The learned court below has not considered the same in proper perspective and has wrongly held that the plaintiff has got personal necessity for establishing a business of her own in the suit premises. It has also been argued that the issue of partial eviction has not been framed and considered by the learned court below while granting the decree on the ground of personal necessity though the said consideration is mandatory as settled by several decisions of this Court and other High Courts. The learned counsel, in the backdrop of aforesaid submissions, has submitted that the impugned judgment and order of eviction cannot be sustained.

The learned counsel appearing for the plaintiff-



opposite party, however, has supported the impugned judgment and order of eviction. It has been submitted that the learned court below has rightly considered the evidence on record before recording the finding that the tenant was liable to be evicted by an eviction decree on the ground of expiry of lease. During the course of submission, however, it has not been denied that the lease deed itself was not adduced in evidence in accordance with law. It has been next contended that as the suit was tried under the special procedure prescribed under Section 14 of the B.B.C. Act, therefore the rules of evidence are not strictly applicable and the learned court below has the discretion to allow the defendant to lead his evidence even after striking of the defence against the defendant. However, no principle or precedent could be cited on behalf of the plaintiff-opposite party in support of this submission. The fact has also not been disputed during the course of submission that no finding on the issue of partial eviction has been recorded by the court in the impugned judgment and order.

After considering the submissions and perusal of the impugned judgment, it is manifest that the suit has been filed firstly on the ground of expiry of the period of lease and also on the ground of bonafide personal necessity of the suit premises by the plaintiff. The fact is not in dispute that the lease said to have been entered into



the plaintiff and the defendant for creation of tenancy over the suit premises has not been brought in evidence and marked as exhibit in the suit. In view of the provision of Order 7 Rule 14 C.C.P.C. as well as in view of the fact that the necessary terms and conditions with regard to the tenancy can only be determined when the lease deed is present as evidence on record, the learned court below has definitely no jurisdiction to go into the contents of the said lease deed and pass a decree for eviction on the ground that the period of lease has expired. This position becomes more evident when in order to establish the fact of lease, the learned court below has taken into consideration the statement made by the defendant-tenant as D.W.1 and his wife D.W.2 into consideration for coming to the finding that the signature on the lease deed has been admitted by the defendant. Once after striking off the defence of the tenant-defendant, the learned court below could not have legally taken into consideration the deposition made by the said defendant as witness in the suit. The said course in fact has been rightly adopted by the learned court below while considering and determining the issue of personal necessity where the learned court below has taken into notice only the evidence on behalf of the plaintiff and has observed that in absence of any defence the assertions made by the plaintiff is to be accepted. It is, therefore, demonstrably clear that the learned court below has adopted two



yardsticks for evaluating the cases of the parties.

The finding of personal necessity has been recorded by the learned court below on the basis of the deposition of the plaintiff alone after taking the stand that there is no defence by the defendant. However, the learned court below has completely ignored the assertion of the plaintiff in paragraph-1 of the plaint itself that the suit shop is a double storeyed construction, and therefore, the proviso to Section 11(1)(c) B.B.C. Act is clearly attracted. There is no issue framed on the point of partial eviction and there is no finding by the learned court below on partial eviction. The provision of law enjoins the learned court below even after striking off the defence of the tenant-defendant to evaluate the claim of the plaintiff in accordance with law on the basis of the materials on record and decide the same in accordance with law. The learned court below was therefore required to consider the issue of partial eviction and record a finding thereupon.

This Court, therefore, comes to the conclusion that the impugned judgment passed by the learned court below has been passed de hors the procedure prescribed by law resulting in material irregularity and is not according to law. Accordingly, this revision application is allowed and the impugned judgment and decree of eviction is set aside. The eviction suit is remitted back to the learned



court below for a decision afresh on the basis of the materials available on record. The learned court below is further enjoined to consider and dispose of the suit within a period of four months from the date of receipt/production of a copy of this order after granting opportunity of hearing to both the parties.

(V. Nath, J)

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