

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.53 of 2015

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1. Sarban Kumar Kushwaha Son of Kailash Mandal Proprietor of Santosh Trading of Akbarnagar, P.s Akbarnagar, District Bhagalpur.

.... Petitioner/s

Versus

1. Sri Udhay Mandal @ Uday Mandal
2. Sri Bijay Mandal
3. Sri Anil Mandal All are sons of Late Bhola Mandal resident of Village-Akbarnagar, P.s Akbarnagar, District Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Diwakar Upadhyaya, Adv

For the O.P. : Mr. Deepak Kumar Sinha, Adv

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

5 08-03-2016 Heard learned counsel for the petitioner as well as learned counsel for the Opposite Parties.

2. This revision application has been filed under Section - 14(8) of the Bihar Building (Lease, Rent and Eviction) Control Act (hereinafter referred to as the B.B.C Act). challenging the judgment and order for eviction passed against the petitioner in Title (Eviction) Suit No. 12 of 2013 on 24.04.2015. The suit has been filed by the plaintiff claiming eviction of the defendants on the ground of personal necessity. The defendants did not deny the relationship of landlord and tenant. At the outset, it would be apt to mention here that earlier the matter was adjourned in view of the prayer made by learned



counsel for the petitioner to seek instruction in response to the offer made by learned counsel for the opposite parties that the petitioner might reside in the suit premises for further six months, but thereafter he would have to hand over vacant possession.

3. Today, when the matter has been taken up the learned counsel for the petitioner has submitted that the petitioner is not agreeable to the said offer but the petitioner is ready to vacate nearly half of the suit premises i.e four rooms out of seven rooms and retain the three rooms, which would be vacated in the month of May 2017. Learned counsel appearing for the opposite parties has submitted that the opposite parties are not agreeable to the said proposal on behalf of the tenant-petitioner. The matter thereafter has been heard on merit on the prayer made by learned counsel for the petitioner.

4. The present revision application has been by filed by the defendant-petitioner against the judgment of eviction of suit premises on the ground of personal necessity. The defendant has contested the case of the plaintiffs inter alia on two grounds. Firstly, that there has been a lease deed, wherein, the parties has agreed that the tenancy would be for a fixed term of ten years. It has therefore been the defence of the petitioner that the present



suit was premature as the period of ten years has not elapsed. It has next been the case of the defendants that the plaintiffs have got another house and both houses have got sufficient accommodation for the family of the plaintiffs and therefore, the need as pleaded is not bonafide.

5. The learned court below after considering the pleadings and evidence of both the parties has returned the findings on the issues in favour of the plaintiffs and granted the decree for eviction by the impugned judgment and order.

6. The learned counsel for the petitioner has submitted that the findings by the learned court below are not in accordance with law and not based upon the proper appreciation of evidence on record. It has been contended that the lease deed (Exhibit-1) and also Exhibit-A adduced on behalf of the plaintiffs-Opposite Parties have admittedly been executed by the plaintiff-opposite parties and from the said document it is evident that the tenancy was created for a fixed term of ten years. It has been propounded that though the said document has not been registered, the same can be considered for collateral purpose for determining the nature and term (period) of tenancy. It has been next contended that the learned court below has not considered the existence of another house of the plaintiffs, which



fact is an admitted fact, before recording the finding of personal necessity to be bonafide. It has been canvassed that the learned court below ought to have considered the need of the plaintiffs in correct perspective keeping in view the fact that the plaintiffs family can very well be accommodated in the said house. The learned counsel for the petitioner has further submitted that even the aspect of partial eviction has not been correctly decided by the learned court below.

7. The learned counsel appearing for the opposite parties has supported the impugned order, and has submitted that the findings by the court below are on the basis of scrutiny of evidence and in accordance with law.

8. On perusal of the impugned judgment and considering the submissions on behalf of the parties, it is manifest that the suit has been filed for eviction of the defendant-petitioner on the ground of personal necessity. The relationship of landlord and tenant between the plaintiff and the defendant is not in dispute. The submission on behalf of learned counsel for the petitioner is that the lease deed (Exhibit-1) and agreement paper (Exhibit-A) postulate the fixed term of tenancy of ten years and therefore the suit filed by the plaintiffs is premature. This point has been considered by the learned court



below which has refused to rely on the terms of the said lease deed for the reason that it is not a registered document. The Apex Court in **K.B. Saha & Sons (P) Ltd vs Development Consultant Ltd. (2008) 8 SCC 564** has considered the sweep of collateral purpose as envisaged under Section 49 of Registration Act and has ruled that the terms on which the tenancy has been created are not collateral facts rather important terms of the contract of tenancy. The learned court below has correctly applied the legal principle in this regard and has rightly rejected the attempt of the tenant petitioner to extinguish the right of landlord-opposite party to maintain the suit for eviction as premature, on the basis of terms of the unregistered lease deed. The existence of another house of the plaintiffs has also been considered by the learned court below which has come to the finding of fact that the plaintiffs need cannot be satisfied by the said owner. It would be also worth to notice here that the explanation II to Section 11 (c) has been added in the B.B.C. Act precluding the tenant to question the choice of the landlord-plaintiff of the premises. So far as the submission on the point of partial eviction is concerned, it transpires from the impugned judgment that the plaintiff-opposite parties in their deposition have taken a stand that the partial eviction of the tenant-petitioner from the suit premises

would not satisfy their need. It is not the case of the tenant-petitioner that they have not cross examined the plaintiffs' witnesses and learned counsel appearing on behalf of the petitioner has also accepted that there has been nothing in the deposition of the defendant-petitioner to indicate his readiness for partial eviction from the suit premises. Even otherwise also the learned Court below has taken into notice the issue of partial eviction in accordance with law and has recorded the finding in favour of the plaintiffs.

9. The jurisdiction of this Court in revision under proviso to Section 14 (8) of the B.B.C Act is circumscribed by the limitations mentioned therein providing that the order of eviction is to be tested only on the touchstone as to whether it is in accordance with law as laid down by the Apex Court in **Chandrika Prasad & Ors vs Umesh Kumar Verma & Ors (2002) 1 SCC 531**. This Court has not been persuaded to find perversity or unreasonableness in any manner in the findings by the learned court below.

10. For the aforesaid reasons, this Court does not find any merit in the application. It is, accordingly, dismissed.

(V. Nath, J)

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