

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.347 of 2013

Smt. Shail Prabha Agrawal W/O Late Ballabh Kumar Goen Resident Of Holding No. 32 (Old) 34 (New) Ward No. 02/07 (Old) 14 (New) Mohalla Gautam Budh Marg, Post Office Gaya, Police Station Kotwali, District Gaya.

.... Plaintiff/Respondent/Appellant

Versus

Pawan Kumar S/O Late Jugal Kishore Agrawal @ Goenka Resident Of Holding No. 42 (Old) Ward No. 02/13 (Old) 14 New) Goenka Lane, Ghandhi Chowk, K.P. Road, Post Office Gaya, Police Station Kotwali, District Gaya.

....Defendant/Appellant/Respondent

Appearance :

For the Appellant/s : Mr. SIDDHARTH HARSH, Adv
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 01-03-2016

Heard Mr. K.N. Choubey, learned senior counsel appearing on behalf of the appellant.

2. The plaintiff is the appellant in the appeal against the judgment and decree of reversal dismissing the suit for eviction. Admittedly the suit property originally belonged to two brothers namely Ballabh Kumar Goenka and Gopal Kumar Goenka. There had been a partition between those two brothers in which Ballabh Kumar Goenka was allotted southern portion and Gopal Kumar Goenka was allotted northern portion. The plaintiff is the widow of



Ballabh Kumar Goenka. It is also not in dispute that the sole defendant has purchased the northern portion of Gopal Kumar Goenka by a registered sale deed executed by Gopal Kumar Goenka and his brothers. The suit has been filed for eviction of the defendant from the suit premises on the ground of default in payment of rent and also personal necessity. Further the relief for payment of arrears of rent was also made. It was the case of the plaintiff that the defendant was inducted as a monthly tenant in the suit premises (southern portion allotted to Ballabh Kumar Goenka) before the partition. The tenancy started from the month of January 2002 on rent of Rs. 1600 per month. The defendant appeared and contested the relief claimed by the plaintiff inter alia on the ground that there was no relationship of landlord and tenant and in fact it was the mother of the defendant who had been inducted as tenant in the suit premises.

3. The trial court returned the findings on the issues in favour of the plaintiff and granted the decree for eviction. In appeal by the defendant, the appellate court on reappraisal of evidence has reversed the findings of the trial court and has held that there has been no relationship of landlord and tenant in between the plaintiff and the defendant.

4. Mr. Choubey, learned senior counsel appearing for



the appellant, while criticizing the impugned judgment, has submitted that the appellate court below has wrongly come to the conclusion that the defendant was not the tenant of the plaintiff ignoring the documentary evidence (Exhibit-6) which was electric connection taken in the name of the defendant as well as the plaint of the partition suit (Exhibit-3) filed by the defendant, wherein, it has been stated that all the different business shops have been allotted to the share of the defendant. Elaborating his submissions, the learned senior counsel has contended that Bimla Devi is the mother of the defendant and therefore, the business which has been carried out in the suit premises must be taken to be the joint family business but the learned appellate court below has ignored this aspect. It has also been submitted that admittedly the defendant had taken electric connection in the suit premises in his name which clearly establishes that he was a tenant in the suit premises. It has also been argued that the appellate court below has not properly considered the material evidence and therefore, the findings are vulnerable.

5. After perusal of the judgment of both the courts below and considering the submissions, it is manifest that the eviction suit has been filed by the plaintiff seeking eviction of the defendant on the ground of default in payment of rent and personal



necessity as well as for recovery of arrears of rent. However, in view of the denial by the defendants of the relationship of landlord and tenant, the same issue was the crucial issue in the suit between the parties. On behalf of the plaintiff a counterfoil of the rent receipts granted in the name of the defendant were adduced in evidence as Exhibit-1 series but those counterfoils did not bear the signature of the defendant. The plaintiff however also did not produce the counter foil of the rent receipts from January 2002 to November 2006 and did not furnish any explanation in this regard. On behalf of the defendant, Exhibit-C series were produced which were the rent receipts issued by Gopal Kumar Goenka in the name of Smt. Bimla Devi and also carried the signatures of Smt. Bimla Devi. The said Gopal Kumar Goenka who was admittedly a co-sharer of the suit premises before partition has been examined as D.W.-5 and he has accepted his signatures over the rent receipts (Exhibit-C series). The appellate court below has considered these documentary evidence and have preferred to rely upon Exhibit-C series along with the Kirayanama (Exhibit-B) for coming to the conclusion that the defendant is not the tenant of the plaintiff. It has also been the case of the plaintiff as averred in the plaint that the defendant, who had obtained electric connection in his name for the suit premises, has shifted the said electric connection in the portion which he has



admittedly purchased from Gopal Kumar Goenka. The appellate court below has elaborately analyzed the material evidence led on behalf of the parties before coming to the conclusion that the plaintiffs have failed to establish the relationship of landlord and tenant with the defendant. The submission on behalf of the appellant is also that the business being carried out in the suit premises is the joint family business of the family of the defendant and thus, even though the tenancy may have been in the name of Smt. Bimla Devi but the suit for eviction could have been maintained by impleading the present defendant alone as sole defendant. This Court is not persuaded to accept the submission in view of the absence of the pleading by the plaintiffs in this regard in the plaint that the business in the suit premises is a joint family business being carried out by the defendant on behalf of the family. It is well settled by now that in a suit for eviction the existence of relationship of landlord and tenant is sine qua non for the exercise of the jurisdiction by the court and if the plaintiff fails to establish the same, the suit cannot be decreed. The scrutiny of evidence by the appellate court below clearly demonstrates that the findings as recorded are not unreasonable or the possibility of the view that has been taken is clearly ruled out. In fact major part of the submission on behalf of the appellant has centered around reappreciation of evidence for

upsetting the finding of fact. As there is no unreasonableness and perversity in the findings of the appellate court below, this Court comes to the conclusion that the findings of fact recorded by the appellate court below cannot be interfered in the second appellate jurisdiction.

6. In the result, this Court does not find any substantial question of law arising for consideration in this appeal, which is accordingly, dismissed.

(V. Nath, J)

Ranjan/-

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