

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.175 of 2013

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1. Md. Moti Son Of Siraj Rangi Mian R/O Mohalla-Hussainpur, Post Office-Mirjanhant, P.S.-Mojahidpur, District-Bhagalpur
 2. Md Alam Son Of Md Moti R/O Mohalla-Hussainpur, Post Office-Mirjanhant, P.S.-Mojahidpur, District-Bhagalpur
 3. Md Aftab Son Of Md Moti R/O Mohalla-Hussainpur, Post Office-Mirjanhant, P.S.-Mojahidpur, District-Bhagalpur
 4. Md Firoz Son Of Md Moti R/O Mohalla-Hussainpur, Post Office-Mirjanhant, P.S.-Mojahidpur, District-Bhagalpur

.... Petitioners

Versus

Bibi Rabia Khatoon Wife Of Md Zafrullah R/O Mohalla-Tatarpur, Bhagwan Mahabir Path, P.O.-Bhagalpur City, P.S.-Tatarpur, District-Bhagalpur

.... Opposite Party.

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Appearance :

For the Petitioner/s : Mr. Khatim Reza, Adv.

For the Opp.Party. : Mr. Ajay Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 24-08-2016

Mr. Khatim Reza, learned counsel appearing for the petitioners has submitted that the petitioner no.1 Md. Moti has died during the pendency of this application and all his heirs and legal representatives are already on record as petitioner nos. 2 to 4. The learned counsel has only prayed for expunging the name of the petitioner no.1. The learned counsel for the opposite party has raised no objection to this prayer.

As prayed for, the name of the petitioner no.1 is accordingly expunged from the revision application.

Heard Mr. Khatim Reza, learned counsel

appearing for the petitioners and Mr. Ajay Kumar Singh, learned counsel appearing for the plaintiff-opposite party.

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) seeking eviction of the defendant-petitioner from the suit premises on the ground of personal necessity alone. The plaintiff has pleaded that she requires the suit premises for construction of flats for accommodating her two daughters, son and husband after demolishing the same. The defendant denied the case of personal necessity, as pleaded, and came out with the case that as the plaintiff had got other premises available the necessity claimed by the plaintiff, could not be said to be bonafide and reasonable.

The trial court has returned the finding on the issues in favour of the plaintiff and granted the decree for eviction by the impugned judgment and decree.

Mr. Reza, learned counsel for the petitioners has submitted that the learned court below has not properly considered the evidence of the parties and therefore the findings are vitiated. It has been contended that the plaintiff has not produced any sanctioned map for the proposed building and therefore also the plea of personal necessity is belied. It has been emphasized by the learned

counsel for the petitioners that the suit premises is separate from the main residential building and the requirement of the plaintiff could have been satisfied even without demolition of the suit premises, and only the demolition of the residential building for the purpose of construction of the flats as pleaded would satisfy the need of the plaintiff.

Mr. Singh, learned counsel for the plaintiff-opposite party has submitted that the learned court below has not committed any error while evaluating the evidence on record and the findings are according to law. The learned counsel has further pointed out that there is no pleading by the defendant-petitioner of the fact that the plaintiff could have constructed the proposed building/flats and the personal necessity as pleaded by the plaintiff could have been satisfied without the demolition of the suit premises. The learned counsel has placed reliance on the decision of the apex court in the case of *Kasthuri Radhakrishnan Vs. M. Chinnian*, (2016) 3 SCC 296 in support of his contention.

After considering the submissions on behalf of the parties and the perusal of the impugned judgment, it is manifest that the relationship of landlord and tenant is admitted between the parties. The plaintiff's case of the need for the suit premises is for construction of flats for accommodating her two daughters, son and



husband after demolishing the entire building. It transpires from the impugned judgment that the learned court below has recorded the finding on the basis of scrutiny of evidence as led by the parties. During the course of submission, this Court has not been persuaded to find perversity or unreasonableness in any manner in the same. The learned counsel for the petitioners further has also accepted that there is no such pleading by the defendant in the written statement that the personal necessity of the plaintiff, as pleaded, could be satisfied without demolition of the suit premises.

In view of the judgment of the Constitution Bench of the apex court in the case of ***Kasthuri Radhakrishnan*** the revisional jurisdiction under the Rent Control Acts is circumscribed by limitations and the revisional court is only to see whether order for eviction is according to law or not. Their Lordships have observed as follows:

*“... So far as the issue pertaining to exercise of revisional jurisdiction of the High Court while hearing revision petition arising out of eviction matter is concerned, it remains no more res integra and stands settled by the Constitution Bench of this Court in **Hindustan Petroleum Corporation Limited***

vs. Dilbahar Singh (2014) 9 SCC 78. Justice R.M. Lodha, the learned Chief Justice speaking for the Bench held in para 43 thus:

“43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that,

if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first



appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity...”

This Court is not persuaded to hold that the judgment and order by the court below for eviction is not in accordance with law.

The revision application is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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