

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.1966 of 2006

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1. Awadhesh Paswan son of late Sri Charan Paswan, resident of Mohalla Karimabad alias Magardahi (Kashipur, ward No. 14 under town Samastipur, P.S. Samastipur, District- Samastipur.
 2. Bachi Kuwar wife of late Ramprit Paswan.
 3. Mithlesh Kumar Vidyarathi.
 4. Akhilesh Kumar.
 5. Mukesh Kumar, all three sons of late Ramprit Paswan.
 6. Rekha Kumari, daughter of late Ramprit Paswan, all resident of Mohalla Karimabad alias Magardahi (Kashipur, ward No. 14 under town Samastipur, P.S. Samastipur, District- Samastipur.
 7. Bidya devi Married daughter of late Ramprit Paswan wife of Roma Paswan resident of village Jitwarpur, P.S. District- Samastipur.
 8. Nutan Kumari, married daughter of late Ramprit Paswan wife of Bhola Paswan, resident of village-Aadhampur, P.S./ Garaul, District-vaishali.

.... Petitioner/s

Versus

1. Saraswati Devi wife of late Jagat Narayan Gupta.
2. Bishwanah Prasad Gupta.
3. Jitendra Kumar Gupta.
4. Rajendra Kumar Gupta.
5. Manoj Kumar Gupta, all sons of late Jagat Narayan Gupta, resident of Muhalla Karimabad alias Magardahi (Kashipur, ward No. 14 under town Samastipur, P.S. Samastipur, District- Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tribhuwan Narayan, Adv.

For the Respondent/s : Mr. Zeyaul Hoda, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-05-2016

Heard learned counsel for the petitioners. The opposite

parties have remained unrepresented.

This revision application has been filed under Section 14 (8) of the Bihar Buildings (Lease, Rent and Eviction) Control Act (hereinafter referred to as 'the Act' challenging the judgment and decree for eviction dated 27.09.2006 passed in Eviction Suit No. 03 of 2001.

The matrix of fact discloses that the Eviction Suit No. 03 of 2001 was filed by the plaintiff-opposite parties against the defendant-petitioners seeking a decree for eviction on the ground of personal necessity alone. The plaintiff claimed the suit premises to be his ancestral property allotted to him in partition and has further claimed that the defendants was inducted as tenant in the suit premises on monthly rental of Rs. 500/- which the defendants initially paid but from October 2000 stopped paying the rent. The plaintiff has asserted the personal necessity for the suit premises for occupation by him and his family members. The defendants, on the other hand, totally denied their relationship of landlord and tenant with the plaintiff and claimed their own title over the suit premises. It was the specific case of the defendants that their predecessor Bochai Paswan orally purchased the suit premises and since then the same is coming in possession of the defendants and his family members.

The learned court below after scrutiny of the pleadings

and evidence of the parties has come to the finding that the defendants are the tenants of the plaintiff and further that the plaintiff requires the suit premises for his personal necessity. Accordingly, the suit has been decreed by the impugned judgment and decree.

This revision application has been admitted for hearing on 27.06.2013.

Mr. R.K.P. Singh, learned counsel for the petitioners, while criticizing the impugned judgment, has placed the genealogy of the family of the plaintiff and the defendants and after dwelling upon a large number of documentary evidence (exhibited in the suit) has submitted that the finding by the learned court below holding the claim of the plaintiff that the defendants are his tenants is against the weight of the evidence on record. It has been propounded that even the prima facie finding by the learned court below that the plaintiff has got title over the suit premises is clearly contrary to the admitted facts as well as the documentary evidence on record. It has further been contended that even the finding upon material issue relating to the relationship of landlord and tenant has been recorded on the basis of surmises and conjectures and thus not sustainable in law. It has been maintained that the evidence on record adduced on behalf of the parties clearly demonstrate the title of the defendants over the suit premises and his possession over the same as such.

Nobody has appeared on behalf of the plaintiff-opposite party even after repeated calls.

After perusal of the impugned judgment and considering the materials on record as well as the submissions on behalf of the petitioners, it is evident that the plaintiff has claimed the suit property to be his ancestral property. It is the case of the plaintiff that the suit premises [holding no. 173 (old)/61 (new)] and has been recorded in the name of his mother Dhaneshwari Devi and later on it has been recorded in the name of Sarswati Devi who is the wife of the plaintiff. It has been the case of the plaintiff that in private partition the suit premises has been allotted in his share and he inducted the defendants as tenants on monthly rent of Rs. 500/- from 01.07.1997. On the other hand, the defendants have claimed that the holding number of the suit premises was earlier 174 and now it is 57 and has been in occupation of the defendants since 90 years. The defendants have further claimed that the suit premises was orally purchased by his predecessor (Bochai Paswan) from the recorded tenant Ramji Lal who at one stage mortgaged the same to the plaintiff Jagat Narayan Gupta but later on the said mortgage was redeemed on 20.08.1913. Claiming title of the suit premises into himself the defendants emphatically denied his relationship of landlord and tenant with the plaintiff.



From the averments of the plaint, it transpires that the plaintiff has claimed the suit premises to have been recorded in the name of his mother Dhaneshwari Devi but the plaintiff has not explained the manner of transfer of ownership from his mother Dhaneshwari Devi to his wife Saraswari Devi. Though, it has been averred by the plaintiff that the suit premises is his ancestral property but again there is no pleading or evidence aliunde to elaborate as to how when the suit premises belonged to his mother or his wife, the same could be allotted to the plaintiff in family partition. Significantly, there is also no cogent evidence adduced by the plaintiff in support of the said partition and allotment of the suit premises to his share. The suit premises is admittedly recorded in survey plot no. 829 as mentioned in schedule-I of the plaint but the documentary evidence (Ext. H, I, J, L, M as well as K) do not support the claim of title of the plaintiff over the said plot no. 829. To the contrary, the rent receipts granted by the State as well as by the ex landlord (Ext. B series and D series) for survey plot no. 829 evidently corroborate the claim of right, title and interest of the defendants. In addition the simple mortgage deed (Ext. E) dated 19.08.2013 also discloses that Bochai Paswan (predecessor of the defendants) had executed the said deed for plot no. 829 in favour of the plaintiff Jagat Narayan Gupta. Further the plaint of T.S. No. 59 of



1984 (Ext. H), the amendment petition (Ext. K) as well as the compromise petition (Ext. J) filed in the said suit to which the present plaintiff was also a party also support the case of the title as pleaded by the defendants. There is also no document of tenancy produced by the plaintiff nor there is any other documentary evidence showing that the defendants ever paid rent for the suit premises to the plaintiff. It is also pertinent to mention here that the plaintiff has not examined himself in the suit and there is also no explanation for non-examination of the plaintiff by his son who has been examined as P.W.4 in the suit. The learned court below has not considered the above mentioned aspects as well as the inevitable inference flowing from the documentary evidence and has also failed to draw adverse inference against the plaintiff who was the best person to explain the above documentary evidence adduced on behalf of the defendant. The scrutiny of evidence as done by the learned court below and the conclusions arrived on that basis do not appear to be reasonable in the facts and circumstances of the case. It is well settled that in a suit for eviction on the ground of personal necessity the plaintiff besides establishing the relationship of landlord and tenant is also required to establish his ownership over the suit premises by leading cogent evidence in case of denial by the defendants. The evidence on record do not support the

preponderance of probability in favour the plaintiff.

For the above reasons and discussions, this Court does not find itself persuaded to align with the findings recorded by the learned court below in the impugned judgment and comes to the conclusion that the impugned judgment is not according to law. This revision application is, accordingly, allowed and the impugned judgment and decree for eviction passed in eviction suit no. 03 of 2001 by Civil Judge (junior division) 1st Samastipur is set aside.

However, any observations and findings in this order shall not prejudice the right of the plaintiff to seek recovery of possession of the suit premises on the basis of his title, in accordance with law.

(V. Nath, J)

Devendra/-

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