

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.186 of 2014

=====

1. Kamla Sinha W/o Late Harendra Kumar Sinha
2. Dharmendra Kumar Sinha
3. Jitendra Kumar Sinha S/o Late Rajendra Prasad Sinha All R/o Mohalla -
Thakurbari Road, P.S. Kadamkuan, District Patna Appellants

Versus

1. Debashish Palit S/o Late Prafulle Chandra Palit
2. Smt. Rita Palit (Gosh) D/o Late Prafulle Chandra Palit, W/o Sri Shubhashis
Gosh Both R/o Gulab Bagh, Bari Path, P.S. Kadamkuan, District Patna
.... Respondents

=====

Appearance :

For the Appellant/s : Mr.Waliur Rahman, Adv.
Mrs. Rina Sinha, Adv.
For the Respondent/s : Mr. Ganpati Trivedi, Sr.Adv.
Mr.R.K.Sinha No.2, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 04-07-2016

V.Nath, J. Heard Mr.W.Rahman, learned counsel appearing on behalf of the appellants.

The defendant-tenant is the appellant in this appeal against the judgment and decree of affirmance in a suit for eviction.

The plaintiff filed the suit for eviction of the defendants on the grounds which included the default in payment of rent, breach of terms of the tenancy and subletting of the suit premises by the defendants. The defendant-tenant appeared and contested the case of the plaintiff.

Both the courts below have concurrently held that the plaintiffs have succeeded in establishing the case of default in payment of rent, breach of the terms of tenancy and subletting by the

defendant-tenant during the period of tenancy. The suit was decreed and thereafter the appeal has been dismissed by the impugned judgment and decree.

Mr.Rahman, learned counsel for the appellants has strenuously submitted at the outset that the eviction suit filed by the plaintiffs before the appellate court was not maintainable as prior to that an eviction suit was filed before the Lok Adalat wherein the parties had entered into compromise. It has therefore been propounded that the present suit filed by the plaintiffs under the provisions of Bihar Buildings (Lease, Rent & Eviction) Control Act would not be maintainable. It has been next contended that the learned courts below have wrongly recorded the findings on the issues of default, breach of tenancy and subletting of the suit premises after misconstruing the material evidence. During the course of submission, the learned counsel for the appellants has made endeavour to persuade this Court to reappraise the evidence in order to overturn the findings of facts.

After considering the submissions and perusal of judgments of both the courts below, it is manifest that the relationship of landlord and tenant in between the plaintiffs and defendants is admitted. The suit of the plaintiffs was decreed on the grounds of default in payment of rent, breach of the terms of tenancy and subletting of the suit premises. The submission by the learned counsel

with regard to the non-maintainability of the suit in view of the compromise in an eviction suit between the parties before the Lok Adalat is clearly misconceived. The provisions of the Legal Services Authority Act do not envisage filing of an eviction suit before a Lok Adalat. Even otherwise also the provisions of the B.B.C.Act which is a special Act will have precedence unless express exclusion or ouster of jurisdiction of the court under the said Act is established before holding that the suit for eviction filed by the plaintiffs under the B.B.C.Act was not maintainable. This Court therefore does not find substance in the submissions on behalf of the appellants in this regard. Further the findings of fact have been recorded by both the courts below on the basis of evidence which are acceptable and could have been relied upon. This Court is not persuaded to hold the finding by the courts below on the material issues to be perverse or unreasonable in any manner.

Ex consequenti, this Court holds that there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.08.2016
Transmission Date	