

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.144 of 2009

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1. Prabhunath Prasad son of late Jyotish Sah.
 2. Laxman Prasad son of late Jyotish Sah.
 3. Bharat Prasad.
 4. Chhote Lal Prasad, all of the sons of late Jyotish Sah.
 5. Most. Yoshoda Devi wife of late Jyotish Sah.
 6. Sunita Devi daughter of Jyotish Sah.
 7. Pinki Devi daughter of Jyotish Sah, all resident of Village-Nautan Bazar,
P.S. Nautan, District-Siwan.

.... Appellant/s

Versus

1. Birendra Sah.
2. Rajendra Sah.
3. Shri Ram Sah, all sons of late Ram Pujan Sah.
4. Kalawati Kunwar wife of late Ram Pujan Sah.
5. Janainu Devi wife of late Ram Pujan Sah all resident of village- Ramgarh,
Bhulauni, P.S. Nautan and District-Siwan.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Akshey Lal Pandit, Adv.
 Mr. Radha Mohan Pandey, Adv.
 Mr. Chandra Shekhar Verma, Adv.
For the Respondent/s : Mr. Chandra Kant, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 09-11-2016

Heard learned counsel for the appellants. Learned counsel
for the respondents is also present.

This is plaintiff's appeal against the judgment and decree
of affirmance dismissing the suit for eviction filed against the
defendants.

The plaintiff (since deceased through L.R.) filed the suit



praying for a decree of eviction against the defendant on the ground of personal necessity of the suit premises. It was the case of the plaintiff that 5 katha 8 dhurs of plot no. 2509 of khata no. 305 was the ancestral land of the plaintiff in which after partition, the plaintiff was allotted the land to the extent of 1 katha 7 dhur towards south in which he constructed a room. It was further the case of the plaintiff that the defendant was inducted in the suit premises as tenant since before 20 years at the monthly rent of Rs. 20/- which was subsequently enhanced to Rs. 60/-. The plaintiff filed the suit praying for eviction of the defendant asserting his bonafide personal requirement for the suit premises for establishing his son in business by opening a readymade garment shop in the suit premises.

The defendant, in his written statement, denied the assertions of the plaintiff and asserted his own title and possession accordingly over the suit property. It was the specific case of the defendant that 5 katha 8 dhur land of plot no. 2509 of Khata No. 305 though originally was recorded in the name of the predecessor of the plaintiff but the same was surrendered and in its place 5 katha 8 dhur of survey plot no. 2509 was settled to him which was also subsequently exchanged by him with land of survey plot no. 3114 area 7 katha by registered deed dated 26.01.1945. It was further case of the defendant that the ex landlord settled the land of plot no. 2509



with different persons who had got their houses and huts over the same and the plaintiff or his predecessor ceased to have any concern with the lands of plot no. 2509 after the surrender. The defendant claimed that the ex landlord settled six dhur of land of plot no. 2509 with the father of the defendant in the year 1940 and subsequently further settled three dhur more land in the year 1942 and put the settlee in possession and since then the defendant was in possession over the suit premises in his own right by making pucca construction over the same.

In view of the rival cases of the parties, the material issue with regard to the existence of relationship of landlord and tenant between the plaintiff and the defendant arose in the suit for determination. Both the courts below on scrutiny of pleadings and evidence have recorded the concurrent finding of fact that the plaintiff has failed to establish his relationship of landlord and tenant with the defendant. The suit was accordingly, dismissed and thereafter the appeal by the plaintiff has also been dismissed by the impugned judgment and decree.

Mr. Pandey, learned counsel for the appellants while criticizing the impugned judgment has mainly propounded that both the courts below have erred in law in entering into the question of title of the parties over the suit premises in a full-fledged manner. It has



been also contended that both the courts below have also not considered the material evidence of the plaintiff which clearly established the title of the plaintiff over the suit premises. It has been submitted that Ext. 9 which is the judgment of partition suit no. 239 of 1989 and the deposition of P.W.-8 clearly support the case of the plaintiff as pleaded but those evidence have been ignored and therefore the impugned judgments are vulnerable. Learned counsel has placed the judgments of both the courts below in detail in order to sustain his submissions.

After considering the submissions and perusal of the judgment of both the courts below, it is manifest that both the courts below have recorded the finding on the issue of relationship of landlord and tenant in between the plaintiff and the defendant, upon consideration of evidence adduced by the parties. It is also transparent that admittedly no documentary evidence of tenancy between the plaintiff and defendant for the suit premises was in existence and for the purpose of establishing such relationship, only oral evidence has been adduced on behalf of the plaintiff. The documentary evidence which have been adduced on behalf of the plaintiff and the defendant demonstrably relate to their respective claim of title over the suit premises. The appellate court below has rightly observed that in view of the specific denial of title of the plaintiff by the defendant and

claim of his own title over the suit premises, the question of title is required to be incidentally gone into for the purpose of finding out the nature of defence being bonafide or mere pretence. The appellate court below thereafter has come to the conclusion that neither the plaintiff nor the defendant could prove their claim of title over the suit property and thereafter has further analyzed the evidence adduced on behalf of the plaintiff on the issue of relationship of landlord and tenant and has come to the finding that the plaintiff has failed to establish the said relationship by cogent evidence. All the material evidence including Ext. 9 as well as deposition of P.W. 8 have been considered by the courts below and the findings have been recorded on analysis of the evidence which were acceptable and could have been relied upon. During the course of submission on behalf of the appellant it could not be shown or established that those findings are perverse or unreasonable in any manner.

The Apex Court in the case of **Tribhuvanshankar Vs. Amrutlal 2014 (2) SCC 788**, after taking into notice the earlier decisions as well, has ruled as follows:-

“28.....
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n a case where a plaintiff institutes a suit for
eviction of his tenant based on the relationship of
the landlord and tenant, the scope of the suit is



very much limited in which a question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship the court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title if disputed, may incidentally be gone into, in connection with the primary question for determining the main question about the relationship between the litigating parties”.

Their Lordships have further laid down:-

“30.....
.....

That apart, the Court can decide the issue of title if a tenant disputes the same and the only purpose is to see whether the denial of title of the landlord by the tenant is bona fide in the circumstances of the case.....”

In view of the above dictum of the Apex Court, it is held that both the courts below have committed no illegality in proceeding to probe into the rival claim of title by the parties over the suit premises which has evidently been done collaterally for the purpose of determining the main issue of relationship of landlord and tenant between the litigating parties.

Ex consequenti, this Court does not find any substantial

question of law arising for consideration in this appeal which is,
accordingly, dismissed.

(V. Nath, J)

Devendra/-

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