

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No. 341 of 2010

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Sanjay Bhardwaj, Son of Late Radheshyam @ Radheshyam Navin Resident
of Mohalla- Dhani Tola, Purani Godown Lane in the House of Raghuvansh
Bhawan, Pankaj Trading (Dealer of Panchi Brand Oil), P.S.- Kotwali, Distt.-
Gaya (Bihar).

.... Defendant/Petitioner

Versus

Chandan Keshri, Son of Sri Mohan Prasad Keshri Resident of Mohalla-
Tekari Road, Purani Godown, P.S. Kotwali Town, Distt.- Gaya.

.... Plaintiff/Opposite Party

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Appearance :

For the Petitioner/s : Mr. J. S. Arora
Mr. Rajesh Kumar Singh-1
Mr. Ashok Kumar
Mr. Md. Waiur Rahman

For the Respondent/s : Mr. Abhishek
Mr. Lal Babu Keshri

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
C.A.V. JUDGMENT
Date: 20-06-2016

The present civil revision petition under Section 14(8)
of Bihar Building (Lease, Rent and Eviction) Control Act, 1982
(hereinafter referred to as the 'Rent Control Act') was preferred
by one Most. Manorama Devi/defendant/tenant (hereinafter
referred to as the 'defendant/tenant') against judgment and
decree dated 30th January, 2010 passed by learned Munsif 1st,
Gaya in Eviction Suit No. 10 of 2005. By the said judgment and
decree, the suit filed by the sole opposite party/plaintiff/landlord



(hereinafter referred to as 'plaintiff/landlord') was allowed, with a direction to defendant/tenant to vacate the suit premises and deliver the vacant possession of the suit premises to the landlord within sixty days from the date of the judgment. Since during the pendency of the present revision petition, the defendant/tenant died, the present petitioner was substituted as petitioner, vide order dated 13-05-2015 passed on interlocutory application i.e. I.A. No. 3964 of 2013, which was filed for substitution.

2. The eviction order was passed on the ground of personal necessity. The defendant/tenant has pleaded that after filing of the eviction suit, the defendant/tenant appeared before the court below and after permission was granted to contest the suit, written statement was filed on behalf of the defendant/tenant. The defendant/tenant in its written statement mainly raised an objection that the plaintiff/landlord was not the title-holder of the suit premises. According to the tenant, Holding no. 13 belongs to the family of one Radhe Krishna Dwivedi, whose ancestor had dedicated the suit property to the Lord Shiva after installing the deity in the temple constructed thereupon and they had continued to act as trustee and Sewait. It was further pleaded that alienation of the property, including the suit



premises by Ramesh Chandra Dwivedi in favour of plaintiff's grand father, was clearly void and illegal, as the said property including the suit premises belongs to Lord Shiva and hence, nobody had right to alienate the said property. According to the defendant/tenant, the suit property was recorded in monthly survey plot no. 9766 "Ka to Cha", which could not have been the subject matter of the partition, which took place in the year 1948, with regard to the entire family property. It has also been pleaded by the tenant that Ramesh Chandra Dwivedi had made a wrong recital in the sale-deed regarding the allotment of the suit property to him in partition. The defendant/tenant claimed that she was tenant of Lord Shiva and she or her ancestors had never been tenant of plaintiff and never paid rent to him. The defendant/tenant claimed that eviction suit was itself not maintainable.

3. At the time of argument, learned counsel for the petitioner/tenant had advanced number of pleas to substantiate that plot, over which the suit premises i.e. a shop is standing, was never transferred to the plaintiff's predecessors-in-title. According to learned counsel for the petitioner, the petitioner/defendant was tenant of Lord Shiva and was paying rent to Lord Shiva



through Sewait. To substantiate the argument that petitioner/tenant was not tenant of the plaintiff/opposite party, learned counsel for the petitioner has referred to Ext. A to A/3 which were rent receipts issued by the Gaya Municipality in the name of one Bageshwari Pd. Dubey. He also referred to Ext. 'D' i.e. Deed of registered partition of the year 1948. Learned counsel for the petitioner/tenant has argued that as per the registered partition deed i.e. Ext. 'D', the suit premises was not required to be transferred by the sale-deed in favour of ancestor of the plaintiff/opposite party. Besides aforesaid documents, learned counsel for the petitioner has also relied on Ext. 'H' i.e. new survey khatian and Ext. 'J' i.e. copy of ordersheet dated 17-01-1991 in respect of objection case no. 55 of 1987 of the Gaya Municipal Corporation.

4. Before proceeding further, it is necessary to record certain facts, which are not in dispute. The plaintiff/opposite party (landlord) had filed an Eviction Suit No. 10 of 2005 in the court of Munsif-I, Gaya disclosing therein that he was owner of the present holding no. 17 under ward no. 3 situated at Mohalla Purani Godown lane, P.S. Kotwali, District - Gaya. The said holding i.e. Holding no. 17 was carved out of parent Holding No.

13. The said holding i.e. Holding No. 17 was acquired by the plaintiff grand father late Chamari Ram under registered deed of sale dated 29-01-1963 from one Ramesh Chandra Dwivedi @ Panna Babu. Thereafter, partition took place in between Chamari Ram and his sons by virtue of registered deed of partition on 28-07-1979 and on the said partition, the holding in suit alongwith other properties were allotted to plaintiff's father namely Mohan Prasad Keshri. Subsequently, again there took a partition in between Mohan Prasad Keshri, the plaintiff's father and his sons and his wife, vide Partition Suit No. 45 of 1990/158 of 1990, which was ultimately effected by partition decree passed in the said Partition Suit No. 45 of 1990/158 of 1990 of Sub-Judge II, Gaya. According to the plaint filed before the court below, by virtue of the said partition decree passed in Partition Suit No. 45 of 1990/158 of 1990, the holding in suit was allotted to the plaintiff/opposite party herein. According to the plaint before the court below, the holding in suit, which comprises of one shop room, was under tenancy of one Raghu Ram Radhe Shyam since before purchase. The grand father of the plaintiff/opposite party after purchase also inducted the said Radhe Shyam as tenant. Even after allotment of the said premises to the plaintiff's father



namely Mohan Prasad Keshri on partition, the plaintiff's father allowed him to continue the tenancy. After the death of the said tenant, his widow i.e. defendant continued as monthly tenant in the shop room in question. After the shop was allotted to the plaintiff in Partition Suit No. 45 of 1990/158 of 1990, the defendant/tenant continued the tenancy in the shop in question and thereby the plaintiff/opposite party inducted the defendant as monthly tenant according to english calendar month and year. On the date of filing of the suit, the monthly rental was Rs. 1,000/- (one thousand).

5. The plaintiff pleaded that defendant/tenant was managing her business in the shop room under tenancy through her sons. The plaintiff on the ground of personal necessity i.e. for the purpose of starting his business, since he was unemployed, requested the defendant/tenant for vacating the shop in question i.e. suit property for his own livelihood, but the defendant refused to vacate and thereafter, the suit was filed. The plaintiff in the plaint had pleaded that the original defendant had got her own holding no. 12 (old) and 15 (new) under the same ward no. 3 near shop room under the tenancy. There was specific pleading that partial eviction would not have served the purpose of the



plaintiff. After being permitted to contest, the original defendant (tenant) filed written statement taking the plea that suit was not maintainable on the ground that there was no contract of tenancy and the plea that plaintiff was not owner of the holding no. 13 because the said holding belonged to Lord Shiva. In the written statement, a stand was taken that the defendant was tenant of Lord Shiva and her predecessors had continued to pay rent to Lord Shiva through trustee or Sewait and after the death of husband of the defendant, she became tenant and started paying rent to Sewait or trustee of Lord Shiva. In the written statement, the defendant had questioned the sale-deed of the year 1963, through which the property, including the suit property, was transferred to Chamari Ram, grand father of the plaintiff/opposite party. The defendant in its written statement also claimed that the decree of partition suit, whereby the suit premises had come to the share of plaintiff/opposite party, was also void ab initio.

6. In the eviction suit, Lord Shiva through its Sewait Radha Krishna Dwivedi was initially added as defendant no. 2, however; the order whereby defendant no. 2 was impleaded in Eviction Suit No. 10 of 2005 was assailed by the plaintiff before

this Court, vide Civil Revision No. 2073 of 2006. The said revision petition was allowed on 12-05-2009 by a Bench of this Court. The order dated 12-05-2009 passed in C.R. No. 2073 of 2006 is quoted here-in-below:-

"Heard both the sides.

The order impugned herein appears completely unsupportable in law. There are decisions of this Court that no third person could be allowed to be impleaded in a suit for eviction if he comes up with claim based on title and interest in the property. The Court has held in several decisions that such impleadment could not be made in favour of a person who is a stranger. In that view of the matter, the impugned order is hereby set aside. The impleadment of O.P. No. 1 is hereby declared non est and the court below is directed to proceed with the trial of the eviction suit from the such way it could be as if the O.P. No. 1 was never a party to it. The present order could not be prejudice to the case of O.P. No. 1 if he has preferred a suit before any competent court. The court wants to remind the learned Munsif-I, Gaya that Eviction Suit No. 10 of 2005 is older by four years and very purpose of filing the suit could be defeated if the suit is not disposed of at the earliest. It is high time that the court below buckles its belt up and decides the question of eviction within a period of six months from the date of receipt/production of a copy of this present order before it."

7. Thereafter, the learned court below proceeded with the case and finally by the impugned judgment and decree allowed the suit against the defendant/tenant and directed for vacating the suit premises.



8. It is pertinent to mention here that during the pendency of this petition, number of interlocutory applications were filed, however; save and except, the interlocutory application, which was filed for substitution i.e. I.A. No. 3964 of 2013, other interlocutory applications were never pressed and as such, this Court is not taking note of any other interlocutory applications, whether filed on behalf of petitioner/defendant or plaintiff/opposite party.

9. In the eviction suit, number of issues were framed, however; keeping in view the objection raised by the defendant/tenant on the question of maintainability, Issue No. 5 i.e. whether the plaintiff is the landlord and defendant is the tenant is the most pertinent issue. Before the court below, number of documents were brought on record by both the sides. From the side of defendant, documents were got exhibited mainly to show that the sale-deed of 1963, which was executed in favour of the grand father of the plaintiff, was having incorrect recital in respect of the suit premises and also the plea that subsequent partition suit was void, whereas, from the plaintiff side, besides other documents, original sale-deed dated 29-01-1963 was got exhibited as Ext. '2'. Certified copy of the decree passed in Partition Suit No.

45 of 1990/158 of 1990 was got exhibited as Ext. '13'. Besides this, some of the relevant rent receipts under the signature of defendant have also been got exhibited.

10. Learned counsel for the petitioner has tried to persuade the Court that the disputed holding number was never transferred to the grand father of the plaintiff/opposite party by the vendor namely Ramesh Chandra Dwivedi. He has argued that the suit premises was the property of Lord Shiva and as such, the said property was not liable to be alienated by anyone. He submits that in view of Explanation - I to Section 11(c) of the Rent Control Act, the plaintiff was excluded as "landlord". In support of his argument that the plaintiff was not the landlord, he has placed reliance on **AIR 1981 Supreme Court 1113 (M. M. Quasim vs. Manohar Lal Sharma and others)** and referred to paragraph 8 and 14. He has argued that since plaintiff was not landlord having no title over the suit premises in question, the learned court below has grossly erred in allowing the eviction suit. He submits that it is true that while exercising power of review, there is limited scope to examine the fact, but in view of specific plea taken before the court below and rent receipts, which were issued by the Sewait in favour of defendant, this Court is well empowered to

examine the evidence in detail and unsettle the judgment and decree in question. On this very point, he has referred to paragraph – 15 of the same case i.e. **M. M. Quasim's case** (*supra*).

11. Learned counsel for the petitioner has drawn my attention to rent receipts produced by the tenant/defendant i.e. Ext. 'E' to 'E/32' to show that the tenant's landlord was Sewait of Lord Shiva. Learned counsel for the petitioner/tenant has further argued that only for the purpose of filing the eviction suit before the court below, the plaintiff/opposite party had produced rent receipts for the month of February, March, April and May, 2005 purported to be paid by the defendant/tenant, whereas, eviction suit was filed in the month of June, 2005. He has argued that learned court below has unnecessarily created doubt on the rent receipts produced by the defendant/tenant and at the same time, the learned court below has accepted the rent receipts issued for few months prior to filing of the eviction suit to show that petitioner was the tenant of plaintiff/opposite party.

12. Learned counsel for the plaintiff/opposite party opposing the revision has raised an objection that the petitioner/tenant in sum and substance is making a prayer for re-appraisal of the evidence, which is not permissible while hearing



a revision petition filed against the judgment and decree passed in eviction suit under the Rent Control Act. He has argued that a five Judges Bench of Apex Court in a case reported in **AIR 2014 SUPREME COURT 3708 (Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh)** has already held that in a revision under the provisions of Rent Control Act, the High Court may not reappraise the evidence. The revisional court is only required to examine as to whether the order impugned was passed in accordance with law or not. He has also referred to **AIR 2016 SUPREME COURT 433 (M/s Boorugu Mahadev and Sons vs. Sirigiri Narasing Rao)**. He has further referred to Ext. 17 i.e. demand correction register of 1964-65 to show that the suit premises is within the title and possession of the plaintiff. According to learned counsel for the plaintiff/opposite party, since the suit has been decreed on the basis of appraisal of the evidence without any apparent error of law, same is not required to be interfered with by this Court in its revisional jurisdiction.

13. After reply being given by learned counsel for the plaintiff/opposite party, Sri J.S.Arora, learned counsel, who was assisted by Sri Rajesh Kumar Singh, learned counsel for the petitioner/defendant tried to persuade the Court that in the



present case, the plaintiff/opposite party has miserably failed to establish its absolute title over the premises in question and as such, he failed to establish the relationship of landlord and tenant and accordingly, in view of judgment of the Apex Court reported in **AIR 2002 SUPREME COURT 136 (Rajendra Tiwary vs. Basudeo Prasad)**, paragraphs 7, 8, 15 & 18 and a case reported in **2010 (3) PLJR 504 (Moin Ahmad vs. Bibi Sazada)**, paragraphs 5 & 8, the suit was required to be dismissed. Sri Arora has also taken a plea that since in the plaint itself, there was no whisper as to whether the defendant had ever paid rent, any oral evidence on this point adduced by the plaintiff was not required to be taken note of. He by way of relying on paragraph - 11 of **AIR 1968 Supreme Court 1083 (Mrs. Om Prabha Jain vs. Abnash Chand and another)** has argued that any evidence produced during the trial without pleading is not required to be relied upon. On this very point, he has also referred to paragraph - 8 of **AIR 1972 Supreme Court 1274 (The Central Bank of India Ltd. vs. Hari Prasad Jalan and others)**.

14. Besides hearing, I have also perused the materials available on record. So far as plea of learned counsel for the petitioner that in absence of any pleading for payment of rent,

oral evidence is not admissible is concerned, the Court is of the opinion that such submission has been advanced by Sri Arora without noticing the pleading. In paragraph - 5 of the plaint in Eviction Suit No. 10 of 2005, there is a specific pleading, which is necessary to be quoted here-in-below:-

“That the defendant is monthly tenant in the shop room under tenancy of monthly rental of Rs. 1,000/-”

Meaning thereby that right from the very beginning through its pleading, the plaintiff has claimed that defendant was his tenant and she was paying monthly rental of Rs. 1,000/-. Accordingly, the argument of Sri Arora on this very point is required to be noticed for its rejection. Moreover, in the suit, the plaintiff has at least produced rent receipts for four months. The said rent receipts, which were got exhibited as Ext. 4 to 4/C, were found genuine by the learned court below and as such, there is no reason for recording a contrary opinion on the genuineness of the said rent receipts. So far as rent receipts, which were got exhibited as Ext. E to E/32 on behalf of the petitioner/defendant is concerned, the learned court below had observed as follows:-

“On the basis of above discussion and perusal of Ext. E to E/32, it is clear that Ext. E/7 to E/32 are new and the signature from one pen is put by Sri Radhe Krishna Dwivedi on maximum exhibits. Both Sewait and defendant of this case

are in collusion in this case and there is every chance to create forged and fabricated document. The plaintiff has purchased the land in 1963 when there was no controversy at all. The Sewait Radhe Krishna Dwivedi and the vendor of Chamari Ram belongs to the same family and on perusal of document filed by defendant, it is clear that some holdings are in the name of Bageshwari Prasad Dwivedi the father of Radhe Krishna Dwivedi and some holdings are in the name of Chamari Ram and is in the name of predecessors of both the families.”

15. The learned court below after examining the evidences both documentary and oral had decided Issue No. 5 i.e. whether the plaintiff is landlord and defendant is tenant, in favour of the plaintiff/opposite party.

16. Besides this, on the question of partial eviction also, the plaintiff had laid evidence that partial eviction may not serve the purpose, which has not been demolished by the defendant before the court below. Ofcourse, at the time of exercising revisional jurisdiction, this Court was not required to examine the evidences in details, in cursory way, I had perused certain evidence, which categorically establishes the relationship of plaintiff and defendant, as landlord and tenant. This fact was also admitted by the witnesses produced from the side of defendant. D.W.-1 Sri Arjun Prasad in paragraph - 13 of his evidence has stated that “**Raghu Ram, Radhe Shyam was tenant**



before the purchase of Chamari Ram and after purchase Chamari Ram also treated Radhe Shyam (predecessor of the defendant) as tenant.” Similarly, D.W.-2 Ram Jatan Mishra in paragraph - 14 has stated that “there was dispute of rent between Mohan Prasad the father of the plaintiff and Sanjay Bhardwaj (substituted petitioner, son of the defendant). Mohan Prasad demands rent and Sanjay Bhardwaz says that he will not pay the rent.”

17. In view of the aforesaid facts, the learned court below has rightly decreed the suit in favour of the plaintiff/opposite party. In the suit by way of filing written statement, the defendant/tenant had raised the plea that sale-deed of 1963, which was executed in favour of the plaintiff, was void and also decree of partition suit in Partition Suit No. 45 of 1990/158 of 1990 in an eviction suit, such objection was not required to be raised or entertained. In eviction suit, if *prima facie*, there is evidence to show that tenant had paid rent to the landlord, in that event, the tenant is debarred from raising any objection in respect of title of the landlord to the suit premises. In the present case, since the learned court below was satisfied on perusal of Ext. 4 to 4/C i.e. rent receipts, which was signed by the



present petitioner, there is no reason to doubt about the relationship of plaintiff and defendant as landlord and tenant respectively. On the point of personal necessity which was the ground for an eviction i.e. personal necessity or partial eviction, no argument was advanced on behalf of petitioner and this issue has already been settled elaborately by the learned court below and as such, there is no reason to interfere with the impugned judgment. At this juncture, it would be appropriate to quote paragraph 19 of **M/s. Boorugu Mahadev's case (*supra*)**, which is as follows:-

"19. It is also now a settled principle of law that the concept of ownership in a landlord-tenant litigation governed by Rent Control laws has to be distinguished from the one in a title suit. Indeed, ownership is a relative terms, the import whereof depends on the context in which it is used. In rent control legislation, the landlord can be said to be the owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else to evict the tenant and then to retain control, hold and use the premises for himself. What may suffice and hold good as proof of ownership in landlord-tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit. (vide Sheela & Ors. v. Firm Prahlad Rai Prem Prakash, (2002) 3 SCC 375) : (AIR 2002 SC 1264)."

18. Since in the present revision petition, learned counsel for the petitioner has mainly raised an issue of title of the



suit premises in question, in view of law settled by the Apex Court, certainly such dispute may not be examined while exercising the revisional jurisdiction. Moreover, the petitioner/defendant is not claiming his own title over the suit premises, but he had tried to raise an issue that title of the suit premises was not in the plaintiff but it was within the title of possession of Lord Shiva, who is not party in the present proceeding. The defendant has admitted that she was tenant in respect of suit premises but the plaintiff is not the landlord.

19. So far as judgments referred by learned counsel for the petitioner/tenant, as noticed above, is concerned, the Court is of the opinion that without any relevance in the present context, said decisions were cited by learned counsel for the petitioner and as such, there is no necessity to elaborately discuss aforesaid points.

20. In view of the facts and circumstances that the suit premises was purchased through registered sale-deed by predecessor of the plaintiff and finally by a deed in the partition suit, the same was allotted to the plaintiff/opposite party, the learned court below has rightly decreed the suit in favour of plaintiff/opposite party.

21. Accordingly, the civil revision application is dismissed with a direction to vacate the suit premises within a period of three months after making payment of entire arrear rent (if not paid).

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
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