

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.84 of 2014

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Sri Madan Prasad Sah S/O Late Bangali Sah resident of Mohalla- Baniya Tola,
Bara Bazar, Purana Dharam Shala, P.O., P.S. AND District- Katihar
..... Defendant Appellant

.... Appellant

Versus

Smt. Kamo Devi W/o Tarini Prasad Sah, resident of village- Mohalla Baniya Tola,
Bara Bazar, Purana Dharam Shala, P.O., P.S. AND District- Katihar
..... Plaintiff Respondent

.... Respondent

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Appearance :

For the Appellant/s : Mr. Jibendra Mishra

For the Respondent/s : Ms. Sushmita Mishra
Mr. Surya Narayan Sah

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 21-06-2016

Heard learned Counsel for the parties in the Interlocutory Application (I.A. No. 4107 of 2016), which has been filed for substitution of the heirs and legal representatives of the deceased sole appellant along with the prayer for condonation of delay.

2. The learned Counsel appearing for the sole respondent has raised no objection to the prayer for substitution.

3. After considering the submission and the stand of the learned Counsel appearing for the parties the prayer for substitution is allowed after condonation of delay and setting aside abatement. Accordingly the name of the deceased sole appellant is expunged from the memo of appeal and substituted by his heirs and legal representatives as mentioned in para 1 of the Interlocutory Application. All the heirs of the deceased appellant have appeared by filing Vakalatnama.

4. Heard Mr. Jha, learned Counsel appearing for the appellant.

Learned Counsel for the respondent is also present.

5. The defendant is the appellant in this appeal against the judgment and decree of affirmance granting the decree of eviction as prayed by the plaintiff.

6. The suit has been filed seeking eviction of the defendant from the suit premises on the ground of default and personal necessity. Both the courts below have come to the concurrent finding that the defendant has committed default in payment of rent and the plaintiff has also got personal necessity for the suit premises, as pleaded. The suit was decreed and thereafter the appeal filed by the defendant-appellant has been dismissed by the impugned judgment and decree.

7. Mr. Jha, learned Counsel for the appellant, has submitted that the learned court below has not considered the aspect that the plaintiff has described the suit premises to be $15\frac{1}{2}$ feet X $8\frac{1}{2}$ feet, whereas in fact according to the defendant the area of the suit premises is $27\frac{1}{4}$ feet X $8\frac{1}{2}$ feet and this becomes important when the issue of partial eviction is to be considered. However, the learned Counsel on behalf of the appellant has failed to explain the finding of default as recorded by both the courts below in view of the admitted fact that no rent was paid by the defendant to the plaintiff for the suit premises after April 2001 and even after the order passed in the suit on 19.7.2004 under Section 15 of the Bihar Buildings (Lease, Rent and Eviction) Control Act directing for payment of current as well as arrears of rent.

8. After considering the submission and perusal of the judgments of both the courts below, it is manifest that the defendant-tenant has not paid rent to the plaintiff after April 2001 and also not

complied the direction for payment of current rent and arrears of rent as directed by the Court under Section 15 of the Bihar Buildings (Lease, Rent and Eviction) Control Act. Both the courts below have considered the evidence on record as well as the facts and circumstances of the case and thereafter have recorded the concurrent finding that the defendant is a defaulter. This Court has not been persuaded to hold that the finding on the issue of default as recorded by both the courts below is perverse or unreasonable in any manner.

9. In that view of the matter, when the plaintiff's suit has been decreed on the ground of default in payment of rent, issue of considering the prayer for partial eviction does not arise.

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

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.08.2016
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