

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.477 of 2012

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Baiju Sah S/O Late Shiv Raj Sah R/O Vill-Lalganj, P.S.-Charpokhari, Distt-Bhojpur, At Present Kirayedar, Mohalla-Ahirpurwa, P.S.-Ara Town, Distt-Bhojpur
..... Defendant Respondent

.... Appellant

Versus

Ayodhaya Sah S/O Late Shambhu Sah R/O Mohalla-Ahirpurwa, P.S.-Ara Town, P.O.-Ara, Distt-Bhojpur Plaintiff Appellant

.... Respondent

Appearance :

For the Appellant/s : Mr. Madan Jeet Kumar

For the Respondent/s : Mr. Kamal Nayan Choubey, Sr. Advocate
Mr. Rama Kant Singh

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 16-09-2016

Heard learned Counsel for the appellant and Mr. K.N.Choubey, learned Senior Counsel appearing for the respondent.

2. The defendant is the appellant in this appeal against the judgment and decree of reversal by which the appellate court below has set aside the judgment and decree of the trial court and granted the decree of eviction to the plaintiff.

3. The facts in detail are not required to be noticed. Suffice it to state that the suit was filed by the plaintiff seeking eviction of the defendant on the ground of personal necessity alone under the provisions of Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as 'the BBC Act'). The plaintiff claimed his title over the suit property and asserted that the defendant was his tenant and further that the suit premises which was a shop was required by the plaintiff for establishing his son in business. The defendants appeared

and filed his written statement contesting the relationship of landlord and tenant and claimed his own legal entitlement over the suit premises. The defendant also claimed to have acquired title over the suit premises on the basis of adverse possession.

4. The trial court returned the finding on the material issue of relationship of landlord and tenant against the plaintiff and dismissed the suit. The appellate court below concurred with the finding of the trial court on the issue of relationship of landlord and tenant in between the plaintiff and defendants but granted the decree for recovery of possession of the suit premises to the plaintiff on the equitable ground holding that the plaintiff has got general title over the suit premises and is entitled to relief for ejectment on the basis of title under Order VII Rule 7 CPC. The appellate court below has further on the same basis has also concluded that the plaintiff has bonafide requirement of the suit premises as he has got title over the same.

5. This appeal has been admitted for hearing on the following substantial question of law :-

“Whether in a suit brought by the plaintiff/respondent for eviction on the ground of personal necessity and default in payment of rent the learned lower appellate Court was at all justified in law in holding that the plaintiff was entitled for a decree of eviction under Order 7 Rule 7 of the CPC?”

6. Learned Counsel for the appellant while criticising the impugned judgment and decree has squarely relied upon the decision of the Apex Court in the case of ***Tribhuvanshankar vrs. Amrutlal, (2014)***



2 SCC 788, and has submitted that the impugned judgment of the appellate court below cannot be legally sustained in view of the law laid down by the Apex Court. Mr. Choubey, learned Senior Counsel appearing on behalf of the plaintiff-respondent, has not been able to distinguish the principle as laid down by their Lordships in the case of *Tribhuvanshankar* (supra), but has also referred to some earlier decisions of this Court including the decision by a Bench of this Court in the case of ***Mohammad Mian vs. Jugeshwar Prasad, AIR 1951 Patna 550, and Smt. Kasturi Devi vs. Shripal Singh, AIR 1954 Patna 128***. However after some argument, learned Senior Counsel for the respondent has submitted that this appeal may be disposed of in terms of the decision by the Apex Court in the case of *Tribhuvanshankar* (supra).

7. After perusal of the judgments of both the courts below and considering the submissions, it is evident that the suit for eviction was filed by the plaintiff-respondent seeking eviction of the defendants on the ground of personal necessity of the suit premises for establishing his own son in business. The defendant denied the relationship of landlord and tenant and claimed his own title over the suit premises. The defendant also claimed acquisition of title over the suit premises by adverse possession. It is evincible from the judgments of both the courts below that the finding on the issue of relationship of landlord and tenant has been concurrently decided against the plaintiff. The appellate court below, however, has granted the decree of ejectment to the plaintiff on the ground of equity holding that the plaintiff has title over the suit premises and, therefore, he also has the bonafide requirement of the suit premises.



8. The plaintiff-respondent has not filed any cross objection before this Court assailing the finding on the issue of relationship of landlord and tenant recorded against him by both the courts below. During the course of submission also the learned Senior Counsel for the plaintiff-respondent has accepted that the finding on the issue of absence of relationship of landlord and tenant, having not been assailed has reached to a finality between the parties.

9. In the case of Tribhuvanshankar (supra), after considering the earlier decision on the issue including the decision in the case of **Rajendra Tiwary vs. Basudeo Prasad, (2002) 1 SCC 90**, the Apex Court has ruled as follows:-

“30. On a seemly analysis of the principle stated in the aforesaid authorities, it is quite vivid that there is a difference in exercise of jurisdiction when the civil court deals with a lis relating to eviction brought before it under the provisions of the Transfer of Property Act and under any special enactment pertaining to eviction on specified grounds. Needless to say, this Court has cautiously added that if alternative relief is permissible within the ambit of the Act, the position would be different. 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. We respectfully concur with the aforesaid view and we have no hesitation in holding that the dictum laid down in Bhagwati Prasad and Biswanath Agarwalla are distinguishable, for in the said cases the suits were filed under the Transfer of Property Act where the equitable relief under Order 7 Rule 7 could be granted.”

10. Their Lordships thereafter has also considered the entitlement of the plaintiff to maintain a fresh suit for title and recovery of possession over the suit premises and has decided the said issue



holding that the plaintiff is entitled in law to file a fresh suit for title and recovery of possession and such other reliefs as law permits. The plea raised by the defendants on the basis of assertion of having perfected their title by adverse possession as raised in that case was also taken into notice by their Lordships and it has been held that the issue of right, title and interest is open between the parties and the appellant is required to establish the same in a fresh suit and the defendant is entitled to resist the same by putting forth all his stand including the plea of adverse possession. It has been also held that after the institution of the suit for eviction, time for acquiring title by adverse possession would stand arrested or remain in state of suspension till entire proceeding arising out of suit for eviction are terminated. The position has been further explained by their Lordships that if by the date of the eviction suit the defendant had already perfected title by adverse possession that would stand on different footing but the defendant shall not be entitled to claim title by adverse possession during the period when the eviction proceeding remained pending. Their Lordships have granted the plaintiff permission to institute a suit on the basis of his title and claim recovery of possession within a period of two months from the date of judgment.

11. This Court, in view of the dictum as laid down in the case of Tribhuvanshankar (supra), comes to the conclusion that the impugned judgment and decree granting equitable relief of recovery of possession to the plaintiff over the suit premises cannot be sustained in the facts and circumstances. The substantial question of law is accordingly answered in favour of the appellant. However, any finding recorded in the eviction proceeding will not stand in the way of the plaintiff-

respondent in filing a suit for recovery of possession over the suit premises on the basis of his title within a period of two months from today. If such a suit is filed, the defendant would be entitled to put forth all his claims including raising the plea of acquisition of title over the suit premises by adverse possession on the date of institution of the eviction suit as laid down in Tribhuvanshankar (supra).

12. The Second appeal is accordingly allowed and the judgment and decree passed by the appellate court below is set aside with the aforesaid liberty and direction. The judgment and decree passed by the trial court dismissing the eviction suit stand affirmed. In the facts and circumstances of the case, however, there shall be no order as to cost.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
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