

THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.109 of 2017

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Ram Lagan Sahu, son of Late Sohrai Sai, resident of mohalla Kadamkuan,
P.O. and P.S. Kadamkuan, District Patna - 800003.

... .. Appellant

Versus

Sanjay Kumar, son of Sri Om Prakash, resident of mohalla Janak Kishore
Road, Kadamkuan, P.S. Kadamkuan, District Patna - 800003.

... .. Respondent

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Appearance :

For the Appellant/s	:	Mr. Sukumar Sinha, Sr. Adv. Mr. Abinash Kumar, Adv.
For the Respondent/s	:	Mr. Jitendra Kishore Verma Mr. Pankaj Majwar Mr. Anjani Kumar Mr. Abhishek Anand

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date : 04-09-2017

Heard learned Senior Counsel appearing on behalf of the
appellant and learned Counsel for the respondent.

2. The appellant is aggrieved by the judgment and decree,
dated 07.01.2017, passed by learned Additional District Judge I,
Patna, in Title Appeal No. 81 of 2012, whereby he has affirmed the
judgment and decree, dated 31.08.2012, passed by learned Sub
Judge III, Patna, in Eviction Suit No. 59 of 2006.

3. The Trial Court, by the judgment and decree, dated
31.08.2012, passed in Eviction Suit No. 59 of 2006, filed by the



plaintiff/respondent, had decreed the suit on contest in favour of the plaintiff/respondent.

4. The dispute relates to suit property, described as Circle No. 13, Ward No. 5/26, Plot No. 39 and 40 (Part), Holding No. 1038/684B, ad-measuring 840 sq. ft. (hall) on the ground floor, mentioned in Schedule-II of the plaint.

5. It has been the case of the plaintiff/respondent that he had purchased a piece of land with building, having area 2130 sq. ft., appertaining to Circle No. 13, Ward No. 5/26, Plot No. 39 and 40 (Part), Holding No. 1038/684B from one Smt. Kalyani Paul. This is not in dispute that the appellant was tenant of Smt. Kalyani Paul in the suit premises, having area 840 sq. ft.

6. The respondent filed the said eviction suit, seeking decree of eviction of the defendant from the suit premises on the ground of default in payment of rent, expiry of lease. He also sought for a decree for payment of arrears of rent, amounting to Rs. 29,400/-. This is also not in dispute that the appellant did not pay any amount to the respondent as rent, at any point of time.

7. The appellant contested the suit questioning title of the respondent, developing a plea that he was not the tenant of the respondent and the area, which was in possession of the appellant,



was different from the piece of land, which was purchased by the respondent/plaintiff.

8. The Trial Court, deciding Issue No. 8, i.e. as to whether the plaintiff was the purchaser of Holding No. 1038/684B, recorded its finding, on analysis of evidence, that the respondent had purchased the suit property and had got his name mutated and was paying rent for the same.

9. Dealing with Issue No. 6, as to whether there was relationship of landlord and tenant, the Trial Court held in positive.

10. The Trial Court considered issue no. 7 based on the plea of the defendant of occupying the suit premises on his own right, being purchased by virtue of the deed of agreement for sale executed on 06.02.2006, and on the basis of findings on other points, decided the said issue against the appellant.

11. The findings so recorded by the Trial Court has been affirmed by the Appellate Court by the impugned judgment and decree.

12. Learned Senior Counsel appearing on behalf of the appellant has submitted that the Courts below had decided title in favour of the plaintiff in an eviction proceeding, which is not permissible. He has relied on Supreme Court's decision, in the



case of **Rajendra Tiwary v. Basudeo Prasad and Another (AIR 2002 SC 136)**, in support of his plea.

13. Learned Counsel representing the respondent, on the other hand, has submitted that there are concurrent findings recorded by the Courts below to the effect that the premises occupied by the appellant was purchased by the respondent from Smt. Kalyani Paul through a registered deed. Indisputably, the appellant was inducted as a tenant in the said premises by said Smt. Kalyani Paul. He contends that in the absence of any dispute that the appellant did not pay any rent after the respondent acquired the title over the suit property on purchase from Smt. Kalyani Paul, the Trial Court rightly passed the decree of eviction. It is his submission that there is no question of law, which the present second appeal, involves, and, therefore, it deserves to be dismissed.

14. On perusal of the impugned judgments and decrees, I find that the appellant took a plea before the Courts below that he had also entered into an agreement for sale with Smt. Kalyani Paul, with respect to the premises occupied by him and he had paid substantial amount in consideration thereof. However, no agreement of sale was exhibited before the Trial Court. Except that the appellant had filed a title suit for specific performance of



contract before Sub Judge I, Patna, in respect of the said suit property, the appellant could not develop his case any further to substantiate his claim.

15. I do not find any substantial question of law involved in the present second appeal. The questions, which arose before the Courts below for determining relationship of landlord and tenant between the parties have been duly examined and dealt with.

16. The second appeal does not deserve admission and is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N/A
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