

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.18 of 2017

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Santosh Prasad, son of Late Hari Prasad Sah, resident of Hariniwas, Mohalla Mundi Chak, P.s.-tilka Manjhi (Kotwali), District Bhagalpur Petitioner

Versus

Govind Sharma, son of Shri Banwari Lal Sharma, resident of Mandroza, P.S. Kotwali, City and District Bhagalpur Respondent

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Appearance :

For the Petitioner : Mr. Surendra Kumar Singh, Sr. Adv.
Mr. Navjot Yesu

For the Respondent : Mr. Govind Sharma (in person)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

ORAL

Date : 03-11-2017

The petitioner is aggrieved by the judgment and decree, dated 22.09.2014, dated 17.10.2014, passed by learned Additional Munsif IV, Bhagalpur, in Title Eviction Suit No. 09 of 2007, whereby the Court below has decreed the eviction suit in favour of the plaintiff-Opposite Party and has directed the defendant-petitioner to vacate the suit premises and hand over the vacant possession of the suit premises to the plaintiff-Opposite Party within three months.

2. It is evident from the judgment and decree impugned that the Court below framed six issues, including following issue nos. 4 and 5 :-

- “4). Whether there is relationship of landlord and tenant between the plaintiff and the defendant?
5). Whether the plaintiff is entitled to a decree of eviction of the defendant from the suit premises on the ground of personal necessity?”



3. The Trial Court, dealing with issue no. 5, conclusively held that there was relationship of landlord and tenant between the plaintiff and the defendant. The Court below decided issue no. 5 in favour of the plaintiff and against the defendant, holding that the plaintiff was entitled to a decree of eviction on the ground of personal necessity.

4. Mr. Surendra Kumar Singh, learned Senior Counsel, appearing on behalf of the petitioner, assailing the impugned judgment and decree, has submitted that there existed no relationship of landlord and tenant between the plaintiff and the defendant. According to him, it is apparent from the impugned judgment and the petitioner was inducted as a tenant by one Banwari Lal Sharma and not the plaintiff-Opposite Party. It is his contention that no evidence could be adduced before the Court below that at any point of time, the petitioner had paid any rent to the plaintiff-Opposite Party. He, accordingly, submits that the finding that there existed relationship of landlord and tenant between the plaintiff and the defendant, is perverse and on that ground alone, the impugned judgment requires interference.

5. He has next submitted that the plaintiff could not establish before the Court below that there was sufficient bona fide and genuine ground for seeking eviction on the ground of personal



necessity. He has submitted that if the pleadings are to be considered, it can be easily seen that the plaintiff developed a case that he desired to start a business, but he did not come forth with specific plea of starting a particular business in which he had the experience, which he wanted to do. He has relied on Supreme Court's decisions, in the cases of **Hameedia Hardware Stores v. B. Mohan Lal Sowear (AIR 1988 SC 1060)** and **Mattulal v. Radhe Lal (AIR 1974 SC 1596)**.

6. The plaintiff-Opposite Party has appeared in person and he has been heard.

7. I have perused the judgment and other materials on record.

8. The civil revision application is barred by limitation as there is delay of 2 years and 4 months. A plea has been taken that as wrongly advised, the petitioner had filed an appeal against the impugned judgment and decree before the Court of learned District Judge, Bhagalpur, in the year 2014, which remained pending till its disposal on 20.04.2016. However, after having realized the correct legal position, the petitioner filed the present civil revision application against the impugned judgment and decree, passed by learned Additional Munsif IV, Bhagalpur.

9. Considering the facts and circumstances of the case and the averments made in I. A. No. 2097 of 2017, I am of the view that



sufficient cause has been shown, which prevented the petitioner from filing the present civil revision application within time.

10. I. A. No. 2097 of 2017 is, accordingly, allowed. The delay stands condoned.

11. Before I proceed to consider other aspects of the matter, this is to be taken note of that the plaintiff-Opposite Party had filed the title eviction suit with clear assertion of him being the adopted son of the said Banwari Lal Sharma. It transpires that the plaintiff-Opposite Party adduced evidence at the trial that there was a partition in the family, on the basis of award prepared by Lok Adalat, in a proceeding arising out of Title (Partition) Suit No. 118 of 2005. The suit premises is a grocery shop. It was the specific case of the plaintiff-Opposite Party that the said shop fell in his share on partition. The said Banwari Lal Sharma had appeared as a witness in the eviction suit and supporting the case of the plaintiff-Opposite Party, deposed that the plaintiff was his adopted son and he also supported the case of the said property falling in the share of the plaintiff-Opposite Party.

12. Considering the evidence adduced at the trial, the Court below, thus, recorded specific finding that there existed relationship of landlord and tenant between the plaintiff and the defendant.



13. Mr. Singh, learned Senior Counsel, appearing on behalf of the petitioner, had attempted to persuade this Court that the so-called award of the Permanent Lok Adalat was wrongly relied upon by the Court below since in the absence of any Permanent Lok Adalat, no award passed by such Lok Adalat could have been accepted as valid.

14. I need not go into said aspect of the matter as it appears that the legality of the award of the Permanent Lok Adalat was not questioned at any stage.

15. In that view of the matter, the finding recorded by the Court below of existence of relationship of landlord and tenant between the plaintiff and the defendant cannot be faulted with.

16. Coming to the next question as to whether the plaintiff-Opposite Party, genuinely and bonafidely, require the suit premises for his business, as has been noticed above, learned Senior Counsel has placed reliance of Supreme Court's decision, in the cases of **Hameedia Hardware Stores** (supra) and **Mattulal** (supra).

17. It appears that the plaintiff in the present case took plea before the Court below that he did not have any residential house and at the said pointed of time, he was residing in a rented house. It was accordingly his case that it had become necessary for him to



do some business to maintain his day-to-day expense in life, for which he did not have any other space.

18. It is the plea on behalf of the petitioner that mere desire to do some business is not enough to satisfy the requirement under Section 11 (c) of the Bihar Building (Lease, Rent and Eviction) Control Act, which states that eviction can be allowed only on the ground of personal necessity if the pleading is reasonable and in good faith, required by the landlord for his own occupation or for the occupation of any person for whose benefit the building is held by the landlord.

19. I am not convinced with the submission so advanced on behalf of the petitioner, while placing reliance on Supreme Court's decision, in the case of **Mattulal** (supra). The Supreme Court, though said that mere desire on the part of the landlord would not satisfy the test of requirement, but the Court, at the same time, held that there should be an 'element of need' and the landlord must show, the burden being upon him, that he genuinely required the non-residential accommodation for the purpose of starting or continuing his own business.

20. From the pleadings, it is apparent, and which is not in dispute, that the plaintiff was not having any employment and had engaged himself in tuition. He wanted occupation of the said non-



residential premises for running his own business. This much he could establish at the trial. No evidence could be adduced on behalf of the defendant that the plaintiff-Opposite Party was engaged in some other business and was having alternative to start his business. The finding recorded by the Court below that the plaintiff-Opposite Party genuinely required the suit premises for his own occupation for the purpose of doing business, in my view, does not require interference, exercising revisional jurisdiction of this Court.

21. In the case of **Hameedia Hardware Stores** (supra), the Supreme Court observed that requirement of claim being bona fide, as contained in Section 10 (3)(e) of the T. N. Building (Leave and Rent Control) Act, 1960, which is not pari materia with Section 111 of the Bihar Building (Lease, Rent and Eviction) Control Act, 1962, that the circumstance that the landlord on the date of making the application was factually carrying on business and had no non-residential building of his own in his own occupation in the city, town or village concerned, is to be construed sufficient to make his claim *bona fide*. The genuineness of the need of the landlord to enjoy the occupation of non-residential premises is the essential requirement to allow eviction on the ground of personal necessity.



22. Accordingly, I do not find any merit in this application.

This application is, accordingly, dismissed.

23. It is the case of the petitioner that he had paid Rs. 1,24,007/- to Banwari Lal Sharma, through cheque, for the purpose of sale of the suit premises, out of the agreed amount of consideration.

24. I need not comment upon the said submission since this plea has not been found to be correct by the Court below.

25. Learned Senior Counsel submits that the petitioner should have liberty to seek remedy for recovery of the said amount from the said Banwari Lal Sharma.

26. This Court cannot comment even on that whether such proceeding will be barred by limitation or not. It will be, however, upon to him to seek legal remedy, as may be found permissible in that regard.

(Chakradhari Sharan Singh, J)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N/A
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