

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.310 of 2016

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Dr. Sanjay Gupta son of Late Umashankar Prasad Resident of Mohalla K.P. Road
Gandhi Chowk, Police Station Kotwali, District Gaya.

..... Plaintiff Appellant

.... Appellant

Versus

Sri Suresh Kumar Jain son of Late Mohan Lal Jain of Sagar Shee Vastralya Police
Station Kotwali, District Gaya.

..... Defendant Respondent

.... Respondent

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Appearance :

For the Appellant/s : Mr. Pramod Kumar, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 28-02-2017

Heard learned Counsel for the appellant.

2. The Interlocutory Application (I.A. No. 1167 of 2017) has been filed on behalf of the appellant praying for early hearing of the second appeal on the ground that the appeal has arisen out of an eviction suit on the ground of personal necessity filed by the plaintiff-appellant.

3. Accordingly, after considering the submission on behalf of the appellant, this Court has permitted the learned Counsel for the appellant to make his submission on the merit of this appeal under Order 41 Rule 11 CPC.

4. Heard learned Counsel for the appellant. It has been



submitted by the learned Counsel for the appellant that both the courts below have erred in law in non-suiting the plaintiff-appellant only on the basis of taking notice of the subsequent events. It has been contended that a suit is to be decided on the basis of the facts existing on the date of the suit and not on the basis of the facts which subsequently occurred. After elaborating the facts and circumstances of the case, it has been propounded that the only substantial question of law which arises for consideration in this appeal is as follows:-

“As to whether the courts below were bound to adjudge the personal necessity of the plaintiff as existing on the date of filing of the suit or the courts below could have taken into notice the subsequent event for non suiting the plaintiff?”

5. The matrix of facts discloses that the plaintiff is the admitted owner of the suit premises. The suit for eviction was filed by the plaintiff with clear averment that as he had obtained the MBBS degree, therefore, he had the requirement of the suit premises for establishing his medical clinic in the same. The plea of bonafide personal necessity for seeking eviction of the defendant was based upon the said ground.

6. The defendant appeared and contested the assertion of the plaintiff and resisted the claim of the plaintiff. It was the specific case of the defendant that the plaintiff after obtaining the MBBS degree had been appointed as a doctor in the government service and he had also joined to the place of his posting, which was out of the town where the suit premises was situated. The defendant had also pleaded that the plaintiff had filed another suit for eviction against another tenant wherein also the



same plea was raised regarding requirement of that suit premises for establishing the medical clinic in the same.

7. Both the courts below after considering the pleadings and evidence of the parties have reached to the concurrent findings of fact that the plaintiff has failed to establish bonafide personal necessity of the suit premises as pleaded. The suit was dismissed and thereafter the appeal by the plaintiff has also been dismissed by the impugned judgment and decree.

8. After considering the submissions on behalf of the appellant, in view of the aforesaid background of facts, and also after perusal of the judgment and decree of both the courts below, it is manifest that the main plea on behalf of the plaintiff is that the personal necessity as existing on the date of filing of the suit should have only been taken into consideration and the subsequent event must have been excluded. There is no dispute with regard to the proposition that the rights of the parties are to be determined on the date of filing of the suit. However, the exception to the same has also been well recognized that if a subsequent event occurs, which has the affect upon the rights as claimed by the parties in the suit, having dimensions to overshadow or eclipse the same, the court is bound to take into notice such subsequent event.

9. In this context it will be also fruitful to take notice of the dictum of the apex court in ***Rai and another Vs. Raghunath Prasad [1981] 3 SCC 103***, holding that the personal necessity as pleaded by the landlord plaintiff must subsist till final decree/order of eviction is passed. In the present case, the plea of personal necessity, as raised by the plaintiff for establishing a medical clinic, is clearly negated after the fact



has been brought on record in the written statement of the defendant specifically pleading that the plaintiff has been appointed as doctor in the government service. The said fact has not been denied by the plaintiff. However, it has been submitted on behalf of the appellant presently and has also been submitted in the court below that the plaintiff has undertaken to resign from the government service but it has also been conceded that the plaintiff has not resigned even up till date. Evincibly, therefore, if after his resignation any necessity which may arise to the plaintiff that will be his future necessity which is definitely not under the domain of Section 11(1)(c) of the Bihar Building (Lease, Rent and Eviction) Control Act. Moreover, it has nowhere been pleaded by the plaintiff that his personal necessity would be satisfied only after the eviction of the present defendant as well as the another tenant who is defendant in the another eviction suit filed by the plaintiff. There is also no pleading that the plaintiff requires both premises for the purpose of satisfying his personal necessity. The appellate court below has taken into notice the averments in the plaint of another eviction suit and has noticed that though the present suit and the another suit (Ext. 'A') were filed on the same day with the same plea of personal necessity but no mention was made in the pleading of either suit that both the premises together were required by the plaintiff for his personal necessity.

10. The findings of fact have been recorded by both the courts below on the basis of evidence, which were acceptable and could have been relied upon. This Court has not been persuaded to find any perversity or unreasonableness in the same.

11. Ex consequenti, this Court finds that there is no



substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed. The Interlocutory Application also accordingly stands disposed of.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
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