

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20819 of 2013

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Smt. Anita Devi & Anr

.... Petitioner/s

Versus

Sri Pramod Kumar Jalan & Ors

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.21247 of 2013

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Smt. Anita Devi & Anr

.... Petitioner/s

Versus

Sri Pramod Kumar Jalan & Anr

.... Respondent/s

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Appearance :

(In CWJC No.20819 of 2013)

For the Petitioner/s : Mr. Ranjan Kumar Dubey
Mr. Parth Gaurav

For the Respondent/s : Mr.

(In CWJC No.21247 of 2013)

For the Petitioner/s : Mr. Ranjan Kumar Dubey
Mr. Parth Gaurav

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

8 19-09-2017 (1) Heard the learned senior counsel, Mr. S.S.Dvivedi

for the petitioners and the learned counsel, Mr. Ashok Kumar

Mishra for the respondents.

(2) Perused the impugned order dated 17.03.2013

passed by Sub Judge II, Patna in Eviction Suit No.23 of 2011

whereby the learned court below rejected the application filed by

the plaintiffs-petitioners under Section 15 of the Bihar

Building(Lease, Rent & Eviction) Act, 1982 and allowed the



amendment in the written statement.

(3) It appears that eviction suit was filed by the plaintiffs-petitioners for eviction of the defendants-tenants alleging that the original landlord, under whom the defendant-respondents were tenant, had died and after his death, the suit property has been sold by his two sons by registered sale deed dated 23.06.2008 and, therefore, they are the tenant but they are not paying rent, as such, they are defaulter.

(4) This application under Section 15 was filed on 10.04.2012. The court below did not decide this application and it was kept pending. Subsequently, the defendant purchased the property by sale deed from Rani Sinha by registered sale deed dated 20.10.2012 and set up a claim by way of amendment in the written statement that the tenants are the co-sharer. The amendment application was filed on 26.11.2012. By this impugned order, the court below also allowed the amendment in the written statement.

(5) The learned senior counsel, Mr. S.S.Dvivedi for the plaintiffs-petitioners submitted that since the tenants were the tenant under the original landlord and after the death of the original landlord his two sons has already transferred the suit property in favour of the present plaintiff, they stepped into the



shoes of the landlord and became the landlord. On the date of filing the eviction suit, the respondents were in possession of the suit property in the capacity of tenant. Since they were in possession of the property as tenant, by operation of law they became the tenant of the plaintiffs and it is not the law that unless the tenant attorn the landlord, the relationship will not be established. Further, the learned counsel relying on the decision of the Supreme Court AIR 2003 Supreme Court 2427 and (2012) 8 Supreme Court Cases 574 submitted that the tenant has to first surrender the possession in favour of the landlord and thereafter only the tenant can claim title on the suit property. In the present case, only amendment has been sought for by the defendant. Admittedly, the partition suit between the brother and sister is pending and this is not the only suit property of the original landlord. In such circumstances, when the suit property had already been sold by two brothers, the title vested in favour of the plaintiff as far back as in the year 2008, as soon as the consideration amount was paid and the document was registered. Unless this sale deed is set aside or held to be not binding on the vendor of the defendants, the question of title could not have been recorded by the trial court or the trial court could not have come to the conclusion that now the defendants-respondents are co-sharer.



Moreover, in an eviction suit, the question of title cannot be decided as has been held by the Hon'ble Supreme Court in AIR 2002 Supreme Court 136.

(6) On the other hand, the learned counsel, Mr. Ashok Kumar Mishra for the respondents submitted that partition suit is pending and the sister of the vendor of the plaintiff has a share in the suit property and, therefore, she had sold the property in favour of the defendants-respondents and the learned court below therefore, rightly held that the defendants-respondents-transferee are now co-sharer, as such, not tenant, therefore, no direction can be given to the tenant to deposit the rent. According to the learned counsel, Section 15 provides that if the tenant contests the eviction suit then the court may direct the defendant to deposit the rent, current and arrears, but the defendants have purchased the property, therefore, they are not tenant.

(7) Perused the impugned order. It appears that it is admitted fact that the plaintiffs are the purchasers of the suit property by registered sale deed of the year 2008. It is also admitted fact that on the date of the purchase, defendants were in possession of the suit property in the capacity of tenant. Therefore, by operation of law they became the tenant under the plaintiffs irrespective of the fact that they attorn the plaintiff as landlord or



not. It is admitted fact that this sale deed in favour of the plaintiff is neither challenged by Rani Sinha, the vendor of the defendants nor the defendants have ever challenged this sale deed. Now therefore, unless this sale deed in favour of the plaintiff is either set aside or held to be void document or is voidable, no relief in favour of the defendants can be granted as has been held by the Hon'ble Supreme Court in **(1996) 7 Supreme Court Cases 767(Md. Noorul Hoda v. Bibi Raifunnisa and others)** wherein the Supreme Court has held that “when the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded.” Admittedly, the defendant is not the plaintiff and now he is claiming title on the basis of a sale deed of the year 2012. Therefore, unless the sale deed of the plaintiff is either set aside or is declared to be not binding on Rani Sinha, the defendant cannot claim title in this eviction suit.

(8) The Hon'ble Supreme Court in **(2002) 1 Supreme Court Cases 90 (Rajendra Tiwary v. Basudeo Prasad and Another) = AIR 2002 Supreme Court 136** has held that “while



dealing with the suit of the plaintiffs for eviction of the defendant from the suit premises under clauses (c) and (d) of sub-section (1) of S. 11 of the Act, Courts including the High Court were exercising jurisdiction under the Act which is a special enactment. The sine qua non for granting the relief in the suit, under the Act, is that between the plaintiffs and the defendant the relationship of 'landlord and tenant' should exist. The scope of the enquiry before the Courts was limited to the question : as to whether the grounds for eviction of the defendant have been made out under the Act. The question of title of the parties to the suit premises is not relevant having regard to the width of the definition of the terms 'landlord' and 'tenant' in clauses (f) and (h), respectively.”

(9) In the present case, admittedly on the date of purchase i.e. in the year 2008 the plaintiffs stepped into the shoes of the original landlord. Therefore, the defendants became tenant under the plaintiffs. Now, because of subsequent purchase by them from Rani Sinha their status will not change unless the sale deed of the plaintiff is declared not binding on Rani Sinha or that title of the entire suit property did not vest to the plaintiffs or that two sons of the original landlord has no authority to transfer the suit property particularly when admittedly the partition suit is pending wherein except this suit premises there are other properties also.



(10) It appears that the court below has not considered this aspect of the matter nor the court below considered the fact that the defendant only sought for amendment in the written statement claiming title to the suit property on the basis of purchase made by them from Rani Sinha in the year 2012.

(11) In view of the decision of the Supreme Court, referred to above, the question of title is a foreign question and the court while deciding the eviction suit cannot decide the question of title. Moreover, in the present case, the amendment sought for was not necessary at all. The court below did not consider as to whether the amendment sought for in the written statement is necessary or not and has allowed the amendment application. Unless the Court records a finding that the amendment is necessary for the decision of the real controversy between the parties, the Court has no jurisdiction to allow the amendment.

(12) The Hon'ble Supreme Court in (2009) 10 Supreme Court Cases 84 has held that the first thing to be considered by the Court is to see as to whether the amendment sought for is necessary for the decision of the controversy between the parties or not. As stated above, since this is an eviction suit, the amendment sought for raising the question of title is not at all necessary for deciding as to whether there is relationship of



landlord and tenant between the parties or that any of the ground mentioned in Section 11 of the B.B.C. Act exist or not.

(13) In view of my above discussion, I find that the court below has exceeded its jurisdiction and has passed the impugned order in the manner not permitted by law and recorded the finding that there is no relationship of landlord and tenant because the defendants are also the co-sharer and if this impugned order is allowed to stand then automatically it will affect the merit of the case and the eviction suit is liable to be dismissed.

(14) In the result, both these writ applications are allowed. The impugned order is set aside and the application filed by the plaintiffs-petitioners under Section 15 of the B.B.C. Act is allowed. The amendment application filed by the defendants-respondents in the written statement is hereby rejected.

(Mungeshwar Sahoo, J)

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