

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.262 of 2014

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1. Binod Kumar Singh.
 2. Arun Kumar Singh
 3. Satish Kumar Singh all Sons of Late Babu Ram Chandra Singh all permanent residence of village- Damodarpur, P.S. Sarai, District-Vaishali and presently residing at Dakbunglow Road Anwarpur, Hajipur, P.S. Nagar (Hajipur), District-Hajipur.
 4. Asha Singh Daughter of Late Babu Ram Chandra Singh, W/o Late Ganesh Pd. Singh Chaughan Vill.- Parmanandpur, P.S.- Lalganj, Dist.- Vaishali.

.... Appellant/s

Versus

1. Amravati Devi wife of late Bishwanath Singh.
2. Vishwajit Singh son of late Bishwanath Singh.
3. Roushan Singh son of late Bishwanath Singh, all permanent residents of village-Sonepur, Pargana-Kashmar, P.O. and P.S. Sonepur, District-Chhapra(Saran).
4. Laxmuni Devi W/o Chandrakhet Narain Singh
5. Champa Devi Wife of Deep Narain Singh
6. Savitri Devi W/o Prem Narain Singh, All Daughter of Late Ram Bahadur Singh Resident of Village-Sonepur, Pargana-Kashmar, P.O. & P.s.-Sonepur, District-Chhapra Saran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kamal Nayan Choubey, Sr. Adv.

Mr. Rajni Kant Jha, Adv.

For the Respondent/s : Mr. Mahesh Narayan Parbat, Sr. Adv.

Mr. Sanjay Kumar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 23-02-2017

Heard Mr. K.N. Choubey, learned senior counsel appearing



on behalf of the appellants and Mr. Mahesh Narayan Parbat, learned senior counsel appearing on behalf of the plaintiff-respondents.

The defendant (now deceased through L.R.) is the appellant in this appeal against the judgment and decree of affirmance granting the decree of eviction to the plaintiffs as prayed.

Both the courts below upon detailed scrutiny of evidence on record have come to the concurrent findings of fact that there exists the relationship of landlord and tenant in between the plaintiff (now deceased through LR) and the defendant and the defendant has committed default in payment of rent. The suit was decreed and the appeal filed by the tenant-defendant has been dismissed by the impugned judgment and decree.

Mr. Choubey, learned senior counsel for the appellants has firstly submitted that both the courts below have committed error of jurisdiction in venturing to adjudicate the question of title over the suit premises even in view of the fact that the suit was only for eviction. It has been propounded that in an eviction suit no decree for eviction can be granted on the basis of title. It has been further submitted that the learned courts below have erroneously recorded the finding that there exists relationship of landlord and tenant in between the plaintiffs and the defendant. During the course of submission, it has also been pointed out that both the courts below have omitted to



consider the oral evidence adduced on behalf of the parties and have wrongly relied upon only the documentary evidence for granting the decree to the plaintiffs. It has been lastly submitted that the learned appellate court below has not passed the judgment in accordance with the stipulations in Order 41 Rule 31 C.P.C. No other submission has been made on behalf of the appellants.

After considering the submissions and perusal of the judgments of both the courts below, it is manifest that admittedly the suit premises stands in the name of the plaintiff Bam Bahadur Singh. The tenant-defendant has accepted that at one stage he had been the tenant of the plaintiff in one of the houses in holding no. 85 but later on when there was a partition, the suit premises was allotted in the share of Dhup Narayan Singh, brother of the plaintiff and thereafter the defendant became the tenant of said Dhup Narayan Singh. The defendant has also come out with the case of purchase of the suit premises by registered sale deed in the name of his wife from the said Dhup Narayan Singh. In view of the admitted fact that the suit premises had been purchased in the name of the plaintiff the burden of proof was directly upon the defendant to establish that the suit premises in partition was allotted in the share of Dhup Narayan Singh who was the brother of the plaintiff and who firstly inducted the defendant as tenant in the suit premises and thereafter sold the same to



the wife of the defendant. There is no denial on behalf of the defendant-appellants that the vendor of the appellants Dhup Narayan Singh has not been examined in the suit. However, learned senior counsel for the appellants has pointed out that an affidavit has been filed by said Dhup Narayan Singh which has been brought on record as Exts. E and E/1. The appellate court below has considered the said affidavit (Ext. E and E/1) where the said Dhup Narayan Singh has made statement that the compromise decree passed in earlier T.S. No. 358 of 1944 (partition) was a fraudulent compromise decree. The appellate court below, on the basis of the said statement, has rightly come to the conclusion that the said compromise decree in T.S. No. 358 of 1944 was within the knowledge of the vendor of the defendant who did not take any step thereafter against the said compromise decree. Both the courts below have rightly considered the documentary evidence pertaining to the T.S. No. 358 of 1944 filed by Sobha Singh who was father of the plaintiff as well as father of the vendor of the defendant, and thereafter have examined the averments made in Ext. 17, 18, 22 and 23 to come to the conclusion that the specific and categorical statement has been made that the property purchased in the name of the plaintiff Bam Bahadur Singh was his exclusive property. It has not been disputed on behalf of the appellants that the suit premises or the properties purchased in the



name of the plaintiff was not the subject matter of T.S. No. 358 of 1944 (partition). Further both the courts below have taken into notice the statement made in the sale deed by the said Dhup Narayan Singh (vendor of the defendant) in Ext. 8 specifically stating that he has no concern with the property purchased in the name of the plaintiff Bam Bahadur Singh. The elaborate consideration of the documentary evidence has been done by both the courts below and the consideration of the oral evidence has been omitted for the said reason after finding the documentary evidence sufficient to sustain the conclusions. Though non-consideration of oral evidence by the courts below has been highlighted by learned senior counsel for the appellants as substantial question of law in this appeal but no part of the oral evidence could be pointed out on behalf of the appellants which if considered would have nullified or at least explained away the effects of the documentary evidence (Ext. 8, 17, 18, 21 and 22) considered by both the courts below. This Court, therefore, has not been persuaded to come to the conclusion that non-consideration of the oral evidence has vitiated the findings of fact concurrently recorded by the appellate court below on the basis of documentary evidence on record.

The next submission that the consideration of question of title by the courts below in the suit for eviction is out side their



domain of jurisdiction is equally misconceived. It is well settled that in a suit for eviction, the court has the jurisdiction to go into the question of title if contested by other side but the said investigation is only incidental for the purpose of determination of the issue of relationship of landlord and tenant. This aspect has been also taken into notice by the trial court in the last portion of paragraph-17 of its judgment. Further, it is also apparent that no issue with regard to the title has been framed in the suit and as such the consideration of rival claim of title in a full fledged manner is out of question.

Both the courts below have further taken into notice the fact that the defendant himself has admitted to be the tenant of the plaintiffs in one of the houses in holding no. 85 and has also come out with the case that after the allotment of the said house to Dhup Narayan Singh he became the tenant of Dhup Narayan Singh who was the brother of the plaintiff. As the allotment of the house to Dhup Narayan Singh as pleaded could not be established by the defendant by leading cogent and convincing evidence in accordance with law, both the courts below therefore, have rightly come to the conclusion that there exists relationship of landlord and tenant in between the plaintiff and the defendant and the defendant has been defaulter in payment of rent to the plaintiff.

For the aforesaid reasons and discussions, this Court does



not find that both the courts below have committed illegality, perversity or unreasonableness in recording the findings of fact. The issues arising between the parties are now concluded by the concurrent findings of fact and this Court does not find any substantial question of law arising for consideration in this appeal.

This appeal is, accordingly, dismissed.

However, it is observed that the finding on the issue of relationship of landlord and tenant in between the plaintiff and the defendant will not prejudice the case of either of the parties seeking possession over the suit premises on the basis of title in accordance with law before a competent court.

Devendra/-

(V. Nath, J)

AFR/NAFR	
CAV DATE	
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