

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.76 of 2015

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1. Shanti Devi Wife of Late Sarbjeet Prasad,
2. Ranjeet Kumar,
3. Bablu Kumar,
4. Indrajeet Kumar, All sons of Late Sarbjeet Prasad,
5. Sheela @ Bhuwari,
6. Poonam Devi @ Baby,
7. Munni Devi,
8. Geeta Devi,
9. Buchiya Devi @ Buchhi Kumari, All daughters of Late Sarbjeet Prasad, All
resident of Mohalla - Daulatganj, Chapra, Post Office and Police Station - Bhagwan
bazar, District - Saran.

.... Petitioner/s

Versus

1. Ashok Kumar Jain Son of Late Anand Kumar Jai, Resident of Mohalla -
Daulatganj, Post Office and Police Station - Bhagwan Bazar, District - Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sangeeta Sharma
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL JUDGMENT
Date: 03-11-2017**

I.A.No.6419 of 2015 has been filed on behalf of the
petitioners/ defendants to condone the delay in filing this revision
petition on the ground that on the basis of wrong advice, initially,
First Appeal no. 2 of 2014 was filed before the District Judge but later
on, in course of argument, it was noticed that against the impugned
judgment and decree, revision was maintainable and, therefore the
aforesaid first appeal was withdrawn on 13.05.2015 and, thereafter,
the present revision petition was filed.



In view of the averments made in I.A. 6419 of 2015, the delay in filing this revision petition, is, hereby, condoned and accordingly I.A.No. 6419 of 2015 stands disposed of.

Heard learned counsel for the petitioners as well as learned counsel for the opposite party.

The petitioners /defendants have filed this Civil Revision petition under section 14(8) of the Bihar Buildings (Lease, Rent and Eviction) Control Act 1982(in short BBC Act) for setting aside the judgment and decree dated 06.02.2014 passed by Munsif-I, Chapra at Saran in Eviction suit no. 04 of 2007 directing the petitioners to vacate the suit premises within 90 days, failing which the opposite party will have right to execute the decree through process of the court.

The opposite party/plaintiff filed Eviction suit no. 4 of 2007 under section 11(1) (C) of the BBC Act, against original defendant Sarbjeet Prasad on the ground that there was coardialgood relation between the father of opposite party/ plaintiff and original defendant. The father of opposite party/ plaintiff permitted the original defendant to live in one room of his house in the month of June 1970 and since then the original defendant along with his family members was residing in the aforesaid room.

However, in the year 2002, the original defendant was in



need of another room for the purpose of marriage of his son and, thereafter, he requested the opposite party/ plaintiff to give another room to him so that he could perform marriage of his son. The opposite party/ plaintiff accepted the request of original defendant and handed over possession of another room to him. On 14.06.2002, an agreement cum Kirayanama (Exhibit-2) was executed between the parties and in the aforesaid agreement, the original defendant agreed to vacate the possession of aforesaid room by 26-27 June 2002.

However, the original defendant vacated the premises in which he was residing with the permission of opposite party/ plaintiff but he refused to vacate the possession of the room which he had taken for solemnization of marriage of his son. The opposite party/ plaintiff was in need of aforesaid room for opening a godown. He asked the original defendant to vacate the room in question but he refused to do so and, thereafter, the opposite party/ plaintiff filed the aforesaid suit.

The original defendant Sarbjeet Prasad, who had appeared and contested the suit claiming his title over the disputed room. The original defendant, specifically, pleaded in his written statement that the grandfather of the opposite party/ plaintiff had settled Khesara no. 2021 area 10 dhur to father of original defendant on 5.4.1948 and handed over the possession of the land to him. The



father of original defendant got constructed two rooms over some portion of the settled lands. Since then he as well as his other family members are residing in the said rooms. He further claimed that his possession over the disputed rooms has been coming since 1958, therefore, he has acquired title by adverse possession also. The original defendant also denied this fact that he had taken any room from opposite party/ plaintiff at the time of marriage of his son and so far as execution of Kirayanama (Exhibit-2) is concerned, the defendant pleaded that the plaintiff got his signature on plain paper playing fraud upon him.

It is an admitted position that original defendant died during pendency of the eviction suit and in his place the present petitioners being the legal representatives of original defendant substituted. It is also an admitted position that after substitution, defendants/ petitioners filed a petition under Order 6 Rule 17 of the Civil Procedure Code for certain amendments in the written statement. The amendment prayer of defendants/ petitioners was allowed and, accordingly, the amendments, as sought for, by the defendants/ petitioners were incorporated in the written statement. By the above stated amendment, the defendants/ petitioners brought the story of settlement of the lands in favour of Jawahir Prasad, the father of original defendants.



Learned court below, on the basis of pleadings of the parties, framed, altogether, seven issues including the issues relating to relationship of landlord and tenant between the opposite party/ plaintiff and original defendant and also of personal necessity. Learned court below while dealing with issue no. 3, 4 and 6 came to conclusion that the original defendant came in possession of suit premises with permission of grandfather of plaintiff/ opposite party as well as with permission of opposite party/ plaintiff and also came to the conclusion that the opposite party/ plaintiff was in need of suit premises for construction of godown and on the basis of aforesaid conclusion, the learned court below passed the impugned judgment and decree.

Learned counsel appearing for the petitioners assailed the impugned judgment and decree arguing that the averments made in the plaint clearly show that the plaintiff/ opposite party brought Eviction suit no. 04 of 2007 on the ground that the possession of the original defendant was permissible possession and it has, nowhere, mentioned in the plaint of Eviction Case No. 04 of 2007 that the original defendant was tenant of the plaintiff and, therefore, in view of the aforesaid pleadings the suit of the plaintiff/ opposite party was not maintainable because it is well settled principle of law that the eviction decree in the cases filed under Bihar Buildings (Lease, Rent



and Eviction) Control Act 1982 can be granted only on the grounds mentioned in the above stated Act but the averments made in plaint of Eviction suit no. 4 of 2007 do not disclose any ground mentioned in the above stated Act.

Learned counsel for the petitioners further submitted that it has, specifically, been pleaded in the plaint that in 1970, the original defendant came in permissive possession of one room. However, subsequently, it is averred in the plaint that in 2002 on the request of original defendant, the opposite party/ plaintiff handed over possession of another room to original defendant and one Kirayanama (Exhibit-2) was executed but contents of the Kirayanama (Exhibit-2) goes to show that the rent of the aforesaid room was never fixed and the aforesaid room was handed over to original defendant without fixing any rent and, therefore, even if the averments of the plaint are taken in consideration, then also, there is no pleading regarding the relationship of landlord and tenant between the parties. Learned counsel for the petitioners further submitted that it has, also specifically, been pleaded by the plaintiff/ opposite party in the plaint Kirayanama that the original defendant vacated the room in which he was residing since 1970 but he did not vacate the premises in which he solemnized the marriage of his son. Learned counsel for the petitioners further pointed out that relief of the plaint discloses that



the relief has been sought for in respect of the room in which the defendant was residing since the year 1970 and according to the averments of the plaint, the said room had already been vacated and moreover, the relief of the plaint also goes to show that the possession of original defendant was permissive possession and, therefore, in the aforesaid circumstance, the suit of the opposite party/ plaintiff was not maintainable but the learned court below did not take note of the above stated facts and, therefore, the impugned judgment and decree is liable to be set aside.

On the other hand, learned counsel appearing for the plaintiff/ opposite party refuted the above stated submissions arguing that it is specific case of the plaintiff/ opposite party that the original defendant was inducted into the suit premises as tenant in the year 1970 and subsequently, when another room was handed over to him, a Kirayanama (Exhibit-2) was executed between the parties and in the aforesaid Kirayanama (Exhibit-2), the original defendant accepted that he was residing in the suit premises as a tenant and, therefore, there is no illegality, irregularity and impropriety into the impugned judgment and decree.

Having heard the parties, I went through the record along with lower court record.

From bare perusal of averments made in the plaint of



Eviction suit no. 4 of 2007, I find that the plaintiff/ opposite party came before the court below with specific pleading that his father permitted the original defendant, to live in one room of his house in the year 1970 and since then the original defendant was living in the aforesaid room . Furthermore, it was specific case of the plaintiff/ opposite party that the possession of defendant was permissive possession and it was further case of the plaintiff/ opposite party that in the year 2002 on the request of original defendant, another room was handed over to him and an agreement dated 14.06.2002 (Exhibit-2) was executed. No doubt, there was the signature of the original defendant on the aforesaid agreement but by subsequent amendment the defendants/ petitioners specifically pleaded that the aforesaid signature on Exhibit-2 was obtained by playing fraud upon original defendant. Moreover, it was specific case of the plaintiff/ opposite party that after solemnization of marriage, the original defendant vacated the premises in which he was residing since 1970 but refused to vacate the room which was given to him for solemnization of marriage of his son. The description of the disputed room has been given in scheduled I of the aforesaid suit which goes to show that holding no. of disputed room is 293. Whereas Exhibit-2 goes to show that so called Kiryanama (Exhibit-2) was executed in respect of holding no. 278 and, therefore, it appears that Exhibit-2 has



no concerne with the disputed room in respect of which the relief has been claimed by the plaintiff/ opposite party.

It is an admitted position that the learned court below has decreed the suit of plaintiff/ opposite party holding that the original defendant was residing in suit premises with permission of plaintiff/ opposite party and, therefore, it is obvious from the aforesaid finding of the court below that there was no relationship of landlord and tenant between the plaintiff/ opposite party as well as original defendant. It is now well settled principles of law that Eviction suit under section 14 of BBC Act can only be decreed on the grounds mentioned under section 11 of the aforesaid Act. In the above stated Act, it has, nowhere, mentioned that if a person is residing in premises with permission of owner, the suit of eviction can be filed under the aforesaid Act

Therefore, in the aforesaid circumstances, in my view learned counsel for the petitioners rightly submitted that the suit of the plaintiff/ opposite party was not maintainable under the BBC Act.

On the basis of aforesaid discussions, this Revision Petition is allowed and accordingly, the impugned judgment and decree dated 06.02.2014, is hereby, set aside and this matter is remitted back to the court below with direction to convert the Eviction Suit No. 4 of 2007 into a regular suit and proceed a fresh in



accordance with law after realizing the ad-valorem court fee, if plaintiff/ respondent wants to continue the suit.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	01.12.2017
Transmission Date	

