

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.432 of 2000

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1. Prof. Ram Kumar Singh.
 2. Dr. Krishna Kumar Singh.
Both sons of late Madan Mohan Prasad Singh.
 3. Smt. Swapna Choudhary, Wife of Prof. Ram Kumar Singh.
 4. Dr. Kamini Rai, Wife of Dr. Krishna Kumar Singh.
All residents of Mohalla-Kachahari Road, Begusarai, P.S.-Begusarai, District-Begusarai.

.... Appellants

Versus

1. Radha Devi, Wife of Late Sita Ram Mahto.
2. Shiwal Mahto.
3. Fekan Mahto.
4. Narain Mahto.
All sons of Late Sita Ram Mahto.
All Resident of Mohalla- Kachahari Road, Police Station-Begusarai, District-Begusarai.
5. Nutan Sinha.
6. Rishi Parveen.
7. Parsoon Praveen.
8. Pallav Praveen.
9. Moni Sinha.
10. Jahanvi Sinha.
11. Khushboo Sinha.
All resident of Mohalla-Mungeriganj, Begusarai, P.S.- Begusarai, District-Begusarai.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Bhupendra Narain Sinha, Adv.
Mr. Shailendra Kumar, Adv.
Mr. Gautam Kumar, Adv.

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 23-06-2017

Heard Mr.B.N.Sinha, learned counsel appearing

for the appellants.

No body has appeared on behalf of the

respondents.



Although, Mr.Shashi Dhar Jha, advocate appeared for the respondents on earlier dates on behalf of the respondents when this appeal was taken up for hearing, it has been informed on behalf of Mr.Shashi Dhar Jha, advocate that he has now no instruction in this appeal on behalf of the respondents.

The plaintiff is the appellant in this appeal against the judgment and decree of reversal passed by the appellate court below setting aside the judgment and decree of the trial court granting the decree of eviction to the plaintiff.

The facts in detail need no notice in view of the limited submission made by the learned counsel for the appellants pertaining to the jurisdiction of the appellate court below to entertain the appeal and it would suffice to state that the plaintiff filed the suit for eviction of the defendant from the suit premises on the ground of personal necessity alone. The defendant denied the relationship of landlord and tenant with the plaintiff claiming title over the suit premises. The trial court recorded the findings on the issues in favour of the plaintiff and granted the decree to the plaintiff as prayed. The defendants thereafter filed M.T.A. (Eviction) No.28/1997 before the appellate court below against the judgment and decree passed by the trial court. By the impugned judgment and decree dated 28.09.2000, the appellate court below has set aside the judgment and decree of the



trial court.

This appeal was admitted for hearing by order dated 02.09.2003 on the following substantial question of law.

(I) Whether the appellate court below is required to consider the evidence and reasonings of the trial court in deciding the appeal?

When this appeal was taken up for hearing, Mr.Sinha, learned counsel appearing for the appellants has submitted that another substantial question of law pertaining to the jurisdiction of the appellate court below in view of the provision of Bihar Building (Lease, Rent & Eviction) Control Act (hereinafter referred to as B.B.C.Act) also arises for consideration in view of the decree passed by the appellate court below being a nullity for want of jurisdiction. Elaborating the submissions, it has been contended that the suit for eviction was filed by the plaintiff-appellant under the provisions of the B.B.C. Act only on the ground of personal necessity and against the order of eviction passed in such a suit, further appeal or second appeal has been expressly barred by the statute as envisaged in Section 14(8) B.B.C.Act. On this base, it has been submitted that the impugned judgment and decree passed by the appellate court below is a nullity having been passed by a court lacking jurisdiction to entertain the appeal. It has been thus prayed that this point may be



considered as additional substantial question of law arising in this appeal.

As mentioned earlier, no body has appeared on behalf of the respondents when this appeal has been taken up for hearing.

After considering the submissions on behalf of the appellants and the facts and circumstances of this case, this Court is satisfied that another substantial question of law pertaining to the jurisdiction of the appellate court below is also arising for consideration. Accordingly, the following question is framed as additional substantial question of law:

(i) Whether in view of the bar of appeal as created by Section 14 (8) of the Bihar Building (Lease, Rent & Eviction) Control Act, the impugned judgment and decree passed by the appellate court below can be legally sustained?

Mr.Sinha, learned counsel for the appellants has submitted that the additional substantial question of law as framed may be decided first and if the same is decided in favour of the appellants, there would be no requirement for deciding another substantial question of law, which was framed at the time of admission of this appeal.

Learned counsel for the appellants has placed the materials on record to substantiate the contention that the suit was



filed for eviction only on the ground of personal necessity and, therefore, after the decree/order of eviction, the defendant had only the remedy of filing a revision application as envisaged in the proviso to Section 14 (8) of the B.B.C.Act. Relying upon the decision in the case of ***Mohan Lal Vs. The Charge Officer, Purnea , 1974 BBCJ 458*** and a decision by the apex court in the case of ***Chandrika Misir Vs. Bhaiyalal, AIR 1973 SC 2391***, it has been propounded on behalf of the appellants that the decree passed by the appellate court below as impugned in this appeal has been passed by a court, which lacked jurisdiction to entertain the appeal and, therefore, such decree is nullity. The learned counsel has also placed reliance upon the Full Bench judgment of this Court in the case of ***Md. Jainul Ansari Vs. Md. Khalil, 1990 (2) PLJR 378*** to strengthen the submission that no appeal lies in case of a decree for eviction passed in a suit for eviction on the ground of personal necessity or expiry of lease.

It would be apposite to notice the provision of Section 14(8) of the B.B.C.Act 1982 which reads as follows:

“8....No appeal or second appeal shall lie against an order for the recovery of possession of any premises made in accordance with procedure specified in this section:

Provided that on an application being



made within sixty days of the date of the order of eviction the High Court may for the purpose of satisfying itself that an order under the section is according to law, call for the records of the case and pass order in respect thereto as it thinks fit...”

The circumspection of the aforesaid provision clearly postulates express bar to an appeal or second appeal against an order of recovery of possession of any premises made in accordance with procedure specified in Section 14 of the said Act. The provision of Section 14 of the B.B.C.Act has been considered by the Full Bench of this Court in ***Md. Jainul Ansari Vs. Md. Khalil, 1990 (2) PLJR 378*** and their lordships have ruled as follows:

“8...Under Bihar Act, the landlord is required to file a suit before the competent Civil Court. As a suit is filed, a decree follows. Before the Bihar Act 1982, all decrees so passed were appealable under section 96 of the Code of Civil Procedure (the Code) and another appeal under section 100 of the Code. For the first time in the Bihar Act of 1982 a distinction was made between a suit for eviction on the



ground of personal necessity and a suit for eviction on other grounds. For the former class of suit, a summary procedure is prescribed in section 14. The procedure is similar to the procedure prescribed in section 25B of Delhi Act, except proviso to sub-section (8) of both the sections.

“19...So far the tenant is concerned, the Legislature thought that he cannot be allowed to delay the disposal of the matter at any stage of the lis, whether during the pendency of the matter in the trial court or after an order of eviction is passed. Therefore his right of appeal under the Code has been taken away.

“65. ... Section 14(8) of the Act is couched in negative terms prohibiting preferring of an appeal from an order of recovery of possession. The words ‘recovery of possession’ are significant. The provision appended to the aforementioned provision, however comes out an exception to the general rule.

In view of the dictum of the Full Bench as



above, there is no doubt that the appellate court below had no jurisdiction to entertain the appeal against the decree/ order of eviction passed against the defendant-appellant therein under the provisions of B.B.C.Act. From the perusal of the impugned judgment of the appellate court below, it does not however appear that the maintainability of the said appeal for want of jurisdiction was questioned by the plaintiff-respondent therein. The impugned judgment, however, also does not reveal that the appellate court below was alive to the bar created by the statute as above noticed under Section 14(8) of the B.B.C.Act. However, the non-raising of objection to the jurisdiction of the court by the plaintiff-respondent therein will not make the appeal maintainable on that basis. This aspect was dealt with by a Bench decision of this Court in the case of ***Mohan Lal Vs. The Charge Officer, Purnea , 1974 BBCJ 458*** where it has been held as follows:

“4....It is well settled that if a court or an authority has got no jurisdiction in law to entertain a dispute and erroneously proceeds to determine the rights of the parties, no amount of consent or acquiescence of the parties themselves will create the Jurisdiction in the said court or authority and the inherent lack of



jurisdiction in the said authority will not in any way be cured or supplied on account of the act of the parties themselves...”

.....
Simply because no objection was taken by the parties themselves during the course of the trial or the hearing of the appeal, would not cure the defect of the jurisdiction in the said authorities. It is equally well settled that the court trying a suit must be competent to try the same, otherwise the decision has got no binding force or effect.

Similar view was reiterated by the apex court in the case of ***Chandrika Misir Vs. Bhaiyalal, AIR 1973 SC 2391.***

“6.....

But the unfortunate part of the whole case is that the Civil Court had no jurisdiction at all to entertain the suit. It is true that such a contention with regard to the jurisdiction had not been raised by the defendant in the Trial Court but where the court is inherently lacking in jurisdiction the plea may be raised at any



stage, and, it is conceded by Mr.Yogeshwar Prasad, even in execution proceedings on the ground that the decree was a nullity.

As the material facts are not in dispute and are also apparent from the judgments of the courts below that the suit was filed for eviction only on the ground of personal necessity and was decreed by the trial court on the ground of personal necessity, an appeal against the said decree was barred under the express provision of Section 14(8) of the B.B.C.Act. The conspectus of the authoritative pronouncements in this regard also leave no room for doubt that the plea of bar of jurisdiction of the appellate court below can be raised even at this stage. This Court, therefore, finds force in the contention on behalf of the appellants that the appeal before the appellate court below was not maintainable and the appellate court lacked jurisdiction to entertain the said appeal.

The conclusion, therefore, is inevitable that the impugned judgment and decree passed by the appellate court below is nullity as the same has been passed by the court lacking jurisdiction to entertain the appeal. This Court, therefore, decides the additional substantial question of law in favour of the appellants. In view of the submission on behalf of the appellants as aforenoticed, there is no need to consider the substantial question of law framed at the time of



admission of this appeal.

In result, this second appeal is allowed and the impugned judgment and decree passed by the appellate court below is set aside.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.07.2017
Transmission Date	

