

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.231 of 2014

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1. Jarina Khatoon widow of late Iliyas.
 2. Mohammad Geyas.
 3. Reyaz Ahmad Salmani.
 4. Md. Faiyaz
 5. Md. Neyaz, all sons of late Md. Iliyas all 2 (a) to 2 (e) are resident of Mohalla-Kabirganj, P.O. and P.S. Sasaram (Town) District-Rohtas.
 6. Razia Khatoon wife of Md. Mannan, daughter of late Md. Iliyas, resident of house no. 10C/237/Panch Para Road, Matiyaguruj, Kolkata-44 (west Bengal).
 7. Sadiya Khatoon wife of Umar Khaiyam daughter of late Md. Iliyas, resident of House no. 10, C.R.O., Colony, Digwadi P.S. Jora Pokhar, District-Dhanbad, (Jharkhand).
 8. Sultana Khatoon wife of Mahmood Alam daughter of late Md. Iliyas, resident of House No. 10, near Masjid, Digwadi, P.S. Jora Pokhar, District-Dhanbad (Jharkhand).
 9. Ajmeri Bano wife of Dr. Badruddin, daughter of late Md. Iliyas, resident of House No. C-15/175, Lallapura Singara, P.S. Singara, District-Varanasi (U.P).
 10. Noojahat Bano, wife of Md. Mustafa, Daughter of late Md. Iliyas, resident of house no. D.283/J.J. Camp. Khanpur, Tigadi, New Delhi.
 11. Noori Bano, wife of Md. Shamim, daughter of late Md. Iliyas, resident of House No. 45, Kadari, Manzil, Bholenath Nagar, near Sandras Tower, Kousa Momra, Thane, Maharastra.
 12. Raushan Bano wife of Md. Mumtaz Alam, daughter of late Md. Iliyas, resident of House no. 1 Digwadi, P.S. Jora Pokhar, District-Dhanbad (Jharkhand).
- Appellant/s

Versus

Md. Khurshid son of late Md. Shafi Ahmad, resident of Mohalla Kila, P.O. and P.S. Sasaram (T), District-Rohtas.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jitendra Kr. Singh, Adv.
Mr. Subash Kumar, Adv.



For the Respondent/s : Mr. Raghunandan Kumar Singh, Adv.
Mr. Upadhyay Saurabh Kumar, Adv.
Mrs. Jagriti Kumari, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 27-02-2017

Heard Mr. Jitendra Kumar Singh, learned counsel for the appellants.

The landlord plaintiff is the appellant in this appeal against the judgment and decree of reversal dismissing the suit for eviction filed under the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the 'B.B.C. Act').

The plaintiff filed the suit for eviction of the defendant on the ground of personal necessity as well as default in payment of rent. It was the case of the plaintiff that the suit property was purchased by the plaintiff by sale deed dated 30.03.2009 and thereafter the defendant was inducted as tenant by the plaintiff for the period from 02.04.2009 to 03.03.2010. The suit was filed on 12.10.2009. The defendant however denied the relationship of landlord and tenant in between the plaintiff and the defendant and further also denied the assertions made by the plaintiff in the plaint and resisted the grant of decree as prayed.

The trial court returned the findings on the issues in



favour of the plaintiff and granted the decree as prayed. In appeal by the defendant, however, the appellate court below, on reappraisal of evidence has come to the conclusion that there is no relationship of landlord and tenant in between the plaintiff and the defendant. The appeal has been, accordingly, allowed reversing the findings of fact recorded in the suit by the impugned judgment and decree.

Mr. Singh, learned counsel for the appellants has submitted that the appellate court below has not properly considered the oral evidence led by the plaintiff in support of the relationship of landlord and tenant in between the plaintiff and defendant. The learned counsel has placed the portions of the judgment in appeal in order to substantiate his contention. Learned counsel has further relied upon the decision in the case of **Sri Sukdeoji Vs. Purushottam Sharma, 2014 (1) P.L.J.R. 332** in order to strengthen his submission that the court can grant the equitable relief of eviction under Order 7 Rule 7 on the basis of title. 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 the suit has been filed under the B.B.C. Act seeking eviction of the defendant from the suit premises on the ground of default in payment of rent and personal necessity. In view of the denial of relationship of landlord



and tenant by the defendant, the evidence was led by the parties on the said issue. It is not in dispute that the plaintiff has not adduced any documentary evidence to establish the creation of the relationship of landlord and tenant with the defendant and has also not produced any Kirayanama or counterfoil of the rent receipt in that regard. The plaintiff adduced only oral evidence in support of the said fact of relationship of landlord and tenant in between the plaintiff and the defendant. The appellate court below has considered the oral evidence adduced on behalf of the plaintiff as well as oral and documentary evidence adduced on behalf of the defendant and thereafter has come to the conclusion that the plaintiff has failed to establish the relationship of landlord and tenant by cogent and convincing evidence. The appellate court below has also taken into notice the fact that the Title Suit No. 639 of 2009 is pending between the vendor of the plaintiff and the person whom the defendant has claimed to be his landlord. The findings of fact have been recorded by the appellate court below on the basis of evidence which were acceptable and could have been relied upon. During the course of submission, this Court has not been persuaded to find perversity or unreasonableness in the same in any manner.

In view of the dictum as laid down by the Apex Court in the case of **Tribhuvanshankar Vs. Amrutlal, 2014 (2) SCC 788,**



this Court does not find substance in the submission on behalf of the appellant on the basis of the decision in the case of **Sri Sukdeoji** (supra) that a decree for eviction on the basis of title could have been granted to the plaintiff in such a suit in absence of the relationship of landlord and tenant.

In the ultimate eventuate, it is held that there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

However, the dismissal of the suit for eviction by the plaintiff-appellant shall not preclude seeking appropriate relief in accordance with law on the basis of his title over the suit premises.

(V. Nath, J)

Devendra/-

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