

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.276 of 2014

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Shri Narayan Sahani, son of Late Lakshmi Ram, resident of Village Aunsi
Babhangama, P.S. Bisfi, District Madhubani

..... Plaintiff Appellant

.... Appellants

Versus

Rajendra Sahani, son of Late Raghunandan Ram, resident of Village Aunsi
Babhangama, P.S. Bisfi, District Madhubani

..... Defendant Respondent

.... Respondents

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Appearance :

For the Appellant/s : Mr. Anant Kumar Bhaskar, Advocate
Mr. Sanjay Kumar Jha, Advocate

For the Respondent/s : Mr. Rajeeva Roy, Advocate
Mr. Manoj Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-02-2017

Heard Mr. Anant Kumar Bhaskar, learned Counsel for the
appellant.

2. The plaintiff is the appellant in this appeal against the
judgment and decree of affirmance dismissing the suit for eviction.

3. The plaintiff filed the suit for eviction of the defendant on the
ground of default in payment of rent and also on the ground of personal
necessity and in the alternative the prayer was made for recovery of
possession. It has not been disputed on behalf of the appellant that there
was no relief for declaration of title sought by the plaintiff. The defendant
contested the claim of the plaintiff and resisted the decree for eviction as
prayed.

4. Both the courts below have come to the conclusion that
there was no cogent and convincing evidence led on behalf of the plaintiff
to establish the relationship of landlord and tenant entitling the plaintiff for



a decree for eviction under the provisions of Bihar Building (Lease, Rent and Eviction) Control Act. Both the courts below have also repelled the prayer of the plaintiff for grant of decree for recovery of possession on the basis of title. The suit has been dismissed and thereafter the appeal by the plaintiff has also been dismissed by the impugned judgment and decree.

5. Mr. Bhaskar, learned Counsel for the appellant, has emphatically submitted that both the courts below have committed error of jurisdiction in not granting the decree of the plaintiff under the provisions of Order VII Rule 7 CPC providing for grant of equitable relief. It has been contended that the earlier partition suit filed by the respondent having been dismissed, the plaintiff's title over the suit property is no more in doubt. The learned Counsel has relied upon a number of decisions i.e. **1999(2) PLJR 148, Maheshwar Prasad Sharma vs. Shobha Devi, AIR 1982 Patna 42, Kashi Choudhary vs. Mujataba Hassan & anr., AIR 1951 Patna 550, Mohammad Mian vs. Jugeshwar Prasad, 1968 BLJR 467 Gauri Sao & ors. Vs. Ramkishun Sao @ Ram Kishun Das & ors.** Elaborating the submission on the strength of the aforesaid judicial pronouncements, it has been canvassed that the plaintiff was entitled to the grant of decree as his title has already been established over the suit premises. It has also been argued that the plaintiff has claimed the relief for recovery of possession by way of alternative in case of failure of his relief for eviction against the defendant on the ground of default in payment of rent and personal necessity. The learned Counsel has also placed the portions of the findings of the appellate court below in order to substantiate his submissions.



6. After considering the submission and perusal of the judgments of both the courts below it is evident that the suit has been filed by the plaintiff for eviction against the defendant on the ground of default in payment of rent and personal necessity. The alternative relief in the suit has been prayed for recovery of possession over the suit premises. Both the courts below have come to the concurrent finding of fact that there is absence of cogent evidence on behalf of the plaintiff to establish the relationship of landlord and tenant in between the plaintiff and the defendant. The aforesaid concurrent finding of fact has not been challenged by the learned Counsel for the appellant and the entire canvassing is for grant of alternative relief for recovery of possession. However, the learned Counsel for the appellant could not explain the position as to under what circumstances the plaintiff has failed to pray for the relief for declaration of title while praying for recovery of possession. But in any view of the matter, the apex court in the case of ***Tribhuvanshankar v. Amrutlal (2014) 2 SCC 788*** has considered the issue of grant of equitable relief under Order VII Rule 7 to a plaintiff in an eviction suit on the ground of title and their Lordships after considering the earlier decisions in this regard including the decision in ***Rajendra Tiwary vs. Basudeo Prasad, 2002 (1) SCC 90*** which was a case under Bihar Building (Lease, Rent and Eviction) Control Act, 1982 have come to the conclusion that no such relief for recovery of possession on the basis of title in the suit for eviction can be granted. Their Lordships have further approvingly taken into notice the observations in ***Rajendra Tiwary (supra)*** as follows:



“In this case the reason for denial of the relief to the plaintiffs by the trial court and the appellate court is that the very foundation of the suit, namely, the plaintiffs are the landlords and the defendant is the tenant, has been concurrently found to be not established. In any event inquiry into title of the plaintiffs is beyond the scope of the court exercising jurisdiction under the Act. That being the position the impugned order of the High Court remanding the case to the first appellate court for recording finding on the question of title of the parties, is unwarranted and unsustainable. Further, as pointed out above, in such a case the provisions of Order VII Rule 7 are not attracted.”

7. In view of the dictum as laid down above, there is clearly no substance in the submissions on behalf of the appellant that the plaintiff appellant was entitled to the grant of equitable relief under Order 7 Rule 7 CPC. It is also evident that the decisions relied upon by the learned Counsel for the appellant are prior to the decision of the apex court in the case of ***Tribhuvanshankar*** (supra). This Court, therefore, follows the principle of law as laid down by the apex court in the case of ***Tribhuvanshankar*** (supra) and comes to the conclusion that the courts below have not committed any illegality in refusing the alternative relief for recovery of possession on the basis of title as claimed by the plaintiff and also argued by the learned Counsel for the appellant on the ground that the equitable relief could have been granted to the plaintiff.

8. In the ultimate eventualate, it is held that there is no



substantial question of law arising for consideration in this appeal, which is accordingly dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
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