

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.2104 of 2008

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Vinod Kumar son of late Vishawanath Agrawal M/s Birdhi Chand Gauri Shankar
by the side M/s Laxmi Readymade, Mohalla Saraiyaganj P.O. + P.S. Town
Muzaffarpur, District-Muzaffarpur.

.... Petitioner/s

Versus

1. Raghunath Prasad son of late Laxmi Prasad Choudhary.
2. Sri Vijay Kumar Choudhary
3. Sri Ajay Kumar Choudhary both sons of Sri Raghunath Prasad all are residents
of Mohalla Saraiyaganj P.O. and P.S. Town and District-Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Om Prakash, Adv.

For the Respondent/s : Mr. Alok Anand, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-07-2017

Heard learned counsel for the parties.

This revision application has been filed under Section 14
(8) of the Bihar Buildings (Lease, Rent and Eviction) Control Act,
1982 (hereinafter referred to as the 'B.B.C. Act') against the judgment
and decree of eviction passed in Eviction Suit No. 02 of 2004.

The tenant-defendant is the petitioner in the present
revision application.

The suit property as described in the plaint is a shop
having an area of 140 sq. ft. situated of a room or outer Barandah with
door abutting Saraiyaganj main road Muzaffarpur. From the said
description, it also transpires that Saraiyaganj main road is adjacent



north to the suit shop. The further averments made in the plaint, it also transpires that the suit shop is the part of the residential building of the landlord-plaintiffs wherein the ground floor is used for commercial purposes having three shops. From the depositions of the plaintiffs examined as witnesses in the suit, it is also clear that the eastern most shop is occupied by the plaintiff no. 3 Ajay Kumar Choudhary and the shop in the middle is occupied by the plaintiff no. 1 where they carry on their respective businesses. The shop subject matter of eviction in the suit is the western most shop in the building which is in occupation of the defendant as tenant where he carries on his clothe business. The suit has been filed seeking eviction of the tenant-defendant on the ground of personal necessity of the plaintiffs for establishing the plaintiff no. 2 Vijay Kumar Choudhary in business of grocery or stationery in the said shop. It is the case of the plaintiffs that they hail from a trading community and business is the main source of income and livelihood and as the plaintiff no. 2 has been sitting idle for want of suitable commercial premises therefore the need for eviction of the defendant from the suit premises has arisen.

The tenant-defendant has contested the assertions and relief for eviction as sought for by the plaintiffs mainly on the ground that the plaintiff no. 2 Vijay Kumar Choudhary is already carrying on his business in the middle shop room in the building as the plaintiff



no. 1 Raghunath Prasad is living a retired life looking after the business of his two sons and therefore, the case of the personal necessity for the suit premises as setup by the plaintiffs is not through and correct. It has also been alleged that the defendant had already vacated 5 feet from east to west and 15 feet from north to south from his tenanted premises which has been utilized by the plaintiffs for extending the area of the middle shop room. In his deposition in the suit, the defendant, however, has stated that the plaintiffs forcibly evicted him from the said area of 5 feet into 15 feet in the year 1998 against which he did not make any complaint or case any where. The defendant in his deposition has further expressed his readiness to vacate the half portion of the suit shop stating that the said half portion would satisfy the need of the plaintiffs.

The trial court, after elaborate consideration and scrutiny of the evidence on record has come to the conclusion that there has been relationship of landlord and tenant in between the plaintiffs and the defendant and the plaintiffs have succeeded in establishing their personal necessity in the suit premises. The trial court has further held that the partial eviction of the defendant in the suit premises would neither fulfill the need of the plaintiffs nor the need of the defendant in view of the area of the shop in question. Accordingly, the trial court passed the impugned judgment and order for eviction of the defendant



in the suit premises.

Learned counsel appearing on behalf of the defendant-petitioner has firstly submitted that the issue of partial eviction has been wrongly determined by the trial court ignoring the facts and circumstances of the case as well as the material evidence on record. It has been contended that the fact has been established from the deposition of the witnesses on behalf of the plaintiffs and the defendant that the suit shop is situated in a busy market place where shops having 4-5 feet width are also running as from the depositions of the witnesses. Elaborating the submission, it has been argued that the purpose of introducing the mandatory consideration of the partial eviction is clearly to mitigate the hardship faced by a tenant and the court is required to consider and balance the equities from that point of view. It has also been submitted that though the defendant has already vacated his 5 feet into 15 feet area but has further expressed his readiness to vacate the half portion of the area in his occupation. It has been emphasized that the learned court below in a routine manner has considered the issue of partial eviction and the mechanical approach in that regard is apparent. It has been next contended that the finding on the issue of personal necessity is also not sustainable on the basis of the evidence on record which established only a desire of the plaintiffs and not the requirement for the suit premises. It has been



contended that the plaintiffs have failed to establish the presence of necessary skill and training of plaintiff no. 2 for the need of his proposed business and have further also failed to establish the presence of adequate fund to start business. Learned counsel for the petitioner has extensively placed the pleadings and the deposition of the witnesses examined in the suit which have been annexed with the revision application.

Pointedly contradicting the submissions on behalf of the petitioner, Mr. Verma, learned counsel appearing on behalf of the opposite parties has contended that the whole attempt on behalf of the petitioner is towards reappreciation of evidence for reaching to another view which is not permissible in the limited jurisdiction under the B.B.C. Act. It has been argued that it is not the case of the plaintiffs that the findings are perverse in any manner and the case has been built up for consideration of the issue without complaining that there has been non-consideration of the evidence before recording the conclusion by the trial court. It has also been argued that the finding on the issue of personal necessity of the plaintiffs for the suit premises has been recorded by the learned court below after considering the evidence and materials on record in detail and such a finding of fact is not open for inference in the revisional jurisdiction. It has been further contended that the offer of the tenant-defendant to vacate the half



portion of the suit shop has also been taken into notice by the learned court below before coming to the conclusion that no case of partial eviction has been made out. It has been lastly submitted that the present revision application has got no merit and is fit to be dismissed.

Learned counsel for both the parties have relied upon a number of decisions which shall appropriately be taken into notice hereinafter.

From the rival submissions on behalf of the parties and after consideration of the materials on record as well as the impugned judgment, it is manifest that the suit has been filed for eviction of the defendant on the ground of personal necessity alone. Though the tenant-defendant denied his relationship as landlord and tenant with the plaintiffs. The learned court below has come to the finding that there exists such relationship. During the course of submission, this finding has not been assailed on behalf of the petitioner and rightly shows in view of the acceptance of payment of rent by the defendant to the plaintiffs for the suit premises. It further transpires from the impugned judgment that the trial court has elaborately analyzed the evidence on behalf of the parties on the issue of personal necessity as pleaded by the plaintiffs and thereafter has come to the conclusion that the plaintiffs have got bonafide personal necessity for a suit premises. It is not the case on behalf of the petitioner that the said



finding suffers from vice of non consideration of evidence or dehors the settled principles of law. Though, learned counsel for the petitioner has extensively placed the oral evidence adduced in the suit on behalf of the parties but the same is definitely an attempt for re appreciation of evidence in order to reach to a different conclusion. This Court has been impressed to hold that the conclusion of the trial court on the issue of personal necessity on the basis of evidence which were considered is not a possible conclusion.

The ambit and scope of the revisional jurisdiction of the High Court in Rent Control Act has been settled by the Apex Court in **Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh, A.I.R. 2014 SC 3708** and has further been noticed in **M/s. Boorugu Mahadev and Sons Vs. Sirigiri Narasing Rao, A.I.R. 2016 SC 433** as follows:-

“43.....We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate Court/first appellate authority because on reappreciation of the evidence, its view is different from the Court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/authority below is



according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a Court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or



irregularity.....”

In view of the above dictum by the Apex Court, this Court declines to interfere in the finding with regard to the personal necessity as recorded in the impugned order in favour of the plaintiff-opposite parties.

So far as the issue of partial eviction is concerned, it is well settled now that the provision of mandatory consideration of the said issue has been purposely introduced to mitigate the hardship of the tenant. The intention of the legislature is also evincible when the word ‘satisfied’ has been qualified by the word ‘substantially’ manifestly to protect the interest of the tenant by making provision for the part occupation of the premises by him in suitable cases. This view is supported by the dictum of the Apex Court in **Rehman Jeo Wangnoo Vs. Ram Chand 1978 (3) SCC 539** and reiterated in **Krishna Murari Prasad Vs. Mitar Singh, 1993 Supp. (1) SCC 439**. A bench of this Court in **Smt. Kalawati Tripathi Vs. Damyawanti Devi, 1992 (2) PLJR 214** has also held as follows:-

“24.....The said proviso is mandatory. Even if the plea of partial eviction is not raised by the tenant, the court has to consider the said question subject to the condition that the tenant agrees to partial eviction. While dealing with the case under the said proviso, the court, at the first instances, has to determine the extent of the



premises reasonably required by the landlord. The court has to consider the said question objectively and not on the basis of mere desire or the *ipse dixit* of the landlord to occupy as much area as he wants.....”

In the present case the fact is admitted that the suit shop is situated in a busy market. It is also transparent that the suit shop is suitable for business purpose and the plaintiffs are already having the occupation of two shops and only the remaining shop which is the suit shop in the building is in possession of the defendant as tenant. The defendant has expressed his readiness to vacate the half of the area of the shop in his occupation for the purpose of utilization of the plaintiffs and has stated in his deposition that the plaintiffs’ requirement as pleaded would be satisfied in that manner. The learned court below, however, has considered the said offer by the tenant-defendant but has concluded that the said offer by the defendant would not satisfy the requirement of the plaintiffs or the defendants. The basis of this conclusion is apparently wrong because half partition of the suit shop having area of 10 feet into 15 feet could not result in two areas having 5 feet and 7 ½ feet each. The learned court below has also not at all adverted to the requirement of the area for the plaintiffs in view of the proposed nature of business and substantial satisfaction of the said requirement by part eviction of the tenant-



defendant. It has been held by this Court in **Md. Jahangir Vs. Smt. Kirti Devi, 2001 (4) PLJR 488** that “even in a business market complex a very small shop having one and two cubits width opening may be construed to be sufficient for the purpose of doing business even though the same depends upon the circumstances of each particular case”. This Court therefore, holds that the finding by the learned court below on the issue of partial eviction is erroneous and deserves to be overturned. It is done so, accordingly.

Consequently, this revision application is allowed in part setting aside only the finding on the issue of partial eviction. The finding on the issue of personal necessity is upheld. The matter is remitted back to the learned court below to examine the issue of partial eviction afresh in accordance with law treating the plaintiffs’ need to have proved. It is clarified that the inquiry thereafter by the learned court below is limited to the extent as to whether the suit shop can be divided and the eviction of the tenant-defendant from a part of the suit shop would substantially satisfied the landlord plaintiffs’ need. The parties to the suit would be entitled to adduce evidence in the learned court below only for that purpose and to that extent alone. The learned court below is further enjoined to pass a fresh order on the issue of partial eviction preferably within a period of 4 months from the date of receipt/production of a copy of this order. The parties



to this application are directed to cooperate in the conclusion of the proceeding within the said time frame and the learned court below is also directed to take all steps as envisaged under the Civil Procedure Code against the party who in the opinion of the court would adopt dilatory tactics. In the facts and circumstances of the case, there shall be no order as to costs.

Devendra/-

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(V. Nath, J)

