

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.1861 of 2009

- =====
1. Sudhir Kumar son of Sri Ram Swaroop Singh, resident of village-Ghatkan, P.O.-Dhangawa, P.S.-Kako, District-Jehanabad at present residing at Mohalla-Sultanpur, Danapur, P.O. Danapur Cantt, P.S. Danapur, District-Patna.
 2. Jai Mahabir Medical, the name and style of Proprietorship business having its business premises at Mohalla-Bibiganj, Opposite-police Chowki, P.O.- Danapur Cantt, P.S. Danapur, District-Patna, through its proprietor Sri Sudhir Kumar

.... Petitioner/s

Versus

1. Sri Uma Shankar Pd. Gupta.
2. Smt. Shyama Devi wife of late Om Prakash Gupta.
3. Arbind Kumar Gupta.
4. Pankaj Kumar Gupta, both sons of late Om Prakash Gupta.
5. Baby Kumari @ Seema Devi
6. Little Kumari @ Shusmita Kumari
7. Luna Kumari @ Jyoti Kumari, all daughters of late Om Prakash Gupta all resident of Mohalla-Bibi Ganj, Opposite-Police Chouki, P.S. Danapur, District-Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s :	Mr. S.S. Dwivedi, Sr. Adv. Mr. Janardan pd. Singh, Adv. Mr. Dipak Kr. No.1, Adv. Mr. Arbind Kr. Singh, Adv.
For the Respondent/s :	Mr. Vishundeo Narayan, Adv. Mr. Chandra Subhas Jha, Adv. Mr. Niranjana Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-07-2017

Heard Mr. S.S. Dwivedi, learned senior counsel
appearing on behalf of the petitioners and also learned counsel for the
opposite 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 order of eviction dated 14.09.2009 passed in Eviction Suit No. 14 of 2001.

The plaintiffs filed the aforesaid eviction suit seeking eviction of the defendants from the suit premises described in the plaint on the ground of expiry of the period of lease and also on the ground of personal necessity of the suit premises. It is the case of the plaintiffs that the brother of the defendant no. 1 who was earlier the tenant of the plaintiffs over the suit premises surrendered the tenancy to the plaintiff no. 1 but requested the plaintiff no. 1 to allow his brother (defendant no. 1) to run his medicine shop as tenant in the suit premises. It has been asserted that though the plaintiffs needed the suit premises for personal necessity for establishing the son of plaintiff no. 1 in business but in view of the agreement by the defendant no. 1 to vacate the suit premises within 11 months, the plaintiffs inducted the defendant no. 1 as tenant in the suit premises for a fixed period of 11 months commencing from 11.08.2000 and expiring on 10.07.2001 on monthly rental of Rs. 800/- per month. The plaintiffs have further asserted that the defendant no. 1 executed an agreement on 11.08.2000 recording the agreed terms of the tenancy. It is also the



case of the plaintiffs that after the expiry of the period of tenancy on 10.07.2001 the plaintiffs however accepted the request of the defendant no. 1 to allow him four months more time to vacate the suit premises and accordingly the period of tenancy was extended by four months in recognition of which fact the defendant no. 1 voluntarily executed an agreement dated 01.08.2001 and handed over the same to the plaintiffs. The plaintiffs' case is that the plaintiffs require the suit premises for personal necessity for the son of plaintiff no. 1 to start his business of Kirana shop in the suit premises but the defendants did not vacate the suit premises even after the expiry of fixed period of tenancy. It has also been averred in the plaint that the partial eviction of the defendants from the suit premises would not satisfy the need of the plaintiffs as the suit premises has only 7 feet frontage on the road and the two shops cannot run in the same. The fact has also been introduced by the amendment in the plaint that the another shop of the plaintiffs was vacated by the tenant and has been occupied by the plaintiff no. 2 as per the agreement between the plaintiffs, for his own business purposes and the requirement of the plaintiff no. 1 for the suit premises as pleaded is still subsisting.

The defendants filed their written statement contesting the assertion and the relief prayed by the plaintiffs. It has been the case of the defendants that the defendant no. 1 is in occupation of the



suit premises not as a fixed term tenancy but as month to month tenant and has also filed T.S. No. 78 of 2001 questioning the legal validity of the deed of agreement/kirayanama dated 01.08.2001 as fraudulent and not enforceable in law. The defendants have further denied the personal necessity as pleaded by the plaintiffs and have asserted that the son of the plaintiff no. 1 is not unemployed and even otherwise also there is sufficient space in the southern side of the suit premises for starting the business by constructing shops thereupon.

The trial court has returned the findings on the issues against the defendants holding that the defendants is a fixed term tenant in the suit premises and the plaintiffs have succeeded in establishing the personal necessity of the suit premises for establishing the son of plaintiff no. 1 in business. Accordingly, by the impugned judgment and order, the defendants have been directed to hand over the vacant possession of the suit premises to the plaintiffs.

While assailing the impugned judgment and order, Mr. Dwivedi, learned senior counsel for the petitioners, firstly has submitted that the learned court below has committed illegality in upholding the fixed term tenancy of the tenant defendants over the suit premises ignoring the fact that the alleged Kirayanama/agreement was not admissible in evidence for want of registration. Elaborating the submission, it has been argued that in view of the provisions of the



Registration Act and the Transfer of Properties Act, the agreement/Kirayanama for the purpose of creating tenancy is required to be registered and is also required to be executed by both the lessor and the lessee whereas in the present case, the alleged Kirayanama (Ext. 1 and 1/A & (Ext. 2 and 2/A) have admittedly not been executed by the plaintiffs. It has also been submitted that the entire facts and evidence on record unmistakably indicate lack of bonafide on the part of the plaintiffs as the personal necessity if any had vanished after repeated grant of tenancy and its extension. It has also been argued that the learned court below has not considered the evidence objectively and has performed a formality in considering the evidence while determining the issue nos. 6 and 8. It has also been submitted that the learned court below has committed error in not considering the mandatory issue of partial eviction.

Learned counsel appearing on behalf of the plaintiff-opposite parties, however, has refuted the contention raised on behalf of the petitioners and has submitted that the lease for a period less than 11 months is not required to be registered. It has also been pointed out that the facts admitted by the defendants in the written statement itself demonstrate that the defendant no. 1 was inducted as tenant for 11 months in the month of August, 2000 and the said fact is fully corroborated by the Kirayanama executed by the defendants on



11.08.2000. It has been further submitted that though the defendants have accepted the execution of another Kirayanama dated 01.08.2001 extending the period of tenancy by four months but his attempt to avoid the same on the ground of fraud by filing T.S. No. 78 of 2001 has proved futile when the appellate court set aside the judgment and decree passed in T.S. No. 78 of 2001 holding that the said deed of Kirayanama is not fraudulent and fabricated document. It has also been contended that no signature of the lessor is required on the lease/kirayanama when it has been admittedly executed by lessee and absence of the signature by lessor will not invalidate the lease/kirayanama for the said reason. It has been next argued that the learned court below has elaborately considered the evidence on record before recording the finding of fact of personal necessity as pleaded by the plaintiffs and such a finding cannot be interfered in the revisional jurisdiction envisaged in the B.B.C. Act. It has also been contended that in view of the tenancy being a fixed term tenancy on which ground the eviction of the defendant has been sought the requirement for considering the issue of partial eviction as argued on behalf of the petitioner has got no substance and even otherwise also the defendant has also not agreed to such partial eviction from the suit premises. It has been lastly submitted that the impugned judgment and order do not deserve to be interdicted in the revisional jurisdiction and



the revision application is fit to be dismissed.

After considering the rival submissions on behalf of the parties as well as the materials on record including the impugned judgment, it is manifest that the fact of tenancy in the suit premises has been admitted by the defendant. In his deposition as D.W.-42, the defendant no. 1 in paragraph-12 has admitted that the tenancy was created by the plaintiff no. 1 for the suit premises from August, 2000 for 11 months for which kiryanama was also written. The defendant has also admitted in his deposition that he had put his signature and LTI on stamp paper on 01.08.2001 at the instance of the plaintiff no. 1 for the purpose of renewal of the tenancy for further 4 months. The fact, therefore, stands admitted that the tenancy of the defendant over the suit premises was initially created for a fixed term of 11 months which according to the plaintiffs was extended for further 4 months. In this view of the matter, the case of the defendant of being month to month tenant is clearly belied.

During the course of submission, the further fact has emerged that the Title Appeal No. 266 of 2007 filed by the plaintiffs against the judgment and decree passed in T.S. No. 78 of 2001 (filed by the defendant challenging the legal validity of the Kiryanama dated 01.08.2001) was allowed and the S.A. No. 404 of 2013 filed by the petitioners has also been dismissed by this Court. The conclusion,



therefore, is inevitable that subsequent lease dated 01.08.2001 extending the period of lease for four months has to be accepted as legal and valid document and there is now no legal impediment in taking the view that the petitioner has been in occupation of the suit premises on the basis of fixed term tenancy the period of which has expired.

So far as the contention on behalf of the petitioner regarding the need of signature of the lessor on the deed of kiryanama for creation of a valid tenancy is concerned, the law has been settled by the Apex Court in the case of **Rajendra Pratap Singh Vs. Rameshwar Prasad, 1998 (7) SCC 602** that merely because the document shows only the signature of one of the parties, it is not enough to conclude that the non-signing party has not joined in the execution of the instrument. In the facts of the present case also, both the deeds of kiryanama i.e. 11.08.2000 and 01.08.2001 bear the signature of the defendant and the defendant accepted the execution of the first kiryanama i.e. 11.08.2000 and after the dismissal of the T.S. No. 78 of 2001 the legal validity of the subsequent kiryanama dated 01.08.2001 also stands established. As such, this Court finds that the contention on behalf of the petitioners pertaining to absence of the signature of the plaintiffs over the deed of Kiryanama as reason to avoid the terms therein has got no substance.



It has been also submitted on behalf of the petitioners that the deeds of Kirayanama would not be admissible in evidence for want of registration. In view of the dictum of the Apex Court in the case of **Satish Kumar Vs. Zarif Ahmed, (1997) 3 SCC 679** that a lease for 11 months though reduced in writing and possession delivered to the tenant thereunder is not compulsorily registrable and such document would be admissible in evidence, this Court again finds no substance in the said submission of the petitioners.

The learned court below has elaborately considered the evidence on record before coming to the conclusion that the plaintiffs have succeeded in establishing the necessity of the suit premises for establishing the son of plaintiff no. 1 in business. It is not the case on behalf of the petitioners that the findings by the learned court below suffer from non-consideration of the evidence or are dehors the settled principles of law. This Court, therefore, is not persuaded to embark upon reappreciation of evidence for the purpose of reaching to a difference conclusion in view of the decision of the Constitution Bench in the case of Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh, A.I.R. 2014 SC. 3708 laying down the limits of the revisional jurisdiction of the High Court in Rent Control cases.

As the suit for eviction has been filed on composite ground of expiry of lease and personal necessity and both the issues



have been decided against the tenant-defendant-petitioners, this Court upholds the contention on behalf of the plaintiff-opposite parties that the impugned judgment and order cannot be vitiated for want of consideration of the issue of partial eviction.

In result, this Court does not find merit in this revision application, which is, accordingly, dismissed. In the facts and circumstances of the case, there shall, however, be no order as to costs.

Devendra/-

(V. Nath, J)

U			
---	--	--	--

