

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.129 of 2015

=====

Rajendra Prasad Sah

.... Petitioner/s

Versus

Basudev Prasad Gupta & Anr

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ram Shankar Das

For the Respondent/s : Mrs. Veena Kumari Jaiswal

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
CAV JUDGMENT

Date: 27 -11-2017

1. This revision petition under Section 14(8) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (in short 'BBC Act') has been filed on behalf of the defendant petitioner for setting aside the judgment and decree dated 4.9.2015 and 23.9.2015 passed by learned Munsif-II, Vaishali at Hajipur in Eviction Suit No.3 of 2008 by which and where under he decreed the aforesaid suit on contest and directed the petitioner defendant to vacate the disputed shop within 30 days and to hand over possession of the same to the plaintiff opposite party no.1, failing which plaintiff opposite party no.1 shall be entitled to get the aforesaid shop vacated through the process of the court.

2. Plaintiff opposite party no.1 filed the above stated Eviction Suit No.3 of 2008 against the defendant petitioner on the ground of personal necessity claiming, himself, to be landlord of



the disputed shop. The plaintiff opposite party averred in his plaint that the defendant petitioner was inducted as tenant on 20.2.1995 by his elder brother Satya Narayan Sah on monthly rent of Rs.350/- and on the same day, one deed of rent was also executed by the defendant petitioner in favour of aforesaid Satya Narayan Sah. The aforesaid deed of rent was handed over to Satya Narayan Sah and after that defendant petitioner started a jewellery shop in the disputed shop and started paying rent to the above stated Satya Narayan Sah. However, in family partition, disputed shop fell in the share of plaintiff opposite party no.1 and the aforesaid fact was communicated to the defendant petitioner by Satya Narayan Sah and thereafter, defendant petitioner agreed to pay rent of shop to the plaintiff opposite party no.1 and similarly, Satya Narayan Sah handed over deed of rent to plaintiff opposite party no.1. Petitioner defendant started paying rent to plaintiff defendant no.1 but in the month of February, 2007, he stopped from making payment of rent to the plaintiff opposite party no.1 when the plaintiff opposite party no.1 asked petitioner defendant to vacate the suit premises as plaintiff opposite party no.1 was in bonafide need of disputed shop because his son wanted to open readymade garments shop in the suit premises. Plaintiff opposite party no.1 gave legal notice to the petitioner defendant but even then petitioner defendant did not



vacate the suit premises. Thereafter, plaintiff opposite party no.1 brought the above stated Eviction Suit No.3 of 2008.

3. Petitioner defendant appeared before the court below and filed written statement pleading therein that in the year 1964 father of plaintiff opposite party no.1 had let out shop in question to his father on the monthly rent of sum of Rs.10/- and since then his father was doing business in the above stated shop and after death of his father, petitioner defendant started his business in the aforesaid shop. However, father of plaintiff opposite party no.1 took huge amount for renovation of his house and subsequently, having got renovated the house, elder brother of the plaintiff gave shop in question to him in the year 1995 on the monthly rent of Rs.105/- but no deed of rent was executed and in course of time rent of the shop in question was increased upto Rs.350/-. Defendant petitioner admitted that in the family partition, plaintiff opposite party no.1 got shop in question in his share and the aforesaid fact was communicated to him by Satya Narayan Sah and thereafter, he started paying rent of shop in question to the plaintiff opposite party no.1. Petitioner defendant averred in his written statement that son of plaintiff opposite party no.1 is not unemployed rather he has one shop at Mahua Bazar and the plaintiff opposite party no.1 is not in bonafide need of the shop in



question. Further petitioner defendant took stand that plaintiff defendant 1st party took Rs.3,00,000/- from him for selling the shop in question but plaintiff opposite party no.1 did not execute absolute sale deed as yet and therefore, there is no relationship of landlord and tenant between plaintiff opposite party no.1 and the defendant petitioner.

4. On the basis of pleadings of the parties, learned court below framed following issues:-

- i) Is the suit as framed maintainable?
- ii) Has plaintiff got valid cause of action and right to sue?
- iii) Is the suit barred by the law of limitation, estoppel and acquiescence?
- iv) Is there a relationship of landlord and tenant between parties and still subsisting after 25.5.2007 ?
- v) Has the plaintiff got the personal necessity of disputed shop ?
- vi) Is defendant 1st set defaulter of rent to the disputed shop ?
- vii) Could the requirement of plaintiff be met by partial eviction of disputed shop ?
- viii) Is plaintiff entitled for the relief prayed ?

5. Both parties adduced oral and documentary evidence and the learned court below, having considered evidences available on record, came to the conclusion that there was relationship of landlord and tenant between the defendant-petitioner and plaintiff-opposite party and furthermore, learned



court below came to the conclusion that plaintiff-opposite party is in bonafide need of disputed shop. The learned court below also held that need of plaintiff-opposite party could not be satisfied by partial eviction.

6. Learned counsel appearing for the defendant-petitioner challenged the impugned judgment on the ground that the defendant- petitioner had filed petition before the court below on 12.6.2014 for recast of issues under Order 14 rule 5 of the CPC but the prayer of the defendant- petitioner was turned down by the court below against which the defendant- petitioner preferred CWJC no. 15754/2014. However, during the pendency of the aforesaid CWJC no. 15754/2014, learned court below passed the impugned judgment as a result whereof the aforesaid CWJC no. 15754/2014 stood dismissed being infructuous giving liberty to the defendant- petitioner to avail remedy as provided under section 105(1) of the CPC. He, further, submitted that it is specific case of the defendant- petitioner that plaintiff-opposite party had taken huge amount in advance for transfer of disputed premises but did not execute sale deed in respect of suit premises. No issue in respect of aforesaid fact was framed by the court below and that was the reason the defendant- petitioner had filed petition for recast of the issue. Learned counsel for the petitioner referred



decisions of **Badami (deceased) by her legal representative vs. Bhali reported in (2012) X1 Supreme Court cases page 574, case of Ved Prakash Wadhwa vs. Vishwa Mohan reported in AIR 1982 SC 816 and Chebrol Sriramalu vs. Vakalapudi Satyanarayana reported in (2013) 9 Supreme court cases 404** to substantiate his contentions that court below committed illegality while rejecting prayer of recast of the issues.

7. Learned counsel for the defendant- petitioner submits that learned court below failed to appreciate the evidence in its right perspective because plaintiff-opposite party could not succeed to prove his bonafide need but even then learned court below decreed the suit of plaintiff-opposite party.

8. On the other hand, learned counsel for plaintiff-opposite party refuted the aforesaid submissions arguing that it is well settled proposition of law that complicated question of title can not be decided in suit filed under section 11(c) of the BBC Act and in the case filed under the above stated section, the court has to see only as to whether there is relationship of landlord and tenant between the parties or not? In support of his contention, he referred several decisions such as **2004 (I) PLJR page 476, AIR 2002 SC 138, AIR 2002 SC page 141, 2002 (3) BBCJ page 159, 2005 (2) BBCJ page 4** and several other decisions.



9. Learned counsel for the plaintiff-opposite party further submitted that plaintiff-opposite party fairly proved his bonafide need and learned court below, having considered the evidence available on record, passed the impugned judgment and, therefore, there is no need for this court to reappraise the evidence while exercising revisional jurisdiction. He, further, submitted that so far as question of recast of issues is concerned, there was no need to recast issues because in the present dispute, court had to see only relationship of landlord and tenant and the court has no jurisdiction to examine title of the party.

10. Having heard the contentions of both parties. I have gone through the record along with lower court record.

11. It is admitted case of the parties that disputed shop fell in the share of plaintiff-opposite party in his family partition and the aforesaid fact was communicated to the defendant-petitioner by elder brother of plaintiff-opposite party. It is also admitted position that after the aforesaid communication the defendant- petitioner started paying rent of disputed shop to plaintiff-opposite party. Therefore, ownership of plaintiff-opposite party over the disputed shop has not been denied by the defendant-petitioner rather it is admitted position that there is relationship of landlord and tenant between plaintiff-opposite party and the



defendant- petitioner. However, the defendant- petitioner claimed that plaintiff-opposite party entered into an oral agreement with him for selling disputed shop and in pursuant thereto, he took huge amount in advance. Therefore, even if the aforesaid stand of the defendant- petitioner assumed to be true, then also, according to the case of the defendant- petitioner itself, title of disputed shop has not been passed to the defendant- petitioner as yet. Moreover, it is settled principle of law that if an eviction suit is filed under section 11(c) of the BBC Act, in the aforesaid suit complicated question of title can not be decided and the court has see only as to whether there is relationship of landlord and tenant between the parties or not. Therefore, in my view, learned court below had refused to recast issues on the prayer of the defendant- petitioner because there was no need to frame any issue in respect of so-called oral agreement and taking of advance money.

12. As I have already stated that relationship of landlord and tenant between the parties is an admitted fact and furthermore, I find that witnesses have specifically stated regarding bonafide need of plaintiff-opposite party and learned court below held that plaintiff-opposite party is in bonafide need of disputed shop.

13. Learned counsel appearing for the defendant petitioner could not succeed to point out any perversity into the



impugned judgment and, therefore, in my view, this court should not reappreciate the evidence while exercising revisional jurisdiction.

14. On the basis of the aforesaid discussions, I do not find any ground to interfere into the impugned judgment and decree and accordingly, this revision petition stands dismissed and the impugned judgment and decree is, hereby, confirmed.

Shahid

(Hemant Kumar Srivastava, J)

AFR	
CAV DATE	2.11.2017
Uploading Date	27.11.2017
Transmission Date	

