

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.125 of 2015

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1. Badamia Devi wife of Late Gongu Mochi
 2. Saheb Mochi son of Late Gongu Mochi Both residents of village- Lakho, P.S.- Muffaasil, Sub-Division and District- Begusarai
 3. Suma Devi daughter of Late Gongu Mochi wife of Anand Lal Das resident of village- Bachhauta, P.S. & P.O. & Dist.- Khagaria.

.... Appellant/s

Versus

1. Maheshwar Mochi.
2. Janjhat Mochi @ Jhanjhat Mochi both 1 and 2 sons of Late Munilal Mochi
3. Sukho Devi
4. Utto Devi
5. Tara Devi
6. Asha Devi @ Ashia Devi, No. 3 to 6 daughters of Late Muni Lal Mochi, all residents of village Lakho, P.S. Mufassil, Pergana Balia, Sub Division & Dist. Begusarai
7. Mahadeo Mochi
8. Rajo Mochi both 7 and 8 sons of Late Gangu Mochi
9. Sita Devi W/o Late Puno @ Puna Mochi
10. Ram Ratan Mochi
11. Pawan Mochi both no. 10 and 11 sons of late Puna Mochi
12. Triveni Mochi, son of Late Jago Mochi all residents of village Lakho, P.S. Mufassil, Pergana Balia, Sub Division & Dist. Begusarai

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rudal Prasad, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 05-05-2017



Heard Mr. Rudal Prasad, learned counsel for the appellants.

The tenant-defendants are the appellants in this appeal against the judgment and decree of affirmance granting the decree of eviction to the plaintiffs, as prayed.

The matrix of facts discloses that earlier Title Suit No. 04 of 1987 was filed against the tenant-defendants seeking eviction from the suit premises on the ground of personal necessity alone. After the decree of the said suit, the matter, however, was remanded by this Court in revisional jurisdiction for considering the issue of partial eviction. The present suit has been filed by the plaintiffs in the year 1994 seeking eviction of the defendants on the ground of default in payment of rent. It has been the case of the plaintiffs that the defendants have not paid rent right from the institution of the T.S. No. 04 of 1987 or even prior to that. The defendants in the written statement, as noticed in the judgment of the trial court, has taken the plea that they have acquired the right to be in possession over the suit property on the basis of the Parcha and further that the decree passed in the earlier suit for eviction was not executed and no delivery of possession was effected. The defendants therefore, asserted that they were in possession over the entire suit property in their own right.

Both the courts below have returned the findings on the issues concurrently in favour of the plaintiffs. The suit was decreed



and thereafter the appeal has been dismissed by the impugned judgment and decree.

Mr. Rudal Prasad, learned counsel for the appellants, in his emphatic manner, has submitted that the courts below have committed illegality in not taking the notice of the fact that the defendants have been in possession of one room only after the decree for eviction in the earlier suit and they were evicted from remaining four rooms. On this base, it has been contended that the courts below have ignored the crucial fact that the proportionate rent of one room was never determined either by the court or by the rent controller and therefore the defendants cannot be held liable for non-payment of rent as claimed and sequentially for eviction. It has also been submitted that the appellate court below has wrongly applied the provision of Article 67 of the Limitation Act in the facts of the case. No other submission has been made on behalf of the appellants.

After considering the submissions and the perusal of the judgments of both the courts below, it is pellucid that earlier the plaintiffs had filed the suit for eviction against the defendants on the ground of personal necessity alone. The said suit was ultimately decreed in part allowing the plaintiffs to have partial eviction of the defendants. The present suit has been filed by the plaintiffs seeking eviction of the defendants on the ground of default in payment of rent.



In their written statement, the defendants, besides taking the plea of their independent right to possession over the suit property on the basis of Parcha have also come out with the case that they have been in possession over the entire property (house) as the decree in the previous eviction suit was not executed and no delivery of possession was effected on that basis. In view of this specific case of the defendants in their pleading that they are in possession over the entire property (house), the submission by Mr. Prasad, learned counsel for the appellants falls apart as the fact that the defendants are only in possession of only one room for which no proportionate rent was determined was never the case of the defendants. It has been next also contended that the appellate court below has wrongly applied the provision of Article 67 of the Limitation Act. However, it is now well settled by the Full Bench decision of this Court in the case of **Raj Kumar Prasad Vs. Uchit Narain Singh, A.I.R. 1980 Pat. 242** that in cases governed by Rent Control Act, there cannot be waiver on the part of the landlord precluding him for seeking eviction decree against the tenant on ground of default. As such, this Court does not find that the learned courts below have committed any illegality in granting the decree for eviction as prayed by the plaintiff-respondents. Even otherwise also the findings by both the courts below have been recorded 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 hold that the findings by the courts below are perverse or unreasonableness in any manner.

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.

Devendra/-

(V. Nath, J)

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