

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.123 of 2017

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1. M/s Ram Motor Works At Jamal Road through its owner Sri Devendra Narain Gupta @ Vinod Gupta at Jamal Road, P.S. Gandhi Maidan, P.O. Jamal Road, District-Patna. At present residing at Mithapur Laxmi Niwas(Tower), P.S.-Jakkanpur, P.O.-G.P.O., District-Patna.
 2. Sri Devendra Narain Gupta @ Vinod Gupta son of Laxmi Narain Gupta.
 3. Sri Samir Kumar Gupta]
 4. Sri Ravi Kumar Gupta] sons of Devendra Narain
 5. Sri Manoj Kumar Gupta @ Manoj Kumar] Gupta @ Vinod Gupta
 6. Sri Shishir Kumar Gupta]
- All resident of Mohalla- Laxmi Niwas (Tower) P.S.-Jakkanpur, P.O.-G.P.O., District-Patna.

.... Defendants-Appellants

Versus

1. Sri Shankar Prasad]
 2. Sri Balgangadhar Prasad] sons of late Sarveshwar
 3. Sri Chandra Shekhar Prasad]
- All residents of Mohalla-Boring Road, P.S.-Sri Krishnapuri, P.O.-Boring Road, Distt.-Patna.

.....Plaintiffs/Respondent Ist Party

4. Raju Kumar son of Krishna Prasad Yadav, resident of Mohalla-Kumhrar, P.S.-Agamkuan, Distt.-Patna

.... Defendant/Respondents 2nd set /Respondents

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Appearance :

For the Appellant/s : Mr. Bishwa Nath Chaudhary, Advocate
For the Respondent/s : Mr. Jitendra Kishore Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

2 23-03-2017 Heard learned counsel for the appellants and learned counsel for the respondents.

The defendants in the suit are appellants in this appeal against the judgment and decree of affirmance granting the decree for eviction as prayed.

The plaintiffs filed a suit for eviction on the ground of default in payment of rent, subletting and personal necessity. The defendants did not dispute the relationship of landlord and



tenant as created by the deed of tenancy. However, the defendants contested the claim of default in payment of rent, subletting and personal necessity as made by the plaintiffs.

Both the courts below have returned the findings on the issues of default in payment of rent, subletting and personal necessity in favour of the plaintiffs-respondents and granted the decree of eviction against the defendants from the suit premises, as prayed. The courts below have also granted the decree of recovery of rent with interest @ 9% from the date of filing of the suit till the date of realization.

Mr. Chowdhury, learned counsel for the appellants, has submitted that both the Courts below have wrongly interpreted the lease agreement which clearly shows that only a vacant piece of land has been leased out to the appellants. Learned counsel has submitted that the suit for eviction filed under the B.B.C. Act with regard to the vacant land was thus not maintainable. It has also been contended that the premises over the lease hold land was constructed by the appellants later on themselves. It has next been submitted that learned courts below have wrongly passed the decree granting the interest @ 9% over the arrears of rent which is excessive in the present facts and circumstances of the case.

After considering the submissions made on behalf of



the appellants and on perusal of judgments of both the courts below it is manifest that in the suit for eviction on the ground of default in payment of rent, subletting and personal necessity along with prayer for recovery of arrears of rent, both the courts below have concurrently found that the defendants have committed default in payment of rent and have sublet the suit premises to defendant no. 6. Both the courts below have also concurrently found that the plaintiffs have the necessity for the suit premises for their own use and occupation. Both the courts below have scrutinized the recitals of the lease deed (Ext.11) before coming to the conclusion that the subject matter of the lease was not the vacant piece of land rather it was the land with construction later on made and thereupon the subject matter of tenancy was not only a vacant piece of land to exclude applicability of the B.B.C. Act. The findings of facts recorded by the court below are on the basis of appreciation of evidence which was acceptable and could have been relied upon. This Court has not been persuaded to come to the conclusion that the findings are perverse and unreasonable in any manner.

So far as submission of the appellants with regard to the excessiveness of the rate of interest granted by the courts below is concerned, learned counsel appearing on behalf of the



respondents has submitted that the respondents will be satisfied if the rate of interest as granted is modified to 6 %.

This Court, therefore, does not find any substantial question of law arising for consideration in this appeal, which is arising out of the eviction suit. However, in view of the stand on behalf the respondents, this Court directs that the plaintiff will be entitled to get interest over the arrears of rent @ 6% from the date of filing of the suit till the date of realization and the impugned decree is modified to that extent only.

The second appeal is, accordingly, dismissed with the aforesaid modification pertaining to the rate of interest above.

(V. Nath, J)

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