

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.130 of 2014

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1. Nitesh Kumar Sinha @ Nitish Kumar Sinha, son of Sri Krishna Kumar Sinha, Sudha Stationary & Nitish Pay Phone, At Biharsharif Opposite Biharsharif Municipal Corporation, P.S.- Bihar, District- Nalanda

.... Petitioner/s

Versus

1. Mostt. Renu Sinha, Wife of Late Ramesh Prasad R/o Mohalla- Amber Uchakapar, P.S.- Bihar, District- Nalanda.....Plaintiff..... Suit Value at Rs. 6,300/- Revision Value at Rs.6,300/-

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uday Prasad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR

SRIVASTAVA

ORAL JUDGMENT

Date: 27-07-2017

Heard learned counsel for the petitioner as well as learned counsel for the opposite parties.

2. The present revision application has been filed against the order dated 27.06.2014 passed by learned Munsif Biharsharif, Nalanda in Eviction Suit No. 03 of 2012 by which and whereunder he decreed the aforesaid suit and passed the order on contest directing the petitioner to vacate the suit premises and hand over the possession to the opposite party within 60 days from the date of the aforesaid order.

3. It would appear from perusal of the record as well as lower court record that the opposite party, who happens to be landlady, filed Eviction Suit No. 3 of 2012 against the petitioner on



two grounds i.e. expiry of tenancy period and personal necessity. The opposite party claimed that the petitioner is her tenant and she inducted the petitioner as tenant on 14.12.2004 for three years @ of Rs. 450/- per month and she also took Rs. 17,000/- in advance but subsequently, the aforesaid advance amount was adjusted in rent within three years and again, a deed of tenancy was executed after expiry of period of previous deed and advance money of Rs. 9000/- was retained by her. The second deed of tenancy was executed on 26.12.2007 for further period of three years which was going to be expired on 14.12.2010 and the rent was fixed at Rs. 525/- per month. At the time of execution of first and second deed of tenancy, her younger son, namely, Rahul Ranjan was student but subsequently, he completed his study but did not get any employment thereafter, she decided to get open one shop for her younger son and requested the petitioner to vacate the suit premises in question and the petitioner assured her to vacate the suit premises after completion of three years period of tenancy but he did not vacate the suit premises even after completion of three years period of tenancy. Thereafter, she gave legal notice to the defendant/petitioner. In reply to the aforesaid notice, the petitioner informed that he had taken loan of Rs. 1 lac under Jawahar Rojgar Yojana on the basis of deed of tenancy and also made allegation that he had spent huge amount in repairing and constructing



the shop as well as furniture. The opposite party, having got the aforesaid notice, filed the aforesaid Eviction suit. The petitioner appeared in the aforesaid Eviction suit and claimed that on the request of the opposite party, he spent huge amount in reconstruction of suit premises and there was charge of Rs. 50,000/-upon the opposite party. He also denied the personal necessity of the opposite party on the ground that both the sons of opposite parties were in job.

4. Learned court below framed altogether seven issues, took oral and documentary evidence of both the parties and passed the impugned order holding that the opposite party has no case to seek eviction on the ground of expiry of lease period but she is entitled to get degree of eviction against the petitioner on the ground of personal necessity.

5. Learned counsel appearing for the petitioner assailed the impugned judgment on the ground that the learned court below failed to appreciate the evidences available on the record in right perspective and the learned court below did not consider this point that the opposite party had other shops apart from the suit premises and her sons were employed whereas petitioner has no means of his livelihood except the shop in question. He further submitted that the learned court below also failed to look into the point of partial eviction.



6. On the other hand, learned counsel appearing for the opposite party refuted the above stated submissions, arguing that the learned court below has considered the evidences on record in right perspective and furthermore, the learned court below discussed the point of partial eviction and came to conclusion that the partial eviction could not fulfil the need of opposite party and, therefore, there is nothing on record on which this revisional court can interfere with the impugned order.

7. Having heard the contentions of the parties, I have gone through the record. It is an admitted position that the appellant was inducted as tenant of the disputed shop by the opposite party on the basis of monthly rent and the opposite party brought suit for eviction on the ground of expiry of lease deed as well as on the ground of personal necessity. The learned court below rejected the ground of expiry of lease though decreed the suit on the ground of personal necessity.

8. The learned court below framed altogether seven issues but the issue of relationship of landlord and tenant between the petitioner and opposite party was not framed. However, it appears to me that the fact of tenancy was admitted between the parties and that was the reason the learned court below did not frame the issue of relationship of landlord and tenant between the petitioner and opposite



party because the issue regarding the admitted fact is never framed.

9. The learned court below while dealing with the point of personal necessity under issue no. 4 came to the conclusion that there was bonafide personal necessity to the opposite party because her son wanted to run a shop in disputed shop. No doubt, the petitioner pleaded before the court below that apart from disputed shop, there were three other shops of the opposite party but it would appear from perusal of the impugned judgment that the witnesses of the petitioner admitted in their respective depositions that other shops of the opposite party had already been let out prior to filing of the eviction suit and, therefore, it is obvious from the aforesaid fact that at the time of institution of eviction suit, there was no any other vacant shop of the opposite party. Moreover, the learned Munsif has discussed the evidences and found that the need of opposite party was genuine and bonafide. It is well settled principle of law that it is prerogative of landlord to choose a particular premises for eviction of the tenant, if there are other premises also and, therefore, the petitioner had no right to say that the opposite party had option to file eviction suit against her other tenants.

10. The issue of partial eviction has been well discussed by the learned court below while dealing with issue no. 5 and the learned court below on the basis of length and width of the suit premises came



to the conclusion that partial eviction would not fulfill the need of the opposite party.

11. Having carefully perused the impugned judgment, I do not find any ground to interfere into the impugned judgment and in my view, this revision petition does not have any merit. Accordingly, this revision petition stands, dismissed at the admission stage itself.

(Hemant Kumar Srivastava, J)

N.K/-

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