

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.311 of 2014

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Narayan Prasad, Son of late Jiut Sah @ Jiut Prasad, Resident of Village- Khajura,
P.S. & Anchal - Durgawati, District- Kaimur

.... Appellant

Versus

1. The State of Bihar
2. Director of Education, Bihar, Patna
3. District Superintendent of Education, Kaimur
4. Education Field Officer, Mohaniya
5. Headmaster, Middle School, Karamnasha at & P.O.-Karamnasha, P.S.-
Durgawati, District- Kaimur

.... Respondents

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Appearance :

For the Appellant/s : Mr. Jitendra Prasad Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 02-03-2017

Heard Mr.Jitendra Prasad Singh, learned counsel
appearing for the appellant.

The plaintiff is the appellant in this appeal against
the judgment and decree of reversal dismissing the suit for eviction by
the plaintiff.

The plaintiff filed the suit with specific averments
that the suit premises consisting of rooms was given to the defendant-
school on rent by the grand father of the plaintiff. It was the case of
the plaintiff that according to the agreed terms the suit premises was
given in tenancy only for the period till the completion of construction
of the own building of the school but thereafter the defendant refused



to vacate the suit premises. The defendants' case was the denial of the assertions of the plaintiff regarding the induction of the defendant as tenant by the grandfather of the plaintiff in the suit premises. It was the specific case of the defendants that the grand father of the plaintiff had gifted the suit premises to the defendant.

The trial court returned the findings on the issues in favour of the plaintiff and granted the decree to the plaintiff as prayed.

At the appellate stage, however, the defendant adduced additional evidence under Order 41 Rule 27 C.P.C which included the gift deed dated 20.10.1973 (Ext.B) executed by the father of he plaintiff in favour of the defendant school for the suit premises. The appellate court below, after appraisal of evidence on record, has reversed the findings of the trial court and come to the conclusion that the plaintiff is not entitled to the decree for eviction as prayed. The appeal has been accordingly allowed and the judgment and decree passed by the trial court has been set aside by the impugned judgment and decree.

The learned counsel for the appellants has submitted that the appellate court below has failed to consider the fact that though the specific case of the defendant in the trial court was regarding the execution of the gift deed by the grand father of the



defendant but at the appellate stage the gift deed executed by the father of the plaintiff was adduced in evidence. It has been contended that the possession of the defendant over the suit premises is only permissive and the plaintiff in the facts and circumstances and on the basis of materials on record is entitled for grant of the decree for eviction as prayed. The learned counsel for the appellants has placed the portions of the findings by the courts below in order to substantiate the submissions.

After considering the submissions and perusal of the judgments of both the courts below , it is manifest that the plaintiff's specific case is that the defendant school was inducted as tenant in the suit premises by his grand father. The appellate court below has scrutinized the evidence and then come to the finding that the plaintiff could not establish the case of letting out of the suit premises to the defendant school .During the course of submission before this Court also no part of evidence could be pointed out which would have established the relationship of landlord and tenant in between the plaintiff and the defendant-school. Further the gift deed dated 22.10.1973 (Ext.B) which has been brought on record by way of additional evidence has been considered by the appellate court below and on that basis the finding has been recorded that the plaintiff is not entitled to a decree of eviction against the defendant school on the



basis of the plea that the defendant school is in possession of the suit premises as tenant. This Court has not been persuaded to hold in these background facts that the appellate court below has committed any error in refusing the relief as prayed by the plaintiff in the suit. The findings by the appellate court below are based upon evidence which are acceptable and could have been relied upon. This Court has not been persuaded to find the conclusions by the appellate court below to be perverse or unreasonable in any manner.

Ex consequenti, this Court does not find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

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