

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Revision No.212 of 2012

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1. Sita Ram Sao S/O Late Pannu Sao R/O Mohalla-New Area Bisar Talab, P.S.-  
Civil Lines, Distt-Gaya

.... .... Petitioner/s

Versus

1. Smt. Shanti Devi W/O Dr. Rameshwar Upadhaya R/O Mohalla-New Area Bisar  
Talab, P.S.-Civil Lines, Distt-Gaya

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Biswajee Pandey

For the Respondent/s : Mr. Sourendra Pandey

Mr. Rajesh Kumar Mihsra

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA**  
**CAV JUDGMENT**

**Date: 10 -11-2017**

1. This revision petition has been preferred against judgment and decree passed in Eviction suit no. 15/2008 by learned Munsif I, Gaya by which and whereunder learned Munsif I, Gaya decreed the above stated Eviction suit no. 15/2008 directing the defendant-petitioner to vacate the suit premises within 60 days from the date of order, failing which he shall be evicted from the suit premises through the process of the court and furthermore, vacant possession of the suit premises be handed over to the plaintiff-respondent.

2. The plaintiff-respondent brought Eviction suit no. 15/2008 for eviction of the defendant- petitioner



under the provision of the Bihar Buildings (lease, rent and control) Act from the suit property detailed at schedule A of the plaint on the ground of personal necessity. The plaintiff-respondent pleaded in the plaint that the suit property bearing holding no. 13 under ward no 9A, presently holding no. 17 ward no 32 (new) situated at Mohalla Tilha Bisar New Area, Civil lines Town/ District Gaya was purchased by her through registered sale deed of 1997 from Gopalchand Bhattacharia and others and the sale deed was executed by their duly authorized attorney, namely, Rameshwar Upadhaya. The suit property consists ground and first floor. First floor of the suit property is occupied by other tenant whereas she has been residing along with her family members on the inner portion of the ground floor. There are two rooms on eastern and western side of the main entrance of the suit property and both the aforesaid rooms are in occupation of the defendant-petitioner as the defendant- petitioner was tenant of her vendor and after purchase, on the request of the defendant- petitioner, she permitted her to continue as tenant of the aforesaid rooms for a period of one year on monthly rental of Rs 200/- and thereafter, the defendant-



petitioner started paying rent of Rs 200/- per month to her. After expiry of period of one year, she requested the defendant- petitioner to vacate the rooms but on this or that pretext, defendant- petitioner evaded her request and subsequently, he refused to vacate the rooms and also stopped making payment of rent. The plaintiff-respondent has specifically, pleaded at para 7 of the plaint that for recovery of rent, she would file a separate suit and the present suit has been filed only on the ground of personal necessity.

3. Plaintiff-respondent has averred in the plaint that her husband is a retired Reader of department of geography, Magadh University, Bodh Gaya and after retirement, her husband wants to start a coaching center for subject of geography and for running coaching center, rooms in question are very suitable and, therefore, her need is bonafide, reasonable and in good faith. She further pleaded that her need can not be fulfilled by partial eviction and accordingly, the plaintiff-respondent sought a decree for eviction against the defendant-petitioner from the suit premises.

4. Defendant- petitioner appeared and contested



the suit by filing written statement. The specific case of the defendant- petitioner is that the suit property was originally belonged to Dwijendra Nath Bhattachariya who died in the year 1966 leaving behind his four sons, namely, Charochand Bhattachariya, Prabodhchand Bhattachariya @ Honu Da, Dr. Gopalchand Bhattachariya and Govindchand Bhattachariya. The above stated Dwijendra Nath Bhattachariya had one daughter, namely, Sandhiya Rani Bhattachariya who died leaving behind her two daughters. Further case of the defendant- petitioner is that only Prabodhchand Bhattachariya used to reside in the suit property and, therefore, suit property was being managed and controlled by the aforesaid Prabodhchand Bhattachariya. The above stated Prabodhchand Bhattachariya was unmarried and, therefore, he allowed father of the defendant- petitioner to stay in one of the rooms inside the suit holding in lieu of services rendered by him to the said Prabodhchand Bhattachariya. Further case of the defendant- petitioner is that subsequently, one room was got constructed in western side of entrance of the suit premises and his father shifted in both rooms. However,



the aforesaid Prabodhchand Bhattachariya being pleased with the services rendered by family of the defendant-petitioner executed Will on 01.09.1991 in his favour to the extent of his share of the disputed property and after death of Prabodhchand Bhattachariya, the defendant-petitioner has filed a probate case and when the plaintiff-respondent got knowledge of filing of probate case, she, in collusion with Rameshwar Upadhaya who happens to be her husband, brought the present suit. Furthermore, the defendant- petitioner denied relationship of landlord and tenant rather claiming that he is residing in disputed rooms on the basis of Will executed by Prabodhchand Bhattachariya in his favour. He also denied the alleged personal necessity of the plaintiff-respondent.

5. Learned court below framed, altogether, seven issues on the basis of pleadings of the parties. Parties got examined witnesses and adduced documentary evidence.

6. Learned court below, having analyzed materials available on record, came to the conclusion that the plaintiff-respondent succeeded to prove relationship of landlord and tenant and furthermore, the plaintiff-respondent was in bonafide need of the rooms in question



and furthermore, need of the plaintiff-respondent can not be fulfilled by partial eviction.

7. Learned counsel for the defendant- petitioner assailed the impugned judgment and decree arguing that the learned court below committed error in decreeing the suit because the learned court below failed to take note of this fact that complicated question of title was involved in the suit which could not have been decided in summary proceeding. He, further, submitted that the learned court below also failed to take note of this fact that there was no relationship of landlord and tenant between the parties as the defendant- petitioner claimed his title up to the share of Prabodhchand Bhattachariya on the basis of Will executed by Prabodhchand Bhattachariya in his favour. He, further, submitted that the learned court below also failed to take note of this fact that need of the plaintiff-respondent was not bonafide and it is well settled principle of law that unless the need is bonafide, decree of eviction can not be granted. He, further, submitted that the learned court below has not discussed the evidences available on record in its right perspective. In support of his contention, learned counsel for the defendant-



petitioner referred catena of judgments which are as follows:-

- i) 1999 Vol.1 PLJR Page-290
- ii)1991 Vol.1 BLJ Page-444
- iii)2013 Vol.2 BBCJ Vol.5 Page-62
- iv)1977 BBCJ Page-43
- v)2012 Vol.4 PLJR Page-96
- vi)AIR 2010 S.C. Page-2679 (B)
- vii)AIR 1961 Patna Page-142 (Full Bench)
- viii)1994(2) PLJR Page-396
- ix)2013 Vol.5 SCC Page-218
- x)AIR 1973 Andhra Pradesh Page-1(Full Bench)
- xi)1991 Vol.2 PLJR Page-341
- xii)2005 Vol.4 SCC Page-605
- xiii)1994 PLJR Page-39 S.C.
- xiv)AIR 1920 Patna Page-359
- xv)AIR 2010 SC Page-2679 (B)
- xvi)AIR 1954 SC Page-340
- xvii)AIR 1985 SC Page-207
- xviii)AIR 1988 SC Page-1858
- xix)AIR 1923 Patna Page-100 (DB)
- xx)AIR 1968 Patna Page-415 (D) Full Bench
- xxi)AIR 1971 SC Page-1865
- xxii)2014 Vol.4 PLJR Page-412
- xxiii)AIR 1962 Patna Page-262
- xxiv)AIR 1941 Patna Page-279

8. On the other hand, learned counsel for the plaintiff-respondent refuted the above stated submissions arguing that in eviction suit, court has to see only relationship of landlord and tenant as well as ground on the basis of which eviction is sought and it is well settled principle of law that complicated question of title can not be decided in eviction suit filed under the BBC Act and,



therefore, the learned court below rightly passed the impugned judgment and decree. He, further, submitted that witnesses examined on behalf of the plaintiff-respondent stated about need of the plaintiff and moreover, need of the plaintiff was not denied by the defendant- petitioner and, therefore, now, at this stage, the defendant- petitioner can not say that need of the plaintiff-respondent was not bonafide. He, further, submitted that the learned court below discussed the evidences in right prospective and came to the conclusion that the plaintiff-respondent was in bonafide need of the suit premises and need of the plaintiff-respondent could not have fulfilled by partial eviction. He, further, submitted that this court in very exceptional circumstances can reappreciate the evidence while exercising revisional jurisdiction and in the present case, there is no perversity, illegality or irregularity on the basis of which this court could reappreciate the evidences on record. Learned counsel for the plaintiff-respondent cited decisions reported in 2002(1) PLJR 144, (SC) 2014 (9) Supreme court cases 78 and AIR 2002 SC 136.

9. Having heard the contentions of both parties I



have gone through the record along with lower court record.

10. It is obvious from perusal of the impugned judgment that learned court below framed issued no. 4 in respect of relationship of landlord and tenant of the plaintiff-respondent and the defendant- petitioner and discussed the aforesaid issue at para 9 of the impugned judgment. It is also obvious that the plaintiff-respondent brought Eviction suit no. 15/2008 under the BBC Act on the ground of personal necessity as mentioned under section 11 of the aforesaid Act. It is well settled principle of law that if a suit of eviction is brought under special Act for eviction of a tenant, title of the parties can not be decided in the aforesaid eviction suit. In the case of **Rajendra Tiwary vs. Basudeo Prasad and others reported in AIR 2002 SC 136**, Apex Court of this country stated that question of title of the parties to an eviction suit filed on the ground mentioned in the Bihar Buildings (lease, rent and control) Act can not be decided in the said eviction suit. It has further been held by Apex Court in the above stated decision that *sine qua non* for granting relief in the suit under the Act is that relationship



of landlord and tenant between plaintiff and defendant should exist and scope of enquiry before the court is limited to the question as to whether grounds for eviction of the defendant have been made out under the Act or not? Therefore, it is not in dispute that if a suit of eviction is sought on the grounds mentioned in BBC Act, in that suit, title of the parties can not be decided and the court has to see only as to whether there is relationship of landlord and tenant between plaintiff and defendant of the aforesaid suit exists or not and as to whether there is ground for eviction or not?.

11. No doubt, while discussing relationship of landlord and tenant, the court can incidentally enquire title of the parties but the aforesaid enquiry is only with an intent to decide the relationship of landlord and tenant and not for deciding title of the parties. Therefore, in my view, learned court below rightly refused to decide the title of the parties.

12. Learned counsel for the defendant- petitioner has further assailed the impugned judgment on the ground that need of the plaintiff-respondent was not bonafide. Learned court below has framed issue no.5 to decide the



above stated point. The plaintiff-respondent, specifically, pleaded before the court below that two rooms situated towards east and west of the main entrance of the gate of the suit premises were needed to her husband to run coaching center. The defendant- petitioner has admitted not only in his written statement but also in his evidence that he was in possession of only above stated two rooms and remaining premises was in possession of the plaintiff-respondent. Learned court below has decided issue no.5 at para 11 of the impugned judgment by discussing evidences available on record. Perusal of the impugned judgment goes to show that learned court below, while analyzing evidences available on record, considered as to whether partial eviction was possible or not and came to the conclusion that partial eviction could not satisfy the need of husband of the plaintiff-respondent. No doubt, separate issue in respect of partial eviction was not framed by the court below but the court below was anxious to deal with the aforesaid point while passing the impugned judgment and, therefore, it can not be said that learned court below did not take note of this fact as to whether partial eviction could satisfy the need of husband



of the plaintiff-respondent or not? Moreover, learned counsel could not succeed to bring any perversity into the findings of the court below and, therefore, in my view, there is no need to interfere into the findings of the court below.

13. Admittedly, in section 14(8) of the BBC Act, provision of appeal has not been provided and only provision of revision has been provided and the High court can call for the record of the case for the purpose of satisfying itself that an order under section is according to law or not, if an application being made within 60 days of the date of order of eviction. It is well settled principle of law that scope of revisional jurisdiction depends on language of Statute and the revisional jurisdiction can not be equated at par with an appeal. Therefore, in revisional jurisdiction, there is very limited scope to reappraise evidence and to substitute findings of the revisional court in place of findings of the court below. In this regard, decisions of **Chandrika Prasad (D) through legal representatives vs. Umesh Kumar Verma and others reported in 2002 (1) PLJR 144 (SC) as well as 2014 (9) SCC 78** are relevant. In BBC Act revisional jurisdiction



has been granted to the High court to satisfy as to whether lower court has passed order in accordance with law or not and, therefore, the aforesaid provision does not permit revisional court to reapprciate evidences unless there is perversity or gross illegality. In the present case, no perversity or illegality in appreciation of the evidences has been brought on behalf of the defendant petitioner and, therefore, in my view, there is no scope for this court to reapprciate evidences available on lower court record. Moreover, it is well settled principle of law that while exercising revisional jurisdiction, revisional court can not substitute its finding replacing finding of the court below unless finding of the court below is completely perverse.

14. Therefore, in the aforesaid circumstances, I do not find any illegality, irregularity or impropriety into the impugned judgment and hence, this revision petition stands dismissed and the impugned judgment is, hereby, confirmed.

Shahid

(Hemant Kumar Srivastava, J)

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