

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.221 of 2017

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Smt. Sabita Devi, widow of Late R. N. Jha, at present residing in Holding No. 41, Mahal No. 3, Ward No. 07, at Grand Square, Dinapur, Cantonment, P.S. Dinapur, District Patna

... .. Appellant

Versus

1. Md. Fakru Zaman, son of Late M. A. Zaman
 - 1 (a) Bibi Farhat Zaman, daughter of Late M. A. Zaman
 - 1 (b) Bibi Sarbat Afja, daughter of Late M. A. Zaman
 - 1 (c) Bibi Talat Aara, daughter of Late M. A. Zaman
 - 1 (d) Bibi Nikhat Ara, daughter of Late M. A. Zaman
 - 1 (e) Bibi Rafat Ara, daughter of Late M. A. Zaman
 2. M. Khurshid Zama, son of Late M. A. Zaman
- All resident of Bari Haweli, Mohalla Saguna, P.S. Danapur, District Patna

... .. Respondents

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Appearance :

For the Appellant/s	:	Mr. Yogendra Mishra
		Mr. Nazir Alam
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date : 22-02-2018

The appellant, in the present second appeal, is aggrieved by the judgment and decree, dated 27.02.2017, passed by learned Additional District Judge II, Danapur, in Title Appeal No. 16 of 1984, whereby he has affirmed the judgment and decree, dated 15.12.1983, passed by learned Additional Munsif II, Danapur, in Title Suit No. 154 of 1980, whereby the said eviction suit was decreed with cost.



2. The suit was filed by the plaintiff seeking decree of eviction and also for recovery of arrears of rent to the tune of Rs. 1170/-, on the ground that the appellant had defaulted in payment of rent from May, 1978 to April, 1980.

3. It transpires from the impugned judgments and orders that there was no dispute between the parties over relationship of landlord and tenant. There appears to be not much dispute over the fact that the rent amount for the said period, i.e. May, 1978 to April, 1980, was not paid by the defendant, who is the appellant herein. The defendant, however, took a plea that the tenancy was not on month to month basis and in past, lump sum payments of rent were made, at times after six months and sometimes after a year also and, accordingly, rent receipts were issued by the landlord. It was accordingly the plea of the appellant/defendant, before the Trial Court, that there being no month to month tenancy, the question of default did not arise. The defendant further pleaded that the plaintiff was required to pay cantonment tax, which he had failed to pay and when cantonment tax was not paid by the plaintiff, the demand notice was served upon the defendant, who was in occupation and in compliance of the said notice, the appellant had paid a sum of Rs. 340.84/- in the year 1979. It was his further case that when the house had become dilapidated and



the plaintiff had failed to carry out repairs, the defendant had filed a case before the House Controller, leading to registration of Case No. 6 of 1980. After having received report from the Executive Magistrate, the House Controller had allowed the defendant to make repair of the house at the cost of Rs. 5741.48/- and a direction was also given to the plaintiff to adjust the said amount towards rent.

4. Learned Trial Court, in view of the rival pleadings, framed altogether 6 (six) issues, including Issue No. 5, i.e. as to whether the defendant was a defaulter and for that reason, the plaintiff was entitled for the decree of eviction or not. The Trial Court, upon considering the evidence adduced at the trial, concluded that the defendant did default in making payment of rent from 1978 to 1980, which was a valid ground for his eviction.

5. On the question of adjustment of the amount said to have been spent by the defendant for repair of the suit premises under the order of the House Controller, the learned Trial Court held that the adjustment could be done against future rent only. The said findings recorded by the Trial Court has been affirmed by the first appellate court, by the impugned judgment and decree.

6. Assailing the impugned judgments, Mr. Yogendra Mishra, learned Counsel, appearing on behalf of the appellant, has



submitted that the concurrent findings recorded by the courts below that the appellant had defaulted in making payment of rent is palpably illegal and perverse in view of the admitted fact that the appellant had already spent more amount than the amount of arrears of rent for the purpose of repair of the suit premises under the orders of the House Controller. He submits that the said amount of Rs. 5,000/- and odd should have been adjusted against the arrears of rent. The courts below, according to him, ought not to have held that the appellant defaulted in making payment of rent. His submission is in the background of another plank of his submission that the tenancy was not on month to month basis and there was no written agreement in respect of the tenancy and, in fact, payments were not made on monthly basis. According to him, though monthly rent was fixed since the landlord used to receive the rent sometimes after six months and sometimes a year or more than that, non-payment of rent for the said period cannot be termed to be default in making of payment of rent. He, accordingly submits the substantial question of law, which the present second appeal involves, is;

“Whether the amount spent over the repair of the house by the orders of the House Controller is adjustable towards rent and



whether the tenant is entitled to get the adjustment of the said amount?”

7. He has also submitted that the landlord himself was lessee of the Cantonment Board and lease having already expired, the landlord lost any right, as landlord, to evict the appellant.

8. So far as last submission made on behalf of the appellant is concerned, it is fit to be rejected in view of clear language of Section 116 of the Evidence Act, which reads thus:-

“116. Estoppel of tenants and of licensee of person in possession. - No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession there of shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

9. In the absence of any dispute that the appellant was tenant of the plaintiff, he is estopped from raising any dispute over the title of the landlord to resist eviction.



10. So far as the plea that the amount spent by the appellant in the repair of the suit premises ought to have been adjusted against the arrears of rent, I am of the definite view that such submission also cannot be accepted for the sole reason that whatever amount the appellant had paid was subsequent to filing of the title suit.

11. In that view of the matter, findings of the courts below cannot be said to be perverse. The findings cannot be said to be against the specific provisions of law, as well. No substantial question of law, in my view, this second appeal involves.

12. This second appeal does not deserve admission and is, accordingly, dismissed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
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