

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.621 of 2011

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TARA RAM, S/O LATE DASHRATH RAM, R/O MOHALLA - JANI
BAZAR (GURUDWARA ROAD), SASARAM, POST OFFICE SASARAM,
POLICE STATION SASARAM, DISTT. - ROHTAS AT SASARAM

... .. Appellant

Versus

VIDYA DEVI, W/O SHRI KANHAIYA PRASAD, R/O MOHALLA - JANI
BAZAR (GURUDWARA ROAD), SASARAM, POST OFFICE SASARAM,
POLICE STATION -SASARAM, DISTT. - ROHTAS AT SASARAM

... .. Respondent

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Appearance :

For the Appellant/s	:	Mr. R. C. Sinha Mr. Jai Prakash Singh Ms. Arti Kumari
For the Respondent/s	:	Mr. Ashutosh Tripathy

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

JUDGMENT AND ORDER
ORAL

Date : 09-03-2018

The appellant is aggrieved by the judgment and decree, dated 20.09.2011, passed by learned Additional District Judge, Fast Track Court No. 1, Rohtas, at Sasaram, in Title Appeal (Eviction) No. 21 of 2010, whereby and whereunder he has affirmed the judgment and decree, dated 08.02.2010, passed by learned Munsif I, Rohtas, at Sasaram, in Eviction Suit No. 2 of 2002.

2. The respondent herein was the plaintiff before the learned Trial Court. The plaintiff filed the said eviction suit seeking decree of eviction from the suit land and the house, described in Schedule B of the plaint and arrears of rent from January, 2001 to



February, 2002. She claimed to be the owner of the suit property, which she had purchased through registered sale deed, dated 04.07.1983. It was also her case that on request having been made by the defendant/appellant for letting out a portion of the house, the plaintiff had given two rooms, described in Schedule B of the plaint, on rent, in the month of November, 1997, on a monthly rental of Rs. 50/-. This is an admitted fact that no paper of tenancy had was prepared and according to the plaintiff/respondent, the tenancy started on the basis of oral agreement. She also claimed to have received the rent from the appellant. With a further case that the appellant discontinued payment of rent and refused to vacate the house and obtained illegal electric connection, the appellant filed the eviction suit, being Eviction Suit No. 05 of 2000. It was also her case that in view of certain assurances given by the appellant/defendant that he would vacate the house, the respondent left doing pairvi in the said eviction suit, which stood dismissed, on 30.01.2001, for default. The plaintiff pleaded that after dismissal of the said eviction suit in default, the appellant stopped making payment of rent. Once, the sons of plaintiff became major and she had personal necessity of the disputed premises, she filed an eviction suit, under Section 14 of the Bihar Building (Lease, Rent



and Eviction) Control Act, 1982, which came to registered as Eviction Suit No. 02 of 2002.

3. The defendant appeared and filed written statement denying the case of the respondent. It seems that the appellant/defendant claimed title over the suit property on the ground of him being the co-sharer.

4. The Trial Court, on the basis of rival pleadings, framed seven issues, including Issue Nos. 2, 4 and 5, which are as follows:-

“2. Was the house in question ever let out to defendant?

4. Did there ever arose a relationship of landlord and tenant in between plaintiff and defendant?

5. Is the plaintiff entitle to realise arrears of rent from the defendant?”

5. The Trial Court, upon analysis of the evidence on record adduced at the trial, decided Issue Nos. 4 and 5 in favour of the plaintiff. Issue Nos. 2 and 3 were not pressed.

6. Learned Trial Court, while dealing with other issues, which were connected with the main issue, as noted above, decreed the suit in favour of the plaintiff, directing the defendant/appellant to vacate the disputed premises and to pay the arrears of rent from



01.01.2001 till delivery of possession at the rate of Rs. 50/- per month.

7. An appeal was preferred against the judgment and decree of the Trial Court, leading to registration of Title Appeal (Eviction) No. 21 of 2010, which came to be dismissed by the judgment and decree under appeal.

8. From the judgment and decree under appeal, it appears that the appellate court below formulated following two points for determination:-

“(i) Whether the plaintiff is entitled to get a decree of eviction against the defendant?

(ii) Whether the judgment and decree passed by the learned lower court is fit to be upheld or not?”

9. This case was admitted by order, dated 28.02.2013, whereby the following substantial question of law was framed in this case:-

“The only substantial question of law which arises in the present second appeal is as to whether the finding of the Courts below as regards relationship of the contesting parties as landlord and tenant is perverse and is based on no evidence available on record.”



10. Learned Counsel, appearing on behalf of the appellant, has vehemently argued that in the absence of any proof of relationship of landlord and tenant between the appellant and the respondent, no decree of eviction, under Section 14 of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982, could have been passed by the courts below. He has drawn my attention to the observation made by the learned appellate court below, wherein he has recorded that it was probable that defendant/appellant was residing in the disputed house, as tenant, in the facts and circumstances of the case. According to him, in the absence of conclusive proof of existence of relationship of landlord and tenant, the Courts below ought not to have decreed the suit for eviction. According to him, the suit for eviction was not at all maintainable and the findings recorded by the Court below, being illegal, deserve interference in the present second appeal under Section 100 of the Code of Civil Procedure, 1908.

11. Learned Counsel, appearing on behalf of the respondent, on the other hand, has submitted that the substantial question of law, which have been framed by this Court, in fact, does not arise in view of the rival pleadings of the parties before the Courts below and conclusive findings, concurrent in nature, recorded by the Courts below on the question of appellant's title



over the suit property. He has submitted that the title of the plaintiff/respondent over the suit property cannot be disputed in view of the concurrent findings recorded by the Courts below. He has also submitted that there was enough evidence on record for the Courts below to have returned to conclusive finding that the defendant/appellant was not a co-sharer in respect of the suit property. The Courts below have taken note of the fact that the appellant was pursuing a title suit for partition against his brothers, being Title Suit No. 72 of 2001, and not against the plaintiff/respondent.

12. He has placed reliance on two decisions of this Court, in the cases of **Suchit Singh v. Hira Lal Rai and Others**, reported in **2010 (2) PLJR 213**, and **Shri Sukdeoiji v. Purushotam Sharma and Others**, reported in **2014 (1) PLJR 332**, in support of his contention that the Courts below are correct in decreeing the suit for eviction in favour of the plaintiff/respondent even in the absence of conclusive proof of relationship of the landlord and the tenant, there being concurrent finding on the question of title of the plaintiff over the suit premises. He has submitted, with reference to Order 7 Rule 7 of the Code of Civil Procedure, 1908, that in an eviction suit, the grant of decree in favour of plaintiff on the basis of general title,



even when the relationship of landlord and tenant is not established, equitable relief, under Order 7 Rule 7 of the Code of Civil Procedure, 1908, has rightly been granted.

13. The concurrent findings recorded by the Courts below on the question of the title of the plaintiff/respondent cannot be said to be suffering from any perversity.

14. This is to be noted that the question of title of the plaintiff/respondent was raised by the appellant/defendant and evidence before the Trial Court were led by the parties over the said question elaborately.

15. Learned Counsel appearing on behalf of the plaintiff/respondent appears to be right in his submission while relying on the decision of this Court, in the case of **Shri Sukdeoji** (supra), wherein the Court held that the scope of jurisdiction of the Court, under Order 7 Rule 7 of the Code of Civil Procedure, 1908, in an eviction suit to grant a decree to the plaintiff on the basis of general title even when the relationship of landlord and tenant could not be established is indisputable.

16. This Court held, in the case of **Shri Sukdeoji** (supra), relying on an earlier decision of this Court, in the case of **Smt. Kasturi Devi and Others v. Shripal Singh and Others** (AIR 1954 Patna 128) that if the defendants themselves raised the



question of title of the plaintiff, which question came to be determined in favour of the plaintiff, there was no scope of any surprise or prejudice to the defendant, if the equitable relief, under Order 7 Rule 7 of the Code of Civil Procedure, 1908, was granted. Paragraph 13 of this Court's decision, in the case of **Shri Sukdeoji** (supra), is relevant to answer the submissions made on behalf of the parties in the present appeal, which reads thus:-

“13. In view of the evidence placed on record, the plea of the defendants that Ranbir Kumar Gupta, brother of the plaintiff, was still the landlord, being the owner of the suit premises, falls apart. The defendants have not claimed title unto themselves and have admitted themselves to be the tenant in the suit premises. However, as the plaintiff has failed to establish the relationship of landlord and tenant between him and the defendants, the defendants are held to be in permissive possession of the suit premises. The question of granting the relief to the plaintiff in such a case under Order 7 Rule 7 C.P.C. has been considered by this Court in **Deepak Kumar Vs. R. S. Singh**, reported in 1991(2) P.L.J.R 541. This Court after considering the provisions of Order 7 Rule 7 C.P.C. and section 14 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 has held:

“Imparting of justice is always uppermost in the mind of the



court to exercise its discretion under Order VII Rule 7 of the Code of Civil Procedure. While exercising such a discretion, court has to keep the facts of the case in its mind and to see as to whether it should exercise its jurisdiction under Order VII Rule 7 of the Code of Civil Procedure, so as to enable it to do complete justice to the parties.”

17. By laying down the law to the aforesaid effect, this Court took note of another decision of this Court, in the case of **Deepak Kumar v. R. S. Singh**, reported in **1991(2) PLJR 541**.

18. Similar view has been taken by this Court, in the case of **Suchit Singh** (supra), paragraph 7 of which reads thus:

“7. In the aforesaid facts and circumstances, the fact admitted by the defendant was that the plaintiffs were the owners and the relationship between the parties was of licensor and licensee. Hence when in an eviction suit, the plaintiff failed to establish the relationship of landlord and tenant but proves his title, the Court would definitely have a discretion under the provisions of Order VII Rule 7 of the Code of Civil Procedure to grant an equitable relief of ejectment on the basis of title, which is accepted by the defendant, provided the plaintiff had done nothing to disqualify him from receiving an equitable relief.”



19. In view of the discussions as above, taking into account the fact that there is concurrent finding in respect of title of the plaintiff/respondent over the suit property, the decree of eviction, invoking Order 7 Rule 7 of the Code of Civil Procedure, 1908, cannot be said to be suffering from any legal infirmity, requiring this Court’s interference in appellate jurisdiction, under Section 100 of the Code of Civil Procedure, 1908.

20. This appeal has not merit and is, accordingly, dismissed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
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