

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Second Appeal No.177 of 2007**

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1. Smt. Urmila Devi, resident of Mohanpur, Punaichak, P.S. Shastrinagar, P.O. & District Patna
  2. Smt. Sumitra Devi Widow of Krishna Kumar Singh
  3. Mukesh Kumar
  4. Rakesh Kumar, sons of Late Krishna Kumar Singh
  5. Neelam Devi wife of Siyaram Singh
  6. Smt. Punam Devi wife of Mukesh Kumar Rai, daughter of Late Krishna Kumar Singh
  7. Kiran Devi wife of Sri Muri Kumar residents of Mohalla Maselanpur, P.S. Sultanganj, Patna

Plaintiffs-Respondents-Appellants..

Versus

1. Vidya Devi wife of Hukumdeo Singh
2. Hukumdeo Singh son of not known both are residents of Mohalla Punaichak, P.S. Shastrinagar, Patna

... .. Defendants-Respondents

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**Appearance :**

For the Appellant/s : Ms Mallika Mazumdar  
Mr. Prem Kumar

For the Respondent/s :

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

**ORAL JUDGMENT**

**Date : 12-04-2018**

**I.A.No.2147 & 2148 of 2018**

I.A.No. 2147 of 2018 has been filed for expunction of the name of appellant no.1 Smt. Rukmani Devi, who is said to have died during the pendency of the appeal, leaving behind her heirs and legal representatives, who are already on record. I.A.No.2148 of 2018 has been filed for condonation of delay in filing the said application.

1. I.A.No. 2147 of 2018 is allowed. Let the name of appellant no.1 be expunged from the cause title of the memo



of appeal.

2. I.A. No. 2148 stands disposed of.

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3. The appellants have put to challenge the judgment and decree dated 04.06.2007, passed in Title Appeal No. 123 of 1990/96 of 2004 by the learned Additional District Judge, Fast Track Court-III, Patna, whereby he has affirmed the judgment dated 26.11.1990, passed by the learned Munsif-II, Patna in Title Eviction Suit No. 17 of 1988. By the judgment and decree dated 26.11.1990, the learned Munsif-II, Patna, had dismissed the Title Eviction Suit No. 17 of 1988 filed by the appellants herein mainly on the ground that the appellants could not establish the relationship of the landlord and tenant between the appellants and the respondents.

4. It appears that the appellants had filed the suit for eviction with a plea that initially the respondents were inducted as tenants in the suit premises and after some time they were asked to act as caretakers of the the suit premises in question. Admittedly, the appellants did not receive any rent as, according to them, the respondents were acting as caretakers.



5. It transpires from the judgment and decree passed by the courts below that the respondents claimed their title over the suit property on the ground of being co-sharer(s) of the appellants.

6. Be that as it may, there is concurrent findings recorded by the courts below that the appellants could not produce any evidence to establish that the respondents were inducted as tenants or as the caretakers in the suit premises. The courts below have noticed apparent contradictions in the stand of the appellants/plaintiffs in the eviction proceeding. The findings recorded by the courts below, in my view, cannot be said to be perverse.

7. Learned counsel appearing on behalf of the appellants, has submitted that the appellants have filed a title suit registered as Title Suit No.557 of 2002, pending in the court of Sub Judge-VI, Patna, claiming their title over the suit property.

8. In my view, since there is concurrent findings of facts recorded by the courts below that the appellants could not establish the relationship of the landlord and tenant which cannot be said to be perverse and the present second appeal does not involve any other substantial question of law, the



second appeal has no merit and deserves to be dismissed.

9. It is, however, observed that the findings recorded in the eviction proceeding shall not prejudice the case of the appellants in Title Suit No. 557 of 2002 on the question of their title over the suit property.

10. This appeal is accordingly dismissed, but with the observation as above.

**(Chakradhari Sharan Singh, J)**

HR/-

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