

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1611 of 2016

In
Second Appeal No.202 of 2008

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Ram Lal Pal, son of Late Kedari Pal, original resident of Village-Kewarhi,
P.S.-Kudara, District-Kaimur at Bhabua, at present address-Durgawati Bazar,
P.O. and P.S. Durgawati, District Kaimur at Bhabua

... .. Petitioner/s

Versus

1. Butaie Pal son of Late Kedari Pal
2. Ram Ashish Pal son of Butaie Pal, all are residents of Village Kewarhi,
P.S. Kudra, District Kaimur at Bhabua, at present opposite party no.1 resided
at village Sondihara P.S. Bhabua, District Kaimur at Bhabua at present
opposite party no.2 resided of village-Durgawati Bazar, _P.O. and P.S.
Durgawati-District Kaimur at Bhabua

... .. Opposite parties

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with
Second Appeal No. 202 of 2008

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Ram Lal Pal, son of Late Kedari Pal, original resident of Village-Kewarhi,
P.S.-Kudara, District-Kaimur at Bhabua, at present address-Durgawati Bazar,
P.O. and P.S. Durgawati, District Kaimur at Bhabua

... .. Defendant/ Appellant

Versus

1. Butaie Pal son of Late Kedari Pal
2. Ram Ashish Pal son fo Butaie Pal, all are residents of Village Kewarhi, P.S.
Kudra, District Kaimur at Bhabua, at present opposite party no.1 resided
at village Sondihara P.S. Bhabua, District Kaimur at Bhabua at present opposite
party no.2 resided at village-Durgawati Bazar, _P.O. and P.S. Durgawati-
District Kaimur at Bhabua

... .. Plaintiffs/Respondents

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Appearance :

(In Miscellaneous Jurisdiction Case No. 1611 of 2016)

For the Petitioner/s : Mr. Shashi Shekhar Dwivedi, Sr. Advocate
Mr. Parth Gaurav

For the Respondent/s : Mr. Anjani Kumar Sinha

(In Second Appeal No. 202 of 2008)

For the Appellant/s : Mr. Shashi Shekhar Dviwedi, Sr. Advocate
Mr. Parth Gaurav

For the Respondent/s : Mr. Anjani Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 20-11-2018



For non-compliance of a peremptory order dated 24.02.2009, passed in S.A.No. 202 of 2008, the said second appeal stood dismissed for default by operation of the order dated 17.03.2009. More than seven years thereafter, MJC No.1611 of 2016 has been filed seeking, restoration of the said second appeal to its original file.

2. By order dated 22.12.2008 two weeks' time was allowed to file the deficit court fee stamp and since the said order was not complied with, S.A. No. 202 of 2008 was placed before the Bench. Thereafter, by order dated 24.02.2009, three weeks' time was allowed by Coordinate Bench to the learned counsel for the appellant to comply with the order of the Registrar General with the stipulation that in case of default, the second appeal shall stand dismissed without further reference to the Bench. Since the order of the Registrar General for filing the deficit court fee was not complied with, the second appeal stood dismissed. The plea which has been taken in MJC No. 1611 of 2016 that when the matter was taken up by the Bench, learned counsel for the appellant could not appear since he missed to mark the case and since the matter was not listed for hearing under Order 41 Rule 11 of the Code of Civil Procedure (hereinafter to be referred to as 'the Code'), even after the lapse



of nearly seven years he started inquiring whereafter he learnt that the appeal had stood dismissed for default. Accordingly, a prayer has been made on behalf of the petitioner in MJC No. 1611 of 2016 for restoration of S.A. No. 2002 of 2008.

3. A counter affidavit has been filed on behalf of the contesting respondents, disputing the fact asserted in the restoration application.

4. It has also been averred in the application seeking restoration that filing of the restoration application after seven years of dismissal of the second appeal is an abuse of the process of the Court. Contradictory stand taken by the petitioner in MJC No. 1611 of 2016 has also been taken as a ground in the counter affidavit for opposing the prayer for restoration of the second appeal. When the restoration application was taken up on 15.03.2018, upon hearing of the learned counsel for the petitioner, the Court had indicated to the parties that the Court's intention to allow the restoration application and will also consider the merits of the second appeal on the next date, irrespective of the heading under which the matter is listed. The matter was adjourned to 22.03.2018. In view of clear stipulation in the said order dated 15.03.2018, the restoration application was heard finally on 18.09.2018, when



Mr. Shashi Shekhar Dwivedi, learned Senior Counsel appearing for the petitioner in MJC No. 1611 of 2016 and the appellant in S.A. No. 202 of 2008, addressed this Court on merits of the second appeal also.

5. It has been argued on behalf of the petitioner in MJC No. 1611 of 2016 that it was out of mistake on the part of the learned counsel for the appellant that the deficit court fee stamp could not be filed within the time allowed by a Bench of this Court. It is his submission that, in any event, the petitioner/appellant should not be allowed to suffer because of unintentional lapse on the part of the learned counsel.

6. Mr. Anjani Kumar Sinha, learned counsel, appearing on behalf of the opposite parties, on the other hand, has submitted that a restoration application having been filed more than seven years after dismissal of the second appeal for default, without any cogent explanation, deserves to be dismissed outrightly.

7. However, after having considered the pleading on record in MJC No. 1611 of 2016 and submissions made on behalf of the parties, I am of the view that the same deserves to be allowed in the interest of justice. Accordingly MJC No. 1611 of 2016 is allowed and S.A.No. 202 of 2008 stands restored to



its original file.

S.A.No. 202 of 2008

8. The defendant-appellant has questioned the correctness and legality of the judgment and decree dated 06.02.2008, passed by the learned 1st Additional District Judge, Kaimur at Bhabua in Title Appeal No. 01/1932 of 1999/2000, whereby and whereunder he has affirmed the judgment and decree dated 28.05.1999, passed by the learned Munsif, Kaimur at Bhabua in Title (Eviction) Suit No. 160 of 1989.

9. The plaintiffs/respondents had filed the eviction suit on the ground of their *bona fide* personal necessity and default in payment of rent for seeking eviction of the appellant with specific case that there was relationship of the landlord and tenant between them. This is not in dispute that the appellant is the full brother of the plaintiff/respondent no.1. They are three brothers namely, Butai Pal(plaintiff/respondent), Rampal (defendant/appellant) and Harijee Pal. Respondent no.2 is the son of respondent no.1, who was also a party to the suit as plaintiff no.2.

10. It was the case of the plaintiffs that they had purchased the suit land through a registered sale deed dated 22.12.1973 over which they had constructed a house. There was



partition in the family of the said three brothers and after partition, the three brothers had purchased their separate property in village Sondihra. The house which stood over the suit land was given on rent to Block Karamchari in the year 1975-76 and after he left, the suit premises became vacant. Since the defendant/appellant was in need of the premises, on a request having been made, the plaintiffs let out the suit premises in his favour on monthly rent of Rs. 300/-. Tenancy began from 01.10.1987. It has also been the case of the plaintiffs that the defendant/appellant used to pay the rent. The defendant/appellant, too, had purchased some land in village Durgawati Bazar and he had assured the plaintiffs that he would vacate the suit premises once he (defendant/appellant) constructed his house on the land so purchased by him. In October, 1988, the plaintiffs had informed the defendant that since personal necessity of the plaintiffs had arisen as they wanted to open their own shop, the defendant should vacate the suit premises. The defendant had taken three months' time for vacating the suit premises since, according to him, by that time, the defendant's house would be completed and he would shift to his newly constructed house in village Durgawati Bazar. He had also promised that even if the construction of the house was



not completed within the said period, he would be vacating the suit premises by making alternative arrangement. The plaintiffs further asserted in the plaint that thereafter the defendant defaulted in payment of rent and despite registered notice having been sent to him through an advocate for vacating the suit premises, he refused to vacate the same on 02.12.1989, giving rise to the cause of action for him to file the eviction suit.

11. The defendant/appellant contested the suit by filing written statement. He denied the existence of relationship of the landlord and tenant between the two and took a plea that the suit premises was the joint family property of the plaintiffs and the defendant. He denied that there was no partition among the brothers and that the defendant had paid any rent to the plaintiffs. Since he denied the relationship of landlord and tenant itself, he took a stand that there was no question of default in making payment of rent. Based on the rival pleadings, the learned trial court framed altogether eight issues, out of which issues nos. III, IV, V and VI are the core issues which read thus:-

“III. Whether there is relationship of land lord and tenant in between the parties of the suit?



IV. Whether the deft. has paid the rent from Sept. 1989 and he is liable to vacate the suit preemies?

V. Whether the plaintiffs are entitled to receive the arrears of rent from the deft.?

VI. Whether the plaintiffs have personal necessity of the suit premises bonafidely and whether the personal necessity of the plaintiff will be fulfilled by partial eviction?"

12. The parties adduced their evidence, both oral and documentary. The trial court decided the said issues in favour of the plaintiffs, except issue no.6 by judgment and decree dated 28.05.1999, which was assailed in Title Appeal No. 01/1932 of 1999/2000.

13. Based on the submission advanced on behalf of the parties, the appellate court framed the following two points for determination:-

“A. Whether there is relationship of land lord and tenant in between the parties to the suit?

B. Whether the deft. has paid rent from September, 1989 till today and whether he is liable to vacate the suit premises and whether the plaintiffs are entitled to receive the arrears of rent from the



defendant since September, 1989?”

14. Based on re-appreciation of evidence adduced at the trial, the learned first appellate court affirmed the finding recorded by the trial court that there was relationship of landlord and tenant between the parties to the suit. Before reaching such conclusion, the lower appellate court has recorded specific finding, based on the documentary evidence that the suit land stood in the name of the plaintiff and his son. The said finding is evincibly based on Ext.10 and 10/A, which were the two registered sale deed dated 22.12.1973, executed by one Bechan Ram in favour of the plaintiff and his son, in respect of the suit land. He further recorded that the trial court has rightly held the existence of the landlord and tenant relationship between the plaintiffs/respondents and the appellant/defendant. He also affirmed the finding that the appellant had defaulted in payment of rent.

15. It has been argued on behalf of the appellant that the findings recorded by the learned courts below are perverse. It has been contended that the appellant was, in fact, the co-sharer in the joint family property and the court below has wrongly recorded the finding that there has been partition in the family and the suit property was self-acquired property of the



plaintiffs/respondents. He submits accordingly that the second appeal involves substantial question of law, the concurrent findings recorded by the courts below being suffering from perversity.

16. Mr. Anjani Kumar Sinha, learned counsel, appearing on behalf of the respondents, on the other hand, would contend that the concurrent findings recorded by the courts below are binding on this Court in a proceeding under Section 100 of the Code. Countering the submissions made on behalf of the appellant, he has contended that the findings are based on appreciation of evidence adduced by the parties at the trial. No finding, he contends, is either contrary to the evidence or without evidence for making out a case of perversity in the findings recorded by the courts below. He, thus, contends that since the second appeal does not involve any substantial question of law, the same deserves to be dismissed.

17. I have perused the judgments of the courts below.

18. The plaintiffs/respondents, in order to make out their case of exclusive right and title over the suit property, had adduced their evidence citing the judgment dated 22.06.1994, passed by the learned Sub-Judge-I, Bhabua in Title Suit No. 19 of 1990 which went to show that the plaintiff, Butai Pal was



not the *Karta* of the family and that the plaintiff(s) and the defendant were not joint. He also took into account Exts.10 and 10/A, which were registered sale deeds dated 22.12.1973, executed in favour of the plaintiff(s) to come to the conclusion that the suit land stood in the name of the plaintiff(s). He also took into account the recitals in the said sale deed for reaching a conclusion that the consideration money was also paid by the plaintiffs/respondents. After having recorded this finding, since the defendant himself had denied the relationship of the landlord and tenant and had admitted that he had not paid rent to the plaintiff(s), the court below held that he was a defaulter in making payment of rent and thus affirmed the decree of the trial court for eviction of the appellant on the ground of default.

19. In my view, the findings so recorded by the courts below cannot be said to be suffering from the vice of perversity, requiring this Court's interference in the second appellate jurisdiction. This second appeal, in my considered view, does not involve any substantial question of law. As a matter of fact, though the appellant has taken ground for assailing the order, but the memo of appeal does not contain any substantial question of law, which, according to the appellant, the second appeal involves.



20. In my view, this appeal is devoid of any merit and is accordingly dismissed.

21. I.A.No. 7114 of 2008 filed under Order 41 Rule 5 of the Code for stay of Execution Case No. 03 of 2008 stands disposed of as having become infructuous in the light of this judgment and order.

22. There shall be no order as to cost(s), however.

(Chakradhari Sharan Singh, J)

HR/-

AFR/NAFR	AFR
CAV DATE	NIL
Uploading Date	29 .11.2018
Transmission Date	

