

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.617 of 2017

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1. Aditya Prakash Verma @ Aditya Kumar Verma son of Late Mahavir Prasad Verma resident of Flat No. 607, B - Block, Lotus Apartment, P.S. - Patliputra, District - Patna.

.... Appellant/s

Versus

1. Ramesh Raut son of Radha Raman Raut resident of Flat No. 101, Sai Guru Apartment, Section 9, CBD, Belapuri Navi Mumbai, Mumbai.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Radha Mohan Pandey

For the Respondent/s : Mr. Rajehdra Narain, Sr. Advocate
Dr. Manoj Kumar, Advocate with him.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 15-03-2018

1. This Second Appeal under Section 100 of CPC has been preferred against the Judgment and Decree dated 27.05.2017 passed by learned Additional District Judge-VIII, Patna in Title Appeal No.1208 of 2014 whereby he has reversed the judgment and decree dated 15.05.2014 passed by learned Sub Judge-X, Patna in Eviction Suit No.49 of 2008 and has decreed the eviction suit in favour of the plaintiff.

2. I have heard learned counsel appearing on behalf of the appellant and learned senior counsel appearing for the respondent. The respondent is the appellant herein. The plaintiff has filed the suit for a decree of eviction of the appellant on the ground of personal



necessity directing him to vacate and hand over the vacant possession of the suit premises described as Flat No.607, B Block of the Lotus Apartment situate at 1/F New Patliputra Colony. The plaintiff respondent claimed himself to be the landlord. He asserted in his plaint that the suit premises was let out to the appellant on oral agreement of payment of monthly rent @Rs.3500/-. He asserted that the appellant had agreed to vacate the suit premises on one month notice without any hesitation and that the rent would be paid by 5th date of the succeeding month and if not, the defendant would be held to be defaulter and that the plaintiff would be at liberty to evict the defendant. The plaintiff received monthly rent against which he issued rent receipts in proof of the payment but the appellant discontinued payment of monthly rent since 05.01.2004 and thus became defaulter. He further asserted that he had reasonable and *bona fide* necessity of the suit premises consequent upon his transfer to Assam since his family was not ready to live with the plaintiff in Assam. Despite request having been made, the appellant refused to vacate the suit premises, leading to filing of the said eviction suit.

3. On notice, the appellant appeared and contested the eviction suit after filing written statement. He set up a case in his written statement that the plaintiff had no point of time was his landlord and he had not inducted the appellant as tenant in the suit premises. He



asserted that he was introduced as a tenant in the suit premises by one Arun Kumar Lakhotiya in whose favor the plaintiff had executed an agreement of sale of the said flat on 04.08.2002. He asserted that ever since his introduction as a tenant in the said premises by said Arun Kumar Lakhotiya in September, 2002, he paid monthly rent of Rs.2000/- to the said Arun Kumar Lakhotiya regularly who also acknowledged receipt of the monthly rent.

4. Upon considering rival pleadings of the parties, the trial Court framed altogether seven issues including Issues No.IV, V and VI which read thus :-

“IV. Whether there is relationship of landlord and tenant between the plaintiff and the defendant?

V. Whether the plaintiff is entitled to a decree of eviction on the ground of personal necessity?

VI. Whether partial eviction of the defendant from the suit premises can fulfill the requirement of the plaintiff or not?”

5. It appears that from the judgments of the Courts below that the parties adduced their evidence both oral and documentary and made their respective submissions. Learned trial Court, dealing with issue No.4 conclusively held that the plaintiff was the owner of the



suit premises and there existed relationship of landlord and tenant between the appellant and the plaintiff. The learned trial Court rejected the case of the appellant that Arun Kumar Lakhotiya was his landlord and that the appellant was inducted by him, on appreciation of evidence and taking into account non-examination of the said Arun Kumar Lakhotiya, as a witness.

6. Learned trial Court, however, dismissed the eviction suit mainly on the ground that the plaintiff could not establish his case of personal necessity as on the date of passing of the decree, though such personal necessity might have existed on the date of filing of the suit. The plaintiff preferred appeal against the judgment and decree of the trial Court giving rise to Title Appeal No.120 of 2014. It appears that the appellant also filed the cross appeal registered as Cross Appeal No.1 of 2016 questioning the finding of the trial Court holding the appellant to be a tenant of the plaintiff in respect of the suit premises. The said Title Appeal No.120 of 2008 has been allowed by the First Appellate Court by the judgment under appeal and accordingly, a decree of eviction has been granted in favour of the plaintiff. The cross appeal filed on behalf of the appellant has been dismissed by the First Appellate Court by the same impugned judgment and decree.

7. What transpires from the judgment of the Courts below that



there is concurrent finding of fact that there was a relationship of landlord and tenant between the plaintiff and the appellant. It is the case of the appellant himself that he did not paid any rent to the plaintiff. These two facts taken together suggest that the appellant was a defaulter. The First Appellate Court has taken note of in his judgment that despite direction made by the said Court for payment of rent to the plaintiff the appellant did not make any such payment.

8. Learned counsel appearing on behalf of the appellant has very vehemently argued that the finding recorded by the trial Court on the question of *bona fide* and personal necessity of the plaintiff could not have been interfered with by the First Appellate Court. According to him, the requirement of personal necessity as ground for eviction is to be seen not only on the date of filing of the suit for eviction rather for the entire period till adjudication on that question by the Court. He has relied upon a Supreme Court decision in the case of **Hasman Raj Vs. Raghunath Raj AIR 1981 SC 1711**. He has drawn my attention to the evidence of the respondent as P.W.-1 to convince this Court that the plaintiff himself had admitted that there was an agreement to sell between him and Arun Kumar Lakhotiya and in that circumstances, the case of the appellant that he was inducted as tenant by Arun Kumar Lakhotiya in the suit premises ought not to have been



rejected by the Court below.

9. Learned senior counsel appearing on behalf of the respondent on the other hand justifying the findings of the Appellate Court has submitted that as is evident, the appellant was a defaulter which stands conclusively proved as has been noticed by the Courts below. He has referred to observation made by the Appellate Court that the plaintiff had admittedly superannuated much before the date of the judgment and decree passed by the appellate Court.

10. For entertaining a second appeal, it is incumbent upon the appellant to establish that the second appeal involves a substantial question of law which requires determination. What I notice from the findings recorded by the Courts below is that the appellant was a tenant of the plaintiff. He defaulted in making payment of rent and on filing of the eviction suit, he took an unacceptable false plea that he was inducted by one Arun Kumar Lakhotiya and accordingly, said Arun Kumar Lakhotiya was his landlord. Arun Kumar Lakhotiya was not produced by the appellant as witness by the trial Court. This is not the case of the appellant that Arun Kumar Lakhotiya has a title over the suit property. The only plea which has been taken is that there was an agreement of sell between the plaintiff and said Arun Kumar Lakhotiya in respect of the suit premises. This is also not in



dispute that the suit premises was not transferred in favour of Arun Kumar Lakhotiya.

11. In view of the above noted facts, I do not find it to be a fit case for interference in exercise of power under Section 100 of CPC, since in my considered view, no substantial question of law is involved in this second appeal.

12. This appeal is thus dismissed.

(Chakradhari Sharan Singh, J)

Sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
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