

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.296 of 2010

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1. Smt. Doulat Devi w/o Late Ganesh Prasad
 2. Ram Babu Kumar
 3. Shyam Babu Kumar @ Shyam Babu Sah both sons of Late Ganesh Prasad
 4. Chanda Kumari D/o Late Ganesh Prasad
 5. Pankaj Kumar minor S/o Ganesh Prasad, under the guardianship of his natural mother Smt. Doulat Devi, all resident of village (Mohalla) Koat Bazar, Sitamarhi Town, P.O. & P.S. Sitamarhi, Distt. Sitamarhi

... .. Defendants-Appellants

Versus

1. Sanjay Kumar son of Late Krishna Shankar Prasad, resident of Mohalla Koat Bazar, Ward No. 16 Sitamarhi Town, P.S. &, Distt. Sitamarhi

.... Plaintiff-Respondent-Respondent 1st Party

2. Ram Shankar Prasad
3. Kripa Shnakar Prasad both sons of Jugeshwar Prasad
4. Most. Siba Devi wife of Late Uma Shankar Prasad
5. Rabi Bhushan Prasad S/o Late Uma Shankar Prasad, resident of village Mohalla Koat Bazar Ward No. 16 Sitamarhi Town, P.O., P.S. & District Sitamarhi
6. Smt. Salini Bhagat D/o Late Uma Shankar Prasad, w/o Kali Charan Bhagat, resident of 50/A/3 Raj Krishna Street, P.O. Uttapara, P.S. Uttapara, Distt. Hugali, West Bengal
7. Smt. Sandhaya Tapan D/o Late Uma Shankar Prasad, resident of Shanti Nagar, Near Lane Sani Mandir, North Market Road, Upper Bazar, Ranchi, P.S. & Distt. Ranchi
8. Most. Vidaya Devi w/o Late Krishna Shankar Prasad, resident of Mohalla Koat Bazar, P.O. & P.S. & Distt. Sitamarhi
9. Kamini Jaiswal D/o Late Krishna Shankar Prasad w/o Anurag Kumar Jaiswal, resident of Navin Chitra Mandir, Mirjapur (U.P.)
10. Smt. Sangita Devi D/o Late Krishna Shankar Prasad, w/o Vinod Kumar Jaiswal, resident of B-D 14 Saket Nagar, Habibganj, P.O. Habibganj, P.S. Habibganj, Distt. Bhopal (M.P.)

..... ... Respondents-Respondents 2nd Party

Appearance :

For the Appellants	:	Mr. Dharmendra Kumar Sinha, Advocate Mr. Uday Kumar, Advocate
For the Respondents	:	Mr. Ashok Kumar Jha, Advocate Mr. Saurav Anand, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 29-06-2018

The appellants have put to challenge the judgment



and decree dated 14.05.2010 passed by the learned Additional District Judge, F.T.C. IIIrd, Sitamarhi in Eviction Appeal No.36 of 2005/3 of 2009, whereby the judgment and decree dated 18.05.2005 passed by the learned Sub Judge IV, Sitamarhi in Eviction Suit No.3 of 1998 has been affirmed.

2. The appellants are the defendants, whereas the plaintiff has been impleaded as the Respondent No.1 (respondent first party). The Respondent no. 1 had filed the said Eviction Suit No. 3 of 1998, seeking eviction of the appellants from the suit premises on the ground of default in payment of rent and personal necessity.

3. I have heard learned counsel appearing on behalf of the appellants and the respondents.

4. From the submissions made on behalf of the parties and materials on record, it appears that admittedly, the suit premises belonged to one Jugeshwar Prasad, who had four sons, including Krishna Shankar Prasad. The plaintiff/respondent no.1 is the son of Krishna Shankar Prasad (since deceased). The plaintiff asserted that the defendant wanted to carry out business of restaurant and accordingly, he had approached Rama Shankar Prasad, son of late Jugeshwar Prasad, he, being Karta of the family, and accordingly a tenancy was created between Rama



Shankar Prasad and the defendant no.1 on the terms that the defendant-appellant would pay monthly rent of Rs.150/- in respect of the suit premises and the said rent would be paid on the first day of each succeeding month of English Calendar and in case of default of payment of rent made by the defendant, as agreed, the defendant appellant would vacate the premises. It was further case of the plaintiff that after some minor differences among the members of the joint family arose, a private partition took place in the month of December, 1993 and as per terms of partition, the suit premises fell in the share of the plaintiff, whereafter he came in exclusive possession thereof. He asserted that the defendant paid rent to him for December 1993, against which the plaintiff granted receipt. He also claimed that since the plaintiff wanted to construct a building for personal use over the suit premises, he asked the defendant to vacate it by 01.02.1994. He also asked the defendant to pay rent on 01.02.1994 and vacate the suit premises. The defendant, however, refused to vacate the suit premises and on demand, refused to pay the arrears of rent also.

5. The defendant in his written statement, on the other hand, took his stand that father of the defendant had taken vacant land on lease from the grand father of the plaintiff and



had made temporary construction for carrying on business of fertilizers. Since the said business was not generating profits, he requested the grand father of the plaintiff late Jugeshwar Prasad to permit him to support the business, to which late Jugeshwar Prasad agreed and allowed the defendant to construct a building for running Hotel. It was his case that as per the agreement between the defendant and late Jugeshwar Prasad, cost of construction of building was to be borne out by the defendant with the condition that expenditure incurred in constructing the building would remain creditable as *pagari* with the landlord. He accordingly pleaded that after construction of building for running a restaurant, he started his business and continuously paid rent at the rate of Rs. 150/- per month. A sum of Rs. 1,25,000/- was spent for construction of the building of the Hotel, which was treated as *pagari*, returnable to the defendant. He questioned the claim of the plaintiff to be the landlord on the ground that after death of Jugeshwar Prasad, there was no material to show that the plaintiff's father had succeeded to the premises. The defendant, on the point of default in payment of rent, asserted that he had been paying rent to late Jugeshwar Prasad and the plaintiff never asked him to vacate the suit land and that the same was allotted as share to him in a partition. He



denied that he ever made any promise to vacate the suit premises. He asserted that till April 1994, late Jugeshwar Prasad had been receiving rent but thereafter he refused to receive rent under the pressure of the plaintiff/appellant.

6. He also asserted that the defendant had filed Miscellaneous Case No. 698 of 1998 under Section 20 of the Bihar Building (Lease, Rent and Eviction) Control Act in the court of learned Sub Divisional Officer against late Jugeshwar Prasad, where the plaintiff had intervened alleging that he had got suit premises along with other land in his share. The defendant had wanted the intervention of the court of S.D.O. to allow him to deposit rent in the Treasury. The said petition was, however, admittedly dismissed.

7. Based on rival pleadings, the trial court framed nine issues including the following :-

(5). Whether the plaintiff is the landlord of the suit premises as mentioned in the plaint and the defendant no.1 is his tenant.

(6). Whether the plaintiff has personal necessity of the suit premises.

(7). Whether the defendant no.1 is a defaulter.

8. The parties adduced their evidence both oral and



documentary. The Trial Court held upon appreciation of evidence that there existed relationship of the landlord and the tenant between the plaintiff and the defendant. The Trial Court decided issue Nos. 6 and 7 also in favour of the plaintiff, holding that the premises, in question, was required to the plaintiff for his personal use and that the defendant had defaulted in payment of rent. These findings have been affirmed by the learned First Appellate Court.

9. Learned counsel appearing on behalf of the appellants, however, has submitted that the plaintiff failed to establish the story of partition as put forward by him to claim his status as the landlord of the suit premises. In the absence of proof that the property in question fell in share of the plaintiff upon a partition, the Court below could not have held existence of relationship of the landlord and the tenant between the plaintiff and the defendant. He next submits that there would have been no question of default in making payment of rent since the defendant had established before the Courts below that the amount, which was spent by him for construction of building of restaurant, was to be treated as *Pagari* to be refunded by the original landlord on termination of lease. He, accordingly, contends that the Second Appeal involves the substantial



question of law that the findings recorded by the Trial Court and the Appellate Court that there existed relationship of the landlord and the tenant between the plaintiff and the defendant is perverse. He also contends that the present Second Appeal involves another substantial question of law to the effect that findings that the defendant had defaulted in payment of rent, is also perverse as there being evidence to establish that the defendant had spent a sum of Rs.1,25,000/- for construction of a building of Restaurant.

10. Learned counsel appearing on behalf of the contesting respondent no.1 (plaintiff) has made his submission and argued that since the present Second Appeal does not involve any substantial question of law, the same deserves dismissal at this stage itself under Order 41 Rule 11 of the Code of Civil Procedure.

11. I have considered rival submissions made on behalf of the parties and have perused the judgments passed by the Courts below. The findings, that there is existence relationship of the landlord and the tenant between the plaintiff and the defendant recorded by the Courts below, are apparently based on appreciation and discussion of pleadings and evidence of the respective parties. The said finding, in my considered view, does



not suffer from perversity for the reason that it is neither based on 'no evidence' or is contrary to evidence. Similarly, there are concurrent findings in respect of default in payment of rent and personal necessity of the plaintiff. It is not the case of the defendant that he had been paying rent to anyone though he admits to have entered into a lease agreement with late Jugeshwar Prasad. As narrated above, he had filed an application before the Rent Controller for depositing the rent, which was dismissed. In that background, the findings recorded by the Courts below that the defendant had defaulted in making payment of rent, in my view, does not suffer from any infirmity or error. Last but not the least, the Courts below have concurrently recorded that the plaintiffs genuinely required the suit premises for their personal use. In my view, the present Second Appeal does not involve any substantial question of law.

12. This is to be noted that by order dated 20.09.2011, this court had stayed proceedings of Execution Case No. 1 of 2005 pending before learned Sub-Judge IIIrd, Sitamarhi. Since I am of the view that the present Second Appeal does not involve any substantial question of law and deserves to be dismissed, the said interim order dated 20.09.2011 stands vacated.

13. The Second appeal is, accordingly, dismissed.



There shall be no order as to costs.

14. Since the matter has remained pending for more than a decade, I observe that let the proceedings of Execution Case No. 1 of 2005 be expedited and the decree be implemented, preferably, within a period of three months from today.

(Chakradhari Sharan Singh, J)

Narendra/Abhijeet

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	10.07.2018
Transmission Date	

