

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.361 of 2016**

=====

1. Most. Shiv Devi wife of Late Ashok Choudhary.
2. Raj Kumar Son of Late Ashok Choudhary.
3. Rohit Kumar son of Late Ashok Choudhary.
4. Rahul Kumar Son of Late Ashok Choudhary.
5. Ritu Kumari minor daughter of Late Ashok Choudhary and under the guardianship of her mother and natural guardian Most. Shiv Devi. All above are resident of Mohalla- Mahavir Sthan, Bibiganj, Main Road, Danapur Cantt, P.S.- Danapur and District- Patna.

.... Petitioner/s

Versus

1. Sunil Kumar Son of Late Ram Dayal.
2. Anjali Devi, wife of Sunil Kumar.
3. Amit Kumar alias Happy son of Sunil Kumar.
4. Sumit Kumar alias Lucky son of Sunil Kumar. All above are resident of Mohalla:- Mahavir Sthan, Main Road Danapur Cant Police Station Danapur and District Patna and at present resident of 15 Grand Square Emerson Road Danapur Cant Police Station Danapur, and District Patna.
5. Most. Chinta Devi Wife of Late Ganga Sagar Choudhary.
6. Manoj Choudhary Son of Late Ganga Sagar Choudhary.
7. Saroj Choudhary Son of Late Ganga Sagar Choudhary. Serial nos. 5, 6 and 7 are resident of Mohalla- Mahavir Sthan Bibiganj, Main Road, Danapur Cantt, P.S - Danapur and District- Patna.
8. Anand Choudhary, son of Late Hari Nath Choudhary.
9. Most. Rita Devi Wife of Late Prabhat Choudhary
10. Raju Kumar son of Late Prabhat Choudhary
11. Ramu Kumar son of Late Prabhat Choudhary.
12. Mutari Devi daughter of Late Prabhat Choudhary.
13. Meena Devi daughter of Late Prabhat Choudhary. Serial nos. 8 to 13 are resident of Mohalla- Mahavir Sthan, Bibiganj, Main Road, Danapur Cantt, P.S.- Danapur and District- Patna.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Partha Sarthy
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 29-10-2018

The petitioners filed this civil miscellaneous petition against the order dated 08.03.2016 passed by Sub Judge II, Danapur in Execution Case No.10 of 1998 whereby learned Sub Judge directed



the petitioners and others to pay the rent @ Rs.966/- per month from the date of rent fixation order as fixed by the Rent Controller in B.B.C. Case No.25/93/12/96.

The facts having relevancy for disposal of this case can be summarised as follows:

The plaintiff filed Title Suit No.172 of 1981 for eviction of the suit property stating therein that Holding No.45 Mahal No.1, Ward No.4 situated in Mahavir Sthan, Main Road, Danapur originally belonged to Sri Ganesh Lal and Smt. Gangajali Devi who gifted the same to Smt. Shanti Devi by registered gift deed dated 06.08.1971. Shanti Devi mutated her name and later on, sold the land in question to the plaintiff by a registered sale deed dated 13.05.1980. The plaintiff inducted the defendant, Hari Nath Choudhary as tenant at a monthly rent of Rs.90/-. The defendants who are the legal heirs of Hari Nath Choudhary stopped payment of rent. The plaintiff gave legal notice demanding arrears of rent and eviction on the personal ground. The defendants filed written statement that the gift deed of 1971 said to have been executed by Ganesh Lal and Gangajali Devi in favour of Dinesh Prasad is forged and fabricated and the so called executant of the gift deed cancelled the gift deed on 24.01.1976 by a registered deed of cancellation. The plaintiff never came in possession. Ganesh Lal and Smt. Gangajali Devi remained in possession over the land. Shanti Devi and Dinesh Prasad fought



criminal litigation and lost the same. Shanti Devi entered into an agreement to sell the land to Ram Chandra Choudhary. Shanti Devi also filed Title Suit No.37 of 1977 in the Court of Additional Munsif, Danapur for eviction of the defendants-petitioners from the suit property. Ultimately, the suit was dismissed and the sale deed dated 12.05.1980 in favour of the plaintiff is hit by Section 52 of the T.P. Act. The suit was pending for hearing but the plaintiff filed petition under Section 5 of the B.B.C. Act in the court of Sub-Divisional Magistrate-cum-Rent Controller for determination of fair rent of the suit premises which was registered as Case No.12 of 1996. The Rent Controller-cum-Sub Divisional Magistrate, Danapur fixed the rent of the suit premises at Rs.966/- per month. The tenant preferred Appeal No.35 of 1998 before the Collector, Patna against the order dated 02.01.1998 passed in B.B.C. Case No.12 of 1996. The said appeal was dismissed for non-prosecution. The tenants-petitioners filed B.B.C. Case No.35 of 1998 for restoration of B.B.C. Appeal No.35 of 1998-99 after recalling the order dated 12.10.1998. The plaintiff filed petition on 19.06.2015 in the Court of Sub Judge II, Danapur which was registered as Execution Case No.10 of 1998. The execution case was filed for execution of order dated 02.01.1998 passed by Rent Controller in view of the provision under Section 23 of the B.B.C. Act. Learned Sub Judge II, Danapur vide order dated 08.03.2016 after hearing both sides directed the petitioners to pay the rent @ Rs.966/-



per month from the date on which fair rent was fixed by the Rent Controller within 60 days.

Learned counsel for the petitioners submits that learned Sub Judge has committed jurisdictional error. The Rent Controller, under Section 5 of the B.B.C. Act, has got no jurisdiction to direct the tenant to pay the fair rent fixed by him and such order, if the Rent Controller give any direction for payment of rent, the same is without jurisdiction and such order cannot be executed under Section 23 of the B.B.C. Act. Learned counsel placed his reliance on the Division Bench judgment of this Court in the case of Sunil Kumar Gami vs. Jogendra Mahto, 2012(2) PLJR 659.

As per contra, Mr. J.S.Arora, learned senior counsel for the respondents-plaintiffs relied upon Single Bench judgment of this Court in the case of Bihar Electricity Board and others v. Ram Ayodhya Singh, 2011(3) PLJR 137. It is submitted that it is option of the plaintiffs either to file case for executing order of the Controller under Section 23 of the Act or to file a regular suit i.e. suit for recovery of money which the tenant is liable to pay.

Having considered the submission of both sides and on perusal of record, I find that plaintiffs filed Title Suit No.172 of 1981 for eviction of the defendants from the suit premises but the defendants denied the relationship of landlord and tenant and further stated that the defendants are the tenant of Shanti Devi who is said to



have executed a deed of gift. The deed of gift filed by Ganesh Lal and Shanti Devi is forged and fabricated. During the pendency of the aforesaid suit, the plaintiff filed a petition before the Sub Divisional Magistrate-cum-Rent Controller for eviction of fair rent of the suit premises and Sub Divisional Magistrate-cum-Rent Controller fixed the fair rent @ Rs.966/- per month and thereafter the plaintiffs filed execution case under Section 23 of the B.B.C. Act which says that any order passed by the Rent Controller under the Act shall be executed by the Court as if such decree passed by such Court. From perusal of Section 5 of the Act, it appears that provisions vest power in the Rent Controller to fix the fair rent of a building in occupation of tenant but the provision as contained in Section 5 of the B.B.C. Act does not empower the Rent Controller for a direction to the tenant to pay the fair rent. A Division bench in the case of Sunil Kumar Gami vs. Jogendra Mahto, 2012(2) PLJR 659 held that under Section 5 of the B.B.C. Act, Rent Controller has not been given the power to determine arrears of rent due to be paid by the tenant or direction for making such payment. Section 5 only provides for determination of fair rent and not the liability of the tenant in this regard. Mere fixation of rent in the absence of adjudication of arrear or the liability of tenant to pay the rent cannot be construed to be an order fit for execution under Section 23 of the B.B.C. Act. Therefore, an order of Controller shall be executable under Section 23 of the Act only when it is found



that the Controller has power to determine arrears of rent and went to give direction for payment but Controller has no such power and such order so passed is not fit to be executed as a decree under Section 23 of the B.B.C. Act. It is apparent that Section 5 of the Act vest power with the Rent Controller to fix the fair rent but not the arrears of rent for the liability of the tenant. Therefore, under Section 23 of the B.B.C. Act, the Court cannot execute such order and direct the tenant to pay arrears of rent from the date on which the same was fixed.

So far the judgment relied upon by the learned counsel for the respondents is concerned, it is not at all relevant for the question called for decision in this case. Thus, I find that the learned Sub Judge has committed jurisdictional error by directing the petitioners to pay fair rent @ Rs.966/- per month from the date on which Rent Controller fixed the fair rent. Thus, the order dated 08.03.2016 passed by Sub Judge II, Danapur is without jurisdiction and illegal and accordingly, the same is set aside. This civil miscellaneous petition is accordingly allowed.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.12.2018
Transmission Date	

