

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.122 of 2016

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1. Srinivas Singh S/o Brij Kishore Singh Resident of village Chuan, P.O. Mangobendar, P.S. Khaira, District - Munger (New Jamui) at Present residing at Mauza - Kalyanpur Tola Maharajganj (Kishnapathi), P.O. + P.S. Jamui, District - Jamui

.... Petitioner

Versus

1. Sri Chandradev Singh S/o Late Raj Kishore Singh Resident of Mauza - Kalyanpur Tola Maharajganj (Kishnapathi), P.O. + P.S. Jamui, District - Jamui

.... Respondent

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Appearance :

For the Petitioner : Mr. J. S. Arora, Sr. advocate
Mr. Prabhat Ranjan Singh

For the Respondent : Mr. Anish Chandra Sinha

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 19-09-2018

Heard both sides.

2. The defendant has brought this Civil Revision application under Section 14 (8) of Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the Act) against the judgement and decree dated 28.03.2016 passed by the learned Munsif, Jamui in Eviction Suit No. 12 of 1989 whereby the suit has been decreed with a direction to the defendant to deliver the vacant possession of the premises to the plaintiff within 60 days from the date of decree.

3. The plaintiff filed the suit for eviction of the suit premises, a building situated on Khata No. 15, plot No. 50 area 2 ¾ decimals situated in the town of Jamui. The plaintiff has got no house and there was partition among his brothers. The plaintiff reasonably



required the suit house for his own as well as his family accommodation. The case of the plaintiff is that the suit house was previously owned and possessed by Late Patti Tanti. Patti Tanti died leaving behind his wife, Sohgi Devi, daughter-in-law, Mina Devi, grand son, Ashok Tanti and two daughters. They came in possession of the suit house. Sohgi Devi and her son executed two sale deeds on 12.08.1986 in favour of the plaintiff with regard to the suit house. Patti Tanti himself inducted the defendant as tenant on a month to month basis at rate of rent of Rs. 115/-.

4. The defendant contested the suit on the ground that there is no relationship of landlord and tenant. The plaintiff filed the suit for eviction in the garb of declaration of title and recovery of possession. The real owner of the suit property mentioned in scheduled-1 of the plaint, part of Khesra No. 50 of Khata No. 15 is owned by Ambika Singh and Ambika Singh is necessary party in the suit. Sohgi Devi and her daughter-in-law, Mina Devi, never executed any sale deed. In fact Meena Devi entered into an agreement to sell of plot No. 50, Khata No. 15, area 2 $\frac{3}{4}$ decimal. Mina Devi received Rs. 10,000/- and remaining amount of consideration was to be paid at the time of execution of sale deed. Ambika Singh was the tenant and Ambika Singh inducted the petitioner as tenant in the suit house. Therefore, the plaintiff is not entitled to get any relief much less the decree for eviction.

5. On the basis of rival pleadings 10 issues were framed. Issue No.8 is whether there is any relationship of landlord and tenant between the plaintiff and defendant with respect to suit premises. Issue No.9 is whether the plaintiff reasonably required the suit premises on the ground of personal necessity. Issue No.7 is whether plaintiff is the owner or landlord of the suit premises and has



got any interest and title over the suit property but the learned Munsif did not give any finding with regard to title. With regard to issue No.8 the learned Munsif held that there is relation of landlord and tenant between the plaintiff and defendant. With regard to issue No.9 the learned Munsif held that the plaintiff reasonably required the suit premises on the ground of personal necessity and, accordingly, decreed the suit.

6. Mr. J. S. Arora, the learned senior counsel for the petitioner tried to invite my attention with regard to the finding of landlord and tenant and submitted that this finding has erroneously been recorded but I find that the learned Munsif has held after discussing the evidence that the petitioner was inducted as tenant by the vendor of plaintiff before the year 1986. Ambika Singh, father-in-law of the petitioner, was firstly inducted as tenant in the suit premises and later on the petitioner, being son-in-law of Ambika Singh occupied the suit premises. Ambika Singh filed the suit for specific performance of contract against the vendor of plaintiff and the suit was partially decreed. Only the part consideration money was paid to the vendor which was ordered to be returned and the plaintiff was found to be bonafide purchaser. Therefore, I do not find any perversity in the finding with regard to relationship of landlord and tenant.

7. Mr. J. S. Arora, the learned senior counsel for the petitioner further submits that in view of provision of Section 11 of the Act the plaintiff is required to prove that he has got genuine and bonafide personal requirement. Admittedly, the suit house is situated on area of 2 $\frac{3}{4}$ decimal. The petitioner also brought on record Exhibit-B showing that after filing of the suit the plaintiff purchased another house in the name of Priti Singh, his wife. The petitioner put forth the



case that the plaintiff does not reasonably require the suit premises and he has got another house but the learned Munsif erroneously held that by Exhibit-B the plaintiff purchased the house after institution of the suit. Therefore, on the date of filing of the suit the plaintiff has got bonafide and genuine requirement of house for occupation. The learned court below did not give any finding on the point of partial eviction. The court is bound to enquire with regard to partial eviction and record a finding that partial eviction does not fulfill needs of the plaintiff and only then the court is to record the finding of eviction on the ground of personal necessity. The learned senior counsel for the petitioner placed his reliance on the judgement of the Supreme Court in the case of **Nasirul Haque v. Jitendra Nath Dey reported in AIR 1984 SC 1799(2)** and submitted that proviso to Section 12(1) (c) of the B.B.C. Act enjoins that what is necessary to be considered is the reasonable requirement of the landlord and whether it would be substantially satisfied by evicting the tenant from a part only of the premises. The court has therefore, in the first instance, to determine the extent of the premises which the landlord reasonably requires. In order to determine it objectively and not on the basis of his ipse dixit or his mere desire to occupy as much he wants. But the court has to, furthermore, apply a test as to whether such requirement, as the court considers reasonable, will be substantially satisfied (not fully satisfied) by ordering partial eviction. The question, thus, has to be determined by giving full effect to the concept of reasonable extent of the requirement from the perspective of substantial satisfaction of such requirement as considered to be reasonable objectively. The learned counsel for the petitioner also placed reliance on the judgement of **Smt. Shakuntala Devi v. Sajjan Kumar Vajoria reported in 2013 (3) PLJR 395**.



8. Mr. J. S. Arora, the learned senior counsel for the petitioner submits that the court has not at all embark to make any enquiry in order to hold and give finding to the effect that by partial eviction the requirement of plaintiff is substantially satisfied and, therefore, the judgement is illegal.

9. From a perusal of the facts of the present case it appears that plaintiff filed the suit for eviction for the entire suit premises on the ground of personal necessity. The learned Munsif has recorded his finding that the plaintiff has got no house to live in as the house in which the plaintiff was living fell in the share of his brother, Lallan Kumar Singh, in a registered deed of partition (Exhibit-2). The DW 5 as well as the defendant stated in their evidence that Chandradev Singh, the plaintiff, has got one more house in Kishnapathi Mohalla and another house in Bariar Mohalla. One house is purchased in the name of Priti Singh, his wife, in Kishnapathi Mohalla and the plaintiff started residing in the house of plot No. 52 Khata No. 80 but the learned Munsif recorded the finding about the genuine and bonafide requirement of the plaintiff of the suit premises that on the date of filing of the suit the plaintiff had no house and Exhibit-B shows that the plaintiff purchased the house from Kailash Choubey in the name of Priti Singh on 25.10.1989 after filing of the suit for eviction on the ground of personal necessity but the learned Munsif did not record any finding with regard to other house owned by the plaintiff and whether substantial requirement of the plaintiff is fulfilled by way of partial eviction of the suit premises as the suit premises consists several rooms over the area of 2 $\frac{3}{4}$ decimal. Therefore, I find that the finding of the learned Munsif on the point of personal requirement of the plaintiff is erroneous and liable to be set aside.

10. Accordingly, this Civil Revision petition is partially



allowed and judgement and decree so far with regard to issue no. 9, is set aside and the matter is remitted to the court of learned Munsif to give a fresh finding on the personal requirement of the plaintiff and whether substantial requirement of the plaintiff is fulfilled after partial eviction is effected and dispose of the suit within four months from the date of receipt of this order.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	01.10.2018
Transmission Date	N.A.

