

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.88 of 2013

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GIRISH CHANDRA MANDAL S/O MIT LAL MANDAL RESIDENT OF
MOHALLA- IMAM BARI, P.S- LAHERIA SARAI, DISTRICT-
DARBHANGA.

... .. Appellant/s

Versus

1. Md. Amanatullah Salfi S/O Late Leyquat Hussain Resident Of Mohalla-
Imam Bari, P.S- Laheria Sarai, District- Darbhanga.
2. Sanaullah S/O Md. Amanatullah Resident Of Mohalla- Imam Bari, P.S-
Laheria Sarai, District- Darbhanga.
3. Hamidullah S/O Md. Amanatullah Salfi Resident Of Mohalla- Imam Bari,
P.S- Laheria Sarai, District- Darbhanga.
4. Samiullah S/O Md. Amanatullah Salfi Resident Of Mohalla- Imam Bari, P.S-
Laheria Sarai, District- Darbhanga.
5. Amirti Devi Widow Of Late Hare Krishna Sah Resident Of Mohalla- Imam
Bari, P.S- Laheria Sarai, District- Darbhanga.
6. Smt. Rajo Devi D/O Late Hare Krishna Sah Resident Of Mohalla- Imam Bari,
P.S- Laheria Sarai, District- Darbhanga.
7. Smt. Raj Rani Devi D/O Late Hari Krishna Sah Resident Of Mohalla- Imam
Bari, P.S- Laheria Sarai, District- Darbhanga.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Dhanendra Chaubey, Advocate
For the Respondent/s : Mr. Md. Anis Akhtar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date : 20-04-2018

The appellant has put to challenge the judgment and
decree, dated 13.03.2013, passed by learned *Ad hoc* Additional
District Judge IVth, Darbhanga, in Title Appeal No. 32 of 2011,
whereby he has affirmed the judgment and decree, dated
27.09.2011, passed by learned Sub-Judge IVth, Darbhanga, in
Title Suit No. 125 of 1999. The trial Court had dismissed the
suit as barred by principle of *res judicata*, which has been



affirmed by the first appellate Court.

2. The suit property is situated at Mohallah-Imambari, PO and PS- Laheriasarai, District-Darbhanga, which is of following descriptions:-

<u>“Municipal Plot No.</u>	<u>Area</u>
26982	11 ½ dhurs with house therein.
	<u>Boundary</u>
	North:- Niz Manmokaran, i.e., Amirti Devi & others
	South”- Personal Gali and thereafter Phoolo Devi
	East:- Sarak Sarkari
	West:- Pokhra”

3. Instead of referring to the case of the plaintiff and the defendants, who are appellant and respondents herein, it would be apt, at this stage, to recount certain facts, in order to appreciate the controversy and dispute with better clarity.

4. The respondents are the defendants who had earlier filed Eviction Suit No. 24 of 1988 on the ground of personal necessity against one Kamal Mahto and the appellant herein, terming the appellant to be his sub-tenant. The eviction suit came to be decreed in favour of the respondents after clear finding by the Court of learned Munsif-I, Darbhanga, by judgment and decree, dated 17.11.1992 that there existed landlord-tenant relationship between the respondents and the appellant. The appellant had filed Title Eviction Appeal No. 05



of 1992 against the eviction decree, dated 17.11.1992, which was allowed and the judgment and decree, dated 17.11.1992, was set aside. The respondents preferred second appeal (SA No. 233 of 1997) before this Court against the judgment passed in Title Eviction Appeal No. 05 of 1992, raising a plea *inter alia* sole question that the appeal itself before the Court below against eviction decree was not maintainable, rather revision petition was maintainable under Section 14(A) of the Bihar Buildings (Lease Rent and Eviction) Control Act, 1982 (hereinafter referred to as 'the Act'). This Court set aside the judgment of the appellate Court dated 08.07.1997 on the ground that appeal itself was not maintainable, and directed the Court below to return back the memo of appeal for preferring a revision application, by order dated 15.02.1999. The appellant, instead, filed a review application before this Court giving rise to Civil Review No. 218 of 1999, seeking review of the order, dated 15.02.1999, passed by this Court in S.A. No. 233 of 1997. The review application was disposed of by this Court by order, dated 13.10.1999, giving liberty to the appellant to avail appropriate remedy in accordance with law before appropriate Court. Thereafter, the appellant filed Title Suit No. 125 of 1999 in the Court of learned Sub-Judge, Darbhanga seeking following



reliefs:-

“(a) That it be declared that the plaintiff is in possession of the suit land mentioned in Schedule A of the plaint in the capacity of paramount title holder from defendant second party.

(b) That it be further declared that the defendants first party are not entitled for exclusive possession of the suit property without getting the suit plot partitioned.

(c) Any relief or reliefs to which the appellant is entitled to”.

5. According to the appellant, as stated in the plaint, the cause of action for the suit arose on or about 29.09.1999, when the respondents first party put the Execution Case No. 06 of 1993 in motion against the appellant, for execution of the eviction decree.

6. Be it noted that in the eviction suit, the respondents first party herein, in his plaint had set up a case that he had purchased the suit premises from Smt. Gulaboo Devi, widow of Hare Krishna Sah. Hare Krishna Sah had two wives, namely, Amriti Devi and Gulaboo Devi. There was partition in the property left behind by Hare Krishna Sah between Amriti Devi and Gulaboo Devi. Gulaboo Devi and her children had got the suit property in a private partition with her co-widow. Gulaboo had let out the suit premises to Kamla



Mahto on a monthly rental of Rs. 100/- for a fixed period of eleven (11) months commencing from 03.05.1985 to 31.03.1986. Despite expiry of the period of tenancy, the said Kamal Mahto did not vacate the suit premises and remained in the suit premises as a tenant. Gulabo Devi thereafter sold the suit premises to the respondents who purchased the same in the name of his children (plaintiff Nos. 2 to 4 in the Eviction Suit No. 24 of 1988) through sale deed dated 05.11.1986. Since the respondents did not have any residential house to live in Laheriasarai or in Darbhanga town, he being an employee of a Madrasa School at Laheriasarai and his son being school going student, he was in personal necessity of the suit premises. With this plea that the respondent was having necessity of suit premises reasonably and in good faith, filed the eviction suit under Section 11 of the Act on the ground of *bona fide* requirement as well as on the ground of expiry of the terms of tenancy. Kamal Mahto denied in his written statement in the eviction suit of having any concern with the suit premises. The appellant herein, appeared in the eviction suit and sought leave to contest the suit under Section 14 of the Act, which was granted. He denied in his written statement that he was sub-lessee of said Kamal Mahto. He rather took the plea that he



had purchased the suit premises through registered sale deed dated 26.11.1987, executed by the co-widow of Gulabo Devi, namely, Amriti Devi and her daughters, namely, Rajo Devi and Rajrani Devi. He also asserted that even before the execution of the sale deed, he was delivered possession of the suit premises. He further asserted that he was tenant of Hare Krishna Sah, who died after execution of *Mahadanama* dated 12.10.1983. After death of Hare Krishna Sah, both of his widows took possession of inherited property according to their convenience and without there being any partition and the suit premises remained in occupation of Amriti Devi and her two daughters, as recited in the sale deed dated 26.11.1987. He thus, denied that the respondent's vendor Gulabo Devi was exclusive owner of the suit premises on the strength of property having been partitioned between she and her co-widow. He also pleaded that a Partition Suit No. 157 of 1986 was then pending between Amriti Devi and her daughters and her children for partition of the entire family property including the suit premises in question, which was instituted on 14.08.1986. The appellant, accordingly, asserted that the sale deed dated 05.11.1986 executed by Gulabo Devi in favour of the respondents was hit by the principles of *lis pendence*.



7. Following six issues were framed in the said Eviction Suit No. 24 of 1988:-

- “1. Is the suit as framed maintainable?
2. Have the plaintiffs got any cause of action or right to sue?
3. Is the suit barred by the principles of waiver, estoppel and acquiescence?
4. Whether there exist relationship of landlord and tenant between the plaintiffs and defendant No.2?
5. Whether the plaintiffs are in bonafide need of the suit premises and whether they are entitled to a decree for eviction of the defendant No.2 from the suit premises?
6. To what relief or reliefs, if any, are the plaintiffs entitled?”

8. Evidently, Issues No. 4 and 5, as noted above, were the core issues. From the Lower Court's Record, it is noticeable that in the eviction suit the parties extensively led their evidence on the question of their respective titles over the suit property. Since the case of the respondents in the eviction



suit was based on the plea that said Kamal Mahto was tenant of Gulabo Devi and, upon purchase of the said property by them, the respondents stepped into the shoes of Gulabo Devi as landlord, which was seriously disputed by the appellant herein, in eviction suit, the learned Munsif-I, Darbhanga considered the dispute of title also, for the purpose of deciding the issue of relationship of landlord and tenant. Learned Munsif held that the *Mahadanama* and the sale deed of the appellant executed in his favour by Amriti Devi and her daughter were fabricated and collusive and sale deed executed in favour of the respondents by Gulabo Devi and her sons and daughter were genuine and, thus, decided issue No.4. The learned Munsif decided issue No.5 also in favour of the respondents holding that the respondents were in *bona fide* need of the suit premises and they were entitled to decree for eviction of the appellant from the suit premises and accordingly, decreed the suit by directing the appellant to vacate the suit premises and deliver the vacant possession of the suit premises to the respondents within two months, by judgment and order, dated 17.11.1992. As has been noticed above, the said decree of eviction was interfered with by an appellate Court below in Title Eviction Appeal No. 05 of 1992 by judgment dated 09.07.1997. On a second appeal preferred by the



defendants before this Court, it was noticed that the appeal against the order of eviction could not be maintained, rather revision was maintainable under Section 14 of the Act. This Court by order, dated 15.02.1999, set aside the judgment and decree of the appellate Court in Title Eviction Appeal No. 05 of 1992, dated 08.07.1997, and directed the Court to return the memo of appeal to the appellant.

9. This is not in dispute that the appellant did not take any step thereafter, by filing any revision application against the eviction decree, rather he filed Civil Review application before this Court registered as Civil Review No. 218 of 1999, which was disposed of by this Court by order, dated 13.10.1999, giving the appellant liberty to avail the appropriate remedy. Thereafter, the appellant filed said Title Suit No. 125 of 1999.

10. The Title Suit No. 125 of 1999 was dismissed by learned Sub-Judge-IV, Darbhanga by a judgment and decree dated 27.09.2011, mainly on the ground that the suit was barred by *res judicata* in view of the findings and decision in Eviction Suit No. 24 of 1988, wherein while deciding the issue of relationship of landlord and tenant between the appellant and the respondents, the learned Court had held the *Mahadanama*



dated 12.10.1983 and sale deed dated 26.11.1987 to be fabricated and collusive. The said judgment of the trial Court has been affirmed by the appellate Court below by impugned judgment and order.

11. While admitting this appeal on 22.12.2016, this Court framed substantial question of law which arose for consideration in the second appeal in the following terms:-

“The substantial question of law arises for consideration in this appeal is as to whether both the courts below have correctly dismissed the suit filed by the plaintiff as barred by res judicata on the ground that the issue of title has already been adjudicated in the earlier eviction suit; and the conclusions by both the courts below are against the law as laid down by the apex Court in ***Tribhuvan Sankar Vs. Amrul Lal, (2014) 2 SCC 788?***”

12. I have heard Mr. Dhanendra Chaubey, learned counsel appearing on behalf of the appellant, and Md. Anis Akhtar, learned counsel for the respondents at length. I have perused the Lower Court's Record also.

13. This is curious to note that the appellant has filed I.A. No.2647 of 2013 for stay of further proceeding of Eviction Execution Case No. 06 of 1993 arising out of the eviction decree passed in Eviction Suit No. 24 of 1988. Another Interlocutory Application being I.A. No 3224 of 2013 has been



filed seeking amendments in the plaint of Title Suit No. 125 of 1999 to the following effect:-

“I. After Relief No.(a) it should be added Reflief No.(a) (I):- “On the basis of facts and circumstances mentioned above it be declared that the Kebala dated 05.11.1986 executed by Gulab Devi in favour of Defendants first party is invalid, illegal, inoperative, without consideration and never acted upon and consequently the judgment dated 17.11.1992 and Decree dated 26.11.1992 passed by the Munsif-I, Darbhanga in Eviction Suit NO. 24 of 1988 be declared null and void.”

II. After Relief No. (a) (i) it should be added Relief No. (a) (ii):- “Defendants first Set be restrained by an order of perpetual injunction over the suit property as mentioned in Schedule-”A” of the plaint.”

III. After Relief No. (a) (ii) it should be added Relief No.(a) (iii):- “Defendants first party be restrained by an Order of an ad-interim injunction not to interfering the possession of the plaintiff over the suit property.”

14. The said two Interlocutory Applications were taken up by this Court on 03.05.2013, when following order was passed:-

“Heard Mr. Dhanendra Choubey, the learned counsel for the appellant.

2, This Interlocutory application (I.A. No. 2647 of 2013) has been filed on behalf of the appellant praying for stay of



further proceeding of Eviction Execution Case No. 6 of 1993 pending before the Munsif-I, Darbhanga. Later on, the appellant has also filed the Interlocutory application (I.A. No. 3224 of 2013) under Order 6 Rule 17 C.P.C. seeking amendment to the plaintiff by adding some more reliefs in the suit.

3. From the facts appearing in the impugned judgments of the Courts below and the submission of the learned counsel for the appellant, it transpires that admittedly the suit property belonged to Harekrishna Sah. The appellant as plaintiff in the suit has claimed to have purchased the suit property by sale deed dated 26.11.1987 from Amriti Devi, the first wife of the admitted owner. It is also the case of the appellant that prior to the sale deed, an agreement for sale (Mahadanama) was executed by the vendor in his favour on 12.10.1983 and in part performance of the said agreement the appellant was put in possession over the disputed premises.

4. On the other hand, the respondents as defendants in the suit have come out with the case that they have purchased the suit property from the admitted owner's second wife Gulab Devi and her daughters by sale deed of the year 1986 which is prior to the sale deed executed by Amriti Devi, Ist wife. The respondents have further asserted that they filed Eviction Suit No. 24 of 1988 seeking eviction of the appellant on the ground of personal necessity wherein the claim of title of the appellant over the suit premises was negatived and a decree for eviction has been passed against him.

5. It has been accepted by the appellant that the respondents filed Eviction



Suit No. 24/88 against the appellant and obtained a decree for eviction of the appellant from the suit premises. The said Eviction decree was assailed by the appellant upto this Hon'ble Court in second appeal. However, it has been submitted that this Hon'ble Court while dismissing the second appeal of the appellant has given liberty to the appellant to take recourse to appropriate remedy in accordance with law.

6. It has been submitted by the learned counsel that the appellant thereafter has filed the suit for declaration of his possession on the basis of title, but the suit was dismissed mainly on the ground of bar of res judicata and no independent finding on the rival claim of title was recorded and the the appellant court also affirmed the said conclusion of the trial Court. It has been also urged by the learned counsel that admittedly the appellant is in possession of the suit premises which is a residential house and he is living therein with his family members.

7. From the facts aforementioned, it is manifest that the appellant as well as the respondents are claiming their rival title over the suit premises on the basis of the sale transactions made by the two descendants of the admitted original owner. It is also plain and patent that the eviction decree has been obtained by the respondents against the appellant in the suit for eviction filed by him after the purchase of the suit premises by sale deed dated 5.11.1986. The appellant has subsequently filed the suit for declaration of his possession over the suit premises as title holder. By making prayer for amendment the appellant has sought to add the reliefs for declaration of the sale deed dated 5.11.1986



executed by Gulab Devi, the second wife of the admitted owner and her daughters, in favour of the respondents as invalid, illegal, inoperative and for declaration that the decree passed in Eviction Suit No. 24 of 1988 is null and void.

8. In the aforesaid facts and circumstances, it appears just and proper that the respondents be heard before passing the final orders in the Interlocutory application for stay as well as the Interlocutory application seeking amendment in the plaint.

9. As such, Issue notice to the respondents in both the aforesaid Interlocutory applications for which the appellant must file requisites both under registered cover as well as ordinary process by Monday (6.5.2013), failing which both the Interlocutory applications shall be rejected without further reference to a Bench.

10. The rule is made returnable within two months.

11. Till further orders, status quo with regard to the possession of the suit premises shall be maintained.”

15. In view of the nature of the order, dated 03.05.2013, the execution case has not proceeded.

16. Mr. Dhanendra Choubey, learned counsel for the appellant after concluding his argument at length on behalf of the plaintiff, refused to address this Court on the said Interlocutory applications and submitted that he would press the said Interlocutory applications after conclusion of the



arguments of the learned counsel appearing on behalf of the respondents.

17. At the outset, Mr. Choubey has taken me to Supreme Court's decision in case of *Tribhuvanshankar Vs. Amrutlal* reported in (2014) 2 SCC 788, with particular reference to paragraphs 25 to 31. He has also placed reliance on the decision in case of *Rajendra Tiwary Vs. Basudeo Prasad* reported in (2002) 1 SCC 90 and in case of *Deva Ram. Vs. Ishwar Chand (AIR 1996 SC 378)*. Reliance has also been placed on a decision of this Court in case of *Satya Narayan Giri Vs. Satya Narayan Sah* reported in 2010 (2) PLJR 77. On the strength of the aforesaid decisions, he has contended that the Courts below have committed serious error of law while allowing the decision in earlier eviction suit to operate as *res judicata* in the subsequent title suit.

18. Md. Anis Akhtar, learned counsel, appearing on behalf of the respondents, on the other hand, resisting the submissions made on behalf of the appellant has taken me to Explanation 4 and Explanation 8 of Section 11 of the Code of Civil Procedure, 1908. He has submitted that the issue of genuineness of *Mahadanama* and the sale deed alleged to have been executed by Amriti Devi in favour of the appellant was



extensively gone into the title eviction suit and on the basis of evidence adduced the Court of learned Munsif-I, Darbhanga held the same to be fabricated and collusive. He contends that though the learned Munsif had limited jurisdiction to decide the issue of relationship of landlord and tenant between the parties but the issue of genuineness of *Mahadanama* and the sale deed was heard and finally decided by the Munsif in the eviction suit. In view of Explanation 8 to Section 11 of the Code of Civil Procedure, he contends, the decision in Eviction Suit has rightly been allowed to operate as *res judicata*, in a subsequent suit.

19. He has relied on Supreme Court's decision in case of *Church of South India Trust Assn. Vs. Telugu Church Council (AIR 1996 SC 987)*. He has opposed the move on behalf of the appellant to seek amendment in the plaint at this belated stage for seeking a declaration that the sale deed dated 05.11.1986 executed by Gulabo Devi in favour of the respondent was invalid, illegal and inoperative, without any consideration. He has submitted that the plaintiff opted not to challenge the said sale deed dated 05.11.1986, though it was within his knowledge right from the very beginning and at least from the date he entered appearance in Title Eviction Suit No.



24 of 1988. He has further submitted that the decree in eviction suit attained finality since the appellant selected not to challenge the decree in accordance with the provisions under the Act, despite opportunity having been granted by this Court. He has also submitted that the appellant, from the very beginning has attempted to linger execution of a decree in eviction suit by one way or the other by raising new pleas at different stages. He has submitted that filing of the Interlocutory application, as has been done on behalf of the appellant is nothing but an abuse of the process of the Court. He also submits that the prayer for amendment is apparently barred by law of limitation.

20. Mr. Dhanandra Choubey, now presses the Interlocutory applications being I.A. No. 2647 of 2013 and 3224 of 2013 and has submitted that for proper adjudication of dispute amendment can be allowed at any stage of the suit. He has relied on decisions of this Court in case of *Balmukund Jha Vs. Maina Devi* reported in *1991 (2) PLJR 177* and in case of *Satya Narayan Lal Vs. Smt. Saraswati Devi* reported in *1993(1) PLJR 20* in support of his submission.

21. Pressing I.A. No. 2647 of 2013, Mr. Choubey contends that admittedly the appellant is in possession of the



suit premises and balance of convenience is also in his favour, therefore, prayer for stay of the execution case should be allowed.

22. On perusal of the impugned judgments and decrees of the Courts below, it is vivid that the appellant's suit has been rejected mainly on the principles of *res judicata* in the light of findings recorded by the learned Munsif in Eviction Case No. 24 of 1988. There is no scope of any doubt that the jurisdiction of the learned Munsif in the eviction suit was limited under the provisions of the Act to determine landlord and tenant relationship between the appellant and the respondents. It is evident from the judgment of the Court below that it has extensively quoted the conclusion reached by learned Munsif in eviction suit, for dismissal of the suit, applying the principles of *res judicata*. I have quoted hereinabove, the issues framed in the eviction suit. Two central issues, which were framed by the Court in eviction suit were in respect of relationship of landlord and tenant between the appellant and the respondents and secondly, whether the respondents had *bona fide* necessity of occupation of the premises for their personal use. Issue of title was not framed.

23. Mr. Choubey, learned counsel, in that background,



has rightly relied on Supreme Court's decision in case of ***Tribhuwan Shankar*** (supra), where the Supreme Court after placing reliance on various other decisions has observed that there is difference in exercise of jurisdiction when the Civil Court deals with a *lis* brought before it under the provisions of the Transfer of Property Act and under any special enactment pertaining to eviction on specified grounds. The decision of the Supreme Court in case of **Deva Ram Vs. Ishwar Chand** (supra) may be referred to in this context, Paragraph 23 of reads thus:-

“23. In the previous suit, which was instituted by the respondent, an issue, namely, Issue No.5 was framed on the status of the appellant as to whether they were the tenants of the land in suit under the respondents but in the subsequent suit this issue was not raised as the appellants who were the defendants in the subsequent suits did not plead that they were the tenants under the respondents. What they pleaded was that they were in possession since a long time namely from Samvat 2005 and had, therefore, acquired title by adverse possession. Consequently, in the subsequent suits, the issue which was raised and tried in the previous suit was not raised, framed or tried and no finding, therefore, came to be recorded as to whether the defendants were tenants of the land in suit. It is true that the instant suit which is the subsequent suit, is between the same parties who had litigated in the previous suit and it is also true that the subject matter of this Court, namely, the dispute land, is the same as was involved in the previous suit but the issues and causes of action were



different. Consequently, the basic requirement for the applicability of rule of re judicata is wanting and, therefore, in the absence of pleadings, in the absence of issues and in the absence of any finding, it is not open to the learned counsel for the appellants to invoke the rule of res judicata on the ground that in the earlier suit it was found by trial Court that the appellants were the tenants of the land in dispute under the respondents.”

24. I may also notice the another decision of the Supreme Court's in case of ***Rajendra Tiwary Vs. Basudeo Prasad*** (supra), which too had arisen out of a proceeding under Section 11 of the Act. The Supreme Court in clear terms held that the scope of enquiry in a proceeding under Section 11 of the Act is limited to the question as to whether grounds for eviction of the tenant have been made out under the Act. The Supreme Court held that the question of title of the parties to the suit premises is not relevant, having regard to the width of the definition of the terms ‘landlord’ and ‘tenant’ in Clauses (f) and (h) respectively of Section 2 of the Act. I consider it apt to quote paragraph 7 of the said decision, which is relevant:-

“7. It is relevant that while dealing with the suit of the plaintiffs for eviction of the defendant from the suit premises under clauses (c) and (d) of sub-section(1) of Section 11 of the Act. Courts including the High



Court were exercising jurisdiction under the Act which is a special enactment. The sine qua non for granting the relief in the suit, under the Act, is that between the plaintiffs and the defendant the relationship of 'landlord' and 'tenant' should exist. The scope of the enquiry before the Courts was limited to the question: as to whether the grounds for eviction of the defendant have been made out under the Act. The question of the title of the parties to the suit premises is not relevant having regard to the width of the definition of the terms "landlord" and "tenant" in clauses (f) and (h) respectively of Section 2 of the Act."

25. The Supreme Court further held that a Court under the BBC Act had limited jurisdiction to try suits on the ground specified in the special Act and does not have jurisdiction of an ordinary civil Court.

26. In view of the law clearly laid down by the Supreme Court in case of *Tribhuvan Shankar* (supra), *Rajendra Tiwary* (supra) and *Deva Ram* (supra), I am of the considered opinion that the Courts below have committed serious error of law while dismissing the suit applying the principles of *res judicata*, in the background facts as noted above.

27. The substantial question of law framed by this



Court in its order, dated 22.12.2016 stands answered accordingly.

28. The judgments and decrees impugned in the present second appeal are, accordingly, set aside and the matter is remitted back to the trial Court for deciding the Title Suit No. 125 of 1999 afresh on the basis of evidence adduced on behalf of the parties with reference to their respective pleadings and issues framed.

29. Before I close the present judgment, I must consider two Interlocutory applications being I.A. No. 2647 of 2013 and I.A. No. 3224 of 2013. In I.A. No. 2647 of 2013 filed under Order 41 Rule 5 of the Code of Civil Procedure, 1908, a prayer has been made for staying further proceeding of Eviction Execution Case No. 06 of 1993 till disposal of the appeal. It is noteworthy that the eviction suit was decreed on the ground of personal necessity on 17.11.1992/26.11.1992. The execution case for execution of the decree of eviction is pending for last 25 years. The eviction suit could not proceed because of the pendency of the present second appeal and in view of an order of this Court, dated 03.05.2013, directing maintenance of status-quo in respect of the possession of the suit premises. The said order, dated 03.05.2013, was passed



much before admission of this second appeal upon framing of question of law by a subsequent order, dated 22.12.2016. For the purpose of consideration of said Interlocutory applications, I may refer to Section 12 of the B.B.C. Act, which reads thus:-

“12. Binding nature of the order of the Court on all persons in occupation of the building- Notwithstanding anything contained in any other law, where the interest of tenant, in any premises is determined for any reason, whatsoever, and any order is made by the Court under this Act, for the recovery of possession of such premises, the order shall be binding on all persons who may be in occupation of the premises and vacant possession thereof shall be given to the landlord by evicting all such persons therefrom:

Provided that nothing in this section shall apply to any person who has an independent title to such a premises or 7 (XXX) to tenant who has been inducted with the express written permission of the landlord himself personally.”

30. In view of overriding effect of Section 12 of the Act under which the eviction decree has been passed, I do not feel inclined to allow I.A. No. 2647 of 2013, which is dismissed.

31. Coming to I.A. No. 3224 of 2013 seeking amendment, this is to be noted that the amendments sought



have been taken note of in Paragraph 13 of the present judgment and order. In my view, the application lacks *bona fide*. The execution of sale deed dated 05.11.1986 by Gulaboo Devi in favour of the defendants first party was within the knowledge of the appellant right from the pendency of the eviction suit, which came to be decreed on 17.11.1992. The sole purpose behind seeking such kind of amendment is to thwart the process of execution of the eviction decree.

32. In my view, such indulgence cannot be granted at this stage, also in view of the law of limitation.

33. I.A. No. 3224 of 2013, is, accordingly, dismissed.

34. This is to be noted that the eviction decree has attained finality inasmuch as despite leave having been granted, the appellant did not chose to challenge the eviction decree in accordance with the provisions of the BBC Act. This is also a circumstance why amendment sought should not be allowed.

35. All other Interlocutory applications stand disposed of.

36. In view of the aforesaid, this appeal is allowed. Considering the fact that dispute between the parties started from filing of the execution case in the year 1998, I direct the



learned trial Court to decide the suit within three months from the date of the communication of the present order. The parties shall not be allowed any adjournments unless essentially required, based on the evidence already adduced on behalf of the parties in the suit, from the stage of argument.

36. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

arun/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	27.04.2018
Transmission Date	N/A

