

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No. 87 of 2015

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Shreemati Kanta Devi Kandel W/o Shankar Lal Kandel Resident of Mohalla -
Anant Ram Lane, P.S. - Kotwali, District - Bhagalpur.

.... Defendant/Petitioner

Versus

Shyam Sundar Garodia S/o Late Baijnath Garodia R/o Mohalla - Anant Ram Lane,
Police Station - Kotwali, District - Bhagalpur.

.... Plaintiff/Opposite Party

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Appearance :

For the Defendant/Petitioner : Mr. Ajay Kumar Singh, Adv.

Mr. Sudhanshu Shekhar, Adv.

For the Plaintiff/Opposite Party : Mr. Deepak Kumar Sinha, Adv.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

CAV JUDGMENT

Date: 05-01-2018

This revision petition has been preferred by the defendant-petitioner(hereinafter referred to as defendant) under Section 14 (8) of Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as “B.B.C. Act”) against the judgment dated 26.06.2015 passed by learned Munsif-IIInd, Bhagalpur in Title Eviction Suit No. 03 of 2000 by which and whereunder he decreed the suit directing the defendant to vacate the suit premises and hand over vacant possession of the suit premises to plaintiff-opposite party(hereinafter referred to as plaintiff) within sixty days from the date of judgment.

2. The plaintiff filed above stated Title Eviction Suit



No. 03 of 2000 against the defendant seeking relief for eviction of the defendant from the suit premises fully described at Schedule-A of the plaint on the ground of personal necessity. The case of the plaintiff is that he is absolute owner of the suit premises and defendant was inducted as tenant of the suit premises on the basis of oral Kirayanama at the rate of Rs. 450/- per month and after that the defendant started his business of jewels and ornaments in the aforesaid premises. The defendant paid rent of the suit premises up to February, 1998 and wife of the plaintiff realized the rent and granted receipts thereof on behalf of the plaintiff but since March, 1998 up to December 1999 the defendant did not make payment of rent and accordingly, defaulted to make payment of the rent Since March 1998. Further plaintiff's case is that his one son, namely, Amit Kumar Garodia aged about 21 years is unemployed whereas his another son is separately carrying his own business and has no concern with the affairs of the plaintiff as well as his younger son, namely, Amit Kumar Garodia. The plaintiff is in need of the suit premises so that he could settle his younger son, Amit Kumar Garodia in business and for starting a business for his younger son, the suit premises is most suitable place and the need of the plaintiff cannot be satisfied by partial eviction of the defendant from the suit premises. The plaintiff requested the defendant to vacate the suit premises but he refused to



vacate the suit premises and thereafter, the plaintiff filed the suit for eviction of defendant from the suit premises on the ground of his personal necessity and so far as recovery of unpaid rent is concerned, he kept his right reserve to file a separate suit.

3. The defendant appeared in the aforesaid suit and contested the suit by filing her written statement. The defendant raised ornamental objections in her written statement and, specifically, pleaded that the plaintiff is not the owner of the suit premises and, therefore, he has no locus standi to file the present suit. The defendant also denied the relationship of landlord and tenant between her and plaintiff on the ground that the wife of plaintiff is actual owner of the suit premises and that is why she had filed House Control Case No. 12 of 1998 under Section 10 of the B.B.C. Act against the wife of the plaintiff and in the aforesaid suit, the wife of the plaintiff appeared and contested. She further pleaded in her written statement that she took the suit premises on rent from the wife of the plaintiff and started her business when there was no other shops in the vicinity but subsequently, due to development of the area several shops cropped up and the wife of the plaintiff got constructed 15 shops on holding no. 17 and out of which six shops are still vacant. Again, she pleaded that presently near about eight shops are vacant and alternative accommodation for business of son of plaintiff is available. She



further pleaded that as a matter of fact, the wife of the plaintiff having taken huge amount in Salami and on a higher rent got inducted several tenants into some of the above stated vacant shops. She has also pleaded that near the suit premises two shop rooms in continuity are still vacant and the son of the plaintiff can be adjusted in the aforesaid shop rooms but the plaintiff has been letting out the aforesaid shops to other persons with an object to derive maximum income through the rent. It has further been pleaded through amendment that during pendency of the suit, plaintiff completed all his incomplete and unplastered shop rooms but some of them let out to the tenants. He also pleaded through amendment that elder son of the plaintiff was earlier running his business in one shop room of holding no. 17 but he left Bhagalpur and settled at Suraj, Gujarat and thereafter, the plaintiff's younger son, namely, Amit Kumar started his business of cosmetic goods by occupying the shop which was vacated by elder son of the plaintiff. She also pleaded that claim of the plaintiff is neither bona fide nor in good faith. She has also pleaded that wife of the plaintiff agreed to this point that defendant will have absolute right to continue as tenant of the suit premises so long she goes on making payment of rent or till voluntarily vacates the suit premises and, therefore, the plaintiff has no right to seek decree of eviction on the basis of his pleadings. The defendant has also pleaded that when



plaintiff refused to receive the rent, she paid rent of the month of March, 1998 and afterwards by money orders but the plaintiff refused to receive the aforesaid money orders. On the basis of aforesaid pleadings, the defendant made prayer for dismissal of the suit of the plaintiff.

4. The learned court below, on the basis of pleadings of the parties, framed altogether six issues and also got recorded the evidences of the parties. Both parties got exhibited their respective documents. The court below while dealing with the issue no. 6 held that there is relation of landlord and tenant between the plaintiff and defendant. Similarly, the court below while dealing with the issue no. 3, 4 and 5 came to conclusion that the plaintiff requires the suit premises in good faith for personal use and is entitled to get a decree for eviction of the defendant from the suit premises.

5. Learned counsel appearing for the defendant challenged the impugned judgment arguing that plaintiff failed to prove that he was owner of the tenanted premises and as a matter of fact, in course of trial, the defendant got exhibited some documents to show that owner of tenanted premises was Uma Devi Garodia, who happens to be wife of plaintiff. He further submitted that the defendant had lodged a proceeding under Section 10 of the B.B.C. Act against the above stated Uma Devi Garodia and in the aforesaid



proceeding, Uma Devi Garodia appeared and accepted that she was owner of the tenanted premises. He further submitted that in view of above stated evidence, it is obvious that plaintiff had no right to file this suit but learned court below failed to appreciate the evidence in its right perspective. Learned counsel further submitted that plaintiff could not succeed to prove his personal necessity as he was failed to prove that suit premises is required to him in good faith and he is in bona fide need of the suit premises. He submitted that mere desire of the landlord is not sufficient to pass a decree for eviction unless it is proved that requirement of the landlord is in good faith and he has no any other alternative accommodation to fulfil his need. He further submitted that learned court below failed to take note of the aforesaid fact and also failed to analyze the evidences available on the record to get him satisfied as to whether the need of the plaintiff could be fulfilled by partial eviction of the suit premises. He further submitted that the learned court below has not properly appreciated the evidences available on the record and that is the reason the learned court below came to wrong conclusion. He relied upon decision of **Smt. Asha Devi & Ors. vs. Shyam Sunder Tibrewal** reported in 2013(2) BBCJ 626 wherein a co-ordinate Bench of this court has held that *“Under Section 11(1) (c) of the B.B.C. Act, an eviction suit on the ground of personal necessity can only and solely be brought by owner of a property.”*



He also relied upon decision of **Martin & Harris Pvt. Ltd. vs. Shri Vardhaman Nagar Society** reported in 2017(3) PLJR 611 wherein a co-ordinate Bench of this Court has held that *“Only the desire per se of the landlord cannot be a ground for eviction because there is distinction between desire and need and unless it is proved that need of the landlord is dire or absolute, no eviction decree can be passed only on mere desire of the landlord.”* He also relied upon decision of **Tribhuvanshankar vs. Amrutlal** reported in (2014) 2 SCC 788 wherein the Hon’ble Supreme Court held that *“Existence of landlord-tenant relationship between the parties sine qua non for grant of decree of eviction, particularly, in the cases where eviction suit is filed under Rent Control Act.”* He also relied upon decision of **Smt. Shakuntala Devi vs. Sajjan Kumar Bajoria** reported in 2013(3) PLJR 395 wherein a co-ordinate Bench of this court held that *“If the suit for eviction is filed by the landlord on the ground of personal necessity, the landlord has to prove that his personal necessity is genuine and bona fide.”* He also submitted that learned court below wrongly observed that partial eviction was not possible, particularly, in the circumstance, when there was sufficient evidence on record to show that the partial eviction of the suit premises could satisfy the need of the plaintiff.

6. On the other hand, learned counsel appearing for the plaintiff submitted that the learned court below rightly held that plaintiff is owner of the suit premises and there is relation of landlord



and tenant between the plaintiff and defendant. He further submitted that no doubt, the rent receipts were issued under the signature of wife of the plaintiff but as a matter of fact, the wife of the plaintiff was only authorized to collect rent from the defendant and she is not the owner of the suit premises and, therefore, being owner of the suit premises the plaintiff has every right to bring the suit for eviction of the defendant from the suit premises on the ground of his personal necessity. He further submitted that learned court below has properly dealt with the evidences available on the record and minutely observed all the pros and cons of the case and thereafter, came to right conclusion. He further submitted that there is nothing in the impugned judgment on the basis of which this Court could interfere into the impugned judgment. He also submitted that this Court, while exercising revisional jurisdiction vested under Section 14 (8) of the B.B.C. Act, no doubt, has wider power than under Section 115 of the C.P.C. but it does not mean that this Court can stretch its power so much as to sit in appeal. Learned counsel appearing for the plaintiff, too, relied upon decision of **Smt. Shakuntala Devi vs. Sajjan Kumar Bajoria (Supra)**. He also relied upon decision of **Savitri Sahay vs. Sachidanand Prasad** reported in 2003(1) PLJR (SC) 171 wherein the Hon'ble Supreme Court has held that *"If there are two or more premises the landlord could choose which one would be preferable to*



him/her and the tenant cannot question such preference and furthermore, the landlord is neither required to keep his other premises vacant during pendency of the eviction suit nor can be forced to occupy other premises which may become available.”

7. Having heard the contentions of both the parties, I went through the record along with lower court record. The plaintiff claims himself to be owner of tenanted shop whereas defendant denies the aforesaid pleading and states that Uma Devi Garodia, the wife of plaintiff, is owner of the tenanted premises and it was Uma Devi Garodia, who inducted him as tenant into the tenanted shop. The defendant got exhibited rent receipts said to be executed by Uma Devi Garodia and also got exhibited the order passed by the controller in a proceeding initiated under Section 10 of the B.B.C. Act. On the basis of aforesaid documents as well as oral evidence of the witnesses, the defendant claimed that Uma Devi Garodia, wife of the plaintiff is owner of the tenanted premises. The learned court below dealt with the aforesaid dispute in issue no. 6 and came to conclusion that plaintiff is owner of the tenanted premises and his wife, namely, Uma Devi Garodia had issued rent receipts in the capacity of agent of her husband. Section 10 of the B.B.C. Act provides a procedure for tenant to seek relief, if without just or sufficient cause a landlord cuts off or withholds any of the amenities enjoyed by the tenant. Admittedly, the defendant got initiated a proceeding under Section 10 of the B.B.C.



Act and in the aforesaid proceeding, the wife of the plaintiff was made opposite party. The plaintiff has been examined in this case and he has admitted the aforesaid fact in his deposition. He also admitted that in the aforesaid proceeding, he was doing pairvi on behalf of his wife. It is an admitted position that in the aforesaid proceeding, the plaintiff was not made party.

8. Here, I would like to refer Section 2(f) of the B.B.C. Act which defines the word “landlord” and says that “Landlord”; includes the person who for the time being is receiving or is entitled to receive, the rent of the building, whether on his own account or on behalf of another, or on account or on behalf of for the benefit of himself and others or as an agent, trustee, executor, administrator, receiver, guardian or who would so receive the rent, to be entitled to receive the rent, if the building were let to a tenant;

9. Therefore, it is obvious from the aforesaid definition of landlord that under this Act, the word “landlord” includes agent etc. However, there is exception in Section 11 of the B.B.C. Act which says that for the purpose of Section 11 of the Act, the word landlord shall not include an agent referred to in Clause f of Section 2. It is clear from the above stated provisions that a proceeding under Section 10 of the B.B.C. Act can be initiated not only against the owner but also against the agent of the owner. Therefore, in the aforesaid



circumstance, mere initiation of proceeding under Section 10 of the B.B.C. Act against the wife of plaintiff is not sufficient to show that wife of plaintiff is owner of the tenanted premises. The learned court below has discussed the evidences in this regard and rightly held that the plaintiff is owner of the tenanted house.

10. It is an admitted position that the defendant is tenant and he only disputes his relationship as tenant with plaintiff but he admits his relationship as tenant with wife of the plaintiff. However, when this court finds that plaintiff is owner of the tenanted premises, then there is no scope for the defendant to dispute his relationship as landlord and tenant with plaintiff. Therefore, in my view, the learned court below has rightly held that there is relationship of landlord and tenant between the plaintiff and defendant.

11. The issue regarding bona fide requirement of the plaintiff has been discussed by the court below while discussing issue no. 3, 4 and 5 and all the aforesaid issues were found to be interlinked. The learned court below came to conclusion that need of the plaintiff was bona fide and in good faith as the tenanted premises was required to the plaintiff so that he could make available the tenanted premises to his son who was unemployed. The evidences available on the record go to show that almost all the witnesses of plaintiff and defendant have accepted, at least, one thing that at the time of filing of



present suit, the younger son of the plaintiff had no independent work rather he used to sit at the shop of his father. Therefore, it is obvious that the plaintiff was in need of tenanted premises so that he could settle his younger son. No doubt, the defendant claimed that several other shops were lying vacant in the market of the plaintiff but could not succeed to prove the aforesaid fact. No doubt, mere desire of the landlord is not sufficient to pass a decree of eviction on the ground of personal necessity but in the present case, the plaintiff has proved that his need is bona fide and, therefore, it cannot be said that there is only desire of the plaintiff to get the suit land vacated. The learned court below has discussed all the above stated pros and cons and came to conclusion that other accommodations are not available and, therefore, except the tenanted premises, the plaintiff has no other alternate for settling his son in business. No doubt, the issue of partial eviction has not been framed by the court below but it would appear from perusal of the record as well as impugned judgment that both parties have not only pleaded regarding the possibility of partial eviction but also adduced evidence in respect thereof. It would also appear from perusal of the impugned judgment that the learned court below discussed the aforesaid issue and came to conclusion that partial eviction will not fulfil the need of the plaintiff.

12. Undisputedly, under Section 14 (8) of the B.B.C.



Act, the court has wider power than the power vested in court under Section 115 of the C.P.C. but ordinarily court interferes into the findings of the court below while exercising the power vested under Section 14 (8) of the B.B.C. Act, if there is perversity into the impugned order or the finding of the court below is completely against the evidences available on the record but I do not find any illegality or perversity into the impugned judgment.

13. Therefore, on the basis of aforesaid discussions, I do not find any ground to interfere into the impugned judgment dated 26.06.2015 and accordingly, this revision petition stands dismissed and the impugned judgment is, hereby, confirmed.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	A.F.R.
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