

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18408 of 2014

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Ram Babu Prasad Son of Sri Krishna Prasad Resident of Village, P.O. & P.S. -
Pakridayal, District - East Champaran at Motihari.

.... Petitioner/s

Versus

Rajendra Prasad Son of Late Shukhal Sah Resident of Village, P.O. & P.S. -
Pakridayal, District- East Champaran at Motihari.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.S.Dwivedi, Sr. Advocate
Mr. Shailendra Kumar Dwivedi, Advocate.
For the Respondent/s : Mr. Kumar Uday Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 02-05-2018

This application has been filed by the defendant of Eviction
Suit No.04 of 2009 pending in the Court of Munsif, Sikrahana at
Motihari, East Champaran whereby and whereunder the amendment
petition filed for amendment of written statement was rejected.

2. Heard learned counsel for the petitioner and the
respondent.

3. The respondent filed the aforesaid Eviction Suit before
the court below seeking a decree for eviction of the petitioner on the
ground of personal necessity. The respondent/plaintiff in his plaint
inter-alia has contended that one Khublal Sah was the owner of the
land. He had acquired 6 kathas and 16 dhurs of land as per registered
sale deed dated 04.07.1956. He died leaving behind two sons, namely,



Ramashish and Acheylal. Ramashish had a son namely, Bhagwan Sah. As per partition among the heirs of Khublal Sah, half share to the extent of 3 kathas 8 dhurs was allotted to Bhagwan Sah. After constructing shop and verandah over the said land, he let out the same to the defendant at a monthly rental of Rs.500/- in which the petitioner/defendant is running a jewelry shop. After the death of Bhagwan Sah, he used to pay rent to one of his son, namely, Santosh Kumar. On partition among the heirs of Bhagwan Sah, the disputed property fell in the share of Santosh Kumar who sold the same to the plaintiff as per registered sale deed dated 24.02.2009. The defendant (petitioner) paid rent at the rate of Rs.500/- to the plaintiff. The respondent/plaintiff having been need of suit premises filed the eviction suit against the petitioner. The petitioner appeared and filed written statement wherein, he inter-alia has contended that there was no relationship landlord and tenant between the parties. He neither accepted the respondent as his landlord nor paid rent to him at any point of time. The petitioner/defendant further contended that he had taken land from Sri Bhagwan Sah and constructed shop and verandah after expending handsome amount. He had given an amount of Rs.51,000/- in advance besides meeting the expenses in making construction which comes to the tune of Rs.41,000/- and thus, a sum of Rs.92,000/- fell due against Sri Bhagwan Sah. During the



pendency of the suit, the petitioner purchased 7 ½ dhurs land for a total amount of Rs.10,00000/- from the widow of Bhagwan Sah by virtue of registered sale deed dated 03.02.2014. After the said purchase, the petitioner filed a petition to amend the written statement in order to incorporate the subsequent event as regards purchase of 7 ½ dhurs land from one of the co-sharer in the said premises.

4. Learned counsel for the petitioner submitted that the need of proposed amendment arose on account of purchase by the petitioner during the pendency of the suit. The defendant has become the owner of the suit premises after the purchase from the widow of Bhagwan Sah and so this fact is necessary to be pleaded in the written statement.

5. The learned counsel for the respondent on the other hand submits that the case pending before the lower court is an eviction suit on the ground of personal necessity. The defendants have already filed written statement and the suit has to be decided on the basis of relationship of landlord and tenant and the personal necessity of the plaintiff. The learned counsel in support of his contention has cited a ruling reported in the case of **Rajendra Tiwary vs Basudeo Prasad & Anr** reported in **AIR 2002 SC 136** wherein the Hon'ble Apex Court at para-7 has observed as follows:-

“7. It is evident 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 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.”

6. It has been further submitted that the petitioner after purchasing the said land has filed a Title Suit No.1257 of 2014 before the Court of Sub Judge, Motihari, East Champaran for declaration of his title and possession over two decimals of land of plot no.1994 purchased by the respondent/plaintiff by virtue of registered sale deed dated 24.02.2009. The petitioner has sought relief for declaring the said sale deed of the respondent as fraudulent, illegal and void. The court below while rejecting the amendment of the petitioner has observed that the claim of the petitioner/defendant is also hit by Section 52 of Transfer of Property Act as he has purchased the suit property along with other property from the mother of the vendor of the plaintiff/respondent who had no title over the same. The petitioner/defendant has no right to go over the land in view of the fact that he has filed a suit for declaration of his title. The plaintiff has already closed his evidence and defendant has examined four



witnesses till the date of filing of amendment petition. The amendment if allowed at this stage it would cause serious prejudice to the respondent/plaintiff as in any event inquiry into title of defendant on the basis of his sale deed which is hit by lis pendense is beyond the scope of the court exercising jurisdiction under the Bihar Building Control Act. The defendant has already filed a title suit for determination of his title on the basis of his sale deed in question.

7. In view of above facts, the order rejecting the amendment petition does not require any interference. This application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	AFR
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