

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.24 of 2018

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Shailendra Jha @ Shailendra Kumar Jha, Son of Surendra Jha, resident of Village- Bairginia, P.S. Dhaka, District- East Champaran.

... .. Appellant/s

Versus

Laxmi Sah, S/o Late Gopaljee Sah, resident of Village- Pachpakari, P.S. Dhaka, District- East Champaran, Motihari.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Shashi Shekhar Dwivedi, Sr. Advocate

Mr. Alok Kumar Jha

For the Respondent/s : Mr. U.S. S. Singh

Md. Harun Quareshi

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 27-11-2018

Heard Mr. Shashi Shekhar Dwivedi, learned Senior Counsel for the appellant and Mr. U.S.S. Singh, learned Counsel for the respondent.

2. The present second appeal has been placed for hearing under Order 41 Rule 11 of the Civil Procedure Code.

3. The defendant, in an eviction suit, is the appellant, in the present second appeal, who has put to challenge the judgment and decree dated 16.06.2017, passed by learned Additional District Judge-IX, East Champaran, Motihari, in Title Appeal No. 96 of 2014/148 of 2014, whereby he has affirmed the judgment and decree dated 17.11.2014 and 01.12.2014, passed by learned Civil Judge, Sikrahana at Motihari, East Champaran in Eviction Suit No. 01 of 2008.



4. The Suit was filed by the respondent for decree of eviction and recovery of the arrears of rent to the tune of Rs. 2600/- in respect of suit property in the nature of shop (80 square ft.). According to the plaintiff's case, the said premises was allotted to him in a partition which he had let out to the defendant on rent of Rs. 300/- in the year 2005. From the month of January, 2007, the defendant/appellant is said to have stopped making payment of rent leading to institution of the eviction suit, on the ground of non-payment of rent.

5. The appellant-defendant disputed the very existence of relationship of landlord and tenant and rather asserted that one Binod Shah was his landlord to whom he was paying rent.

6. It appears from the judgment and decree of the court below that the plaintiff had proved Exts. 6 and 6/A to support his plea of existence of relationship of landlord and tenant, which was the application filed by the appellant/defendant before the licensing authority for grant of licence to run a medical shop. In the said application form, the defendant had mentioned the details of the suit premises and had admitted the plaintiff/respondent to be his landlord. The said exhibits have been proved in course of trial. The court below rejected the objection of the appellant/defendant over existence



of relationship of landlord and tenant. Consequently, the courts below have held the appellant to be defaulter in payment of rent.

7. Mr. Shashi Shekhar Dwivedi, learned Senior Counsel, appearing on behalf of the appellant, has attempted to persuade this Court that the appellate court has committed serious error by not looking into the entire evidence adduced at the trial. He has submitted, referring to the judgment of the first appellate court, that based on said Exts. 6 and 6/A courts below have held that there existed the relationship of landlord and tenant between the petitioner and defendant, without going into other evidence available on record.

8. He submits that perversity in the judgment of the first appellate court raises a substantial question of law to be decided in the present second appeal.

9. I have perused the judgments of the trial court and the appellate court. This is not in dispute that the plaintiff had filed an application seeking licence for running a medical shop in the suit premises, in which he had described the plaintiff to be his landlord. The said document having been proved at the trial and not disputed, the finding recorded by the first appellate court, of existence of relationship of landlord and tenant, cannot be considered to be perverse. After having held that their existed



relationship of landlord and tenant, the courts below have rightly held that the appellant was defaulter in payment of rent and, therefore, the plaintiff/defendant was entitled for decree of eviction.

10. In my view, the present second appeal does not involve any substantial questions of law, which is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	.11.2018
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