

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.52 of 2018

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1. Bibi Nurjeha, W/o Late Md. Salim,
 2. Md. Salludin, S/o Late Md. Salim,
 3. Md. Sirazudin @ Md. Parvez @ Siraj, S/o Late Md. Salim,
 4. Md. Tajuddin, S/o Late Md. Salim,
 5. Md. Kamaluddin, S/o Late Md. Salim,
 6. Md. Sahabudin, S/o Late Md. Salim,
 7. Naj Washima Parvin, D/o Late Md. Salim, All resident of Village-Madhepura Purani Bazar, Ward No.6, New Ward No.10, P.S. and District- Madhepura.

.... Appellant/s

Versus

1. Bibi Sabana, W/o Late Md. Islam,
2. Haidar Ali,
3. Tipu Sultan, Both minor sons of Late Md. Islam,
4. Md. Kudus, S/o Late Noor Mohammad, all by caste Muslim, by profession Cultivation, Resident of Madhepura, Ward No.4/8 Madhepura, Municipality, P.S. and District- Madhepura, Respondent Nos.2 and 3 are minors and they live under guardianship of Md. Kudus, Grand father of the minors.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Gopal Kumar Jha
For the Respondent/s : Mr. Jitendra Kishore Verma, Advocate
Mr. Nafisuzzoha, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

5 21-06-2018 The defendants in an Eviction Suit are the appellants in the present Second Appeal, under Section 100 of the Code of Civil Procedure, 1908, who are aggrieved by the judgment and decree dated 23.11.2017 and 06.12.2017 respectively passed by learned Additional District Judge-I, Madhepura, in Title Appeal No.5 of 2012, whereby he has affirmed the judgment and decree dated



30.01.2012 and 08.02.2012 passed in Eviction Suit No.40 of 2008 by the learned Civil Judge-I (Junior Division), Madhepura.

It appears from the impugned judgments and decrees that the Courts-below have concurrently found existence of landlord tenant relationship between the plaintiffs and the defendants. It appears that the defendants themselves admitted that they were tenant of the vendor of the plaintiff. It is, however, their defence that the plaintiffs' vendor had executed an agreement to sell the premises in question. It is also the case of the defendants/appellants that before filing of the Eviction Suit, they had filed title suit for specific performance of contract, registered as Title Suit No.179 of 2006, which pending in the Court of Civil Judge-I (Junior Division), Madhepura, against the plaintiffs vendor.

I have heard Mr. Gopal Kumar Jha, learned counsel appearing for the appellants, and Mr. Jitendra Kishore Verma, learned counsel, representing the respondents-plaintiffs.

Mr. Jha, learned counsel appearing for the appellants has submitted that in view of execution of agreement to sell by the plaintiffs' vendor in favour of the defendants, relationship of landlord and tenant between the plaintiffs' vendors and defendants had ceased. He accordingly contends that the defendants could not



have been held by the Courts-below, to be the tenants of the plaintiffs on the ground that he acquired the suit property from the vendor when the defendants were tenants.

I do not find any merit in the submission, which is being made on behalf of the appellants. Mere execution of an agreement to sell in favour of the defendants, even if the same is admitted, cannot amount to transfer of title in their favour. The plea taken on behalf of the defendants has rightly been rejected by the learned Courts below.

Learned counsel for the plaintiffs/respondents has pointed out that even the agreement to sell was not brought on record before the Courts below by the defendants and in that background the plea taken by the appellants is absurd.

Be that as it may, in my opinion, no substantial question of law arises in the second appeal. The second appeal, thus, does not deserve admission and is accordingly dismissed under Order XLI Rule 11 of the Code.

Interim stay granted by this Court stands vacated.

(Chakradhari Sharan Singh, J)

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