

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.25035 of 2013

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Shambhu Kumar @ Shubham Kumar Son Of Late Surendra Prasad Resident Of
Mohalla Moulviganj, P.S. Town District Darbhanga

.... Petitioner/s

Versus

1. Most. Sushama Devi Widow Of Late Basudeo Panjiyar Resident Of Mohalla Moulviganj, P.S. Town District Darbhanga
2. Dular Panjiyar @ Shankar Panjiyar Son Of Late Basudeo Panjiyar Resident Of Mohalla Moulviganj, P.S. Town District Darbhanga
3. Kartik Panjiyar Son Of Late Basudeo Panjiyar Resident Of Mohalla Moulviganj, P.S. Town District Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sukumar Sinha, Sr. Advocate
Mr. Abinash Kumar, Advocate

For the Respondent/s : Mr. Vinay Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 09-05-2018

This writ application has been filed for setting aside the judgment dated 23.08.2013 passed by learned Additional District Judge, Darbhanga in Eviction Appeal No.28 of 2003 whereby and whereunder the eviction appeal filed by the petitioner was allowed and the case was remanded to the trial court to give finding on the point of title after considering Ext.5 and Ext.D.

2. Heard learned counsels for the petitioner and the respondents.

3. The Eviction Suit No.01 of 1999 was filed by the plaintiff-petitioner for vacating the suit premises on the ground of



default in making payment of rent besides the other reliefs. The plaintiff filed the suit claiming to be the owner and landlord of the suit premises described in Schedule I of the plaint. The said premises was purchased by the plaintiff as per registered sale deed dated 04.09.1979 executed by defendant in his favour. The plaintiff was put in possession and after getting his name mutated, the plaintiff paid rent to the State of Bihar. The suit was contested by the defendant and it was dismissed holding that the plaintiff has not proved the relationship of landlord and tenant between the parties. The plaintiff being aggrieved by the said judgment, filed Eviction Appeal No.28 of 2003. The said appeal was heard and as per judgment dated 23.08.2013, it was allowed. The judgment of learned Munsif was set aside and the matter was remanded for fresh consideration. The lower appellate court directed the trial court to give finding as regards title of plaintiff-appellant in the light of Ext.5 and Ext. D.

4. After hearing both sides, I perused the judgment of both the courts below. The plaintiff-petitioner claims title on the basis of sale deed executed by the defendant. The plaintiff proved Ext.5 which is certified copy of sale deed dated 04.09.1979 with respect to disputed premises executed by defendant in favour of Surendra Prasad, who was father of present petitioner. The lower appellate court has further referred Ext.D which was filed by the defendant.



The Ext.D is certified copy of Mahadanama (deed of agreement) dated 04.09.1979 executed by the father of plaintiff in favour of Basudeo Panjiyar (the husband and father of respondents).

5. On going through the judgments of both the courts below, I find that the lower appellate court has passed the judgment without applying its judicial mind to the fact and circumstances of the case and without considering the relevancy of the documents Ext.5 and Ext.D which have been referred to by the court below. The plaintiff has filed the eviction suit on the basis of Ext.5 itself which is registered sale deed dated 04.09.1979. Another document, which has been relied by the defendant, is Ext.D which is registered deed of agreement alleged to be executed by the father of plaintiff in favour of the husband and father of defendants-respondents. Both the parties have adduced their evidence in the light of their respective claim and documents. The lower appellate court has not considered the pleadings and evidence of the parties and remanded the matter to the court below. The eviction appeal is continuation of eviction suit and the court of appeal has full authority and jurisdiction to decide all the questions of facts and law and if needed also to frame issue or to take any evidence, which it deems necessary for proper adjudication of the case. The lower appellate court has thus failed to discharge its legal duties in remanding the case without applying its mind and



without taking necessary step in the appeal which ought to have been taken.

6. In view of above discussions, the impugned judgment of the lower appellate court is not sustainable and is hereby set aside and the lower appellate court is directed to decide the appeal in accordance with law after considering all the documents, both oral and documentary, which are already on record. This writ application is accordingly allowed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.05.2018
Transmission Date	

