

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.11 of 2019

Ajay Kumar, Aged about 43 years, Male, Son of Late Prem Chand Prasad Kashyap, R/o Mohalla-Kuran Sarai, P.O. + P.S.-Sasaram, District-Rohtas

... .. Appellant/s

Versus

1. Devidin Prasad S/o Antu Sah R/o Mohalla-Chamar Takia, P.O. and P.S.-Sasaram, District-Rohtas
2. Most. Kusum Kunwar Wife of Late Raghochand Prasad R/o Mohalla-Chamar Takia, P.O. and P.S.-Sasaram, District-Rohtas
3. Kapil Kumar Gupta S/o Late Raghochand Prasad R/o Mohalla-Chamar Takia, P.O. and P.S.-Sasaram, District-Rohtas
4. Sandeep Kumar Gupta S/o Late Raghochand Prasad R/o Mohalla-Chamar Takia, P.O. and P.S.-Sasaram, District-Rohtas
5. Vikas Kumar Gupta S/o Late Raghochand Prasad R/o Mohalla-Chamar Takia, P.O. and P.S.-Sasaram, District-Rohtas
6. Most. Sarita Kunwar Wife of Late Shankar Prasad Gupta R/o Mohalla-Chamar Takia, P.O. and P.S.-Sasaram, District-Rohtas
7. Deepak Kumar Gupta S/o Late Shankar Prasad Gupta R/o Mohalla-Chamar Takia, P.O. and P.S.-Sasaram, District-Rohtas
8. Prakash Kumar Gupta S/o Late Shankar Prasad Gupta R/o Mohalla-Chamar Takia, P.O. and P.S.-Sasaram, District-Rohtas
9. Akash Kumar Gupta (minor) S/o Late Slakar Prasad Gupta through Sarita Kunwar Guardian and natural mother R/o Mohalla-Chamar Takia, P.O. and P.S.-Sasaram, District-Rohtas

... .. Respondent/s

Appearance :

For the Appellant	:	Mr. Waliur Rahman, Advocate
For Res. No.1	:	Mr. Jitendra Prasad Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

7 11-07-2019 Heard Mr. Waliur Rahman, the learned counsel appearing on behalf of the appellant.

The appellant has filed this second appeal against the judgment and decree passed by the learned Additional District and Sessions Judge-VII, Sasaram at Rohtas in Eviction Appeal Case No.56/2011/C.I.S. No.90/2013 by which the judgment and decree



passed in Eviction Case No.3 of 1998 on 29.04.2011 and 06.05.2011 has been affirmed and appeal is dismissed.

The plaintiffs filed the suit against the defendant, Premchand Prasad for vacating shop no.3 and 4 and for realization of arrears of rent from the year 1996 till June 1998. The trial court held that the defendant-appellant is defaulter in payment of rent and the defendant-appellant did not pay rent to the landlord for more than two months. The trial court further held that the plaintiffs required the suit premises for his personal necessity. The appellate court upheld the judgment and affirmed the finding of the trial court.

Mr. Waliur Rahman, the learned counsel for the appellant submits that the trial court as well as the appellate court held that the plaintiffs-respondents required the lands for his bona fide necessity but did not give any finding whether the partial eviction of the suit premises would be suffice for the necessity of the respondents-plaintiffs. It is further submitted that even on the point of default in making payment, the trial court gave a cryptic finding in para 8 of the judgment and without appreciating the evidence on record came to the conclusion that in view of Schedule C annexed with the plaint, the defendant appears to have defaulted in payment of rent since month of June, 1996. It is further submitted that the appellate court modified the order in judgment with regard to the rate of rent and held that the defendant-appellant was paying rent @ Rs.216/- per month but did not appreciate the fact that the appellant was not a



defaulter rather the appellant paid rent to Omnath Prasad whenever he used to come and on this fact the appellant cannot be said to be defaulter in payment of rent.

Having considered the submissions of the learned counsel for the appellant and on perusal of the records, it is evident that the plaintiffs purchased the entire lands mentioned in Schedule A of the plaint from one Ramji Sah on 15.03.1996. There are many shops out of which the shops mentioned in Schedule B of the plaint were under tenancy of the defendant. The defendant had taken the rent from Ramji Sah. The plaintiffs informed the defendant-tenant about the purchase of the land and the defendant accepted the status of the plaintiffs and agreed to pay rent of Rs.600/- per month. The trial court has held that the plaintiffs are required the suit premises for the purpose of running business and at the same time, the trial court also held that the defendant defaulted in making payment continuously for more than two months. The defendant also stated that he was paying rent to Omnath Prasad and from February, 1996 to February, 1998, the total rent comes to Rs.5400/- out of which he had already paid Rs.1900/- to Omnath Prasad. When he went to pay Rs.3500/- to Omnath Prasad, he refused to accept the rent and thereafter the defendant sent the arrears of rent through Money Order to Omnath Prasad but Omnath Prasad also refused to receipt the Money Order. Omnath Prasad was agent of Ramji Sah, the former landlord and Omnath Prasad never collected the rent as owner of the suit premises.



The defendant himself admitted the fact that the payment of rent from the month of February, 1996 to February, 1998 was not made. The appellate court also found that the defendant defaulted in making payment of rent and the rate of rent was Rs.216/- per month as there was no material on record to show that the rent was enhanced to Rs.600/- per month. It is evident and crystal clear that appellant admitted that he did pay rent to the landlord from February, 1996 even after his admission that plaintiff-defendant purchased the suit land from Ramji Sah, the vendor of the plaintiff. Once the tenant is found defaulter, the question of giving finding on partial eviction becomes irrelevant as the tenant is liable to be evicted on the ground of defaulter itself. Thus, I find that the court has rightly held that the appellant-defendant defaulted in making payment and I do not find any substantial question of law arises for consideration in this second appeal.

Consequently, the second appeal is dismissed.

(Prabhat Kumar Jha, J)

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