

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.69 of 2016

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Md. Zasim Akhtar @ Jasim, son of Md. Firoz Ahmad, resident of village,
Bardaha, P.S. Bisfi, District, Madhbani

..Defendant Petitioner/s

Versus

1. Sarfaraz Ahmad, son of late Md. Khurshid
2. Faiz Ahmad
3. Faisal Ahmad , All sons of late Khurshid
4. Noor Jahan Begam, wido of late Md. Khurshid
5. Husan Ara Begam, w/o Riyaz Haque
6. Raushan Ara Begam wife of Parwez Ahmad
7. Sobham Ara, All daughters of late Md. Khurshid
8. Azfa Begam, wife of late Md. Khurshid
9. Md. Umar
10. Md. Parwez Ahmad
11. Faiz Ahmad, All sons of late Md. Khurshid
All are residents of village, Bardaha, P.S. Bisfi, District, Madhubani

... plaintiff .. Opp. Parties

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Appearance :

For the Petitioner/s : Mr. Bhupendra Narain Sinha
Mr. Ahailendra Kumar
Mr. Saket Kumar, Advocates

For the Respondent/s : Mr. K. N. Choubey, Sr. Advocate
Mr. Shankar Kumar,
Mr. Binod Kumar Mishra, Advocates

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 14-11-2019

Heard parties.

2. This civil revision petition has been filed under the provisions of Bihar Building (Lease, Rent & Eviction) Control Act, 1982 (hereinafter referred to as 'the Act') to evict the defendant on ground of personal necessity by the summary procedure under section 14 of the Act.

3. It has been stated in the plaint that the land measuring 1 katha 15 dhur stood in the name of Bibi Sabja



Khatoon who had purchased the same through various sale deeds from various vendors and constructed 25 rooms three storied building with all amenities. However, she settled in England and executed the power of attorney in favour of her son Yasuddin who executed sale deed in favour of plaintiff and pursuant to said sale deed plaintiff became the land owner of the suit premises.

4. It has been further stated in the plaint that defendant was a tenant under the original land owner Bibi Sabja Khatoon on payment of Rs. 2,500/- as rent per month and defendant was running his clinic. The defendant used to regularly pay the rent to the original landlord Bibi Sabja Khatoon and above property of Bibi Sabja Khatoon was purchased by plaintiff and plaintiff became the landlord and owner of the suit property.

5. Plaintiff asked the defendant to pay the rent of the suit premises to the plaintiff after purchase of suit premises but defendant refused to pay any rent.

6. Plaintiff is a businessman and required the premises for his bonafide personal necessity as such gave a legal notice to the defendant in May, 2010 to vacate the suit premises and on refusal of the defendant to vacate the premises, the present suit was filed by the plaintiff for eviction of defendant on ground of



personal necessity by summary procedure under Section 14 of the Act.

7. The defendant appeared and filed his written statement and denied the claim of the plaintiff and denied relation of landlord and tenant and claimed that Bibi Sabja Khatoon had agreed to sale the suit premises to the father of defendant on a consideration amount of Rs. 7,00,000/- and in March, 2005 part payment of Rs. 5,00,000/- was made to her for which an agreement for sale of the suit premises was entered between the parties in which Bibi Sabja Khatoon has admitted to have received Rs. 5,00,000/- as part payment on 12.03.2005. The husband of Bibi Sabja Khatoon was a witness and thereafter Bibi Sabja Khatoon left for England and finally sale deed was to be executed after payment of remaining 2,00,000/- and he also deposited Rs. 2,00,000/- in her Bank account as per her instruction but Bibi Sabja Khatoon never came to execute the sale deed for which the father of the defendant had filed title suit being Title Suit No. 10/2007 for specific performance of contract which is still pending before the Court.

8. On the basis of rival pleadings of the parties, the trial Court framed nine issues for its determination among which core issues are issue no. 7 and issue no. 8. Issue no. 7 is



whether there is relation of landlord and tenant between the parties and issue no. 8 is whether the plaintiff requires the suit premises in good faith for his personal necessity.

9. In support of his case, the plaintiff has examined six witnesses, witness no. 1 is Md. Khurshid, witness no. 2 is Kesar Alam, witness no. 3 is Md. Nasim, witness no. 4 is Subash Chandra Mishra, Witness No. 5 is Chandra Kumar Das and witness no. 6 is Deo Narayan Lal Suman, who have deposed in support of plaintiff. Plaintiff has also produced four documentary evidence which has been marked as exhibits by the court below. Ext. A is sale deed dated 2.12.2009. Ext. B is rent receipt. Ext. C is the legal notice and Ext. D is copy of plaint of Title Suit No.10/2007.

10. Defendant has also adduced eight witnesses, witness no.1 is Ravishankar Kumar Jha, witness no.2 is Jakki Imam, witness no.3 is Sahkir, witness no.4 is Md. Anjar, witness No.5 is Md. Fakruddin, witness no.6 is Jasim Akhthar, witness No.7 is Nasim Ahmad and witness no.8 is Sanif Khan. Witness no.1 is formal witness whereas others are material witnesses. Documentary evidence have also been produced on behalf of the defendant which have been marked as exhibits by the trial court. Unregistered agreement dated 1.10.2007, unregistered



agreement dated 1.10.2012, unregistered agreement dated 22.07.2012, unregistered agreement dated 23.09.2007 are marked as Exhibit-A to A-4. Ext. B is the articles purchased by the defendants. Ext. C is receipt of deposit in bank of India. Ext. D is the certified copy of Title Suit No.10/07. Ext. E is the summons issued to Bibi Sabja Khatoon. Ext. F to F/3 is receipt of payment of electricity bill and Ext. G and G/1 is list of family members of Jasim Akhtar.

11. The trial court has considered and dealt with issue nos.7 and 8 which are core issues in eviction suit as to whether there is any relation of landlord or tenant and secondly whether the plaintiff requires the suit premises in good faith for his personal necessity.

12. The trial court has held that the plaintiff is title holder of the suit premises by virtue of the sale deed. The trial court has found that father of defendant has deposited Rs.5 lacs in the bank account of Bibi Sabja Khatoon on 11.07.2005. The trial court has also held that father of defendant used to look after the property of Bibi Sabja Khatoon and was authorized to settle lands to others and receive rent from settlees. The trial court has held that although it is established that father of defendant had deposited rupees five lacs in the account of Bibi



Sabja Khatoon but it is not established that same was paid as part consideration amount with respect to agreement for sale.

13. The trial court has further held that it appears that the defendant who is a medical practitioner and is running medical clinic and also residing in the same premises and it appears that even prior to agreement sale dated 02.12.09, he is residing in said premises. There is no settlement in the sale deed with respect to that suit property on rent. Bibi Sabja Khatoon and his son Yasuddin have also not brought any evidence on record that defendant is residing there as their tenant. As such from said document, i.e, sale deed dated 2.12.09 of plaintiff does not support the case of plaintiff that defendant was residing in said premises as a tenant.

14. The trial court has held that on consideration and appreciation of the evidences adduced by the parties, the relations of landlord and tenant between the parties is not established and plaintiff does not require suit premises in good faith.

15. Having decided the issue that neither there is any relation of landlord or tenant between the plaintiff and defendants nor plaintiff require the premises in good faith still the court has further held that since plaintiff has been able to



establish that he is the title holder of the suit property on the basis of sale deed executed by son of Bibi Sabja Khatoon holding her power of attorney and it is admitted fact that Bibi Sabja Khatoon is the title holder of suit property whereas defendant is claiming suit property on the basis of agreement for sale deed executed by Bibi Sabja Khatoon in favour of father of defendant but has not produced agreement for sale before this Court as such he has failed to establish title over suit property.

16. The trial court has further held that plaintiff is the title holder on the basis of sale deed and defendant is running a clinic in part of said premises as such plaintiff has been able to establish that he is landlord and the status of defendant is that of a tenant and has decreed the eviction suit in favour of plaintiff.

17. Bihar Building (Lease, Rent & Eviction) Control Act, 1982 is a special Act providing for speedy disposal of eviction suit on certain grounds enumerated therein. Under the said Act eviction suit is required to be tried under summary procedure provided under the Act. To succeed in the eviction suit the plaintiff is required to prove contract of tenancy between him and tenant and also the ground on which eviction is sought.

18. In such suit the court is not required to go into the



serious question of title otherwise the purpose of said Act would get frustrated.

19. The learned trial court could not have decided complicated question of title in the suit under summary procedure and once the trial court came to the conclusion that there was no relation of landlord and tenant, the eviction suit must fail. No eviction decree could have been granted on the basis of title as same is beyond the scope of eviction suit filed under Bihar Building (Lease, Rent & Eviction) Control Act, 1982. While discussing relation of landlord and tenant the court can incidentally inquire title of the parties but the aforesaid enquiry is only with an intent to decide the relationship of landlord and tenant and not for deciding the title of the parties.

20. The Apex court in the case of **Rajendra Tiwary Vs. Basudeo Prasad and Ors** since reported in **AIR 2002 SC 136** in para 7 has held as follows:-

“7. It is evident that while dealing with the suit of the plaintiff 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 plaintiff 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.”

21. For the reasons as stated above once the trial court
came to the conclusion that there was neither any relationship of
landlord and tenant between the parties nor the requirement of
plaintiff was bonafide, the trial court had no other option but to
dismiss the eviction suit as title of the parties cannot be decided
nor eviction can be granted on the basis of title in eviction suit
under summary procedure.

22. Accordingly, the judgment and decree passed by
the trial court is neither sustainable in law nor on fact and is
accordingly, set aside. The civil revision petition is allowed and
eviction suit filed by the plaintiff is dismissed.

23. However, the dismissal of suit will not preclude
the plaintiff from filing a suit for declaration of title and
recovery of possession of the suit premises against the
defendant in a duly constituted title suit before Civil Court of
competent jurisdiction.

Let the LCR be returned forthwith to the court below.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.02.2020
Transmission Date	NA

