

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.573 of 2016

=====

Mobarak Hussain Son of Late Refakat Hussain, resident of Village- Dhaka
Ramchandra Tola, Chianpur, P.S.- Dhaka, District- East Champaran.

... .. Appellant

Versus

1. Most. Shahida Khatoon and Ors Wife Late Amir Hasan,
2. SK. Kazim
3. SK. Nazim Sons of Late Amir Hasan All residents of Village- Dhaka
Ramchandra Tola- Chainpur, P.S.- Dhaka, District- East Champaran.

... .. Respondents

=====

Appearance :

For the Appellant/s	:	Mr. Uma Shanker Verma, advocate
		Mr. Binod Kumar Mishra, advocate
For the Respondent/s	:	Mr. Zaki Haider, advocate

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 06-02-2019

Heard the learned counsel for the appellant and the learned
counsel for the respondents.

2. With consent of both sides, this appeal is disposed of at
the stage of hearing under Order 41 Rule 11 of the Code of Civil
Procedure.

3. The appellant filed this Second Appeal under Section 100
of the Code of Civil Procedure (hereinafter referred to as the Code)
against the judgement and decree dated 30.07.2016 passed by learned
Additional District Judge-VIII, East Champaran, Motihari in Title
Appeal No. 22 of 2014 by which he confirmed the judgement and
decree dated 11.02.2014 passed by learned Munsif, Sikarhana, East
Champaran, in Eviction Case No. 03 of 2006.



4. The appellant is defendant in the suit. The plaintiff filed the suit for eviction of defendant from the suit premises and for recovery of arrears of rent and current rent. The genesis of the case of the plaintiff is that RS plot No. 2718 appertaining to Khata No. 51 area 12 Katha 12 Dhurs recorded in the name of Sk. Ishak and Sk. Yakub, both sons of Umed Ali, in the records of rights and by the partition the suit land came in possession of Sk. Yakub, who died leaving behind his son Sk. Amir Hasan. The respondents are widow, sons and daughters of the plaintiff. Sk. Amir Hasan who had let out the suit premises, fully described in schedule of the plaint, to the sole defendant in the month of February, 1998 at the rate of Rs. 500/- per month. The defendant set up a saw mill and paid rent to Sk. Amir Hasan during his lifetime, that is, till December, 2003. Sk. Amir Hasan died in the year 2003 and defendant stopped payment of rent since January, 2004.

5. The defendant contested the suit stating that plaintiff had no personal necessity and the defendant never defaulted in payment of rent. Learned Munsif held that plaintiff required the suit premises for his bonafide need and held that need of plaintiff could not be satisfied by partial eviction. Learned Munsif further held that the defendant defaulted in payment of rent and, accordingly, decreed the suit. The appellant preferred Title Appeal No. 22 of 2014 which was heard by learned Additional District Judge-VIII, East Champaran, Motihari and the learned Additional District Judge dismissed the appeal on



30.07.2006. Being aggrieved by the aforesaid judgement the appellant filed this Second Appeal.

6. The learned counsel for the appellant submits that the appellant filed first appeal under Section 96 of the Code and the learned first appellate court is obliged under the law to consider the pleadings of the parties and reappraise the evidence independently. Order 41 Rule 31 mandates that the appellate court shall be in writing and shall state the points for determination, the decision thereon with the reasons for such decision but the learned first appellate court in paragraph 5 of the judgement wrote that the ground taken by the appellant in the memo of appeal has been fully considered by the learned Munsif in his judgement under appeal and dismissed the appeal without giving any finding, as required under Order 41 Rule 31 of the Code.

7. The learned counsel for the respondents, while relying upon paragraph 12 of the judgement rendered by the Supreme Court in the case of **Girjanandini Devi & Ors v. Bijendra Narain Choudhary** reported in **AIR 1967 SC 1124**, submits that duty of the appellate court is that when the appellate court agrees with the view of trial court on evidence it need not restate effect of evidence or reiterate reasons given by trial court. Expression of general agreement with reasons given by court decision of which is under appeal would ordinarily suffice. It is further submitted that both the courts below have given concurrent finding on the issue of personal necessity of the plaintiff and default in payment of rent and this appeal is liable to be dismissed.



8. After hearing submissions of both sides and on consideration of judgements of both the courts below, I find that the following substantial question of law is involved in this appeal:-

“Whether the judgement of the first appellate court suffers from illegality on the ground of non consideration of the evidence of the parties according to issues raised by the appellant in the memo of appeal under Order 41 Rule 31 of the Code of Civil Procedure?”

9. Order 41 Rule 31 mandates that the appellate court shall be in writing and shall state the points for determination, the decision thereon with the reasons for such decision.

10. On consideration of submission of both sides and on perusal of the judgement of first appellate court, I find and hold without any hesitation that the appeal as preferred under Section 96 of the Code provides substantive right to the appellant and the first appellate court shall record its finding and determine all the issues after examining the pleadings of the parties and reappraising the evidence independently but the learned first appellate court has failed in its duty. The learned first appellate court simply dismissed the appeal stating in paragraph 5 of the judgement that the ground taken by the appellant in the memo of appeal has been fully considered by the learned Munsif in his judgement under appeal and held that there is absolutely no evidence to come to a different finding without reappraising the evidence on record. It is true that the appellate court may not reconsider the same reasoning but reasoning must be given for concurring with the finding of the trial court. Order 41 Rule 31 also mandates and casts duty upon the first appellate court to decide the points of determination after reappraising



the evidence of the parties available on record with independent reasoning.

11. Taking into consideration the facts aforesaid, I find that the order of first appellate court is illegal and not at all sustainable in the eye of law as it sans any reasoning.

In the result this appeal is allowed and the judgement and decree dated 30.07.2016 passed by learned Additional District Judge-VIII, East Champaran, Motihari in Title Appeal No. 22 of 2014 is set aside. The matter is remitted to the first appellate court to hear the parties afresh and decide the matter in accordance with law.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	14.03.2019
Transmission Date	N.A

