

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.100 of 2018

Sanjay Kumar Choudhary @ Sanjay Kumar Son of Sri Narayan Choudhary,
Resident of Mohalla- Chhotisaraiganj, P.S. Town, Post and District-
Muzaffarpur.

...Defendant ... Petitioner

Versus

1. Smt. Neeta Jaiswal W/o late Rajkishore Jaiswal,
2. Niahit Jaiswal, S/o late Rajkishore Jaiswal,
both resident of Mohalla- Chhotisaraiganj, P.S. Town, Post and District-
Muzaffarpur.

... Plaintiffs ... Opposite parties

Appearance :

For the Petitioner/s	:	Mr.Ranjan Kumar Dubey, Adv& Mr. Ashish Anand, Adv
For the Respondent/s	:	Mr.Ray Saurabh Nath, Adv, Mr. Mayank Manvendra, Adv and Mr. Alok Anand, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 14-11-2019

Heard learned counsel for the parties.

2. The plaintiff(s) have filed suit for eviction of defendant from suit property as detailed in the plaint under Section 14(8) of the Bihar Building (Lease, Rent and Eviction) Control Act on the ground of personal necessity.

3. The case of plaintiff is that she is the owner and landlord of the suit premises and defendant 1st party was inducted as tenant on monthly rent for fixed period of Tenancy of eleven months from 15.09.2004 to 14.08.2005. It has been further stated in the plaint that suit premises was leased out to defendant in the year 1999 by the deceased husband of plaintiff



for a fixed period of tenancy of 11 months which was renewed after every 11 months and lastly same was renewed for 11 months from 15.09.2004 to 14.08.2005. Unfortunately, the husband of the plaintiff no.1 died on 12.01.2006 leaving behind plaintiffs as their legal heirs who are widow and son.

4. The husband of the plaintiff no. 1 was running a shop in Tilak Maidan Road, Muzaffarpur in the name and style of M/s Shishu Readymade in a rented shop and after demise of her husband plaintiff no. 1 had to take over the business of her deceased Husband to maintain the family.

5. The lease of suit premises expired on 14.08.2005 but even after request, defendant Sanjay Kumar Choudhary refused to vacate the suit premises. However, the next agreement was prepared from 1st April, 2006 at monthly rent of Rs. 2500/- and same was paid till May-2006, however, thereafter defendant insisted for agreement for a period of 10 years which was not agreed by the plaintiff and since 2006 he has left making payment of rent.

6. The suit premises was required by plaintiff no. 2 to start hardware business as detailed in the plaint. It has been further stated in the plaint that the requirement of the plaintiff no.2 will not be satisfied by partial eviction of the suit premises



and the entire suit premises is required to run the business.

7. Defendant in his written statement has admitted that he is tenant of the suit premises and has further stated that at the time of letting of the shop Rs. 1, 30,000/- was deposited as security which is still with the plaintiff. It has further been stated that defendant was inducted on a fixed term tenancy for which lease agreement was entered which expired on 14.08.2005 and thereafter defendant was allowed to continue as tenant on month to month basis as such defendant at present is a tenant on month to month basis.

8. Defendant has stated that monthly rent of the suit shop is Rs. 1725/- and not Rs. 2500/- and rent has been paid till July-2018 on the said rate but no receipt was granted. Defendant has denied that plaintiff(s) have any bonafide personal necessity.

9. Plaintiff No. 1 has been examined as witness no. 1 and the relation of landlord and tenant is admitted. In support of personal necessity, she has stated that her son did graduation in the year 2012 and was unemployed and was willing to establish his own business of hardware in the suit premises and as such he requires the suit premises on the ground of bonafide personal necessity and he is duly qualified and fully aware with the nature of business and has also received proper training in said



trade and has sufficient capital for investment. She has further stated that entire suit premises is required to run the business and requirement will not be satisfied by partial eviction.

10. She admitted the security deposit of Rs. 1,30,000/- and also agreed to return it. She has further stated that the dry-cleaner business which was run by her deceased husband is closed after his death. She has further deposed that one of her son is employed and is running hardware business in Motihari and she requires the suit premises for her second son to run the business as he is unemployed and the suit premises is suitable to run the said business. M/s Shishu Readymade shop is running in a rented premises. In support of her case 7 documentary evidence were produced which were marked as exhibits by the trial court.

11. P.W.2 Arun Kejriwal and P.W. 3 Amit Jaiswal have supported the case of plaintiffs that plaintiff no.2 is unemployed and requires suit premises to open his hardware shop. P.W. 4 is Manoj Kumar Gupta who is brother of plaintiff no.2 and runs hardware business at Motihari and plaintiff no.2 has got training in his shop and has supported the case of plaintiff of requirement of suit premises for establishing hardware shop. P.W. 5 is plaintiff no.2 who is the eldest son of



plaintiff no.1 and has stated that he is a graduate and well trained in hardware business and resides with her widow mother at Muzaffarpur and has sufficient capital to start his hardware business. He has no other shop except the suit premises. Shishu Readymade shop is run by his mother after death of his father which is on rent. P.W.6 Ajit Kumar Mishra, P.W.7 Saroj Pandey and P.W. 8 Surendra Thakur are formal witnesses.

12. Eight witnesses were examined on behalf of defendant.

13. Defendant No. 1 Sanjay Kumar Choudhary is defendant himself who has admitted to be the tenant of plaintiff and has stated that plaintiff no.2 Nishit Jaiswal is running the shop in the name and style of M/s Shishu Readymade and was major at the time of death of his father. He has denied that the plaintiff has any bonafide requirement of the suit premises as plaintiff no. 2 is already employed.

14. In his cross examination he has admitted that he has no proof that plaintiff no. 2 runs any shop and is employed. Defendant is not aware even about the basic facts and nature of the suit in which he is deposing.

15. DW-2 Chitranjan Prasad is formal witness who has proved Kirayanama.



16. DW-3 Rakesh Kumar is also a formal witness with respect to chit showing due amount written in the handwriting of Sanjay Kumar Chowdhary with initial of Nishit Jaiswal.

17. DW-4 Dilip Kumar Chowdhary who is brother of defendant has said nothing material in his deposition and has also not denied any personal and bonafide need of the suit premises by plaintiff no. 2.

18. DW-5 Mohan Pathak is also a formal witness who has proved receipt i.e. Exhibit-D.

19. DW-6 Hemant Kumar has stated that M/s Shishu Readymade was run by Nishit Jaiswal plaintiff no. 2 during lifetime of his father.

20. In support of his case defendant has produced 7 documentary evidence which have been marked as Exhibit A to G by the trial court.

21. The trial Court after considering the oral and documentary evidence adduced on behalf of parties has held that there is relation of landlord and tenant between the plaintiff and defendant and plaintiffs have been able to establish that they require the suit premises for bonafide personal necessity and have proved their case for personal necessity of the suit premises and at the time of death of father of plaintiff no. 2, he



was minor and was a student and after attaining majority he is unemployed but has sufficient experience and expertise for running the business of hardware, for which he has received sufficient training while working with his brother who is also running the shop of hardware in Motihari. Plaintiff no.2 was minor at the time of death of his father and was a student doing his graduation and subsequently after completing his studies and becoming major requires suit premises in good faith to run business.

22. The trial court has found that the requirement of plaintiffs will not be satisfied by partial eviction. Plaintiffs have deposed that they need the entire suit premises and their requirement will not be satisfied by partial eviction and thereafter onus shifts upon the defendant to establish that the requirement and necessity of plaintiffs would be satisfied by partial eviction of the suit premises. However, there is no evidence led on behalf of defendant on the issue of partial eviction.

23. This Court while considering the issue of partial eviction in case of Shri Vinod Kumar Gupta & Anr. Vs. Smt. Pushpa Devi & Anr. since reported in 2005(3) PLJR 719 in paragraph no.9 of said judgment has held as follows:-

“9. So far the question of partial eviction is



concerned, the law is well settled that the landlord cannot be saddled with the onus of proving as to whether bonafide requirement can be substantially satisfied by order of partial eviction as once the landlord has proved his bonafide need of the premises, onus shifts on the tenant. This view has been taken by a Division Bench of this Court in the case of M/s Bata India Ltd. vs. Dr. Md. Qamruzzama reported in MANU/BH/0328/1992 : 1993(1) P.L.J.R. 87, which has held that it is the tenant who has to express his readiness and willingness for part occupation of the premises and to show that the plaintiff's need can be substantially satisfied by evicting the defendant from only part of the premises and allowing him to continue in occupation of the rest of it. In the instant case the defendants' evidence is completely silent on the point of partial eviction, whereas paragraph-6 of the impugned order fully shows that the plaintiffs have claimed and proved that their necessity will not be satisfied by partial eviction of the suit premises. Hence, in my view, the petitioners cannot raise the question of partial eviction at the revisional stage on the ground that there is no specific evidence on the point. This view also finds support from another decision of this Court in the case of Food Corporation of India & Ors. vs. Vishun Properties & Enterprises & Ors. reported in 1995 B.B.C.J. 711 in which it has been specifically held that plea for partial eviction must be raised in the written statement or deposition and is not to be decided suo motu. Here the defendants have completely failed to show that they raised any such question either in the written statement or in their evidence, which clearly indicates that they were not ready for partial eviction. Furthermore, it is an admitted fact that the defendants are running their Oil Mill in the entire suit premises, which is one room (katra). Hence it is apparent that the requirement of the plaintiffs, who also want to run an Oil Mill, can be satisfied only by eviction of the defendants from the entire suit premises.”



24. Having considered the submissions of petitioner and opposite parties and perusing the order passed by the trial court, this Court does not find any irregularity, illegality or infirmity in the order passed by the trial court.

25. Accordingly, the present civil revision petition is dismissed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.12.2019
Transmission Date	NA

