

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.179 of 2016

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Anish Khan Son of Anwar Khan, Resident of Village- Vishanpur Mansingh,
P.S.- Sheohar, District Sheohar, at present - Poshak Tailor, proprietor- Anish
Khan, P.S. Sheohar, District Sheohar.

... .. Petitioner/s

Versus

Shyam Babu Sah Son of Late Bhukhlu Sah, Resident of Village and P.O.-
Sheohar, P.S.- Sheohar, District- Sheohar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Surendra Kishore Thakur
For the Respondent/s : Mr.Arvind Kumar Jha

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 01-08-2019

Heard the parties.

2. This civil revision application has been filed on behalf of defendant/petitioner for setting aside the order dated 16.06.2016 passed by Munsif Sheohar in Eviction Suit No. 01/2008 by which the learned court below has decreed the eviction suit in favour of plaintiff/opposite party on the ground of bonafide personal necessity.

3. Plaintiff/respondent had filed a suit for eviction against defendant/ petitioner on ground of bonafide personal necessity. Plaintiff purchased the suit land and constructed room over it and defendant/petitioner approached the plaintiff/respondent to let out the room to him to run his tailoring shop and after negotiation plaintiff/opposite party let out the suit premises to the defendant on a monthly rent of Rs.



500/-. The plaintiff due to personal requirement of the tenanted premises requested defendant to vacate the tenanted premises as the same was required by him to run and expand his own business and as such needed the tenanted premises in good faith for bonafide personal necessity for which a legal notice was sent to the defendant/petitioner by registered post on 24.01.2007 and lastly on 29.06.2008 but defendant/petitioner refused to vacate the tenanted premises even after receipt of legal notice and thereafter stopped payment of monthly rent.

4. Defendant in his written statement has denied any relation of landlord and tenant between the parties. It was further stated that the suit premises is joint property of plaintiff, his brother Ram Babu Sah and his mother Sumitra Devi and not the self acquired property of the plaintiff. The alleged Kiraynama dated 15.11.2005 was forcibly obtained from defendant. He has taken the schedule-I property on rent from the brother of plaintiff in the year 2003 and for which Kiraynama was executed on 10.04.2003 and defendant was to pay Rs. 400/- as monthly rent as the suit premises was allotted to brother of plaintiff in an oral partition among plaintiff, his brother and mother on 20.05.2000.

5. The trial court has held that there is relation of



landlord and tenant between plaintiff and defendant. The brother of plaintiff has appeared as witness on behalf of plaintiff and denied that defendant was his tenant rather defendant was tenant of plaintiff. The trial court has further held that defendant has breached the terms of contract after receiving the notice to vacate the rented premises by not vacating the same. The trial court has further held that suit premises was rented by the plaintiff to the defendant.

6. The trial court has held that defendant has admitted that he would vacate the suit premises if brother of plaintiff asks him to do so as he claims to be the tenant of brother of plaintiff. The trial court has further held that the suit premises is required by the plaintiff in good faith and bonafide personal necessity and has decreed the suit of plaintiff on ground of bonafide personal necessity.

7. The counsel for the defendant has submitted that the mandatory requirement by the trial court to consider the issue of partial eviction was not considered by the trial court as no issue of partial eviction was framed by the trial court, as such, no evidence was led on this issue nor any finding was recorded by the trial court.

8. It is a settled preposition of law that the trial court is



bound to consider the mandatory requirement of partial eviction for which he has to frame such issue during the trial of the suit with opportunity to both parties to lead evidence on partial eviction.

9. For the reasons as stated above the judgment and decree of the trial court is not sustainable for want of any finding on issue of partial eviction, accordingly, the matter is remitted for the limited purpose to trial court to consider the issue of partial eviction after granting opportunity to both the parties to lead evidence on partial eviction.

10. This Court is not inclined to interfere in respect of other findings as recorded by the trial court and same is left undisturbed.

11. With the aforesaid observation and direction civil revision petition is disposed of.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	28.11.2019
Transmission Date	N.A.

