

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.269 of 2015

=====

Sunil Kumar Son of Ramayan Sah Resident of Village- Kadipur tola,
Nabiganj, PO Nagra, P.S Khaira, District Saran, Bihar

... .. Appellant

Versus

Narendra Prasad Son of Sipahi Prasad Resident of Village- Bahuara, Patti, Po
Nagar, P.S Marhaura, District Saran, Bihar

... .. Respondent

=====

Appearance :

For the Appellant/s : Mr. Abhishek

For the Respondent/s : Mr. Jitendra Kumar

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

6 05-07-2019 Heard both sides.

This Second Appeal has been filed against the judgement dated 30.11.2012 and decree dated 12.12.2012 passed by the learned Additional District Judge-V, Saran at Chapra in Eviction Appeal No. 01 of 2013 affirming the judgement and decree passed by Munsif-I, Saran in Eviction Suit No. 5 of 2007.

The appellant is defendant. The plaintiff/ respondent filed the suit for eviction of the appellant from the suit premises, that is, plot No. 259, Khata No. 181, area 2 Katha 16 Dhur. The plaintiff asserted that Hotilal Sah and Kishun Prasad purchased the suit premises and other properties jointly. There was partition between Hotilal Sah and Kishun Sah and the suit premises fell in the share of Hotilal Sah. Hotilal Sah and



Ramnath Sah, son of Hotilal Sah, constructed house on the suit land and they were doing business. There were five shops on the suit land. One of the shop was given to the appellant on rent and monthly rent was fixed at Rs. 450/-. Ramnath Prasad got six sons, namely, Sidheshwar Prasad, Tripurari Sharan, Lalit Kumar, Prabhu Sharan, Brij Mohan and Janmejay Prasad. There was registered partition among Ramnath Prasad and his sons and suit land fell in the share of Brij Mohan. Brij Mohan got two sons, namely, Rajesh Kumar and Sanjeev Kumar. Plaintiff purchased the suit land from Rajesh Kumar and Sanjeev Kumar and thereafter the defendant/ appellant paid rent to the plaintiff. The defendant is running cycle shop in the suit premises. Son of Kishun Prasad filed Title Suit No. 121 of 2004 against Rajesh Kumar and Sanjeev Kumar for declaration of title and setting aside the sale deed but the suit was dismissed. Thereafter, the defendant stopped payment of rent from the month of October, 2008. The plaintiff filed the suit for eviction on the ground of default in payment of rent. The defendant contested the suit but admitted that Bibi Kulsum and Rahim executed sale deed in favour of Hotilal Sah and Kishun Prasad on 09.05.1953. The defendant stated that Hotilal Sah got share in the suit land from southern side and Kishun Prasad got share from northern side of



the plot. Kishun Prasad constructed house and defendant took shop on rent from Kishun Prasad and his son. Son of Kishun Prasad sold the land to Serajul Haque and defendant/ appellant is paying rent to Serajul Haque. The trial court held that the appellant/ defendant is tenant of plaintiff and he is defaulter in payment of rent. The appellate court also affirmed the finding of trial court.

The learned counsel for the appellant submits that whether both the courts below are justified in holding and recording the finding that plaintiff is owner of the suit property on the basis of judgement and decree passed in Title Suit No. 121 of 2004 without appreciating the facts that appellant/ defendant is not tenant of the plaintiff. It is submitted that there is no question of holding that the appellant is defaulter in payment of rent since he is paying rent to Serajul Haque, vendee from the son of Kishun Prasad. It is further submitted that there is no relationship of landlord and tenant between the appellant and respondent and even the concurrent finding is not sustainable on facts and in law.

Having considered the submission of both sides and on perusal of judgements, I find that the submission of learned counsel for the appellant is not acceptable. The admitted facts



are that Bibi Kulsum and Rahim sold the land through registered sale deed on 09.05.1953 in favour of Hotilal Sah and Kishun Prasad. According to case of the plaintiff there was partition between Hotilal Sah and Kishun Prasad. Hotilal Sah and his son Ramnath Prasad constructed house and shops on the suit premises when the suit premises fell in their share and other lands jointly purchased by Hotilal Sah and Kishun Prasad fell in the share of Kishun Prasad. Son of Kishun Prasad filed Title Suit No. 121 of 2004 against grand sons of Ramnath Prasad, son of Hotilal Sah, by whom the sale deed was executed in favour of the plaintiff. The son of Kishun Prasad sought relief for declaration of title and cancellation of sale deed made in favour of the plaintiff but the suit was dismissed. The son of Kishun Prasad sold the land to Serajul Haque. Once the competent Civil Court decided that son of Kishun Prasad had no title over the suit land, the claim of the appellant/ defendant that he is tenant of Serajul Haque is not acceptable and the tenant cannot deny the title of his landlord which has already been decided by a Civil Court of competent jurisdiction and the finding of Civil Court passed in Title Suit No. 121 of 2004 was never challenged by the judgement debtor. Therefore, I find that both the courts below have rightly, on the basis of evidence on record, come to



a finding that the appellant is defaulter in payment of rent and there is relationship of landlord and tenant between the appellant and respondent.

Thus, I find that no substantial question of law is involved in this Second Appeal. Accordingly, this Second Appeal is dismissed. Consequently, I. A. No. 2 of 2019 filed for vacating the stay order in the Execution case also stands dismissed.

(Prabhat Kumar Jha, J)

BKS/-

U			
---	--	--	--

