

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.57 of 2018

Govind Lal Son of Late Sukhdeo Lal, Resident of Mohalla Panchmahal,
Krishna Dwarika, P.O. Chand Chaura, Police Station Civil Lines District-
Gaya.

... .. Petitioner/s

Versus

Kamal Kumar Son of Late Narayan Lal, Resident of Mohalla Maulaganj,
Kharkatta, P.O. Chand Chaura, Police Station Civil Lines District- Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Pramod Kumar, Adv.

For the Respondent/s : Mr. Arbind Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

CAV JUDGMENT

Date : 26.07.2019

Heard learned counsel for the parties.

2. This civil revision application has been filed for setting aside the judgement and order dated 28.02.2018 passed by Munsif 1st, Gaya in Eviction Suit No. 03 of 2012 by which the Eviction Suit has been decreed.

3. Briefly stated, the facts of the case is that plaintiff had purchased schedule I property of plaintiff having an area of 159.2 sq ft. alongwith his brothers through registered sale deed No. 915 dated 15.01.1990 from Anandi Lal More upon which four shops were constructed of which one shop at north western part was let out to the defendant/petitioner as tenant and tenancy started from the month of February 1991 with monthly rent of Rs. 140/- and which was enhanced and lastly



defendant/petitioner was paying Rs. 600/- as monthly rent. Tenancy was created through an agreement and receipts of payment of rent were initially granted till 1994 and thereafter no receipts were granted.

4. Plaintiff/opposite party and his brothers partitioned the holding on 16.08.2011 and the suit premises was allotted in the share of plaintiff and thereafter rent was being paid to the plaintiff/opposite party.

5. Plaintiff/opposite party has got franchisee of Elan Services and had to start outlet for Air ticket and railway booking for which he required the suit premises and requested defendant to vacate it but same was not vacated and plaintiff had to file an eviction suit on ground of bonafide personal necessity.

6. Defendant/petitioner appeared in the eviction suit and filed written statement and denied relationship of landlord and tenant. It was further stated that father of the plaintiff who was own brother in law of defendant were running business in two shop rooms of Anandi Lal as tenant and defendant and plaintiff's father purchased two shops after paying the consideration amount. Defendant has denied grant of any rent receipts and signature upon the rent receipts are forged.

7. The trial court has found that Exhibit-2 is registered



sale deed executed by Anandi Lal More in favour of Kailash Kumar, Kamal Kumar and Kamlesh Kumar appertaining to holding No. 16, ward No. 4A/16(New) Municipal Survey Plot No. 9036 (old)/232(new) area 159.2 sq. ft. situated at Mohalla Makhlautganj Netaji Subhash Path, Gaya. Exhibit-1 is signature of witness Ram Bilas Prasad who has been examined as P.W. 2 who has deposed that suit premises was purchased by plaintiff Kamal Kumar and his brothers through registered sale deed dated 15.01.1990 from Anandi Lal More and he as well as Vijay Kumar More (son of Anandi Lal More) Shyam Sundar More, Govind Lal and Bhagwan Lal Barnwal are attesting witness of sale deed and have proved sale deed dated 15.01.90 which has been marked as Exhibit-2.

8. Defendant in his cross-examination himself has admitted that he has signed the sale deed as a witness, as such the trial court has disbelieved the claim of defendant that he was not aware about the sale deed as he himself is a witness of sale deed and as such he cannot claim title over the suit property.

9. Exhibit-3 to 3F are house tax, cash receipts jointly in the name of Kailash Kumar and others. Exhibit- 5 is Memorandum of partition dated 16.08.2011 among the brothers of plaintiff by which holding No 161 was divided into three



parts among three brothers and north west side of this holding defendant Govind Lal was shown as tenant and said shop was given in share to plaintiff Kamal Kumar in said partition and accordingly Govind Lal defendant became the tenant of plaintiff Kamal Kumar.

10. Trial court has held that defendant has accepted to be a tenant in suit premises and as such the relation of landlord and tenant exist between the plaintiff and the defendant.

11. Exhibit-6 is unregistered rent agreement dated 27.02.1991 executed between Kailash Kumar, Kamal Kumar and Kamlesh Kumar and defendant Govind Lal of holding No. 161, ward No. 4A/16 and rent was Rs. 140/- per month.

12. Exhibit-4 to 4/1 are rent receipts in which defendant has been shown to be tenant and he has put his signature on it which were found to the signature of Govind Lal defendant by handwriting expert.

13. Trial court has held that plaintiff has produced sufficient evidence for establishing that he is the owner/ landlord of suit premises and defendant is tenant and as such there exists relationship of landlord and tenant between plaintiff and defendant. Oral witnesses were also examined on behalf of plaintiff who has fully supported the claim of plaintiff that



plaintiff is the owner and landlord of suit premises whereas defendant is tenant. Oral witnesses have also been examined on behalf of defenant. D/.W. 1 is Uday Shankar Sharma. D.W. 2 is Sanjay Kumar Lohani, D.W. 3 is Ashok Kumar Nath and D.W. 4 is defendant himself. The trial court has scrutinized the ocular evidence examined on behalf of plaintiff and defendant and have found the evidences of witnesses examined on behalf of plaintiffs to be reliable, trustworthy and believable whereas has disbelieved the ocular evidences adduced on behalf of defendant. The trial court has also found that the plaintiff requires the suit premises and their requirement of suit premises is for bona fide personal necessity.

14. After considering entire evidences both oral and documentary the learned court below has decreed the suit of eviction and has found that the suit premises is required by the plaintiff and he has personal necessity for the same and the requirement of the suit premises cannot be satisfied by partial eviction from the suit premises.

15. After hearing the parties and perusing the order passed by the learned court below and considering the materials available on record, this Court does not find any error or infirmity in the judgement and order of learned court below and



accordingly present revision filed under Section 14A of B.B.C. Act against the judgement and order of eviction is dismissed.

16. However, since the learned court below has not considered and framed the issue of partial eviction, if personal necessity of landlord would be satisfied by the partial eviction of the suit premises and said being mandatory under Section 11(1)(c) of Bihar Building (LR&E) Control Act, 1982, the appeal is remanded to the learned court below to frame an issue with respect to partial eviction of suit premises and grant opportunity to both the parties of leading evidence on issue of partial eviction and decide the same within six months from the date of receipt/production of a copy of this order passed by this Court.

17. Miscellaneous appeal is disposed of.

18. Let the L.C.R. be returned forthwith to the court concerned.

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	14.05.2019
Uploading Date	30.07.2019
Transmission Date	N.A.

