

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.22 of 2012

1. Most. Geeta Devi, W/O Late Ganesh Prasad @ Ganeshi Prasad, R/O Village - Paschimwari Rauja, P.O. Sahebganj Chapra, P.S. Chapra Town, Distt. - Saran.
2. Anil Kumar Gupta, S/O Late Ganesh Prasad @ Ganeshi Prasad, R/O Village - Paschimwari Rauja, P.O. Sahebganj Chapra, P.S. Chapra Town, Distt. - Saran.
3. Sunil Kumar Gupta, S/O Late Ganesh Prasad @ Ganeshi Prasad, R/O Village - Paschimwari Rauja, P.O. Sahebganj Chapra, P.S. Chapra Town, Distt. - Saran.
4. Sushil Kumar Gupta, S/O Late Ganesh Prasad @ Ganeshi Prasad, R/O Village-Paschimwari Rauja, P.O. Sahebganj Chapra, P.S. Chapra Town, Distt.- Saran.
5. Pankaj Kumar Gupta, S/O Late Ganesh Prasad @ Ganeshi Prasad, R/O Village-Paschimwari Rauja, P.O. Sahebganj Chapra, P.S. Chapra Town, Distt.-Saran.
6. Chhote Lal Gupta, S/O Late Ganesh Prasad @ Ganeshi Prasad, R/O Village - Paschimwari Rauja, P.O. Sahebganj Chapra, P.S. Chapra Town, Distt.- Saran.
7. Rani Kumari, D/O Late Ganesh Prasad @ Ganeshi Prasad, R/O Village - Paschimwari Rauja, P.O. Sahebganj Chapra, P.S. Chapra Town, Distt.- Saran.
8. Guriya Kumari, D/O Late Ganesh Prasad @ Ganeshi Prasad, R/O Village-Paschimwari Rauja, P.O. Sahebganj Chapra, P.S. Chapra Town, Distt.- Saran.
9. Chandani Kumari, D/O Late Ganesh Prasad @ Ganeshi Prasad, R/O Village - Paschimwari Rauja, P.O. Sahebganj Chapra, P.S. Chapra Town, Distt.- Saran.
10. Smt. Bhagmani Devi, W/O Sri Uday Prasad Gupta & D/O Late Ganesh Prasad, R/O Village-Paschimwari Rauja, P.O. Sahebganj Chapra, P.S. Chapra Town, Distt. - Saran.
11. Smt. Rajmani Devi, W/O Sri Ram Babu Gupta & D/O Late Ganesh Prasad, R/O Village-Paschimwari Rauja, P.O. Sahebganj Chapra, P.S. Chapra Town, Distt.- Saran.

... .. Plaintiffs/Appellants/ Appellants.

Versus

1. Bharat Sah, S/O Sarjug Sah, R/O Village-Mothiya Bharsara, P.S. Maharajganj, Distt.-Siwan, at present resident Of Mohalla-Dahiyawan, P.O. Chapra, P.S. Chapra Town, Distt. - Saran.
2. Jitendra Sah, S/O Bharat Sah, R/O Village-Mothiya Bharsara, P.S. Maharajganj, Distt.-Siwan, at present resident Of Mohalla-Dahiyawan, P.O. Chapra, P.S. Chapra Town, Distt. - Saran.
3. Munna Sah, S/O Bharat Sah, R/O Village-Mothiya Bharsara, P.S. Maharajganj, Distt.-Siwan, at present resident Of Mohalla-Dahiyawan, P.O. Chapra, P.S. Chapra Town, Distt. - Saran.
4. Dilip Sah, S/O Bharat Sah, R/O Village-Mothiya Bharsara, P.S.



- Maharajganj, Distt.-Siwan, at present resident Of Mohalla-Dahiyawan, P.O. Chapra, P.S. Chapra Town, Distt.-Saran.
5. Raj Kumar Sah, S/O Bharat Sah, R/O Village-Mothiya Bharsara, P.S. Maharajganj, Distt.-Siwan, at present resident Of Mohalla - Dahiyawan, P.O. Chapra, P.S. Chapra Town, Distt. - Saran.
 6. Dulli Devi, D/O Bharat Sah, R/O Village-Mothiya Bharsara, P.S. Maharajganj, Distt.-Siwan, at present resident Of Mohalla-Dahiyawan, P.O. Chapra, P.S. Chapra Town, Distt.-Saran.
 7. Rekha Devi, D/O Bharat Sah, R/O Village-Mothiya Bharsara, P.S. Maharajganj, Distt.-Siwan, at present resident Of Mohalla-Dahiyawan, P.O. Chapra, P.S. Chapra Town, Distt.-Saran.
 8. Punam Devi, D/O Bharat Sah, R/O Village-Mothiya Bharsara, P.S. Maharajganj, Distt.-Siwan, at present resident Of Mohalla - Dahiyawan, P.O. Chapra, P.S. Chapra Town, Distt.-Saran.
 9. Putal Kumari, D/O Bharat Sah, R/O Village-Mothiya Bharsara, P.S. Maharajganj, Distt.-Siwan, at present resident Of Mohalla-Dahiyawan, P.O. Chapra, P.S. Chapra Town, Distt.-Saran.
 10. Renu Kumari, D/O Bharat Sah, R/O Village-Mothiya Bharsara, P.S. Maharajganj, Distt.-Siwan, at present resident Of Mohalla-Dahiyawan, P.O. Chapra, P.S. Chapra Town, Distt.-Saran.
 11. Sunita Kumari, D/O Bharat Sah, R/O Village-Mothiya Bharsara, P.S. Maharajganj, Distt.-Siwan, at present resident Of Mohalla-Dahiyawan, P.O. Chapra, P.S. Chapra Town, Distt.-Saran.
-Defendants/Respondents/Respondents-Ist Set.
12. Mosmat Raj Banshi Devi, Wife of Late Ram Jatan Sah, resident of Village-Rauza, P.S. Chapra Town, District-Saran.
-Plaintiff/Appellant/respondent 2nd Set.

Appearance :

For the Appellants : Mr. Nagendra Rai, Advocate.
For the Respondents : Mr.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

15 24-02-2020 Heard Mr. Nagendra Rai, learned counsel for the appellants under Order-XLI, Rule-11 of the Code of Civil Procedure.

2. The present appeal has been filed by the plaintiffs/appellants/appellants against the judgment dated 08.07.2011 and the decree which was signed on 21.07.2011



passed by learned A.D.J., (F.T.C.-I), Saran at Chapra in Eviction Title Appeal No. 08 of 1998 affirming the judgment dated 23.09.1998 and decree which was signed on 05.11.1998 passed by learned Munsif-I, Chpara in Eviction Suit No. 02 of 1991.

3. The plaintiffs/appellants/appellants filed Eviction Suit No. 02/1991 for eviction of respondents from the suit premises, on the ground of personal necessity and also for arrears of rent, stating that the defendant no. 1 out of her own personal fund purchased disputed land in the name of her minor son, who is defendant no. 3, and was coming in possession maintaining her family.

4. It was further case of the plaintiffs/appellants/appellants, that defendant no. 1 was need of money for running her shop and business has executed a registered Deed of Mortgage by conditional sale on 30.11.1977 in favour of father of the plaintiff after receiving an amount of Rs. 5500/- and put the plaintiff in possession over the land in question, with promise that within a period of two years she will return the consideration amount to the plaintiff, and get the Sale Deed from the plaintiff, but again defendant having need of money therefore, defendant no. 1 again executed a registered Deed of Mortgage by conditional sale on 26.11.1979 in favour of the plaintiff, for consideration of



Rs. 20,000/- and put the plaintiff in possession with promise, that by 25.11.1982 the defendant will return the entire consideration amount in one lump sum and will get the Deed of reconveyance executed by the plaintiff, failing which their right of reconveyance shall be abolished.

5. It was further case of the plaintiff that the defendant has requested the plaintiff to let out the suit premises on rent, and accordingly, plaintiff inducted the defendants as tenant on monthly rent of Rs. 200/- and since then the defendant is in possession over the disputed land as tenant, but she did not pay the consideration amount of mortgage within the time given in the conditional sale dated 30.11.1977 or 26.11.1979 and has not got the deed of reconveyance, and as such, the defendant nos. 2 and 3 filed a Title Suit No. 138/1984 wherein defendant no. 1 was impleaded as party, and ultimately the suit was dismissed on 14.03.1989.

6. It was further case of the plaintiff that father of the plaintiff was party in Title Suit No. 138/1984 which was dismissed, the plaintiff having title over the suit land, and as the defendant has stopped paying rent, he is entitled for arrears of rent since January 1988 to December 1990, and eviction the defendant and recovery of possession upon the suit land.



7. The defendant nos. 1 and 2 did not appear nor filed written statement, whereas the defendant no. 3 appeared and filed written statement, and has pleaded that in fact the land in question is recorded in his name, which was purchased by the father from the gifted money of defendant no. 3, which was given by his *Nani* and maternal uncle at the time of celebrating *Chhathi*, as such, his mother having no right to execute deed of conditional sale, he further stated that mother of the defendant was not guardian, rather his father was guardian during the period of minority, hence, the deed of mortgage by conditional sale is not binding upon the defendant no. 3, he further denied the relationship of landlord and tenant, with plea that during the period when the defendant no. 3 was minor his father filed a Title Suit No. 138/1984, without protecting his interest, and due to fear given deposition, and as such the judgment and decree passed in Title Suit No. 138/1984 is not binding upon the defendant no. 3.

8. The Trial Court after trial has dismissed the suit, holding that the plaintiff failed to prove relationship of landlord or tenant, further holding that the defendant has failed to prove that he has got title over the land in question dealing with Issue Nos. 5 and 6 along with other issue.



9. Being aggrieved by the judgment and decree the plaintiffs/appellants/appellants filed Title Appeal No. 08/1998, which was also dismissed by the judgment and order dated 8th July 2011. Hence, the present appeal filed.

10. The following questions of law have been proposed for consideration on behalf of learned counsel for the appellants:

I. Whether the impugned judgments and decrees are perverse?

II. Whether the courts below could have legally given any finding contrary to the judgment passed in T.S. No. 138/84 (Ext.-4)?

III. Whether the courts below could legally act as appellate court to scrutinize the judgment and decree passed in T.S. No. 138/84?

11. The learned counsel for the appellants Sri Rai has contended, and has drawn my attention regarding finding recorded by the Trial Court and Appellate Court, and argued that the Trial Court has exceeded jurisdiction while holding trial of eviction suit, deciding question of title, which is beyond the jurisdiction of Trial Court, dealing with Eviction Suit under the



Bihar Building (Lease, Rent and Eviction) Control Act, and has argued that the judgment and decree passed by the Trial Court as well as Appellate Court appears to be jurisdictional error, and has prayed that the judgment and decree of Trial Court as well as Appellate Court is fit to be set aside.

12. It appears from the judgment of the Trial Court as well as Appellate Court that while dismissing the appeal and suit, it was not sole ground that the Trial Court and Appellate Court dismissed the suit, but has also considered the plea of tenancy and Ext.-3 series which is judgment of Title Suit No. 138/1984, observing that the suit was disposed of on the terms of compromise, wherein it was agreed by the defendant, (father of the plaintiff) that the consideration amount of Rs. 23,000/- will be returned by the plaintiff (of Title Suit 138/1984) in installment, and in case of failure the defendant can file money suit for recovery of agreed amount, further holding that it appears to be deed of mortgage. Further while considering the Ext.-3 series the Court has observed, that on the basis of judgment and decree of Title Suit No. 138/1984 the plaintiff has tried to establish that there was a relation of landlord and tenant, but from the pleading it appears that the plaintiff has not given specific date, when the defendant entered into the tenancy and



when the defendant failed to make payment of rent amount, accordingly, has dismissed the suit. So far the argument of the learned counsel for the appellant that while dealing with Eviction Suit the Court should not have gone into the complicated question of title, and it was beyond his jurisdiction. It is settled in a case of Shamim Akhtar Vrs. Iqbal Ahmad & others reported in 2000 (8) SCC 123 that, “in Eviction Suit under the Rent Control Act question of title can be considered by the Court as an incidental question” and as such, the argument of the learned counsel for the appellant appears to be misconceived.

13. Further it appears from the judgment of the both Courts that the court below has well considered the Exhibits adduced on behalf of the plaintiff and oral evidence, by which the plaintiff has failed to prove the relationship of landlord or tenant and there was lack of pleading, the plaintiff has not stated in pleading as well as in evidence, that in which month or on which date the tenancy started, or from which date or month the plaintiff failed to make payment of the rent amount, nor from the evidence, it appears that the plaintiff has proved its case that ever rent amount was paid, and there was a relationship of landlord or tenant between the parties, considering the judgment



of both courts, submission advanced by the learned counsel for the appellant, it appears that there is concurrent finding of fact, both courts below have well considered documentary and oral evidence, holding that the plaintiff has failed to prove the relationship of landlord or tenant, further holding that the plaintiff failed to prove his title, but if for the present, I can consider that the Trial Court while dealing with Eviction Suit should not have gone into title of the parties, but it appears that it was not sole ground of the Trial Court as well Appellate Court for dismissal of the suit, rather, while dealing with issue of tenancy the trial court enter into question of title incidentally, as has held in a case of Shamim Akhtar Supra, hence, I find that the plaintiff has failed to prove its case, and also failed to establish relationship of landlord and tenant, which is prime consideration for deciding the Eviction Suit, for the reasoning given above, present appeal is dismissed at the admission stage. Accordingly, interlocutory application is also dismissed.

(Sudhir Singh, J)

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