

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL REVISION No.69 of 2019**

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Md. Zahid Hussain S/o Late Md. Abdul Majid Proprietor of Bihar Timber  
situated at Dr. Rajendra Prasad Road, Near Khalifabagh Chowk, P.s.-  
Kotwali, Distt.- Bhagalpur

... .. Defendant/Petitioner

Versus

1. Sri Babul Kumar Saha S/o Late Shyamal Kishore Saha Resident of Mohalla-  
Dr. Rajendra Prasad Road, Khalifabagh Chowk, Bhagalpur
2. Sri Navin Kumar Saha S/o Late Shyamal Kishor Saha Resident of Mohalla-  
Dr. Rajendra Prasad Road, Khalifabagh Chowk, Bhagalpur

... .. Plaintiffs/Opposite Parties

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**Appearance :**

|                            |   |                                                                                                                               |
|----------------------------|---|-------------------------------------------------------------------------------------------------------------------------------|
| For the Petitioner         | : | Mr. Siya Ram Sahi, Advocate<br>Mr. Suman Kumar, Advocate<br>Mr. Amar Nath Singh, Advocate<br>Mr. Subodh Chandra Jha, Advocate |
| For the Opposite Parties : |   | Mr. Deepak Kumar Sinha, Advocate                                                                                              |

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

**ORAL JUDGMENT**

**Date : 03-06-2020**

This civil revision application has been filed under Section 14(8) of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 (hereinafter referred to as the Act of 1982), questioning the legality of an order dated 23.01.2019 passed by the learned Munsif-II, Sadar Bhagalpur in Title Eviction Suit No. 36/2011, whereby and whereunder learned Court below has decreed a suit for eviction, filed on behalf of opposite parties under the Act, on the ground of their personal necessity to occupy the demised premises.

2. The dispute related to the premises bearing holding No. 26/46, Ward No. 8(Old), situate at Mohalla Khalifabagh



Chowk, Dr. Rajendra Prasad Road, under Bhagalpur Municipal Corporation, as fully described in Schedule “A” at the foot of the plaint.

3. I have heard Mr. Siya Ram Sahi, learned counsel appearing on behalf of the petitioner and Mr. Deepak Kumar Sinha, learned counsel appearing on behalf of the opposite parties.

4. The case of the plaintiffs, as disclosed in the plaint, is as under :

(i) The suit property was owned and possessed by one Ganga Prasad Saha, who had constructed two thatched rooms and had inducted the defendant/petitioner as a tenant.

(ii) Sons of Ganga Prasad Saha had got constructed two rooms, one tin shed along with an office and thereafter had inducted again the defendant as a tenant and handed over possession of the same to him after death of Ganga Prasad Saha.

(iii) After death of said Ganga Prasad Saha, his four sons partitioned all the properties amongst themselves on 20.01.1989 through *Khangī Batwara*. The tenanted premises, which was in occupation of the petitioner, admeasuring 0.0460 hectors, fell in the share of the father of the defendant, late Shyamal Kishor Saha. Names of the sons of Ganga Prasad Saha were mutated accordingly in terms of the partition in the *sirista* of the State of



Bihar, whereafter they had been paying rent and getting rent receipts.

(iv) After death of Shyamal Kishor Saha, the plaintiffs/opposite parties inherited the suit property and came in possession accordingly. It was their specific case in the plaint that they were owners of the land bearing Khata No. 404, Khesra No.1104(part), admeasuring 0.0230 hectares out of 0.0460 hectares on the eastern side vide Holding No. 26/46, Ward No. 8(Old).

(v) The defendant was carrying on his business of saw mill, partly in the suit premises on monthly rental @ Rs.1100/- per month as a tenant on month to month basis on oral agreement and was paying rent and getting rent receipt till February, 2007.

(vi) The defendant had paid the rent and subsequently stopped paying rent since March, 2007. Legal notices were sent to the defendant/petitioner asking him to pay the rent and also mentioned that the plaintiffs were in urgent need of the premises in question for their personal use for carrying on their business.

(vii) It was the case of the plaintiffs that the defendant neither paid the rent nor vacated the tenanted premises.

(viii) In order to make out a case of their bonafide personal requirement, the plaintiffs asserted that after death of their father, they mutually agreed that whereas the plaintiff No.2



would carry on the business of sweet etc. shop situate at Variety Chowk, the plaintiff No.1 would start a business in the suit land, which he would use for his residential purpose also after making the required construction over it. It was the specific case of the plaintiffs that Plaintiff No.1/Defendant No.1 was still unemployed and the family did not have any other suitable vacant premises for starting a business. They pleaded that the plaintiff No.1 wanted to start a business by establishing a shop dealing with Television and electronic goods after making fresh construction on the front portion of the land and construct a residential house over the back portion of the land.

(ix) They further pleaded that the dimension of the suit premises on the front was only 23' 5" wide on the front side and there was no egress and ingress for the suit premises and, therefore, 10' width front portion land would be separated/bifurcated for egress and ingress for the back portion of the premises. This plea was taken apparently to pre-empt the defendant/petitioner from taking a ground that requirement of plaintiff No.1 could be satisfied by partial eviction of the suit premises.

(x) It was further case of the plaintiffs that initially the petitioner/defendant, on request, had assumed to vacate the suit



premises within a year. Subsequently, however, despite repeated requests having been made, he refused to vacate the same finally on 15.10.2011, which necessitated filing of the suit for eviction.

(xi) The petitioner, on notice, appeared as defendant and obtained leave to contest the suit. He questioned the maintainability of the suit and pleaded lack of cause of action.

**5.** The case of the defendant, as pleaded before the Court below, was as under : -

(i) Plaintiffs were not the owner of the suit property, since, after death of Ganga Prasad Saha, a Partition Suit No. 201/1993 between his heirs was pending adjudication before the Subordinate Judge-8, Bhagalpur, and, therefore, it could not be said that the plaintiffs were exclusive owners of suit property.

(ii) The suit property was owned by Ganga Prasad Saha, but there was no construction or structure ever built by Ganga Prasad Saha during his life time, rather the land was vacant/without structure.

(iii) Father of the defendant Abdul Majid was the original tenant of the suit property, who was inducted by virtue of an unregistered agreement dated 24.02.1955, on a rental @ Rs.88/- per month for running a saw mill. There was no attached room on the demised property, which was a *parti* vacant land.



(iv) After the death of defendant's father, a fresh agreement was executed in favour of the defendant by the sons of Ganga Prasad Saha (since deceased) at the enhanced rental of Rs.101/- per month. It was stipulated in the *kirayanama* that the lessee shall not raise any structure over the piece of land and in case any structure was raised, the defendant would be called upon to vacate the premises. The rental was enhanced.

(v) It was admitted in the written statement that father of the plaintiffs/opposite parties Late Shyamal Kishor Saha had enhanced the rental from time to time up to Rs.150/- per month.

(vi) The defendant had filed a petition before the House Controller, Bhagalpur, for fixation of fair rent, giving rise to House Controller Case No.28/1968, in which sons of Ganga Prasad Saha including father of the plaintiffs were impleaded as opposite parties and had jointly filed their reply admitting that the demised premises was a *parti* piece of land and not a 'building' within the meaning of House Control Act. The defendant accordingly pleaded that the plaintiffs were estopped now, to plead that the said tenancy would be covered by the provisions of the Act. The House Controller had rejected the claim of the petitioner in the said proceeding that the suit property could be said to be building within the meaning of the Act.



(vii) Appeal, preferred against the order of the House Controller, was allowed by the Collector, Bhagalpur, taking a view that the holding, which was let out to the petitioner, did come within the definition of building under the Act.

(viii) The matter had gone to the Commissioner, Bhagalpur, against the order of the Collector by way of revision filed by the petitioner. The Commissioner allowed the revision application affirming the decision of the House Controller to the effect that the suit property could not be termed as building within the meaning of the Act.

(ix) The matter thereafter reached this Court with filing of a writ application, giving rise to C.W.J.C. No. 13 of 1976. A Division Bench of this Court, by judgment and order dated 17.11.1978 passed in C.W.J.C. No. 13 of 1976, held that the premises in question was not a 'building' within the meaning of the Act and, therefore, provisions of the Act had no application.

(x) The rental of the premises was never raised to Rs.1100/- per month and at no point of time, the defendant ever paid such amount towards rental. There was no relationship of landlord and tenant between the plaintiff and the tenant and at no point of time he had ever paid any amount to the plaintiffs towards rent of the demised premises occupied by the plaintiffs.



(xi) He has been paying rent regularly to Raj Kishor Saha, son of Late Brij Kishor Saha and after his demise his son Chandra Kishor Saha has been realising rent, which has been enhanced from time to time by Chandra Kishore Saha. There was no rental pending as arrears in respect of suit premises. In any case, there was no bonafide requirement of occupation of the suit premises since father of the plaintiffs Shyamal Kishor Saha was running the business of a shop of sweets, snacks etc., which required involvement of minimum three persons for smooth running of the business. The plea of unemployment of plaintiff No.1 taken in the plaint was denied, accordingly.

(xii) About partition in the family after the death of Shyamal Kishor Saha, the defendant expressed his ignorance and pleaded that the same must be proved by the plaintiff.

**6.** Based on rival pleadings of the contesting parties before the Court below, altogether following six issues were framed for adjudication : -

- (i) Whether the suit, as framed, was maintainable?
- (ii) Whether there existed valid cause of action to maintain the suit?
- (iii) Whether there existed relationship of landlord and tenant between the plaintiffs and the defendant?



(iv) Whether the suit property was reasonably and in good faith required by the plaintiffs for their own occupation?

(v) Whether partial eviction could satisfy the requirement of the plaintiffs for their own occupation, as claimed in the plaint?

(vi) Whether the plaintiffs were entitled to relief against the defendant in the plaint?

7. It transpires from the impugned judgment and decree of the Court below that the parties led oral and documentary evidence in support of their respective claims.

8. It can be easily discerned from the plea taken by the defendant in his written evidence that he had heavily relied on Division Bench decision of this Court rendered in C.W.J.C. No. 13 of 1976 dated 17.11.1978, wherein it was held that the premises in question was not a 'building' within the meaning of the Act and, therefore, the provisions of the Act had no application and the said provisions could not govern the relationship of landlord and tenant between the parties within the meaning of the Act. This plea is the reason why the Court below framed the issue No. (i) on the question of maintainability of eviction suit under the Act. It was the case of the defendant that once the suit property was held to be not a building within the meaning of Bihar Building (Lease, Rent



& Eviction) Control Act, 1947 (Act of 1947), the same cannot now be termed as building within the meaning of the provisions under the Act of 1982.

9. On analysis of the pleadings and evidence on record, the Court below has referred to the specific pleading in the plaint that during 1980-81 two pucca rooms, one tin shed and an office was constructed, whereafter the same was given on rent to the defendant. This pleading was supported by oral evidence and receipt issued by the Municipal Corporation (Exhibit – 4) from which it could be inferred that the same related to Holding No. 46 standing in the name of father of the plaintiffs late Shyamal Kishor Saha. The Court below noted that the defendant did not take any plea that there was no construction/structure existing over the suit property nor he had asserted that he had himself ever made any construction over the suit property. The Court below thus inferred that the defendant failed to specifically deny the specific statement made in the plaint that there were structures constructed over the land in question, which were conclusively found to be not there when decision of this Court was rendered on 17.11.1978 in C.W.J.C. No. 13 of 1976. Applying the legal principle enunciated in *Star Printing Press vs. Bharat Cooking Coal Ltd.*, reported in 1988(1) PLJR 391, the Court below concluded that in the absence



of specific denial by the defendant of the claim of the plaintiffs in the plaint that there were structures raised over the tenanted premises subsequent to the decision of this Court dated 17.11.1978 (C.W.J.C. No. 13 of 1976), the Court below upheld the plea of the plaintiffs that there were structures in the nature of building over the suit premises constructed subsequently. He then relied on decision of this Court rendered in case of *Hindustan Petroleum Corporation Ltd. vs. Rajeshwar Prasad*, reported in 2007(3) PLJR 582, to conclude if the tenanted land is initially vacant and subsequently construction is made over the land in question and rent in respect of the tenancy is being paid by the tenant to the landlord, such premises shall not be treated to be a vacant *parti* land, rather shall be covered by the provisions of the Act. Paragraph 16 of the decision *Hindustan Petroleum Corporation Ltd. vs. Rajeshwar Prasad* (supra) is being reproduced hereinbelow : -

“16. So far the question of applicability of the Act in the instant case is concerned, the claim of the defendants-petitioners is that in the description of the suit property given in the schedule of the plaint only two kathas of land is mentioned. But from the perusal of the statements made in the plaint specially paragraph-7 and also from the lease agreement (Ext-2) and the Schedule attached thereto, it becomes quite apparent that there were several constructions on the land in question which was admitted by the defendants in the said agreement and hence it is squarely covered by the definition of 'building' under



Section 2(b) of the Act, according to which 'building' means any building, or hut or a part of the building or hut, let or to be let separately for residential or non-residential purposes, and includes the garden, grounds and out-houses, if any, appurtenant to such building or hut or part of such building or hut. This view finds support from a decision of this Court in case of *Mohammad Shah Alam v. Abdul Hamid* reported in 1984 PLJR 102 as well as from a decision of the Hon'ble Apex Court in case of *Shaw Wallace & Co. Ltd. v. Govindas Purushotham Das and Anr.* reported in AIR 2001 SC 1387. It may be noted in this regard that the above decision of the Apex Court is with respect to a case of Tamil Nadu Buildings (Lease, Rent and Control) Act, 1960, but Section 2(2) of that Act is exactly the same as Section 2(b) of the Bihar Act. Even in case where originally the premises was a vacant land and subsequently the tenant makes construction and pays rent for the entire premises, the said premises cannot be legally called a vacant land and cannot be legally deemed to stand out of the definition of 'building' as provided in Section 2(b) of the Act. This view finds support from a decision of this Court in case of *Sri Binay Kumar Maheshwari v. Fanindra Prasad Mishra* reported in 2000 (2) PLJR 865. In the aforesaid facts and circumstances, it is hereby held that provisions of the Act would be applicable to the facts and circumstances of the instant case, whereas the provision of Transfer of Property Act would not be applicable.”

10. It must be noted that no ground has been taken in the present revision application either to the effect that the pleadings have been incorrectly mentioned in the impugned judgment and decree or to the effect that the oral and documentary evidence led before the Court below on behalf of the parties have been incorrectly mentioned.



**11.** Mr. Sahi, learned counsel for the petitioner, with reference to the conclusion of the Court below in respect of Issue No. (i) has submitted that the Court below wrongly held the premises to be a 'building' within the meaning of the Act despite Division Bench decision of this Court rendered on 17.11.1978 in C.W.J.C. No. 13 of 1976. He has vehemently argued that the provisions of the Act did not have any application at all.

**12.** I do not find any infirmity in the finding recorded by the Court below while answering Issue No.(i) for the reason that there was specific plea on behalf of the plaintiff that there existed constructed structures in the nature of the building over the disputed land. There was no specific denial by the defendant in his written statement by stating that there was no structure at all over the land in question after the decision of this Court rendered on 17.11.1978 in C.W.J.C. No. 13 of 1976. The plaintiff adduced evidence in the nature of Municipal receipt (Exhibit – 4) in support of his pleadings that structures in the nature of building were raised over the land in question. In such circumstance, in my view, therefore, Issue No. (i) has been correctly decided holding the eviction suit to be maintainable under the provisions of the Act of 1982.



**13.** The Court below has next answered Issue No. (iii) in favour of the plaintiffs/opposite parties, which related to determination of existence of relationship of landlord and tenant between the plaintiffs and the defendant. The Court below has taken note of the stand taken by the defendant before the Rent Controller in Rent Control Case No. 28 of 1968, which was preferred by the defendant for fixation of fair rent. He had taken specific plea before the Rent Controller that father of these plaintiffs and others had illegally enhanced the rent of the land in question. The Court below, thus, concluded that the defendant had admitted relationship of landlord and tenant and he did not mention anywhere in the written statement as to when this relationship of landlord and tenant between defendant and plaintiffs came to an end. Upon analysis of the evidence on record, both oral and documentary, the Court below concluded that there existed relationship of landlord and tenant between the plaintiffs and the defendant.

**14.** Mr. Sahi, learned counsel for the petitioner, assailing the finding, has submitted that question of title over the disputed land is still to be decided amongst the members of the joint family having Ganga Prasad Saha as the common ancestor and, in such circumstance, the plaintiffs could not have claimed exclusive



ownership. He has submitted that the Court below failed to appreciate in correct perspective the plea of the plaintiffs that the holding in question had been allotted to them. He has contended that structure/construction, whatever existing on the land occupied by the defendant on the western portion of the land in question, alleged to be allotted to Kaushal Kishor Saha and the eastern portion, allotted to the plaintiff in the alleged family partition was lying vacant/*parti* and was being used by the defendant to store wooden logs on Holding No. 26(old) 46(new). It is evident, thus, that the defendant himself admitted existence of structures over the premises, which were initially given on rent to his father. The question of non-application of the Act does not arise at all. On the one hand, it is the case of the petitioner/defendant that the land, which fell in the share of the plaintiffs was *parti* land and, therefore, the Act of 1982 will have no application, at the same time, a plea is being taken that the plaintiffs do not have the title over the land and their existed no relationship of landlord and tenant between the plaintiffs and the defendant. The ground taken in the revision application in this regard is unsustainable and is rejected accordingly. The finding recorded by the Court below in answer to Issue No. (iii) does not suffer from any infirmity,



requiring this Court's interference exercising revisional jurisdiction under Section 14(8) of the Act of 1982.

**15.** The next important issue of requirement of the premises, reasonably in good faith by the landlord for his own occupation has been discussed by the Court below as Issue No. (iv). As has been noted above, to oppose the plea of personal necessity, the defendant has averred in his written statement that the shop personally run by the family is enough to engage three persons and, therefore, the plaintiff No.1 could not claim to be unemployed and seek eviction for starting a new business in the tenanted premises. The Court below has relied on decisions of this Court in case of *Md. Nooruddin vs. Rabindra Kumar Sinha*, reported in 2011(1) PLJR 1035; *Chunchun Prasad Singh vs. Surendra Prasad Singh*, reported in 2013(1) BLJ PHC 170 and *Maqsood Hasan vs. Sudama Prasad Jaiswal*, reported in 2018(1) PLJR 743, to take his view that landlord is free to select premises required for his own use and objection of the tenant in this regard cannot control such selection of the landlord.

**16.** Similar plea was taken in case of *Maqsood Hasan vs. Sudama Prasad Jaiswal* (supra), which was rejected by this Court in following terms :

**“16. The plaintiff-opposite party has, specifically, pleaded that he requires the shop in question for opening medical**



shop for his sons as they are unemployed. However, the learned court below having marshaled and analyzed the evidences available on the record came to conclusion that although there are two medical shops in the family of the plaintiff-opposite party but even then one son of the plaintiff-opposite party is unemployed and, therefore, the personal necessity of plaintiff-opposite party is bona fide and reasonable. The learned court below also found that the partial eviction of the suit premises cannot fulfil the need of plaintiff-opposite party. Although, learned counsel appearing for the defendant-petitioner has argued that the court below has not discussed and given its finding regarding the partial eviction but I do not find any force in the contention of learned counsel for the defendant-petitioner because it is obvious from perusal of the record that learned court below framed specific issue regarding partial eviction and while dealing with the issue No. 3, 4 and 5, the learned court below considered the evidences available on the record in respect of partial eviction and after that the court below came to conclusion that partial eviction of the defendant-petitioner from the suit property would not fulfil the need of the plaintiff-opposite party.”

17. A plea of the same nature taken in case of *Md. Nooruddin vs. Rabindra Kumar Sinha* (supra) was turned down by this Court.

18. On the question as to whether the bonafide requirement of the plaintiff No.1 for occupation of the premises in question could be satisfied by partial eviction, the Court below has discussed the pleadings on record and the evidence adduced by the parties. The Court below has taken into account that since the dimension of the front portion of the land adjacent to road was



only 23' and 5", out of which 10' was required for ingress and egress, considering the said circumstance, *inter alia*, and has reached a conclusion that the requirement of plaintiff No.1 could not be satisfied by partial eviction. Further, the Court below has found that the defendant could not successfully establish that the bonafide requirement of the plaintiffs for occupation of the land in question for their personal use could be satisfied by partial eviction.

**19.** Mr. Sahi, learned counsel for the petitioner/defendant, has contended that no evidence was led on the point of partial eviction on behalf of the defendant nor there was any plea on behalf of the defendant. He submits that in such circumstance there was no requirement for the Court below to have framed an issue in the said regard. In my opinion, however, the Court below has rightly framed the Issue No. (v) while considering the plea of the plaintiffs/opposite parties seeking eviction of the defendant on the ground that the premises was reasonably and in good faith required for their own occupation in view of the proviso to Clause (c) of sub-Section (1) of Section 11 of the Act. It is correct that there was no pleading on the point of partial eviction by the defendant nor any evidence led on his behalf before the Court below. Despite that, the finding recorded



by the Court below, that requirement of the landlord could not be satisfied by partial eviction, cannot be said to be unwarranted, in view of the proviso to Clause (c) to sub-Section (1) of Section 11 of the Act.

**20.** On careful perusal of the impugned judgment and decree, I find that the Court below has dealt with rival pleadings on record and has analysed in detail evidence, both oral and documentary, adduced in support of respective cases of the parties before reaching his conclusions. The finding recorded by the Court below are based on analysis of pleadings and the evidence available on record. The findings cannot be said to be suffering from perversity and such legal infirmity as would have required this Court's interference in exercise of revisional jurisdiction under Section 14(8) of the Act of 1982.

**21.** I do not find any merit in this application. This application is accordingly dismissed.

**22.** There shall be no order as to costs.

**(Chakradhari Sharan Singh, J)**

Pawan/-

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