

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.44 of 2015

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Dinesh Rai, son of late Tribhuvan Rai, Resident of village Rampur Shyamchandra, P.O. Rampur Shyamchandra, P.S. Raghapur, District Vaishali.

... .. Defendant-Petitioner

Versus

1. Chano Devi, wife of Tarkeshwar Rai.
2. Ranjit Rai, son of Tarkeshwar Rai.
3. Tarkeshwar Rai, son of late Ram Prasad Rai, Resident of village Rampur Shyamchandra @ Saistabad, P.O. Rampur Shyamchandra, P.S. Raghapur, District Vaishali.

... .. Plaintiffs-Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Naresh Chandra Verma, Advocate
For the O.Ps.	:	Mr. Rajendra Narayan, Senior Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 14-02-2020

The petitioner has filed this civil revision petition under Section 14(8) of the Bihar Building Control Act to set aside the judgment and decree dated 27.01.2015 passed by the learned Civil Judge, Junior Division, Hajipur, Vaishali in Eviction Suit No.10 of 2012 by which the learned Civil Judge, Junior Division decreed the suit holding that there is relation of landlord and tenant between the petitioner-defendant and plaintiffs-opposite parties and ordered to evict the suit premises failing which the petitioner shall be evicted from the suit premises in accordance with the process of the Court.

2. The petitioner is the defendant. The opposite parties-plaintiffs filed Eviction Suit No.10 of 2012. Chano Devi, plaintiff no.1 purchased the land of Khata No.446, Khesra No.2990, area 3



Katha 7 Dhurs from her own income and she came in possession of the land. The plaintiffs no.2 and 3 are husband and son of plaintiff no.1. The plaintiffs constructed four rooms. The petitioner-defendant after construction of the house approached Tarkeshwar Rai, plaintiff no.3, the husband of plaintiff no.1 and with the consent of other plaintiffs, the defendant-petitioner was inducted as tenant in the month of December, 1999 on a monthly rent of Rs.200/-. The defendant-petitioner continued to remain as tenant in the house. Plaintiff no.2, Ranjit Rai is a practicing advocate in Patna High Court and he felt difficulties to continue his profession from his old house. The plaintiffs requested the defendant-petitioner to evict the house. The plaintiff gave notice on 06.04.2012 and 30.09.2012 but even then the defendant-petitioner did not evict the house and thus, the plaintiffs filed the suit for eviction of the suit premises on the ground of personal necessity.

3. The defendant-petitioner filed WS and stated that Plot No.2990, area 2 acres 38 decimals, Plot No.2991, area 8 decimals and Plot No.2992, area 13 decimals were recorded in the revisional survey Khatihan in the name of Mishrilal Rai, Kuldip Rai and Nemu Rai two share and Tribhuvan Rai, son of Sukha Rai one share. Tribhuvan Rai, the father of the defendant-petitioner came in possession of the land. Tribhuvan Rai got house on some portion of Plot No.2990 and he constructed brick built house in the year 1965.



Tribhuvan Rai died in jointness with his three sons, namely, Mahesh Rai, Dinesh Rai (the petitioner-defendant) and Umesh Rai. The defendant-petitioner denied the relationship of landlord and tenant between the plaintiffs and defendant and reiterated the facts that he is residing in his ancestral house.

4. The learned Civil Judge, Junior Division framed as many as eight issues including issue no.4, whether there is any relationship of landlord and tenant between the plaintiffs and defendant?

5. The court below having considered the documentary as well as oral evidence while discussing issue no.4 recorded finding and held that the plaintiffs-opposite parties are landlord and the defendant-petitioner is the tenant and there is relationship of landlord and tenant between the plaintiffs and defendant. The learned court below also decided other issues in favour of the plaintiffs and by judgment and decree dated 27.01.2015 ordered for eviction of the petitioner-defendant from the suit premises. The petitioner-defendant being aggrieved by the aforesaid judgment and decree filed this present civil revision petition.

6. Heard Mr. Naresh Chandra Verma, the learned counsel for the defendant-petitioner and Mr. Rajendra Narayan, the learned Senior Counsel for the plaintiffs-opposite parties.



7. Learned counsel for the petitioner submits that from perusal of revisional survey records (Ext.9 and 9/B), it would appear that the lands of Plot No.2990, area 38 decimals, Plot No.2991, area 8 decimals and Plot No.2992, area 13 decimals were recorded in the name of Mishrilal Rai, Kuldip Rai and Nemu Rai two shares and Tribhuvan Rai one share and this fact itself shows that Tribhuvan Rai, the father of the petitioner got 1/3 share in the land. The land was purchased in the year 1949 from Most. Akli Devi, wife of Keshwar Rai in the joint name of three sons of Nemu Rai and in the name of Tribhuvan Rai, son of Sukha Rai. Of course Tribhuvan Rai sold the lands in the name of different persons including the lands of Plot No.2990, on the part of which the ancestral house in which the petitioner is residing is situated. This is the specific case of the petitioner-defendant that there is no relationship of landlord and tenant and he is residing in his ancestral house but the learned court below recorded erroneous finding on the basis of the only fact that Chano Devi purchased the land from Tribhuvan Rai in the year 1999 and she, her husband and son are owner of the land and they are landlord but there is no cogent and convincing evidence on record on the point of relationship of landlord and tenant. Admittedly the house is situated in a village where hardly any person takes the house of another on rent. There is no agreement of tenancy. The plaintiffs did not produce any chit of paper to show the payment of rent nor the



witnesses have given any cogent and reliable evidence to show the existence of landlord and tenant between the petitioner and the opposite parties. It is further submitted that on mere surmises and conjecture, the learned court below has held that the petitioner is tenant of the opposite parties only on the ground that the sale deed with regard to the land on which the house is situated is standing in the name of the opposite parties-plaintiffs.

8. Learned counsel for the petitioner further submits that the plaintiffs set forth the case in their plaint that after purchase of the land from the father of the petitioner, they constructed house in the year 1999 but PW10, who is plaintiff no.1, has herself stated in her evidence that the house in which the petitioner is residing is standing thereon from her childhood. At the time of deposition, PW10 was 60 years old and this evidence of PW10 itself demolishes the story of the plaintiffs that they constructed the house in the year 1999 and inducted the defendant-petitioner in the house in the month of December, 1999 rather this fact shows that the house on portion of Plot No.2990 is existing for last more than 40 years and even before the execution of sale deed in favour of Chano Devi, plaintiff no.1 in the year 1999. It is further submitted that the revisional survey Khatihan and the sale deed executed by Akli Devi in the name of three sons of Nemu Rai and in the name of Tribhuvan Rai, son of Sukha Rai, the father of defendant-petitioner in the year 1944 itself



shows that the land was ancestral property and the father as well as the sons of cousins of the father of the petitioner also got shares. There is no material although it is a suit of eviction but it is claimed that Tribhuvan Rai purchased the land from his own income and the same was his self acquired property and no evidence was brought on record to this effect enabling the court to incidentally record a finding on this point in order to establish the relationship of landlord and tenant between the plaintiffs and the defendant and, therefore, in absence of any cogent and reliable material on the point of relationship of landlord and tenant between the plaintiffs and the defendant, the findings recorded by the learned court below is not sustainable and liable to be set aside.

9. Mr. Rajendra Narayan, the learned Senior Counsel for the opposite parties submits that the plaintiffs and their witnesses have categorically stated in their evidence that the petitioner-defendant is tenant and he was paying rent to the landlord Tarkeshwar Rai. D.W.7, Niranjana Rai and D.W.8, Dinesh Rai in para 26 to 30 of their deposition have categorically stated that they got knowledge about execution of sale deed by Tribhuvan Rai but Dinesh Rai being the son of Tribhuvan Rai did not take any step against execution of the sale deed by his father. It amounts to candid admission on the part of the sole defendant, Dinesh Rai with regard to transfer of title on execution of sale deed and relationship of



landlord and tenant between him and the plaintiffs. It is further submitted that in a revisional jurisdiction, the Court has limited scope for entering into the findings recorded by the court below on the basis of the evidence on record, unless and until it is found that the finding is based on non-appreciation of evidence and there is a material irregularity. Thus, the judgment does not require any interference. It is further submitted that from the evidence of the sole defendant (D.W.8), it would appear that he disclosed that his ancestral house is situated in another plot and, therefore, the house in which the defendant-petitioner is residing is constructed by the plaintiffs after they purchased the land.

10. Having heard the submission of both sides, the only question arises for consideration in this civil revision is whether there exists any relationship of landlord and tenant between the opposite parties-plaintiffs and petitioner-defendant and the finding of the learned court below on this question is sustainable and based on cogent evidence?

11. The plaintiffs-opposite parties sought eviction of the petitioner-defendant from the suit premises on the ground of personal necessity. They brought the suit on the pleadings that plaintiff no.1 purchased the land from Tribhuvan Rai, the father of the petitioner-defendant as the land was self acquired property of father of the defendant-petitioner. After execution of the sale deed they



constructed a house on the disputed land in the year 1999 and when the petitioner-defendant approached them, they inducted the petitioner-defendant as monthly tenant but the petitioner-defendant has denied the relationship of landlord and tenant and contested the suit on the ground that the suit land is his ancestral property although his father executed the sale deed but the sale deed was never effected. There was house on the disputed land from before execution of the sale deed by his father and petitioner was residing therein. The plaintiffs instead of declaration of title and recovery of possession chose to file suit for eviction on the ground of personal necessity. Admittedly there is no documentary evidence to show that there is any relationship of landlord and tenant between the petitioner and opposite parties. The plaintiffs-opposite parties did not produce any chit of paper to show that the defendant-petitioner ever paying any amount as rent. Even there is no material on record to show that the petitioner was inducted as a tenant in the house. Only Tarkeshwar Rai, the opposite party no.3 was the person who is said to have inducted the petitioner as tenant in the house but there is no cogent and oral evidence to prove the relationship of landlord and tenant between the plaintiffs-opposite parties and defendant-petitioner. It further appears that Chano Devi, plaintiff no.1 was examined as P.W.10 in whose name the property was purchased. She disclosed that after purchase of the land, the house was constructed but she



herself stated in her evidence that the house in which the petitioner is residing is existing from her childhood and this fact itself shows that the house was standing on the disputed land for about 40 years and, therefore, the case of the plaintiffs that after purchase they constructed house in the year 1999 and inducted the petitioner-defendant as a monthly tenant crumbles.

12. From perusal of the sale deed executed by Most. Akli Devi in the name of three sons of Nemu Rai and in the name of Tribhuvan Rai, son of Sukha Rai who was the father of the defendant-petitioner in the year 1944 itself shows that the land was purchased jointly in the name of the sons Nemu Rai and Tribhuvan Rai, son of Sukha Rai. Their shares were described in the sale deed itself. Although the age of the father of the petitioner has not been disclosed but after about 50 years from purchasing the land, the father of the petitioner executed the sale deed claiming partition amongst the co-sharers. It further transpires from perusal of the judgment of the learned Civil Judge, Junior Division that the learned Civil Judge, Junior Division has recorded the finding on the basis of the Khatihan and the sale deed standing in the name of Tribhuvan Rai and the sale deed executed by Tribhuvan Rai in the name of the plaintiff as he held that that after execution of the sale deed, the plaintiff became the owner of the land and on such facts since the sale deed was executed by Tribhuvan Rai in the name of plaintiff



no.1, the finding of the learned court below that there is a relationship of landlord and tenant is not sustainable. In an eviction suit, the court is not at all justified in entering upon the complicated question of title. Of course the court can incidentally look into the title of the plaintiffs but that is not suffice for recording a finding of existence of relationship of landlord and tenant. In absence of any such cogent evidence in order to show that there exists any relationship of landlord and tenant between the petitioner and the opposite parties, I find that the finding of the learned court below is perverse and in fact based on no worth reliable evidence. Admittedly the house is situated in a village where seldom any landlord let out the house to his villager and from the evidence of the plaintiff no.1, P.W.10, P.W.7 and others, I find that there evidence on the point of tenancy is very sketchy and not worth reliable. There appears on the face of it and on the perusal of the documentary evidence such as Ext.9 and 9/A, the Khatihan, that the land was purchased jointly in the name of three sons of Nemu Rai and Tribhuvan Rai the father of the petitioner. Even the house, according to the evidence of P.W.10, plaintiff no.1, was standing thereon for last 40 years since her childhood or when she came to the village after her marriage with Tarkeshwar Rai.

13. Having considered the facts aforesaid, I find that the judgment and decree dated 27.01.2015 passed by the learned Civil



Judge, Junior Division, Hajipur, Vaishali in Eviction Suit No.10 of 2012 is illegal and not sustainable in the eye of law and is fit to be set aside.

14. In the result, the civil revision petition is allowed and the judgment and decree dated 27.01.2015, passed by the learned Civil Judge, Junior Division, Hajipur, Vaishali in Eviction Suit No.10 of 2012 is set aside.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
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