

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.485 of 1989

1. Hari Charan Yadav, son of late Thakur Choudhary, resident of village- Chandpur, P.S. Panchrukhi, District- Siwan
2. Manki Devi, Daughter of late Thakur Choudhary, both resident of village- Chandpur, P.S. Panchrukhi, District- Siwan
3. Deo Charan Yadav, son of Thakur Choudhary, at present residing at Sagruara Chauk, Gomia, P.O. Indian Explosive Gomia, District- Bokaro

... .. Appellant/s

Versus

- 1(a) Manager Chaudhary,
- 1(b) Jata Chaudhary,
- 1(c) Jitan Chaudhary,
- 1(d) Amar Chaudhary
- 1(e) Rusa Chaudhary, all son of late Mahendra Chaudhary
- 1(f). Tetari Devi
- 1(g) Bachchi Devi
- 1(h) Ghurli Devi, 1(f) to 1(h) are daughters of Mahendra Choudhary,
All resident of village Chandpur, P.S. Pachrukhi, District-Siwan

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vinay Kirti Singh, Senior Advocate
	:	Mr. Pramod Kumar Sinha, Advocate
	:	Mr. Akhileshwar Singh, Advocate
	:	Mr. Venkatesh Kirti, Advocate
For the Respondent/s	:	Mr. Randhir Kr., Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

CAV JUDGMENT

Date : 20-09-2022

This Second Appeal under Section 100 of the Code of Civil Procedure, has been directed against the judgment and decree dated 01.08.1989 passed by Shri Jhauri Prasad Paul, 3rd Additional District Judge, Siwan in Eviction Appeal No. 4 of 1988 affirming the Judgment and decree dated 16.04.1988



passed by Shri Dharam Nath Prasad Verma, Ist Munsif Siwan in Eviction suit no. 91 of 1983, whereby the Eviction suit was dismissed.

The brief facts are that the original plaintiff/appellant Thakur Choudhary, who died during the pendency of the appeal represented by his legal heirs, appellant nos. 1 to 3 filed Eviction suit No. 91 of 1983 for eviction of defendant from the suit house and realization of arrears of rent. It is stated that R.S. plot No. 463 under Khata No. 2 was owned and possessed by original kashtkar and the same land is recorded in the name of Sheo Govind Raut, the grandfather of the plaintiff under Sikmi Khata no. 2.

The plaintiff Thakur Choudhary is the grandson of Sheo Govind Raut, a recorded Sikmi tenant of Khata No. 2 R.S. Plot No. 463 having an area of 15 Katha 7 dhur who had taken oral settlement from ex-landlord and became Kashtkar. The rent of land was paid to the ex-landlord and thereafter to the State of Bihar on vesting of Zamindari. The suit house was constructed by the plaintiff over the suit land and the same was rent out orally to the defendant on 01.01.1980 on the monthly rent of Rs. 25. The respondent paid rent to him till 31.12.1981 and refused to pay the rent thereafter. The plaintiff was in need of the suit



house for his personal necessity. Accordingly, the suit was filed.

The original defendant/respondent, Mahendra Choudhary denied the claim of the plaintiff and stated that the suit land was never settled by the ex-landlord in favour of the plaintiff. The plaintiff or his father or grandfather never remained in possession of suit land and never constructed the suit house. It is further stated that suit house was constructed by him and his family members. The creation of tenancy, payment of rent and arrear of rent in respect of suit house have been denied. It is further stated that grandfather of plaintiff Sheo Govind Raut had got wrong survey entry of Sikmi khatian in his name who died 50 years ago and on his death the landlord Kashtkar, namely, Kapil Dev Narayan and Praduman Narayan got back the possession of the suit land and later on father of the defendant purchased 8 katha of land in R.S. Plot No. 463 by oral sale from them on payment of Rs. 95 and came in possession in Vaisakh 1936. The father of the defendant constructed the suit house over 1 katha of land and remaining land remained in his cultivation. Subsequently, the father of defendant transferred the suit land in favour of the defendant by registered sale deed and he came in possession of the suit land from the date of the sale.

The Trial Court framed as many as 7 issues on the basis



of rival pleadings of the parties, which are as follows.

- (i) Is the suit as framed maintainable?
- (ii) Has the plaintiff got any cause of action for the suit?
- (iii) Is the suit time barred?
- (iv) Has the plaintiff got any right, title and interest over the suit land?
- (v) Is there any relationship of landlord and tenant between the parties?
- (vi) Is the plaintiff entitled to a decree of eviction and arrears of rent as claimed?
- (vii) To what relief if any, the plaintiff is entitled?

One of the core issues which the learned Trial Court had proceeded to decide was as to whether the plaintiff got any right, title and interest over the suit property and whether there is any relationship of landlord and tenant between the parties.

The learned Trial Court decided these issues against the plaintiff and in favour of the defendant. It was held that the plaintiff has failed to prove his right, title and interest over the suit property and there was no relationship of landlord and tenant existing between the parties. Accordingly, arrears of rent does not arise. Accordingly, suit of the plaintiff was dismissed on contest with cost.



In appeal the First Appellate Court had formulated points for determination, which are as follows:-

- (i) Whether there is relationship of landlord and tenant between the appellant/plaintiff and the respondent/defendant?
- (ii) Whether the respondent/defendant is liable to be vacated from the suit house with direction to pay arrears of rent to the appellant/plaintiff?
- (iii) Whether the appellant/plaintiff has right, title and interest over the suit land by dint of so called settlement?
- (iv) whether the judgments and decrees of the courts below are sustainable?

After having examined the grounds taken to question the correctness of the decision of the Trial Court and appreciating the evidence on record, by the impugned judgment the First Appellate Court below affirming the findings of the learned Trial Court decided all the points against the appellants and in favour of respondent and accordingly, the First Appeal was dismissed.

Vide order dated 01.03.1990 substantial question of law was framed by this Court as to whether the court was right in utilizing a part of the statement of PW-17, the plaintiff, and not



the whole of it which gives a different picture altogether and whether the court below is right in not relying on his evidence?

Learned counsel appearing on behalf of appellants has submitted that the courts below have erred in reading part of the deposition of the plaintiff (PW-17) and have committed an error of law in relying upon such a part as an admission.

It is further submitted that the courts below have erred in law in proceeding to decide the question of title in the suit for eviction of defendant. It is further submitted that the survey entry was in favour of the plaintiff and he was accordingly, entitled to the benefit of statutory presumption of correctness of survey entry under the B.T. Act.

It is further submitted that it is well established that if a finding of fact is arrived at ignoring important and relevant evidence, the finding is bad in law. He has referred the judgment of Hon'ble Supreme Court in **Damadilal and Others Vs. Parashram and Others AIR 1976 S.C. 2229.**

Despite sufficient opportunities provided, no one appeared on behalf of respondents at the time of final hearing of this matter.

In the present case, the title of the plaintiff was denied and the defendant claimed title to the suit property in himself



and issue regarding title was therefore, framed and both sides adduced evidence on the question of title. The two courts below concurrently has not found title with the plaintiff and also held that the plaintiff had not been able to prove relationship of landlord and tenant.

On perusal of the judgment of trial court it appears in paragraph 6 that the trial court has dealt with the evidence of PW-17 (the plaintiff) in detail and recorded that plaintiff himself admitted that Sikmi right existed for a period of 4 to 5 years only and after abolition of Sikmi right, the ex-landlord settled the disputed land in favour of the grandfather of the plaintiff. Therefore, from this admission of the plaintiff it appears that the Sikmi right of the grandfather of the plaintiff breaks after 4 to 5 years of his existence and the original Kastkar of the land resumed his possession over the suit land. The first appellate court observed that it is not case of the plaintiff in the plaint that ex-landlord came in possession of the suit land after removing Kashtkar Kapildeo Narain Singh and Praduman Narain Singh and the story of settlement as made by the plaintiff does not appear to be believable one.

In his evidence, PW-17 stated that landlords had made his grandfather Kashtakari before Revisional Survey. In this regard



it appears that if landlord had settled the disputed land in the name of Sheo Govind prior to survey it would have been recorded in khatian as Kashtkar but his name is recorded only as Sikmidar accordingly the statement of plaintiff (PW-17) is not corroborated and trustworthy.

The learned courts below have considered the entire evidence including the evidence of the plaintiff (PW-17) and on analysis of the same given the finding of facts. Other points raised by the learned Counsel for the appellants are finding of facts and not substantial questions of law. It is well settled that a Second Appeal lies only on the substantial question of law not on substantial question of fact and the court cannot entertain a Second Appeal unless a substantial question of law is involved.

In the back-ground of nature of pleading put forth by the parties before the court below and the evidences laid on their behalf which have been duly considered and appreciated by the learned trial court and the first appellate court, the findings of the court being concurrent, I do not find any infirmity or error in the impugned judgment and decree requiring this Court's interference in exercise of power under Section 100 of Civil Procedure Code. The substantial question of law formulated is answered against the appellants.



The substantial question of law having been answered in aforesaid terms, in my opinion the present appeal fails and is accordingly dismissed. The interlocutory application, if any, stands disposed of. There shall be no order as to costs.

(Sunil Dutta Mishra, J)

saaurabhkr/-

AFR/NAFR	NAFR
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