

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.169 of 2021

1. Mala Devi, W/o Late Gopal Choudhary, Resident of Village-Bus Stand, Bariyarpur, P.O. and P.S.-Bariyarpur, District-Munger.
2. Sonu Kumar, S/o Late Gopal Choudhary, Resident of Village-Bus Stand, Bariyarpur, P.O. and P.S.-Bariyarpur, District-Munger.
3. Monu Kumar, W/o Late Gopal Choudhary, Resident of Village-Bus Stand, Bariyarpur, P.O. and P.S.-Bariyarpur, District-Munger.

... .. Appellant/s

Versus

1. Chandradeo Mandal, S/o Late Parash Nath Mandal, Resident of Village-Pariya, P.S.-Bariyarpur, District-Munger.
2. Smt. Fulmani Devi, W/o Sri Chandradeo Mandal, Resident of Village-Pariya, P.S.-Bariyarpur, District-Munger.
3. Rajniti Kumar, Prayag Ram Sao, resident of Village Gandhipur, P.O. and P.S. Bariyarpur, District Munger.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anil Kumar Jha, Advocate Mr. Arun Kumar, Advocate
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

CAV JUDGMENT

Date : 11-10-2022

This Second Appeal under Section 100 of the Code of Civil Procedure has been directed against the Judgment and Decree dated 24.12.2020 passed by learned Adhoc FTC 1st, Munger in Eviction Appeal No. 3 of 2004 (Tr. No. 01 of 2009) affirming the Judgment and Decree dated 29.03.2004 passed by learned Munsif 1st, Munger in Eviction Suit No. 11 of 2002 whereby and whereunder the Trial Court has decreed the suit on contest against defendant 2nd party and ex-parte against defendant 1st party and directed the defendant 2nd party who is



presently in possession of suit premises through defendant 1st party to hand over the vacant possession of the suit premises to the plaintiff within a month of passing the decree.

2. The appellants are legal heirs of original 2nd party namely Late Gopal Chaudhary before the Trial Court. The case of the plaintiff is that plaintiffs purchased the suit property (mentioned in Schedule-01 of the plaint) from Mostt. Sako Devi and other heirs and decendants of Late Shyam Sunder Chaudhary. The defendant 1st party was month to month tenants of the vendors of plaintiffs in the suit premises on monthly rent of Rs. 600/- per month. After the expiry of the lease on 20.04.2002 the plaintiff executed a deed of lease (kerayanama) in favour of defendant 1st party on 06.04.2002 operative from 20.05.2002 to 21.04.2003 and became month to month tenant of plaintiff on a monthly rental of Rs. 700/-. The defendant 2nd party in collusion with defendant 1st party got the suit premises sub-let in his favour and entered into the suit premises. The further case of the plaintiffs is that without permission of plaintiffs, defendant 1st party has no right to sub-let the suit premises to defendant 2nd party (Gopal Chaudhary) and his such action is in violation of the term of the lease and further defendant 1st party has also not paid rent of the suit premises for



the consecutive two months.

3. The defendant 1st party not filed any written statement accordingly ex-parte hearing was done against him. The defendant 2nd party contested the suit and filed his written statement stating that Shyam Sunder Chaudhary and Baijnath Chaudhary were full brothers and Baijnath Chaudhary died leaving behind his three sons including Gopal Chaudhary. Shyam Sunder Chaudhary died leaving behind three daughters including Sako Devi. The defendant 2nd party claimed that Late Shyam Sundar Chaudhary conveyed his share to his own brother Baijnath Chaudhary who became absolute owner of his father. On partition on 19.10.1978, between Baijnath Chaudhary and his sons, the property left by Late Shyam Sunder Chaudhary fell to the share of defendant 2nd party who constructed house and developed property and defendant no. 1 was his tenant who after expiry of lease vacated the suit premises and made over the possession of the suit premises to defendant 2nd party Sako Devi and other vendors of the plaintiff have never got any concern or interest with the property of Late Shyam Sunder Chaudhary and defendant 2nd party is the real owner (title holder) and landlord of the property.

4. The Trial Court recasted four issues for adjudication



and held that incidental title of plaintiff over the suit property is established and there is no documentary evidence on the record to show the title of defendant 2nd party on the suit land. Moreover, the claim of title of defendant 2nd party is not to be decided in this eviction suit. It is found that defendant 1st party is the tenant of the plaintiff and he has left the suit premises handing over the possession of the suit premises to defendant 2nd party violating the tenancy and accordingly suit was decreed.

5. In appeal the Appellate Court below on analyzing the evidence and applying the judicial mind found that the plaintiffs have filed Ext.-3 sale deed in their favour showing their ownership but defendant 2nd party has not such type of any document so ownership on suit premises *prima facie* goes in favour of plaintiffs.

6. The learned court below has also taken note of observation made in various judgments of this Court particularly in **1999 (2) PLJR page 148 to 157** that in a suit for eviction, the court is not required to decide the title of the plaintiff in a full fledged manner and the court is only required to see whether there is relationship of landlord and tenant between the parties or not. It is for that purpose that the court is required to see whether the plaintiff is the owner of the premises and whether



the defendant is the tenant. The Appellate Court below find that in the present case the defendant has not filed any title deed on its behalf. On the other hand the plaintiff has filed Ext.-3. The plaintiffs have brought only eviction suit. The defendant 2nd party has not taken proper steps or filed any counter claim by depositing *ad volerum* court fees. The Appellate Court dismissed the appeal on cost and upheld the Judgment and Decree passed by the Trial Court.

6. Learned counsel for the appellant has submitted that the Appellate Court failed to appreciate that the appeal was fit to be remanded to the Trial Court to be tried as a regular suit and the impugned Judgment is perverse in treating the appellant-defendant 2nd party as sub-lessee of defendant 1st party without considering the vital documents of appellant-defendant 2nd party including Ext.- D(kirayanama). It is further submitted that plaintiffs have failed to prove the relationship of landlord and tenant between the parties and default in payment of rent but the courts below decreed the suit ignoring the same.

7. Having heard the learned counsel for the appellant and on perusal of judgments of both Trial Court and Appellate Court, it appears that both the courts below have given concurrent finding that defendant 1st party is the tenant of



plaintiff who handed over the possession of the suit premises to defendant 2nd party violating the terms of tenancy. Both the courts considered the evidence on record and there is no perversity in concurrent findings of the courts below. No substantial question of law arises in this Second Appeal.

8. Accordingly, this Second Appeal is dismissed at the admission stage itself.

(Sunil Dutta Mishra, J)

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AFR/NAFR	NAFR
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