

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.179 of 2018

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Binod Kumar Vyahut S/o Late Parmeshwar Prasad Resident of Mohalla-East
Salempur, Sadha Road, P.O. and P.S.-Chapara Town, District-Saran.

... .. Petitioner/s

Versus

1A-Binod Kumar Gupta
1B- Kanhaiya Kumar, both sons of Late Jagarnath Prasad
Resident of Mohalla Lah Bazar, P.O.-Chapara, P.S.-Chapara Town, District-
Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Nivedita Nirvikar, Sr. Advocate Mr.Upendra Kumar Singh, Advocate Mr. Dronacharya, Advocate Mr. Anant Kumar Bhaskar, Advocte Ms. Kriti Kumar Suman, Advocate Mr. Sanjay Kumar Jha, Advocate
For the Respondent/s	:	Mr. Gopal Pandey, Advocate Mr.Shambhu Prasad Yadav, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

CAV JUDGMENT

Date : 13-12-2022

This Civil Revision application under Section 14 (8)
of Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982
is directed against the Judgment and Decree dated 19.09.2018
passed in Eviction Suit No. 18 of 2015 passed by the learned
Munsif Ist Chapra whereby and whereunder he has decreed the



eviction suit on contest in favour of the plaintiff/opposite party/respondent and directed the defendant/petitioner to vacate the disputed shop within 60 days of such decision and deliver the possession failing which same shall be done by following the judicial process.

2. Petitioner was defendant before the Court below.

The original plaintiff (now deceased represented by his legal heirs) had filed Eviction Suit No. 18 of 2015 under Section 11 (i) (c) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (in short, BBC Act), claiming that Schedule 1 shop (disputed shop) belongs to him and the defendant was in need of the shop who requested to let him on rent and the shop was given on rent by executing a deed of rent dated 05.08.2008 at the rate of Rs. 800/- per month which was valid for the period of 11 months. After the expiry of 11 months the defendant did not vacate the shop but continued as tenant. The further claims of the plaintiff is that his son Kanhiya Kumar after completing his studies is unemployed and wants to start his stationary business for which the plaintiff requested the defendant to vacate the said shop but despite given assurance he failed to vacate the same. The defendant send legal notice to the sons of plaintiff giving false claim that sons of plaintiff have agreed to sale the shop and



taken advance money which has been duly replied by the sons of plaintiff. It is also submitted that the defendant stopped the payment of rent from January, 2015. It is further case of the plaintiff that the shop is very small and partial eviction does not satisfy the plaintiff and also claimed recovery of arrears of rent due from January 2015.

3. The defendant appeared and filed this written statement stating therein inter alia that there is no relationship of landlord and tenant on the ground that the plaintiff and his sons had decided to sell the disputed shop with the defendant and received earnest money of Rs. 1,00,000 of the total consideration of Rs. 10 lakh. Further case of the defendant is that when the plaintiff did not execute sale deed in favour of the defendant with respect to the shop in question for which the deed of agreement dated 26.11.2015 was executed then title Suit No. 93 of 2017 was filed by the defendant in the Court of learned Sub-Judge Ist, Saran with a prayer to pass a decree of specific performance of contract and to confirm the possession over the shop. However, the Title Suit No. 93 of 2017 was rejected vide order dated 30.03.2017 against which the defendant petitioner herein filed Title Appeal No. 98 of 2017 in the Court of learned District Judge Saran at Chapra.



4. On the consideration of pleading and evidence produced on behalf of the parties learned trial Court passed the impugned judgment and decree dated 19.09.2018 in the Eviction Suit No. 18 of 2015 in favour of the plaintiff and against the defendant hence this Revision filed on behalf of the defendant-petitioner.

5. Learned senior counsel Ms. Nivedita Nirvikar appearing on behalf of the petitioner submits that the impugned judgment and decree passed by the learned Court below is not in accordance with the provision of Section 11 (1) (c) of the BBC Act. Learned senior counsel further submits that once there is agreement of sale between a landlord and the tenant, the old relationship of landlord and tenant comes to an end. In other words, on the date of execution of the agreement of sale their status as that of landlord and tenant change into a new status as that of a purchaser and a seller.

6. She has further submitted that after the execution of deed of agreement dated 26.11.2015 to sell the disputed shop and after receiving the earnest money relationship of landlord and tenant end and accordingly eviction suit is not maintainable. She has further submitted that the Title Appeal No. 98/17 with respect to the Eviction Suit property is also pending before the



District Judge, Saran at Chapra. Accordingly, the finding of the Court below is not in accordance with the law and the impugned judgment and decree are liable to be set aside.

7. On the other hand, Shri Shambhu Prasad Yadav, learned counsel for the respondent submits that the learned trial Court below has passed the impugned judgment and decree on the basis of evidence on record and there is no illegality in the impugned judgment accordingly there is no requirement to interfere in the reasoned judgment by this Court in its revisional jurisdiction. He has further submitted that this Court under the revisional jurisdiction cannot re-appreciate the evidence to take different view and to correct the findings of the fact, if any.

8. He has further submitted that the law is now well settled that the tenant cannot dictate the landlord with respect to the personal necessity of the landlord.

9. The Hon'ble Supreme Court in the judgment reported in (2000) 9 Supreme Court Cases 339 (R. Kanthimathi and another vs. Beatrice Xavier) observed in paragraph 9 that "every conduct of the landlady right from the date of entering into agreement of sale, accepting money towards the sale consideration, delivering possession in lieu of such agreement all clearly indicates and has to be construed in law that she



repudiated her old relationship of landlord and tenant. Thus after this parties enter into a new cloak of seller and purchaser and their relationship is to be governed under the said terms of the agreement. Every right and obligation thereafter would flow from it. Even if parties under the agreement of sale do not perform their obligations, remedy may be availed in law as permissible under the law. Hence we have no hesitation to hold that the courts below including the High Court committed error in holding that the tenant committed willful default. When the appellant is no more the tenant how can non-payment be construed as willful default?"

10. In a suit for eviction filed by the landlord, the defendant has admitted the relationship of tenancy and the period of lease agreement; but resisted the plaintiff's claim by setting up a defence plea of agreement for sale and that he paid an advance of Rs. 1Lakh which is denied by the landlord. The petitioner also filed the suit for specific performance, which of course is contested by the landlord. When such issues arising between the parties ought to be decided, mere admission of relation of landlord and tenant cannot be said to be an unequivocal admission to decree the suit under Order 12 Rule 6 CPC.



11. It is well settled that BBC Act is a special Act providing for speedy disposal of eviction of suit on certain grounds enumerated therein under the said Act. Eviction suit is required to be tried under summary procedure provided under the Act. To succeed in the eviction suit under the BBC Act, the landlord is required to prove contract of tenancy between the plaintiff and the tenant and also the ground on which the eviction is sought. In such a suit the learned Court is not required to go into the serious question of title otherwise the purpose of the Act would stand frustrated.

12. In the Revision jurisdiction under the Rent Control Act has now been well settled by the Constitution Bench decision of the Apex Court in the case of Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh 2014 (9) SCC 657. In view of the said judgment of the Apex Court the revisional court is only to see whether the judgment and order of eviction has been passed according to law or not.

13. On perusal of the impugned judgment and decree, it appears that the learned Court below after discussing the evidence on record given specific finding that Mahadnama (agreement to sale) is not the registered document. It is observed that defendant in his written statement admitted that he had



taken the shop in question on the rent for 11 months and giving the admitted rent. Accordingly, there is relationship of landlord and tenant between the plaintiff and the tenant and also given finding that son of plaintiff namely, Kanahiya Kumar is an unemployed for which he requires the disputed shop for doing the personal requirement for opening the shop.

14. The trial Court also given specific finding that the disputed shop is 30'' 6' length and 5'' 7' width and accordingly partial eviction is not possible.

15. The learned trial Court also observed that the defendant in his written statement admitted that in January 2015 the sons of the plaintiff had agreed to sale the suits for Rs. 10 lakh and it was agreed for advance payment of Rs. 80,000 but no Mahadanama papers were prepared and later on the sons of the plaintiff stated that the owner of the disputed land is plaintiff and they have no right to execute the same.

16. Accordingly, in view of the said statement of the defendant also the question of executing agreement to sale is not correct. The findings recorded by the Court below is based on evidence and material on record, I do not find any infirmity warranting interference with the impugned judgment and decree.



17. Accordingly, the instant Civil Revision No. 179 of 2018 is dismissed.

(Sunil Dutta Mishra, J)

ashutosh/-

AFR/NAFR	NAFR
CAV DATE	13.10.2022
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