

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.342 of 2021

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Yaduvansh Singh S/o Late Dayali Singh, Resident of Mohalla - Sujaganj,
Devi Prasad Dhandhanian Lane, P.S.- Kotwali, District - Bhagalpur.

... .. Appellant/s

Versus

Umashankar Singh S/o Late Sajendra Singh, Resident of Mohalla - Sujaganj,
Devi Prasad Dhandhanian Lane, P.S.- Kotwali, District - Bhagalpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Mukesh Kumar Jha, Advocate

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 27-09-2022

Heard learned counsel for the appellant.

This Second Appeal has been preferred against the judgment and decree dated 27.03.2021 and 13.04.2021 respectively passed by the learned Additional District Judge-XII, Bhagalpur in Title Appeal No. 93/2019 affirming the judgment and decree dated 24.07.2019 and 06.08.2019 respectively passed by the learned Munsif-II, Bhagalpur in Title Eviction Suit No. 37/2013.

The appellant was defendant in the eviction suit. The case of the plaintiff / respondent herein is that he is the landlord of the suit premises (having an area of 250 Sq. ft. bearing Municipal Survey Plot No. 128 under Khata No.366 in Ward No.29/38 situated at Mohalla Bahadur Devi Prasad



Dhandhanian Lane, Sujaganj, Bhagalpur) and the defendant is the tenant of the suit premises on the monthly rent of Rs. 2400/-. The defendant paid the rent till March, 2013. Thereafter, he became defaulter and despite demand he has not paid the rent and refused to vacate the suit premises. Accordingly, suit for eviction and delivery of possession has been filed.

The defendant by filing written statement denied the relationship of landlord and tenant and stated that earlier the plaintiff entered into an agreement for sale of 996 Sq. ft. and the suit premises is a part of the said agreement with the defendant and when the plaintiff refused to execute the sale deed then for enforcement of Jerbeyanama dated 15.04.1987 defendant filed a suit bearing Title Suit No. 391/2013 prior to filing of eviction suit in which there was a compromise decree. The deed of Jerbeyananama itself proves that there is no relation of landlord and tenant between the parties. It is to create hurdle in enforcement of agreement dated 15.04.1987 the suit for eviction was filed. The learned Trial Court decreed the suit against which the defendant/appellant filed title appeal which has been dismissed vide judgment and decree dated 24.07.2019 and 06.08.2019 respectively. Hence this Second appeal has been filed.



Learned counsel for the appellant submits that the judgments and decree have been passed by both the learned Court below are bad and illegal in the eye of law as well as on facts. The learned Courts below failed to consider that after execution of agreement dated 15.04.1987 (Exhibit-C) there was no relationship of landlord and tenant between the parties. Accordingly question of payment of rent and default does not arise. Learned Court below misinterpreted the provision of Transfer of Property Act and Registration Act. It is further submitted that the rent receipt (Exhibit-2 series) does not have acknowledgment and it has no legal value and the learned Court below failed to consider that the rent receipts are forged and fabricated. Learned counsel for the appellant further submits that both the Courts below also failed to frame the issue of title of defendant.

From perusal of the Trial Court judgment it appears that the Trial Court found that there was no relationship of landlord and tenant between the plaintiff and defendant and the defendant is defaulter in making the rent accordingly, the plaintiff is entitled for order of eviction. The Trial Court also discussed the (Exhibit-C) i.e. Jerbeyananama dated 15.04.1987 which was not the registered document and held that by that



document the defendant claims as owner of the land is not legal in view of Section 54 of the Transfer of Property Act. The Court below relied on the judgment of Hon'ble Supreme Court Rambhau Namdeo Gajre Vs. Narayan Bapuji Dhotra (2004) 8 SCC 614 and State of U.P. Vs. District Judge 1997 (1) SCC 496.

In Title Appeal the First Appellate Court had formulated two points for adjudication:

(i) Is there any landlord-tenant relation in between plaintiff and defendant in respect of suit premises?

(ii) whether defendant is defaulter in paying rent to plaintiff in respect of suit premises, as such defendant is liable for eviction from the suit premises under the provision of B.B.C. Act?

The Appellate Court on consideration of facts and law held that Exhibit-C on which the defendant is relying is an agreement for sale only which is an unregistered document and the executor is not the exclusive owner of the said property. By the said Jerbeyananama dated 15.04.1987, both the parties have been agreed to sell it on certain terms. Therefore, by virtue of the document Exhibit-C the title has not been passed in favour of defendant. The Court has also held that the present suit is filed for eviction, therefore, the provision of BBC Act will



apply.

It was also observed that on perusal of Exhibit-C tenancy is accepted and according to law one cannot be owner of another property on the basis of document of agreement for sale only.

Accordingly, The First Appellate Court held that there is landlord and tenant relation in between plaintiff and defendant with respect to suit premises as described in Schedule-A of the plaint. On the point of default of making payment of rent to plaintiff it was also held that the defendant became defaulter in paying arrears of rent in respect of suit premises to the plaintiff. defendant is liable for eviction under the provisions of B.B.C. Act.

Considering that both the Courts below have given concurrent finding that there is a relationship of landlord and tenant between the plaintiff and defendant and the defendant is defaulter in making payment of rent in respect of suit premises and accordingly, defendant is liable to be evicted under the provisions of B.B.C. Act. There is no perversity or unreasonableness in the aforesaid finding of the Courts below which have been recorded on the basis of evidence and in accordance with the principles of law.



In my considered view, no substantial question of law arises in this Second Appeal filed by the defendant. Accordingly, this Second Appeal is dismissed.

(Sunil Dutta Mishra, J)

Kamlesh/-

AFR/NAFR	NAFR
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