

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.93 of 2018

Divakar Singh Son of late Ram Pratap Singh R/o Mohalla S.k Puran , Arya Samaj mandir Road, lane No. 8, R.P.S. More, Bailey Road, P.O. Danapur Cantt. P.S.- Danapur, District- Patna.

... .. Petitioner/s

Versus

Veena Singh Wife of Ram Darash Singh R/o Mohalla S.K. Puram, Arya Samaj Mandir Road, Lane No. 8 , R.P.S. More , Bailey Road, P.O. Danapur Cantt. P.S. Danapur, District- Patna Presently residing at Flat No. 103, Jaya Enclave, AN Path, Boring Road, P.S. Shri Krishnapuri, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Adv.

For the Respondent/s : Mr. Mritunjay Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

8 05-12-2022 Petitioner is the defendant in a Title Eviction Suit No. 07/2015. He is aggrieved by order dated 22.11.2017 whereby the learned trial court (Munsif, Danapur) has directed the petitioner to deposit the arrears of rent w.e.f. July 2011 to October 2017 along with current rent month to month on a petition filed by the plaintiff/respondent/landlord under Section 15 of Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (for short 'the Act').

2. The plaintiff/respondent/landlord filed the Eviction Suit No. 07/2015 before the court of Munsif, Danapur seeking a decree of eviction from the tenanted premises against the petitioner/tenant on the ground of personal necessity as well as default in payment of rent. The case of the plaintiff is that the



defendant was inducted as tenant in the suit premises in February 2011 on monthly rental of Rs. 4000/- per month. The petitioner/defendant paid the rent to the plaintiff at the rate of Rs. 4000/- upto 30.06.2011 and thereafter, stopped the payment of rent w.e.f. 01.07.2011.

3. The petitioner/defendant filed the written statement accepting the tenant landlord relationship between the parties. It has further been stated that later on the plaintiff in the month of February, 2014 announced the sale of the suit property for meeting her expenses and the defendant/petitioner requested the plaintiff to sell the property in his favour at the market price. The offer of the petitioner was accepted by the plaintiff/respondent on the total consideration amount of Rs. 13 Lacs out of which a sum of Rs. 6,50,000/- was paid in cash as advance to the plaintiff by way of token money and by way of an acknowledgment having terms and conditions for sale having been signed by the plaintiff on 07.12.2013. A copy of the same has been annexed in counter affidavit at Annexure- 'C'.

4. Learned counsel for the petitioner assailing the impugned order submits that there is no doubt that the defendant/petitioner was inducted as a tenant on monthly rent @ Rs. 4000/- which was being paid by him to the plaintiff but in



the month of February 2014, the plaintiff fell in need of money and announced the sale of the suit premises which the petitioner agreed to purchase and paid a sum of Rs. 6,50,000/- (Six Lacs Fifty Thousand) and a receipt thereof, was issued by the plaintiff/respondent by way of token money agreement. The possession of the suit premises was handed over to the petitioner in part performance of the agreement as per Section 53A of the Transfer of Property Act. As such, the plaintiff cannot take a plea that the defendant is a tenant in view of the changed circumstances.

5. Accordingly, his submission is that the petitioner now is not residing in the suit premises as a tenant of the plaintiff rather he is the owner of the suit property by virtue of the agreement for sale and token money accepted by the plaintiff/respondent. He also submits that the arrears of rent cannot be claimed three years prior to the institution of the suit.

6. *Per contra*, learned counsel for the respondent/plaintiff submits that it has been admitted by the petitioner in his counter affidavit that the petitioner was inducted as a tenant in the suit premises in February 2011 on monthly rental of Rs. 4000/-. It is, therefore, admitted by the petitioner that there is landlord tenant relationship between the



respondent and the petitioner. However, the petitioner is claiming title and owner-ship over the suit land on the basis of the fact that in February 2014, the respondent/plaintiff announced the sale of the suit property and the petitioner agreed to purchase the same and paid an advance of token money of Rs. 6,50,000/- (Six Lacs Fifty Thousand) in favour of respondent/plaintiff. On one hand, the petitioner is claiming that the plaintiff announced the sale of the suit property in February 2014 but in contradiction of the aforesaid statement the petitioner is relying upon the agreement for sale/token money receipt, allegedly, signed on 07.12.2013. A copy of token money receipt/agreement for sale has been annexed as Annexure- 'C' to the counter affidavit filed by the respondent/plaintiff. He also submits that the question of title over the suit premises is not germane in the eviction suit.

7. I have heard learned counsel for the parties and perused the material on record including the order impugned.

8. The petitioner, by filing the written statement, has admitted the tenant landlord relationship between the parties and stated in paragraph-7 of the written statement that the petitioner was inducted as a tenant in February 2011 on monthly rental of Rs. 4000/- per month. It is, therefore, at the first instance, the



petitioner has accepted the relationship of tenant and landlord and also the rent paid by him. Subsequently, the petitioner claimed his title and owner-ship upon the suit premises on the basis of an alleged agreement for sale/token money receipt and claimed that the possession of the suit property has been transferred by the plaintiff in favour of tenant/defendant in part performance of the agreement by the plaintiff under Section 53A of the Transfer of Property Act.

9. It is not the case of the petitioner that agreement for sale/token money receipt by which the possession has been transferred in favour of the petitioner by the plaintiff was registered. Section 17(1-A) was introduced in the Registration Act by Act 48 of 2001 w.e.f. 24.09.2001 which contemplates that the document containing contracts to transfer for consideration, any immovable property for the purpose of Section 53A of the Transfer of Property Act, 1882 shall be registered if the same has been executed on or after the commencement of the registration and other related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement then, they shall have no effect for the purpose of the said Section 53A of the T.P.Act.

10. Apart from above, it is settled law that the



question of title over the suit premises is not germane for decision of the eviction suit. The reason being, if the landlord fails to prove his title over the suit premises but proves the existence of relationship of landlord and tenant in relation to suit premises and further proves the existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds. {See judgment reported in **2018 (2) PLJR (SC) 15 (Kanaklata Das & Ors. vs. Naba Kumar Das)**}

11. The Hon'ble Supreme Court in a judgment reported in **(1995) 6 SCC 580** in the case of **Dr. Ranbir Singh v. Asharfi Lal** has held that in an Eviction Suit the question of title to the property is not germane and may be examined incidentally but cannot be decided finally in the eviction suit.

12. Taking into consideration the aforesaid discussions on facts as well as on law, I come to the conclusion that there is relationship of landlord and tenant between the parties and the last rent paid @ Rs. 4000/- per month is also admitted. From the perusal of Section 15 of the Act, it is abundantly clear that this Section provides that when the tenant contests the suit for recovery of possession as regards claim for ejectment then the landlord may move an application for payment of month to month rent including the arrears of rent. On such



application being filed, the Court pass an order to deposit the rent month to month and the arrears of rent. Later part of this Section also stipulates that if the tenant fails to deposit arrears of rent or month to month rent within the period fixed, the defence of the defendant/tenant against the ejectment shall be struck off and the tenant shall be placed in the same position as if he had not defended the claim to ejectment. In the present matter, the petitioner/plaintiff has claimed arrears of rent as well as current rent to be paid by the defendant/tenant month to month.

13. The Full Bench of this Court in the case of ***Priyavarte Mehta v. Amrendra Banerjee*** as reported in **1996 (1) PLJR 732** has held that Section 15 of the Act empowers the Court to pass order for arrears of rent even prior to the institution of the suit for a period not barred by limitation as well as for arrears of rent and rent by month to month during the pendency of the suit. The claim of arrears of rent during pendency of the suit is not controlled or circumscribed by period of limitation.

14. The judgment rendered by the Full Bench has been approved by the Hon'ble Supreme Court in the case of ***Bindeshwari Choudhary v. Ajay Kumar*** as reported in **(1997) 4 SCC 708**.



15. The present suit has been filed in the year 2015. Plaintiff/respondent has claimed arrears of rent prior to the institution of the suit w.e.f. July, 2011. Meaning thereby, the plaintiff has claimed arrears of rent prior to the institution of the suit for more than three years. Article 52 of the Limitation Act, 1963 prescribes the period of limitation for claiming arrears of rent as three years. As such, in my opinion, the plaintiff/respondent cannot claim arrears of rent under Section 15 of the Act for more than three years prior to the institution of the suit.

16. The learned trial court has directed the petitioner to pay arrears of rent w.e.f. July 2011 whereas if three years is calculated prior to the institution of the suit, it starts from 25.04.2012.

17. For the reasons stated hereinabove, the order impugned does not require any interference by this Court except to the extent regarding arrears of rent to be calculated w.e.f. 25.04.2012.

18. Accordingly, the petitioner is directed to deposit arrears of rent starting from 25.04.2012 as well as current rent month to month as directed by the trial court within the period of 15 days from the production/receipt of a copy of this order.



19. The petition stands disposed of with the above observation and direction.

(Anil Kumar Sinha, J)

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