

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.168 of 2022

Ashok Kumar Gupta @ Ashok Kumar

... .. Appellant/s

Versus

Sharda Rani Jain

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajneet Ranjan, Advocate
For the Respondent/s	:	Mr. Binod Kumar Singh, Advocate
	:	Ms. Vagisha Pragya, Advocate
	:	Ms. Sushmita, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL JUDGMENT

Date : 22-11-2022

Re. I.A. No. 01 of 2022.

This interlocutory application has been filed under Section 151 of the Civil Procedure Code for stay of order dated 18.05.2022 passed in Execution Case No. 05 of 2021, whereby survey knowing pleader commissioner has been appointed arising out of judgment and decree dated 26.11.2020 passed by Learned Court of Munsif-II, Ara, Bhojpur in Eviction Case No. 02 of 2015.

As the appellant has not pressed, this interlocutory application i.e. I.A. No. 01 of 2022 is dismissed as withdrawn.

Heard learned counsel for the appellant and learned counsel for the respondents.

The instant appeal has been preferred by the appellant against the judgment and decree dated 04.03.2022, passed by Additional District Judge Vth, Bhojpur, Ara, in Title Appeal No.



13 of 2021, who affirmed the judgement and decree dated 26.11.2020 passed in Eviction Suit No. 02 of 2015 which was for eviction on the ground of default.

As per the plaintiff's case the plaintiff Sharda Rani Jain and her son Dr. Kumar Sanjay Jain are the landlord of the suit premises bearing holding No. 77 Khata No. 1719 Khesra No. 834 area 117 Sq. ft situated at Mohalla Mahadeva Road District Bhojpur, Ara. It is further submitted that the defendant Ashok Kumar Gupta is his tenant-Shop keeper. The tenant had taken shop on rent from the husband of the plaintiff, namely, Late Brij Kishore Jain. The defendant was paying rent @ Rs. 600 per month to Late Brij Kishore Jain. Later on, shop was demolished and defendant-appellant was shifted in an adjoining shop of the plaintiff and a new shop was constructed. The new shop was handed over to the defendant on the 1st day of the June 2014. On this occasion, it was also decided between Late Brij Kishore Jain and the defendant that the new rent will be applicable @ Rs. 2000 per month from 01.06.2014. It was also decided that the arrears of rent from the month of September 2013 to May 2014 will be paid by defendant at the rate of old rent @ Rs. 600 per month. The plaintiff's husband, Late Brij Kishore Jain died on 11.09.2014. Thereafter, the defendant showed his willingness to continue as



tenant of the plaintiff on the condition laid down between Late Brij Kishore Jain and the defendant. The plaintiff agreed and the tenancy was continued but the defendant had not paid the arrear of the rent from September 2013 to May 2014. He has also not paid rent of month of June 2014 till filing of the suit @ Rs. 2000 per month. Therefore, the plaintiff issued a legal notice to defendant on 10.02.15, which was refused to be received by the defendant, therefore, the eviction suit was filed on 17.04.2015.

After notice the defendant appeared and filed his written statement that the suit is not maintainable under provision of Bihar Building (lease, Rent and Eviction) Control Act, 1982. The defendant has denied the ownership of the suit premises as such he pleaded that the plaintiff is not the owner of the suit property. It is further stated that suit property belongs to Kaiser-e-Hind and now has vested in State of Bihar. It is stated by the appellant that plaintiff is also tenant of the State of Bihar. It is further case of defendant that the State of Bihar has also filed a case under Section 9 of the Municipal Act for the land of new khata No 149 situated in Ward No. 11. The ancestors of the plaintiff, namely, Brij Kishore Jain, was opposite party in that case. In that case it was ordered to enter the name of Bhairav Kumar Jain as Awaidh Dakhalkar in Municipal Khatian and delete the name as owner of



the land. It is stated that the State of Bihar has also filed Title Suit No. 218 of 2009 for declaration of title over the suit property which is pending in the Court. It is also stated that the defendant had also filed a case bearing case No. 8 of 2015, before the Court of S.D.M.-Cum-House Controller to decide that to whom rent has to be paid. It has been further stated that it is wrong to say that any rent was due from September 2013 to May 2014. The fact is that on 26.08.2013, an agreement had taken place in which it was contended that old shop will be demolished and a new shop will be constructed. It was also decided during the construction period that no any rent will be paid to the plaintiff. It is also stated that at the time of the aforesaid agreement Late Brij Kishore Jain had taken 20,000 as advance money in presence of witnesses and it was decided that amount will be refunded. Later on in the month of January 2015 the defendant demanded this money from plaintiff then the plaintiff has filed this false case.

Learned counsel for the appellant has submitted that the learned Courts, who ought to have considered this fact that if any money was due with the appellant then why the tenancy was continued after the death of Late Brij Kishore Jain by the respondent without taking arrears of rent. It is further submitted that the new rent has been fixed @ Rs. 2000 per month but the rent



is still paid @ Rs. 600 per month. It is submitted that the appellant has also paid the arrears of rent from the month of September 2013 to October, 2020 @ Rs. 600 per month on the orders of the Court dated 16.08.2016 passed under Section 15 of B.B.C. Act.

The learned counsel for the plaintiff-respondent submitted that the relationship of landlord and tenant between the respondent and the appellant has been established. The appellant himself has stated that he was paying rent on regular basis and has not defaulted the rent. The relationship between parties is proved and is not beyond doubt. It is stated that the appellant's father, namely, Jangali Prasad, was an old tenant of the respondent and ran a shop in the suit premises @ Rs. 600 per month. The shop occupied by the tenant is newly constructed in the year June 2014 and for a time being the appellant was shifted in an adjoining shop. It is contended that the arrears of rent from September 2013 to the passing of the judgement and decree has been deposited as per direction of learned trial Court dated 16.08.2016.

Considering the judgment of Trial Court as well Appellate Court, it is submitted that the monthly rent of Suit premises was @ Rs. 600 per month for the old shop. It is also admitted that the appellant shifted in new shop on 01.06.2014. The dispute between the parties is that as to whether the rent was fixed



@ Rs. 600 or @ Rs. 2000 from June, 2014 which has been concurrently held that the rent was @ Rs. 600 per month.

After considering all the facts and evidences adduced by the parties, it is also submitted that appellant is a defaulter for much more than two months that is from September 2013 till filing of the suit. It is admitted case that defendant being tenant has failed to pay monthly rent @ Rs. 600/-. Hence, the appellant is a defaulter since September 2013 till filing of the suit which was filed on 17.04.2015.

Considering the aforesaid facts and circumstances as well as the materials on record, it is quite apparent that judgement and decree of the courts below which is covered by the findings of facts and no question of law much less substantial question of law arises for consideration in the instant second appeal, which is, accordingly, dismissed at the stage of hearing under Order XLI Rule 11 of the Code of Civil Procedure.

(Khatim Reza, J)

shanu/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.11.2022
Transmission Date	NA

