

IN THE HIGH COURT OF JUDICATURE AT PATNA

SECOND APPEAL No.202 of 2017

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1. Mahendra Sah son of Late Halkhori Sah, resident of Rosera Town, Mohalla Panjiar Toli, Ward No. 1, P.O. P.S.- Rosera, District- Samastipur.
 2. Pramila Devi W/o Suresh Gupta resident of Village- Uda Bhathua, P.S. Mushrigharari, District- Samastipur.

... .. Appellant/s

Versus

1. Chardra Shekhar Purvey son of Late Satish Purvey
2. Ashok Kumar Purvey son of Late Satish Purvey
3. Dilip Kumar Purvey son of Late Satish Purvey
4. Surendra Purvey son of Late Satya Narain Purvey
5. Binod Purvey son of Late Satya Narain Purvey
6. Pramod Purvey son of Late Satya Narain Purvey
7. Raja Purvey son of Late Mukund Purvey
8. Anand Purvey son of Late Bipin Bihari Purvey
9. Gautam Purvey son of Late Bipin Bihari Purvey
10. Mira Devi wife of Suresh Prasad Singh, resident of Village- Tulsiyahi Nepal, Daughter of Late Bipin Bihari Purvey.
11. Rekha Devi wife of Hari Prasad Mandal, Daughter of Late Bipin Bihari Purvey
12. Mimle Devi wife of Dilip Prasad Sah, R/o Bhagalpur, Daughter of Late Bipin Bihari Purvey
13. Birendra Narayan Purvey son of Late Mukund Purvey
14. Krishna Kumar Purvey son of Late Daya Nanda and grand son of Late Mukund Purvey
15. Shakuntala Devi wife of Late Vijay Purvey
16. Madhukar Purvey wife of Late Vijay Purvey
17. Madhu Devi wife of Anand Kumar Pradhan, resident of Village- Crarhata, Mani Gacchi, District- Darbhanga.
18. Meera Devi, wife of Rajesh Purvey, near Bus Stand, Darbhanga.
19. Bikki Kumar
20. Puja Kumari daughter of Late Vijay Purvey
21. Most Kasturba Devi wife of Chandra Kumar Purvey
22. Kumar Anuranjan Purvey son of Late Chandra Kumar Purvey
23. Kundan Kumar Purvey son of Late Chandra Kumar Purvey
24. Pammi Kumari wife of Pradeep Mahto, resident of Village- Mahe Singhiya, P.O.- Mahe Singhiya, P.S.- Singhiya, District- Samastipur.



25. Kumari Nadhi @ Mala daughter of Late Chandra Kumar Purvey null
26. Ajay Kumar Purvey son of Late Daya Nanda and grand son of Late Mukund Purvey
27. Krishna Devi wife of Late Sachidanand Purvey
28. Ujjwal Purvey son of Late Sachidanand Purvey
29. Swarn Kumar Purvey son of Late Sachidanand Purvey
30. Nutan Devi, daughter of Late Sachidanand Purvey
31. Ruby Devi daughter of Late Sachidanand Purvey
32. Nitu Devi daughter of Late Sachidanand Purvey
33. Suresh Prasad Purvey son of Late Parmanand Purvey and grand son of Late Mukund Purvey
34. Shashi Shankar Purvey son of Late Parmanand Purvey resident of Rosera Town, Mohalla Panjiar Toli, Ward No. 1, P.O. P.S.- Rosera, District- Samastipur.
35. Jagdish Sah son of Basu Sah, resident of Rosera Town, Mohalla Panjiar Toli, Ward No. 8, P.O. P.S.- Rosera, District- Samastipur.
36. Nirmala Devi wife of Late Yogendra Sah
37. Chandan Kumar son of Late Yogendra Sah
38. Uttam Kumar son of Late Yogendra Sah
39. Bikash Kumar son of Late Yogendra Sah
40. Bittu Kumar son of Late Yogendra Sah
41. Anjali Kumari daughter of Late Yogendra Sah, under guardianship of mother Most. Nirmal Devi, All resident of Mohalla- Panjiar Toli, Ward No. 11, P.O. P.S.- Rosera, District- Samastipur.
42. Arti Devi wife of Sri Ram Lala Sah, resident of Village- Kolhanda Patori, P.S.- Bishanpur, District- Darbhanga.
43. Laxmi Devi wife of Sri Manoj Sah, resident of Village- Pan Patori, P.S.- Ujiarpur, District- Samastipur.
44. Geeta Devi wife of Sri Tarun Sah, resident of Village- Gora Bhusgali, P.S.- Biraul, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ganpati Trivedi, Sr. Advocate
Mr. Vijay Anand, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 28-09-2022

This Second Appeal has been filed against the
judgment and decree dated 20.01.2017 passed by Additional



District Judge, Rosera, District Samastipur in Title Appeal No. 39 of 1994 confirming the judgment and decree dated 16.07.1994 passed by Munsif, Rosera in Title Suit No. 22 of 1990 whereby the suit has been decreed.

The defendants are appellants in this appeal. The plaintiffs filed the aforesaid Title Suit for declaration of their title to the suit house and also that defendants are only occupier of the suit house for which they are liable to pay arrears of house rent claimed by the plaintiffs as well as a decree for eviction of the defendants in respect of the suit house.

The plaintiffs' case is that ancestor of plaintiff Nos. 1 to 12, namely, Mukund Purbey acquired properties including land of Khesra No. 3630 from Most. Kanchania and also Khesra No. 3631 along with a house by sale deed on 06.06.1938 and later on when house portion fell down he constructed house over it numbered as (holding No. 6) and the same was let out to defendant No. 1, namely, Halkhori Sah (since dead) on monthly rental of Rs. 25/- who was paying rent to Mukund Purbey till his death and thereafter, to plaintiff No. 1 Satish Purbey. The name of plaintiffs had been entered as owner of the house in question and defendants names were entered only as occupier. Jamabandi is running in the name of plaintiffs ancestor Mukund Purbey and



plaintiffs continued paying rent of the land and getting rent receipts. Since March 1984 defendant No. 1 had stopped the payment of monthly rent of the suit house and involved the plaintiffs in various cases.

The defendants petition for opening Khata in his name was dismissed by the concerned authorities.

The defendants have not only become defaulter but they erected certain pucca structure during the pendency of suit also.

The case of the defendants is that Banshi Laheri (their ancestor) came in possession of plot No. 3631 by registered Kabuliat on 01.05.1907 and also taken possession of plot No. 3630 and continued possession on both plots. Holding No. 6 stood in the name of Halkhori Sah and after approval by the municipality on 12.01.1971 defendants had done construction work. It is further case of the defendant that defendants were never tenants of Mukund Purbey nor the house was ever let out to him, so the question of collecting monthly rent does not arise. It is also stated that sale deed of 1938 in favour of Mukund Purbey is fake and not effective and Jamabandi created in his name on that basis is also not correct.

The Trial Court on the basis of pleadings, framed as



many as 9 issues including issue No. 6 as to whether a brick walled tile roofed house containing a room along with three verandah and Aangan and a service latrine has been constructed by plaintiffs' ancestor Mukund Purbey in portions of plot Nos. 3630 and 3631 and whether the same was let out by Mukund Purbey to defendant No. 1 at a monthly house rental of Rs. 25/- per month and whether on death of Mukund Purbey defendant No. 1 continued to be monthly tenant of plaintiffs' family at the rate of Rs. 25/- per month.

Trial court considering the evidences on the record held that relationship of tenant and landlord receiving monthly rent of Rs. 25/- from the defendant does not stand corroborated. Therefore, it appears to be one of permissible possession of the suit house to the defendant by father of the plaintiff Mukund Purbey may be on terms and conditions decided by him.

The Trial court concluded that plaintiffs' title over house constructed by their father Mukund Purbey has been established on the basis of oral and documentary evidence but relation of tenant with defendant does not find support in a cogent way.

It is further held that since the defendant has constructed without consent of the plaintiff permanent structure



on the suit premises it amounts to the breach of conditions of lease etc. for which he is liable to be evicted from the suit house.

The first appellate court in its finding held that it is not in dispute that the disputed land and house is in possession of defendant first party. On the other hand the plaintiffs title over the disputed land and house constructed by the father Mukund Purbey is established on the basis of oral and documentary evidence. But the relationship of tenant and landlord between the plaintiffs and defendant is not proved by cogent and reliable evidence.

It was further observed that finding of the learned court below is based on evidence as produced by the parties the judgment and decree of the Trial court was confirmed.

It is submitted by learned Senior Counsel for the appellants that judgments and decrees passed by the courts below are perverse as the findings are against the material and evidence on the record and a third case has been made out without pleading of the parties that possession of defendants are permissive. It is further submitted that courts below have failed to consider the evidence of defendants in right prospective.

Having heard learned counsel for the appellants



and on perusal of judgment of both trial court and the appellate court, it appears that both the courts below have given concurrent finding on the basis of evidence that plaintiff's title over the disputed land and house constructed by Mukund Purbey and it is also not in dispute that the disputed land and house is in possession of the defendant 1st party. The relationship of landlord-tenant between the plaintiffs and defendant is not proved by cogent and reliable evidence.

This Court finds no perversity and unreasonableness in the findings by both the courts below which have been recorded on the basis of evidence and in accordance with the principles of law. A concurrent finding of facts based on evidence cannot be disturbed in Second Appeal under Section 100 of the Civil Procedure Code.

In result, it is held that there is no substantial question of law arising for consideration in this appeal which is accordingly dismissed.

(Sunil Dutta Mishra, J)

saaurabhkr/-

AFR/NAFR	NAFR
CAV DATE	21.07.2022
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