

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
SECOND APPEAL No.124 of 2013**

Binod Kumar @ Vinod Kumar S/O Late Ram Narain Ram, Resident of  
Village and P.O- Main Road, Raxaul, P.S- Raxaul, District- East Champaran.

... .. Appellant

Versus

Dhruv Narain Prasad S/O Dinanath Prasad, Resident of Village and P.O-  
Raxaul, Ward No. 8 Old, Presently 13, P.S- Raxaul, District- East Champaran.

... .. Respondent

**Appearance :**

|                    |   |                                         |
|--------------------|---|-----------------------------------------|
| For the Appellant  | : | Mr. Rajendra Narain, Sr. Advocate       |
|                    | : | Mr. Umesh Kumar Roy, Advocate           |
|                    | : | Mr. Anju Kumari @ Anju Narain, Advocate |
| For the Respondent | : | Mr. Anil Kumar, Advocate                |

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA  
CAV JUDGMENT**

**Date : 17-10-2022**

1. Heard Shri Rajendra Narain, Senior Advocate appearing on behalf of the appellant and Shri Anil Kumar, Advocate appearing on behalf of the respondent.

2. This Second Appeal, under Section 100 of the Code of Civil Procedure, has been directed against the judgment and decree dated 11.03.2013 passed by Additional District Judge – V East Champaran, Motihari, in Eviction Appeal No. 1/09 (Supplementary Registration No. 1/10) dismissing the appeal and affirming the judgment and decree dated 21.07.2009 passed by Munsif, Raxaul at Motihari East Champaran (Motihari) in Eviction Suit No. 03/2007, whereby and whereunder the suit was dismissed.



3. The appellant is the plaintiff who filed the Eviction Suit for decree of eviction against the defendant over the suit premises (shop area 21 feet X 10 feet detailed in Schedule 'ka' of the plaint) on the ground of his personal necessity along with other consequential reliefs. The parties to this appeal hereinafter be referred to by their position in the suit.

4. The case of the plaintiff, in brief, is that the plaintiff is Karta of his joint family and has filed the suit in that capacity. The property as detailed in Schedule 1 of the plaint, area 21' X 15' was purchased through registered sale deed dated 15.05.1998 which is divided in two parts and one of its part is described in Schedule Ka which is suit premises. Defendant was the tenant in the suit premises of vendor of plaintiff and after purchase, he became tenant of plaintiff in the suit premises. The defendant is running his cloth shop in suit premises and used to pay the rent of the suit premises Rs. 800/- per month to plaintiff. The case of the plaintiff is that his elder son is unemployed so plaintiff is in personal need of suit premises for his elder son's readymade garments business. Despite request made by plaintiff, the defendant did not vacate the shop.

5. The defendant in his written statement stated that suit property belongs to one Satya Narayan Prasad from whom the



defendant had taken suit premises on rent and started his cloth shop in the name of Natraj Sari showroom. Satya Narayan Prasad died leaving behind his widow Sarswati Devi and one adopted son, namely, Bidhi Kumar and after her death he continued to make payment of rent to Bidhi Kumar at the rate of Rs. 800/- per month. The plaintiff has neither any title nor he came in possession over the suit premises. The defendant has no any other business than this shop and he used to maintain his family from the income of this shop. He has denied that plaintiff is in need of personal requirement of suit premises for starting business of readymade garments of his elder son.

6. On the basis of rival pleadings of both parties, the trial Court framed/ recast as many as seven issues. On scrutiny of evidences of the parties, the trial court held that since Exhibit-7 is a registered sale deed in favour of plaintiff, it presumed to be operative until and unless it has been set aside by competent Court and accordingly, held that defendant Dhruv Narayan Prasad is a tenant of plaintiff of suit premises. It is further held that the plaintiff is utterly failed to establish his case that he required the suit premises bonafidely and in good faith. On the point of partial eviction, it is held that area of suit premises is too small to partition for a convenient use of anyone as after equal



division it will be of size 10 ½' X 5' and shop of this size will not be accommodable.

7. Learned counsel for the appellant submits that the Courts below have decided the suit and appeal in clear violation of the evidence and material on record and against the true interpretation/ appreciation of pleadings, evidence and material on record. The courts below referred to other litigation between the present plaintiff-appellant and others with which the present defendant is not at all concerned nor the present matter is concerned with the matter in issue. It is further submitted that the present suit premises is of size 21' X 10' and front being of 10' the half would come to 21' X 5' and the size referred 10 ½ ' and 5' as referred erroneously that half of suit premises will be of no use to any party. The Courts below have failed to appreciate that defendant has many other landed properties and tenants therein and the allegation of defendant that plaintiff's son was doing business of grains in India and Nepal is unfounded and unbelievable but the courts below taken it to be true and so illegally held that there is no need of personal necessity of the plaintiff's son. The suit No. 2/07 brought by the plaintiff against defendant Birendra Chaudhary for eviction from the premises of the size 21' X 5' was brought for using the space as passage and



the courts below have unnecessarily misappreciated the admitted compromise therein taking thinking that the said space had become available and so plaintiff's son could have started his proposed business of ready made garments. He has further submitted that for consideration of personal necessity subsequent events may be considered but it is not required that plaintiff must not opt for any other employment to earn his livelihood.

8. Learned counsel appearing on behalf of respondent, however, submitted that the courts below have correctly decided the issue of personal necessity of plaintiff's son on the basis of material on record and considering all the facts and circumstances of the case have passed the correct judgment. It is also submitted by the learned counsel that the said issue has now been concluded by the finding of fact and no substantial question of law is involved in this appeal.

9. This Court vide order dated 03.11.2014 admitted this appeal for hearing and following question of law for consideration framed.

“ Whether the judgment under appeal stands vitiated on account of non-consideration of material evidence on record adduced by the plaintiff to demonstrate personal necessity to have the suit premises for engaging his eldest son, particularly



when the relationship of the landlord and the tenant has consistently been found by both the courts below?”

10. The trial court in paragraph 22 categorically stated that no any evidence either oral or documentary have been produced by the plaintiff on the point of his personal necessity of suit premises. In paragraph 27 it is observed that it is well established principle that the plaintiff in ejectment suit must succeed on the strength of his own. Here in the instant case there is complete absence of any evidence either oral or documentary on the point of suit premises for the business of readymade garments of his elder son.

In paragraph 29 it is observed that the elder son of plaintiff who is aged about 27-28 years and for whom the plaintiff is desirous to be vacated the suit premises has not come forward and did not depose before the court that he (Agnivesh Kumar) is in need of opening readymade garments shop in suit premises as he is unemployed in spite of fact that his name has been in list of witness. Non-production of Agnivesh Kumar is also giving a death blow of the case of plaintiff on the ground of personal need of suit premises for the business of readymade garments for his elder son.

11. The appellate court discussed the evidence of plaintiff



(PW-1) and stated that from perusal of paragraph 8, 9 it appears that elder son of plaintiff Agnivesh after getting education is unemployed and he has to do business of readymade garments for which he had told the defendant to vacate the disputed premises, he has in his cross examination in paragraph 29 stated that he has compromised in Eviction Suit No. 02/07 with Birendra Chaudhary and accepted that he had brought the Eviction Suit No. 02/07 against Birendra Chaudhary that suit premises is required to him for starting readymade cloth business of his son.

In view of the aforesaid facts and circumstances it cannot be said that the plaintiff has reasonable and bona fide requirement of suit premises.

12. The apex court in the case of **Nasirul Haque Vs. Jitendra Nath Dey** 1984 PLJR (SC) 79 has held that the “full effect to the concept of reasonable extent of the requirement from the perspective of substantial satisfaction of such requirement as considered to be reasonable” has to be given “objectively”.

13. In **Giridhari Gopal Singh Vs. Gorakh Sah 2012 (3) PLJR 490** as relied by the learned counsel for the appellant, this court on the point of consideration of subsequent events



observed “ the happening of subsequent events, no doubt, is to be considered by a court even in a suit for eviction on the ground of personal necessity but those subsequent events must be momentous enough as to really discredit the plaintiff with his case of personal necessity as pleaded. The principle that the personal necessity must exist till the final decision of the eviction suit cannot be interpreted to mean that the plaintiff must keep everything in standstill position and if the personal necessity of the suit premises is for starting a business the plaintiff must not opt for any employment to earn his livelihood till the litigation pends.”

14. In the present case when both the courts below given concurrent finding that there is no reasonable and bona fide requirement of suit property by the plaintiff then question of partial eviction does not arise. The Courts below discussed the evidence and noted that other eviction Suit No. 02/07 filed by plaintiff on the ground of personal necessity for starting cloth business of his son Agnivesh Kumar which was compromised in which it was accepted by defendant in that case that he will vacate the said shop after Chhath Puja and also noted that son of plaintiff, namely, Agnivesh Kumar who is material witness for whom requirement the eviction suit was filed not examined on



behalf of plaintiff.

15. In the background of pleading and evidence laid down by the parties before the trial court which have been duly considered and appreciated by the trial court as well as appellate court below, the findings of the court being concurrent, I do not find any infirmity or error in the impugned judgment and decree requiring interference by this court in exercise of jurisdiction under Section 100 of Civil Procedure Code. Accordingly, the substantial question of law formulated is answered against the appellant.

16. The substantial question of law having been answered against the appellant, accordingly, the present Second Appeal fails and liable to be dismissed. Hence, this Second Appeal stands dismissed. The interlocutory application, if any, stands disposed of. There shall be no order as to costs in the facts and circumstances of this case.

(Sunil Dutta Mishra, J)

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| <b>AFR/NAFR</b>          | NAFR       |
| <b>CAV DATE</b>          | 24.08.2022 |
| <b>Uploading Date</b>    | 17.10.2022 |
| <b>Transmission Date</b> | N.A.       |

