

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.260 of 2018

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Anil Prasad Singh Son of Late Basudeo Prasad Singh, Resident of Village-
Pakra, P.S. Navgachia, District- Bhagalpur.

... .. Appellant/s

Versus

Md. Irfan @ Ejjaz Son of Late Dr. Gafoor Ali, Resident at Navgachia, Bazar
Ward No. 2, Holding No. 75, P.S. Navgachia, District- Bhagalpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Kumar Singh, Advocate
For the Respondent/s : Mr. Ashok Kumar Yadav, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 29-09-2022

1. This Second Appeal has been preferred against the Judgment dated 26.03.2018 and Decree dated 10.04.2018, passed by 1st Additional District Judge, Naugachia, Bhagalpur in Title Eviction Appeal No. 36 of 2015, affirming the Judgment dated 19.03.2015 and Decree dated 01.04.2015, passed by Munsif, Civil Court, Naugachia in Title Suit No. 01 of 2003, wherein the suit was dismissed on contest.

2. The appellant was plaintiff before the Trial Court who had filed the suit for eviction of defendant from the suit property on the ground of personal necessity. It was stated by the plaintiff that the plaintiff is the owner and possessor of suit property bearing Holding No. 75, Ward No. 2 of N.A.G., Naugachia (Survey Plot No. 1940, *Khata* No. 610 situated at



Bihula Asthan Road, Naugachia.

3. The case of the plaintiff is that the defendant is the tenant in respect of suit property i.e. shop room of the said Holding No. 75 at a monthly rent of Rs. 175/- per month. The defendant is carrying a Homeopathic Clinic in the said shop and he is the Homeopathic Practitioner. Further case of the plaintiff is that his nephew wants to carry on a business of Crockery in the town of Naugachia and the suit premises is a suitable place for carrying a crockery business, accordingly, the suit premises is required by the plaintiff for his own occupation to launch the business of crockery to provide an engagement to his nephew Rajnish Kumar who is sitting idle. The plaintiff requested the defendant to vacate the suit premises several times but the defendant failed to comply the said request. Hence, the plaintiff filed the said suit for eviction.

4. The defendant by filing written statement denied the allegations of the plaintiff. It is stated that defendant used to pay the monthly rent of the shop to the plaintiff but plaintiff is nowhere in Municipality record. It is further contended that defendant is 75 years old man conducting Homeopathic Medical practice in the said shop to maintain his whole family from the income of his profession.



5. It is further submitted that the plea of personal necessity taken by the plaintiff to engage his nephew Rajnish Kumar in business is baseless as the alleged shop is too small to conduct the crockery business. During the proceeding the respondent died and his son appeared and filed his W.S. and contended that he too was carrying his business of Homeopathic practice along with his father in the said shop because he is also a Homeopathic doctor and he continue to earn the livelihood of his family. He further submits that the plaintiff also filed the eviction suit against Antilal Sah on the basis of personal necessity which was decreed in the favour of the plaintiff on the basis of his personal necessity but the same shop was again rented out by the plaintiff for Rs. 1100/- per month to Abhay Kumar Gupta and accordingly the plaintiff has no personal necessity of the shop and he only try to get the defendant /respondent ousted from the shop so that he may rent it out to any other person for a higher rent.

6. The Trial Court dismissed the suit after discussing the evidence on record by giving finding that the plaintiff has no personal necessity and in appeal the First Appellate Court also dismissed the appeal and confirm the Judgment and Decree passed by the Trial Court.



7. Heard learned counsel for the appellant on admission.

8. Learned counsel for the appellant submits that both the courts below have erred by not considering the bonafide personal requirement of the plaintiff.

9. It is further stated that both the courts below given finding based on non-consideration of the pleading and evidence on record and accordingly the same are perverse. Both the courts not considered the bonafide requirement of the plaintiff and nowhere recorded that nephew of the plaintiff namely Rajnish Kumar is not an unemployed one. It is further submitted that the Trial Court accepted the written statement without order by the court as per requirement under Section 14 (4) of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982.

10. Perused the judgments of the courts below. The Trial Court on the basis of pleading, framed issues including the issue whether the plaintiff has the personal necessity of the disputed shop and after discussing the evidence recorded finding that the plaintiff has no bonafide and reasonable requirement of the disputed shop. It was found that the plaintiff had filed two eviction case for his two nephew and one shop has already been get vacated by the plaintiff which was again rented to other



tenant on higher rent by disobeying the order of this Court because the shop was vacated only on personal necessity.

11. The Appellate Court also given finding that the plaintiff has no personal necessity but he only desires to get the shop vacated by the respondent for the rent purpose. The Appellate Court did not find any merit in the appeal. For getting the shop vacated for the personal necessity there is no personal necessity to the plaintiff and the shop is only means of livelihood of the respondent who is carrying his Homeopathic practice in the said shop and the right to sue to the son of the respondent who was carrying Homeopathic practice in the said shop along with his father is survived after the death of his father.

12. Both the courts below have concurrently come to the finding of facts that plaintiff has no personal necessity based on the appreciation of evidence and before this Court also no perversity in the finding of the courts below could be established on behalf of the plaintiff.

13. Considering the fact that there is concurrent finding of facts by both the courts below there is no merit in this appeal. A concurrent finding of facts based on evidence having no perversity cannot be disputed in an appeal under



Section 100 of the Civil Procedure Code. There is no substantial question of law arises in this appeal and accordingly this Second Appeal is dismissed at the admission stage itself.

(Sunil Dutta Mishra, J)

Shweta/-

AFR/NAFR	NAFR
CAV DATE	19-07-2022
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