

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.455 of 2019

Abdus Salam Mandal, Son of Late Ghulam Mustafa Mandal, Resident of Mohalla-Kanhauliganj, Pakki Sarai, Chamra Godam Lane, one of the quarters of the town of Muzaffarpur, Police Station-Town, District-Muzaffarpur.

... .. Appellant/s

Versus

Santosh Kumar Nathani, Son of Late Maliram Nathani, Resident of Mohalla-Kanhauliganj, Pakki Sarai, Chamra Godam Lane, one of the quarters of the town of Muzaffarpur, Police Station-Town, District-Muzaffarpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Nachiketa Jha

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 11-10-2022

This Second Appeal under Section 100 of the Code of Civil Procedure has been filed against the Judgment and Decree dated 03.08.2019 and 13.08.2019 respectively passed by learned Additional District Judge-VIIth, Muzaffarpur in Eviction Appeal No. 4 of 2016 affirming the Judgment and Decree dated 30.05.2016 and 13.06.2016 respectively passed by learned Munsif, Muzaffarpur in Eviction Suit No. 5 of 1993.

2. Appellant is defendant in the Trial Court. Respondent/plaintiff filed Eviction Suit No. 5 of 1993 in the court of Munsif, Muzaffarpur against the defendant/ appellant for eviction on the ground of default in payment of rent as well as for personal necessity. The case of the plaintiff is that he is owner of suit premises (Municipal holding no. 351, Mohalla-



Kanhauliganj Pakki Sarai Road, Chamra Godown Lane, Town-Muzaffarpur containing room, baramdah, kitchen, latrine etc.). The suit premises was given on monthly rent of Rs. 350/- for the period 21.06.1991 to 20.06.1992 for which a lease deed was executed but defendant failed to vacate the same despite several request and not paying the rent and as such suit was filed for eviction on the ground of default as well as personal necessity of the premises.

3. The defendant/ appellant contested the suit and filed written statement stating that the father of the plaintiff had given the suit premises to defendant for a monthly rent of Rs. 250/- which was increased from 250/- to 300/- from March, 1986 but after death of father of plaintiff, the plaintiff started disturbing and by making pressure the rent was increased to 350/- per month for which on 21.06.1991 informative petition was filed and he has paid rent regularly since February 1980. He has also pleaded that plaintiff has other houses which are vacant and the plaintiff has only two-three staff who are conveniently residing in his residential premises. In additional written statement dated 28.09.2004 filed by defendant the ownership of plaintiff on suit premises has been denied.

4. The Trial Court on the basis of rival pleadings of the



parties framed altogether seven issues for adjudication and held vide Judgment dated 30.05.2016 that with respect to suit property there is relationship of landlord and tenant between the plaintiff and defendant and plaintiff has personal necessity of suit premises and plaintiff is entitled for a decree for eviction. The Trial Court also held that the earlier order passed by the Court under Section 15 BBC Act, was passed on the basis of documentary evidence and on the basis of admission in pleading which cannot be said to be taken by fraud. It appears that when defendant did not make payment of rent as per the order of the court then his defence was struck off and the suit was decreed with a direction to vacate the suit premises within 60 days and the plaintiff is entitled for arrears of rent from April 1993 to the date of getting possession.

5. In appeal, the Appellate Court below affirmed the finding of the Trial Court and held that there is relationship of landlord and tenant between the plaintiff and defendant and the plaintiff is entitled for decree of eviction and dismissed the appeal.

6. Learned counsel for the appellant has submitted that the judgment and decree passed by both the courts below are bad in law as they failed to appreciate that plaintiff is not



landlord and the plaintiff has not bonafide requirement of the suit property. He has further submitted that both the courts below have committed serious illegality and jurisdictional error by holding that plaintiff is entitled to receive arrears of rent and defendant is entitled for eviction. Learned counsel for appellant has submitted that suit house is the joint property purchased by ancestor of plaintiff and part of the same was sold by co-sharers and the property in question is not in the share of plaintiff and therefore he is not entitled to receive rent as landlord.

7. Having heard the learned counsel for the appellant and on perusal of judgments of both the courts below it appears that there is concurrent finding based on the evidence on record that there is landlord and tenant relationship between the plaintiff and defendant and defendant is defaulter in payment of rent and plaintiff has also bonafide requirement of the suit premises. Both the courts below after considering the evidence on record and on proper appreciating the same have given finding which cannot be termed as perverse or unreasonable and this Court finds no valid reasons to interfere into the concurrent findings of facts in an appeal under Section 100 of the Code of Civil Procedure. The entire submissions on behalf of the appellant, in fact, centre around reappreciation of evidence in



order to upset the concurrent findings of facts. The law is well settle that the Second Appeal can be heard by this Court on the substantial question of law. In the present appeal, it appears that there is no substantial question of law arising for consideration and the appeal is devoid of merit.

8. Accordingly, this Second Appeal is dismissed at the admission stage itself.

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	N.A.F.R.
CAV DATE	30.08.2022
Uploading Date	11.10.2022
Transmission Date	N.A.

