

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.728 of 2019

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Arbind Kumar Sinha S/o Late Sarbeshwar Prasad Resident of Flat No. JF-1/71, Block No.6, Road No.10, Rajendra Nagar, District- Patna 800016, at present Sita Bhawan, Dariyapur Gola, Patna 800004, P.S. Kadamkuan.

... .. Appellant

Versus

1. Smt. Rashmi Sinha Wife of Gopal Kumar Resident of Panki Kothi, Nala Road, Police Station- Kadamkuan, Town and District- Patna.
2. Gopal Kumar Son of Late Ram Balak Singh Resident of Panki Kothi, Nala Road, Police Station- Kadamkuan, Town and District- Patna.

... .. Respondents

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Appearance :

For the Appellant	:	Mr. J.S. Arora, Senior Advocate
		Mr. Manoj Kumar, Advocate
For the Respondents	:	Mr. Manoj Kumar Ambastha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 10-10-2022

This Second Appeal under Section 100 of the Code of Civil Procedure has been directed against the Judgment and Decree dated 17.09.2019 passed by the court of learned Additional District Judge – VI, Patna in Title Appeal No. 59 / 2000 whereby and whereunder the Judgment and Decree dated 19.04.2000 dismissing Eviction Suit No. 4/1 of 1995/ 1999 by the court of learned Munsif–II, Patna has been reversed by allowing the said appeal.

The appellant–tenant was defendant and respondents were plaintiffs in the trial court. The case of plaintiffs in the trial court is that plaintiff No. 1 is the owner and landlady of the shop



in holding No. 169/98, Circle No. 20/B and Ward No. 18 situated in Panki Kothi, Nala Road, Patna in which the defendant was inducted as tenant on monthly rent of Rs. 965 /- and the tenancy was month to month. The tenant-defendant is running the business of furniture shop since 12 years and the said shop is in front of Nala Road and the area is famous for furniture business. It is further case of the plaintiffs that the plaintiff No. 1's husband is unemployed graduate and he has desired to start furniture business in the said shop for his livelihood. They have no other shop or house in Patna to start business. It is further case of plaintiffs is that the plaintiffs have conveyed his personal necessity to the defendant who assured the plaintiffs that he would vacate the suit shop within two or three months but he did not vacate the same. Hence, the suit for eviction filed on the ground of personal necessity of the plaintiffs stating that need of plaintiffs is reasonable and bonafide.

Appellant contested the suit, inter alia, contending that neither the plaintiffs are the landlords nor the plaintiff No. 2 is unemployed and story of the personal necessity for starting furniture business in the suit shop is false and concocted and the plaintiffs did not require the suit shop reasonably and good faith



hence the plaintiffs have no occasion to file the suit. It is also stated that the description of the premises under the tenancy of the defendant has been wrongly given in Schedule – 1 of the plaint. In the petition for grant of leave to contest the suit it is stated that defendant is tenant of one Mahesh Prasad Singh who got filed the suit malafide to apply undue pressure on the defendant to enhance the rent and to extract a heavy amount of 'Pagri' and enhance rent from the defendant or from any new person by inducting in place of the defendant.

The learned trial court framed as many as ten issues. It was held that there is no relationship of landlord and tenant in between the plaintiffs and the defendant but such relationship exist in between Mahesh Prasad Singh and the defendant and also held that the plaintiffs have got no right to claim a decree of personal necessity over the suit premises (shop) and story of personal necessity as given in the plaint is not proved and accordingly, learned trial Judge dismissed the suit.

On appeal, the First Appellate Court held that plaintiff has established her right as she is a landlady of the said building and plaintiffs have personal necessity of the suit premises by observing that a person doing business so away from his house and the shop situated in his house is in possession of rentor and



if a person wanted to establish business in his house so defence cannot be taken that he is doing a business at their place. Accordingly, the title appeal has been allowed and Title Eviction Suit decreed on contest.

Heard learned Senior Counsel Shri J.S. Arora appearing for appellant.

Mr. Arora, learned Senior Advocate has submitted that learned Lower Appellate Court has committed jurisdictional error by not appreciating that the Deed of gift (Exhibit-1) which was the basis of the plaintiff-respondent for her claim of being owner and landlord was not in respect of shop in suit under the tenancy of the defendant-appellant as description of property i.e. size and dimensions of shop for which suit was filed and detail in Schedule-1 of the plaint and those described in the deed of gift are apparently different and therefore, the suit for eviction filed by plaintiff under Section 11 (1) (C) of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982 itself was not maintainable. It is further submitted that the Appellate Court below failed to appreciate that for maintaining an eviction suit existence of relationship of landlord and tenant is a sine qua non and the plaintiff failed to establish the same with defendant. He further submits that the Appellate Court Below failed to



appreciate that a registered deed may be corrected by another registered deed or by a decree of Civil Court and it cannot be corrected or modified by an affidavit and in absence of any registered instrument, the plaintiff cannot be said to have acquired right, title and interest in respect of the suit property. He has submitted that if title in a property has not been validly created, the same cannot be created either by admission, by estoppel or any acquiescence. It is well settled that a title cannot pass by mere admission. On this point he has referred the judgment reported in **(1993) 1 PLJR 172 Ziyarat @ Jayarat Hussain & Anr. Vs Kasmsmali (since dead) and Ors.**

He has further submitted that plaintiff having no valid documents supporting her title to the suit property has no locus to maintain the suit on the plea of personal necessity and in this regard he has relied and referred the judgment reported in **2013 (2) BBCJ 627 (Smt. Asha Devi & Ors. Vs. Shyam Sunder Tibrewal)** wherein it was observed:-

“It is true that a tenant cannot question the title of a landlord but before that the landlord has to establish his locus to maintain a suit. In cases of eviction based on grounds other than those found under Section 11(1) (C), perhaps this aspect would not be so relevant but insofar as suits based upon grounds of



personal necessity is concerned, the issue of locus becomes very relevant and in view of the judgment rendered in case of **M.M. Quasim Vs. Manoharlal (AIR 1981 SC 1113)**, the issue remains no integra.

Having heard the learned counsel for the appellants and on perusal of judgment of courts below it appears that it is admitted position in this case that Mahesh Prasad Singh was the original owner and landlord of entire suit land. Mahesh Prasad Singh, has two sons namely Ranjeet Singh and Prem Prakash Singh. Plaintiff No. 1 Rashmi Sinha @ Daizy is the daughter of Ranjeet Singh. It is also admitted fact that one shop has been let out facing Nala Road by Mahesh Prasad Singh to the defendant.

Mahesh Prasad Singh in his evidence admitted that he had gifted the said shop to Rashmi Sinha, his grant daughter through registered deed of gift in April, 1984 and Rashmi Sinha is the owner of the said property. He has admitted that in the deed of gift (Exhibit -1) wrong boundary has been mentioned. Though an affidavit dated 26.02.1992 (Exhibit – 2) corrected the said boundary.

The appellate court in paragraph 28 given finding that Mahesh Prasad Singh being witness No. 4 clearly stated before the court that he gifted the said property to his grand daughter



Rashmi Sinha and Rashmi Sinha also admitted that property was gifted to her. On the other hand defendant-tenant DW-1 Arvind Kumar Singh clearly admitted that Mahesh Prasad Singh is his landlord, then as per provision of Section 109 of T.P. Act, said Rashmi Sinha would also landlord of the tenant as per the provision of law. It was also observed that if there is tenancy admitted there is no question of title between the parties to be decided and in eviction suit question of title on prayer of defendant cannot be decided.

In Paragraph 7 of the Judgment of Hon'ble Supreme Court reported in **(2002) 1 SCC 90 (Rajendra Tiwary Vs. Basudeo Prasad & Another)** observed that the sine qua non for granting the relief in the suit, under the Act, is that between the plaintiffs and the defendant the relationship of "landlord and tenant" should exist. The scope of the enquiry before the courts was limited to the question as to whether the grounds of eviction of the defendant have been made out under the Act. The question of title of the parties to the suit premises is not relevant having regard to the width of the definition of the terms "landlord" and tenant in clause (f) and (h), respectively, of Section 2 of the Act.

The appellate court below given finding based on



evidence which cannot be stated as perverse. There is no perversity or unreasonableness in the finding of the appellate court below. No substantial question of law arises in this Second Appeal.

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

(Sunil Dutta Mishra, J)

saaurabhkr/-

AFR/NAFR	NAFR
CAV DATE	26.09.2022
Uploading Date	10.10.2022
Transmission Date	NA

