

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.178 of 2020

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Bijay Kumar Sah S/o Late Ram Kumar Sah Resident of Slipper Shop in front of Railway Station, Patel Babu Road, P.S.- Kotwali, District- Bhagalpur.

... .. Appellant

Versus

1. Pawan Kumar Singhania S/o Late Mahali Ram Singhania Resident of M.P. Dwivedi Road, P.S.- Tatarpur (Kotwali), Town and District- Bhagalpur.
2. Ratan Kumar Sah S/o Late Ram Kumar Sah Resident of M.P. Dwivedi Road, P.S.- Tatarpur (Kotwali), Town and District- Bhagalpur.

... .. Respondents

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Appearance :

For the Appellant : Mr. Samir Kumar, Advocate
For the Respondents : Mr. Jitendra Kishore Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

8 18-04-2023 The instant appeal has been filed against the judgment and decree dated 21.12.2019 passed by the learned Additional District Judge-V, Bhagalpur in Title Appeal No. 85 of 2018 confirming the judgment and decree dated 26.03.2018 passed by the learned Munsif-II, Sadar, Bhagalpur in Title Eviction Suit No. 13 of 2012.

2. Originally, the plaintiff, namely, Pawan Kumar Singhania filed Title Eviction Suit No. 13 of 2012 against the defendants, namely, Bijay Kumar Sah (appellant) and Ratan Kumar Sah for eviction from the suit premises bearing Holding No. 253 (part), ward no. 29/38 which is situated at Patel Babu Road in front of Bhagalpur Railway Station under Bhagalpur Municipal Corporation, Bhagalpur.



3. The case of the plaintiff-respondent is that originally, the father of the defendants, namely, Ram Prasad Sah was inducted as tenant on a portion of the aforesaid suit premises on the ground floor having shop measuring 25 ft. X 8 ft. on a monthly rental of Rs. 250/- only and after his death, his widow, Smt. Panna Devi and his son Bijay Kumar Sah (appellant) are carrying on business in the said suit premises. The defendant's mother paid rent of the premises at the rate of Rs. 250/- up to the month of November, 1999 and thereafter without assigning any rhyme and reason stopped payment of rent since, December, 1999, and even not rendered the same by postal money order. Since then, the defendant did not pay the rent till filing of the suit. So, the defendant is a defaulter for more than two months in the eyes of law and he is liable to be evicted on that ground from the suit premises. Further, case of the plaintiff is that the plaintiff comes from a trading family having experience of business but due to lack of accommodation, he is sitting idle without any business and he wants to carry on business of wholesale and retail machinery part for which, the suit premises is the most suitable as there is several shops of machinery part in the vicinity. Hence, the plaintiff requires the suit premises for his personal use and



occupation reasonably, bonafidely and in good faith as such, the defendant is liable to be evicted from the suit premises on this ground also. The suit premises is only 25 ft. X 8 ft. in size hence its partial eviction cannot satisfy the personal requirement of the plaintiff. As the defendant had defaulted in payment of rent since the month of December, 1999 at the rate of Rs. 250/- per month, hence, the plaintiff is entitled to realise and receive the rent from the defendant since December, 1999, but the rent for more than three years becomes barred by law of limitation and hence plaintiff is only entitled to get rent since May, 2009 to April, 2012 at the rate of Rs. 250/- total amount of Rs. 9,000/- only. Further, the case of the plaintiff is that the plaintiff approached the defendant times without number and also requested to vacate the suit premises and the defendant realising the facts promised to pay arrears of rent and to vacate the suit premises but later on does not stick on his words and on 12.03.2012, finally refused to pay the arrears of rent and vacate the suit premises rose the necessity of the filing of the suit.

4. On the other hand, defendant's appeared in the suit obtained leave to contest the suit which was granted. In the written statement filed on behalf of the defendant no. 1 (appellant) apart from the ornamental plea the defendant raised



objection with regard to the suit under-valued as the rent of the suit premises is Rs. 300/- per month as per order dated 11.12.1999 passed in House Control Case No. 26 of 1998 and confirmed by the Collector in House Control Appeal No. 16 of 1999-2000, the plaintiff has no cause of action for filing the suit. It is further contended that all the co-sharers of the plaintiff are separate in mess and a partition suit for the suit property is pending in the court of learned Sub Judge-VIII, Bhagalpur bearing Title Suit No. 63 of 2004 filed by Gaurav Kumar Singhania and others, who is the son of one of the co-sharers of the suit property. He admits that his father Ram Prasad Sah was inducted as contended in the suit at the rate of Rs. 95/- only which has been enhanced time to time by the plaintiff's family. Further case of the defendant is that earlier the plaintiff was issuing the rent receipt for self and on behalf of the other co-sharers against the rent paid by the defendant. A case was filed by Raja Ram Singhania, who is the elder brother of plaintiff for fixation of rent of the suit premises bearing House Control Case No. 26 of 1998 before House Controller, Bhagalpur, which was contested by the defendant-appellant and during the pendency of the said case, the plaintiff was realising the rent of the suit premises and issued rent receipt to the defendant. It is further



contended that from the month of November, 1999, the plaintiff stopped to take the rent and in spite of request made by the defendant several times, the plaintiff always refused to receive the rent as such the defendant began to tender the rent of the suit premises since November, 1999 through money order to the plaintiff which was also refused by the plaintiff and since thereafter, the defendant tendered the rent of the suit premises to the plaintiff at the rate of Rs. 250/- per month till the order passed by the House Controller in H.C. Case No. 26 of 1998. The learned House Controller by his order dated 11.12.1999 fixed the rate of rent at Rs. 300/- per month and since thereafter, the defendant has been tendering the rent on the aforesaid rate but this fact has purposely been concealed by the plaintiff for wrongful gain best known to him. Further the case of the defendant is that he is not defaulter in the eyes of law and he is still ready to pay the arrears of rent of the suit premises in spite of that the large portion of the arrears became time barred. He contended in the written statement that it is incorrect that plaintiff's son is sitting idle. The plaintiff has his running shop at Gurhatta Chowk known as "Anil Automobiles" dealing in motor parts and the said shop is in the running condition since last several years. Apart from the above shop, the plaintiff has



his residential house at M.P. Dwiwedi Road and the said road is one of the busiest market buildings of Bhagalpur and the plaintiff has his another shop on the ground floor of his house abutting road relating to motor parts. The plaintiff has got a building situated in M.P. Dwiwedi Road gifted by his brother, namely, Ashok Kumar Singhania in favour of Alok Kumar Singhania, the only son of plaintiff and the said building consists of several shops on the ground floor and the shop facing to M.P. Dwiwedi Road is lying vacant. It is submitted that the said space is sufficient for accommodation of the plaintiff. Apart from the above, the plaintiff's family has a big shop adjacent east to the suit premises within the same building which is lying vacant under the lock and key of the plaintiff's family since long and is a finest place for opening a shop but the plaintiff's family never choose to open shop as the plaintiff or his other family members have no need to open any further shop. It is further contended that the suit has been purposely filed by the plaintiff to let out the suit premises on higher rent to others and also to realise a handsome amount from the proposed tenant. Lastly, he contended that neither the plaintiffs' requirement of the suit premises is bonafide or reasonable nor this defendant ever defaulted in payment of rent and as such, the



plaintiff is not entitled to the relief claimed. The defendant is always ready to pay arrears of rent, as such, he is not entitled for reliefs claimed and the suit is fit to be dismissed.

5. The learned appellate court after analysing the trial court judgment and materials on record has held that all the plaintiffs' witnesses have supported the factum of the personal necessity of the plaint as pleaded in the plaint in their evidence. P.W.-1, P.W.-2, P.W.-4 and P.W.-5 supported the case of requirement of shop. Pawan Kumar Singhania (PW-3), who is the plaintiff himself, has deposed that he comes from a business class family and earlier also his machinery parts shop was at Gurhatta Chowk which was in a tenanted building, he left that shop because the shop was at much distance from his home. The shop in question is most suitable place for business of motor parts. It is situated in front of station and adjacent to it, there are many shops of machinery parts. The learned appellate court after perusing the evidence of plaintiff and defendant and materials on record has observed that while deciding the necessity of the plaintiff, the trial court meticulously examined the testimony of PW-1, PW-2 and PW-3 as well as DW-1, DW-2, DW-3, DW-4 and DW-5 and come to a finding that plaintiff has succeeded to the cross-examination of defendants witnesses



to establish that at present, the plaintiff is having no employment for himself. Earlier, he was having motor parts shop, which has been closed, and the suit premises on the basis of land, place and situation/position is the most suitable for the plaintiff for his motor parts business. The learned trial court also observed that on the other hand though the defendant in his written statement has contended that plaintiff has many premises in which he can pursue his business but no such documentary evidence has been produced so as to prove that plaintiff was having other premises also in his ownership. The defendant-appellant contended that plaintiff has no right to file his suit as he is not the exclusive owner of the suit premises. It is pleaded by the plaintiff that he and his co-sharers are the landlords and owners of the suit premises which has been admitted by the defendant that plaintiff is one of the co-sharers and all co-sharers are separate in mess and properties. The defendant has also contended that a partition suit for the suit property is pending in the court of Sub Judge-VIII, Bhagalpur bearing Title Suit No. 63 of 2004 filed by Sri Gaurav Kumar Singhania, son of Sri Ashok Kumar Singhania and Ors. The defendant did not produce any evidence before the trial court to support the aforesaid contention. Therefore, no documentary



evidence has been brought on record by the appellant to support his contention that any partition suit relating to the disputed shop of this case is pending between the family members of the plaintiff. The learned courts below further held that defendant could not establish that the suit premises was subject matter in the partition suit nor any documentary evidence has been brought by him to establish that any such partition suit was pending in which the suit premises was also under dispute. The learned court further deals with several decisions of the Hon'ble Supreme Court as well as Patna High Court with regard to co-sharers that co-sharers can alone file eviction suit and a co-owner can also sought for eviction on the ground of his personal necessity.

6. So far, the question of partial eviction is concerned. It is quite apparent that the plaintiff had pleaded that they had bonafide personal requirement for the shop premises but the defendant nowhere pleaded that the requirement of the plaintiff would be satisfied by partial eviction. Although, it is a settled law that once personal necessity is proved the onus shifts on the tenant to satisfy that partial eviction shall satisfy the personal necessity of the plaintiffs. Reference in this regard may be made to decisions of this Court in case of *Food Corporation*



of India and others vs. Vishun Properties and Enterprises and others reported in 1995 BBCJ 711 as well as in case of *M/s Bata India Ltd. vs. Dr. Md. Qamruzzama reported in 1993(1) PLJR 87 (DB)* and also in the case of *Hira Lal Das and Anr. vs. Loknath Newatia reported in 2014 (4) PLJR 476*. The learned trial court discussed about the partial eviction. The learned lower court finds that the suit premises is only 25 ft. X 8ft. in size, hence, its partial eviction cannot satisfy the personal requirement of the plaintiff. Reference in this regard may be made to a decision of this Court in the case of *Haveli Ram Bhatia vs. Smt. Rajwanti Devi and others reported in 1984 PLJR 207*. In case of *Anamika Roy vs. Jitendra Chowrasia and Ors. reported in 2013 (6) SCC 270*. The Hon'ble Supreme Court has held that the respondent defendant neither before the appellate court nor before the trial court or in the High Court has accepted that a portion of the premises will satisfy the requirement of the appellant.

7. So far question of default in payment of rent is concerned both the Courts concurrently held that the plaintiff failed to prove that the defendant-appellant was defaulter in payment of rent but he succeeded to establish his bona fide personal need on the suit shop premises.



8. After hearing the averments made on behalf of the parties and on perusal of the materials on record, including the judgment of the learned courts below, it appears that the court of appeal, which is the final court of facts, after considering the pleadings of the parties and the evidence adduced by them came to a clear finding that Court below has rightly held that plaintiff is entitled to bring the suit for personal necessity bonafidely and in a good faith. It is further held that as it was a composite suit initiated on both grounds of default in payment of rent and on bonafide personal necessity so the suit can also be prayed by co-owner or co-sharers.

9. After coming to the aforesaid findings on the basis of the material produced by the parties specially claimed by the plaintiff that plaintiff is sitting idle and having single option to choose the suit premises for opening his shop of motor parts, as his tenanted motor parts shop was earlier closed and thereafter the motor part shop in a building situated on M.P. Dwivedi Road also could not run, so the suit premises is the most suitable for such business as in its vicinity there are several motor parts shops. As such, he requires the suit premises for his business and this fact has not been denied by the defendant.

10. In the said circumstances, the finding of the



learned courts below that the plaintiffs have bonafide personal requirement of the suit premises appears to be legal and proper. Reference in this regard may be made to a decision of this Court in case of *Tip Top and others vs. Smt. Indramani Devi* reported in *AIR 1982 Patna 190* as well as in Case of *Dr. Hemchandra Jha vs. Smt. Anjana Lal* reported in *1987 PLJR 582*.

11. Considering the aforesaid facts and circumstances as well as materials on record, it is quite apparent that the judgments and decree of the courts below are covered by the findings of facts and no question of law much less substantial question of law arises for consideration in the instant second appeal, which is, accordingly, dismissed.

(Khatim Reza, J)

Gaurav Kumar/-

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