

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.334 of 2021

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1. Suresh Prasad Son of Late Bishwanath Prasad Resident of Mohala Melwa Tola, Raxaul, P.S. - Raxaul, District - East Champaran.
 2. Ramanand Prasad Son of Late Bishwanath Prasad Resident of Mohala Melwa Tola, Raxaul, P.S. - Raxaul, District - East Champaran.
- Appellant/s

Versus

- 1.1. Anjani Devi D/o- Late Mukti Narayan Prasad and Wife of Binda Prasad Resident of Village- Harpur, P.O.- Nakardei, P.S.- Raxaul, District- East Champaran.
 - 1.2. Muni Devi D/o Late Mukti Narayan Prasad, Wife of Binod Prasad Resident of Village- Pakhnahiya, P.S.- Ramgarhwa, District- East Champaran.
 - 1.3. Kiran Devi D/o- Late Mukti Narayan Prasad, Wife of Upendra Sah Resident of Mohalla- Birta Bazar, Birganj, P.S.- Birganj, District- Parsa (Nepal).
 2. Jitendra Kumar Son of Late Mukti Narayan Prasad Resident of Naga Road, Raxaul, P.S. - Raxaul, District - East Champaran.
 3. Vijay Kumar Prasad Son of Late Mukti Narayan Prasad Resident of Naga Road, Raxaul, P.S. - Raxaul, District - East Champaran.
- Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ganpati Trivedi, Sr. Counsel with Mr. Binay Kant Mani Tripathi, Advocate
For the Respondent/s	:	Mr. Bishwajeet Singh, Advocate
	:	Mr. Waliur Rahman, Advocate
	:	Mr. Nishant Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

15 15-06-2023 This Second Appeal has been filed by the defendants-appellants against the judgment and decree of affirmance.

2. The matter arises out of Title Eviction Suit No. 03 of 2013 which was decreed by the learned Sub Judge-6th, Motihari, East Champaran, which was challenged by the defendants in Title Appeal No. 51 of 2019. After hearing the parties and considering the materials on record, the learned



Additional District Judge- XX, East Champaran at Motihari dismissed the said appeal by judgment and decree dated 27.02.2021 and affirmed the judgment and decree of the trial court. Against the said judgment and decree of the learned appellate court below, the instant Second Appeal has been filed.

3. Originally, the plaintiffs-respondents had filed an Eviction Suit but during the trial, the plaintiffs amended their suit and also amended the relief by adding that the court declare the title of the plaintiffs over the disputed property and if the court comes to conclusion that the plaintiffs were not in possession of the disputed property, the plaintiffs be given the possession of the suit property. The plaintiffs further prayed to get a decree for rent from September, 2012, till the eviction of the defendants from the disputed property.

4. The case of the plaintiffs, in short, is that plaintiff is the son of Bishwanath Prasad, who married twice. His first wife was Ramgatiya Devi and out of the wedlock, Bishwanath Prasad had one son Mukti Narayan Prasad. It was further case of the plaintiff that during the minority of Mukti Narayan Prasad, Ramgatiya Devi died and Bishwanath Prasad married Bhukhali Devi and from the said wedlock, defendants-petitioners were born. It was the case of the plaintiffs that Mukti Narayan Prasad



was ill-treated by his step mother and he left the house at the age of 10-11 years, and went to Nepal, and started working as a servant in the house of Pahariya. When Mukti Narayan attained the age of 18 years, he came back to Raxaul and started working in the business store of a *Marwari*. He earned money from his work and saved money while working as a servant in Nepal, Mukti Narayan Prasad started business of selling spices like chilli, coriander etc, and started having business earning. From his own earning, Mukti Narayan Prasad purchased 10 *Dhurs* of land at Naga Road, Raxaul, vide registered sale deed dated 23.04.1965. He constructed house and lived with his wife and children. The further case of the plaintiffs is that on 22.04.1966, Mukti Narayan Prasad from his earning, purchased the disputed land pertaining to Khata No. 97 Plot No. 1497 measuring 7 *Dhurs* with concrete house situated at Mohalla Melawa Tola, P.S. Raxaul, Distt. East Champaran vide sale deed dated 22.04.1966. It is further pleaded that Mukti Narayan Prasad sold 4 *Dhurs* of land from the property which he purchased at Naga Road on 23.04.1965 and from the said earning, he constructed the house over the disputed land. Later on, Mukti Narayan Prasad died leaving behind his wife Rajali Devi and his two sons who are the plaintiffs. It was further case of the plaintiffs



that defendants lived at the upper floor on the land situated at Mircha Patti and the house due to lapse of time, needed repair. The defendants requested the plaintiffs in January, 2012 to give the disputed property on rent for few months at monthly rent of Rs. 5,000/- and in the meantime, they would repair the house and shift in the said house. The plaintiffs agreed to said tenancy and disputed premises was handed over to defendants on 15.01.2012. The further case of the plaintiffs is that when the tenancy was created, the original sale deed remained in a box kept in almirah in the wall. The defendants mischievously recovered the same and started claiming the said property as ancestral property of their father. Further case of the plaintiffs is that the defendants defaulted in making payment of rent since September, 2012. The defendants did not repair their house at Mircha Patti. The plaintiffs needed the said tenanted premises. The plaintiffs requested the defendants to vacate the premises but the defendants refused to do so. Ultimately, the plaintiffs served a legal notice dated 15.01.2013 on the defendants, but the defendants never bothered to reply the same.

5. The suit was contested by the appellants (defendants) and they filed their written statement. The defendants contested the suit claiming therein that there was no



landlord and tenant relationship between the parties and further pleaded that Bishwanath Prasad from his own income purchased the land at Naga Road through sale deed dated 23.11.1965 and sale deed dated 22.04.1966 in favour of Mukti Narayan Prasad and also constructed house over the said plots of land. Bishwanath Prasad used to live at disputed property along with his second wife and children, who were the defendants in the suit. It was further contended that Mukti Narayan Prasad lived at the house, built at Naga Road. It was the case of the defendants that Mani Sah, the father of the Bishwanath Prasad had settled 3 *Dhurs* 3 *Kanwa* land at Mircha Patti Raxaul from Bettiah Raj. After his death, five sons partitioned the land and Bishwanath Prasad opened a *Kirana* store on the share which he received on partition. Further case of the defendants is that the disputed property was the property of his father on which they lived and was in possession and were still living till date. The Defendants denied the creation of tenancy over the disputed land in the month of January, 2012 at a rent of Rs. 5000/- per month and also denied that the plaintiffs had any title over the disputed land and plaintiffs were in possession of the said lands.

6. Learned senior counsel Mr. Ganpati Trivedi, appearing on behalf of the appellants submitted that the suit



property was acquired by Bishwanath Prasad, father of Mukti Narayan Prasad and the defendants in the name of his eldest son, namely, Mukti Narayan Prasad, out of the income of family business. Plaintiffs have failed to prove the suit land as the self-acquired property of Mukti Narayan Prasad. Learned courts below failed to consider the story of purchase of suit premises by own earning of father of plaintiff nos. 2 and 3 which according to them was impossible with reference to their age given and proved by plaintiff no. 1 in her deposition as well as on the basis of evidence adduced by the defendants (appellants) about age of plaintiff nos. 2 and 3 in this case. Learned senior counsel further submitted that both the courts failed to prove main and real issue involved in the suit as to whether plaintiffs have exclusive title over suit premises in order to establish the relationship of landlords and tenants with defendants. It is further submitted that the settled principle of law regarding Eviction Suit either in Bihar Building (Lease, Rent & Eviction) Control Act or in Title Eviction Suit, the plaintiffs have to prove relationship of landlord and tenant between the parties which has not been decided by the courts below. Moreover, the learned courts below have held that the property in suit was in possession of plaintiffs prior to the creation of tenancy in the



year 2012 and the appellants (defendants) came in possession of the suit property after the creation of tenancy, and further held that appellants (defendants) are in unauthorized possession over the suit property. Learned senior counsel further submitted that learned courts below failed to consider that whether the suit property was the joint family property and was acquired by Bishwanath Prasad or self-acquired property of Mukti Narayan Prasad. The burden of proving that any particular property is joint family property in the first instance is upon persons who claims it a co-parcenary property. This finding is wrongly shifted upon defendants.

7. The learned appellate court, after considering the pleadings of the parties and the evidence adduced by them came to a conclusion that the father of the respondents, namely, Mukti Narayan Prasad acquired the disputed property from his own earning. So far question raised by the defendants with regard to family arrangement dated 01.12.1979 (Exhibit-B) is concerned, the same is suspicious and is without pleadings and that Exhibit-7 vitiates Exhibit-B. It bears the signature of Ramanandan (defendant in the case) on *Panchnama* (Exhibit-7) between the appellants and the respondents which makes the document Exhibit-B suspicious as no reason is assigned for existence of



Exhibit-B in view of Exhibit-7 which relates to partition bearing signature of the plaintiffs and the defendants. The Exhibit-B could not be considered as the appellants have not pleaded in their pleadings and it is settled principle of law that evidence without pleadings is no evidence in the eyes of law. Reference may be made in the case of *Biraji @ Brijraji and Another Vs. Surya Pratap and others* reported in *(2020) 10 SCC 729*. The Hon'ble Supreme Court has held that in the absence of pleadings submitted at the appropriate stage within the stipulated time, any amount of evidence submitted later on, will not be taken into consideration by the court as well as *Ram Sarup Gupta Vs. Bishun Narain Inter College and others* reported in *(1987) 2 SCC 555*, *Mudi Gowda Gowdappa Sankh Vs. Ram Chanda Ravagowda Sankh* reported in *(1969) 1 SCC 386*, *Daulat Ram Chauhan Vs. Anand Sharma* reported in *AIR 1984 SC 621*, and *K.V. Narain Rao Vs. P. Purushottam Rao* reported in 1993 *Supp(2) SCC 90*, wherein the Courts have held that no evidence without pleading with specific particular case can be accepted. However, defendant no. 2 Ramanand Prasad, who deposed as D.W.-1, have not even whispered anywhere in the evidence about the deed of partition. The respondents (plaintiffs) have also filed a partition deed



(*Panchnama*) dated 24.04.2010 which is exhibited as Exhibit-7 which bears the signature of Ramanand Prasad, who is the defendant/appellant no. 2 in this case.

8. After hearing the averments made on behalf of the parties and perusal of materials on record including the judgment of the learned courts below, it appears that the learned appellate court, which is the final court of facts, after considering the pleadings of the parties and evidence adduced by them, came to clear finding that the property, in question, was purchased by Mukti Narayan Prasad, who also constructed the house over it. There is nothing on record to show that Bishwanath Prasad purchased the properties in the name of Mukti Narayan Prasad. Further, learned appellate Court has held that evidence of respondents (plaintiffs) have been able to prove that the disputed property was in their possession before the creation of tenancy in the year 2012 and the appellants (defendants) came in possession of the disputed property after the creation of tenancy. The appellants are in unauthorized possession over the suit property.

9. The suit was converted into regular title suit and the question of title was decided in favour of the plaintiffs and the Courts below on the basis of oral and documentary



evidences found that the defendant-appellant came in possession of disputed premises after creation of tenancy and further found the possession of the defendant/appellants as unauthorized over the suit property. Reference may be made to a decision of Hon'ble Supreme Court in the case of ***Chacko and Another Vs. Mahadevan*** reported in ***2007 (7) SCC 363***, wherein the Hon'ble Supreme Court has held that:-

“In a first appeal filed under Section 96 CPC, the appellate court can go into questions of fact, whereas in a second appeal filed under Section 100 CPC, the High Court cannot interfere with the findings of fact of the first appellate court, and it is confined only to questions of law.”

10. In the aforesaid facts and circumstances, this Court does not find any irregularity in the impugned judgment and decree of the lower courts below nor does it find any substantial questions of law involved in the instant Second Appeal, which is accordingly dismissed at the stage of hearing under order 41 Rule 11 of the Code of Civil Procedure.

(Khatim Reza, J)

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