

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.78 of 2019

1. Md. Faheem Akhtar, aged about 61 years (M), Son of Late Mohd. Noorul Hoda, Resident of Village- Kumrauli, P.S.- Kumrauli, District- Darbhanga.
2. Md. Zafar Alam Ansari, aged about 65 years (M), Son of Md. Talha Ansari, Legal Heir and Son of Talha Ansari R/o Chaukzohra, P.O.- Laheriasarai dum duma, P.S.- Laheriasarai, Distt.- Darbhanga.

... .. Petitioners

Versus

1. Md. Fazle Imam Son of Late Md. Akhtar Hussain Resident of Mohalla- Bakarganj, P.O. and P.S.- Laheriasarai, District- Darbhanga.
2. Sajda Begum Wife of Late Noor Imam Resident of Village- Thador, P.O.- Haridarganj korh, P.S.- Rajgir, District- Nalanda.
3. Tanwir Imam Son of Late Noor Imam Resident of Village- Thador, P.O.- Haridarganj korh, P.S.- Rajgir, District- Nalanda.
4. Azhar Imam Son of Late Noor Imam Resident of Village- Thador, P.O.- Haridarganj korh, P.S.- Rajgir, District- Nalanda.
5. Ashia Zarin W/o Tasneem Ahmad Zafrin Resident of Village- Thador, P.O.- Haridarganj korh, P.S.- Rajgir, District- Nalanda.
6. Ruby Yasmin W/o Masadin Nasir Resident of Village- Mananiasu, P.O.- Nayanagar, P.S.- Hasanpur, District- Samastipur.
7. Nakiya Shakin W/o Md. Imamullah Resident of Village- Mananiasu, P.O.- Nayanagar, P.S.- Hasanpur, District- Samastipur.
8. Shagupta Farhin D/o Late Noor Imam Resident of Mohalla- Bakarganj, P.O. and P.S.- Laheriasarai, District- Darbhanga.
9. Md. Azhar Imam Son of Md. Noor Imam Resident of Mohalla- Bakarganj, P.O. and P.S.- Laheriasarai, District- Darbhanga.
10. Noorul Hoda Son of Md. Jan Village- Kumrouli, P.S.- Kumrouli, district- Darbhanga.
11. Md. Nazeer Akhtar Son of Noorul Hoda Resident of Mohalla- Chakjohra, P.S.- Laheriasarai, District- Darbhanga.
12. Md. Sakil Akhtar Son of Noorul Hoda Resident of Mohalla- Chakjohra, P.S.- Laheriasarai, District- Darbhanga.

... .. Opposite Parties

Appearance :

For the Petitioners	:	Mr. Syed Firoj Raza, Advocate
	:	Mr. Karuna Nath Sahay, Advocate
	:	Ms. Rashmi Sandhwar, Advocate
	:	Mr. Shahrukh Siddqui, Advocate
For the Opposite Parties	:	Mr. Shashi Shekhar Dwivedi, Sr. Advocate
	:	Mr. Parth Gaurav, Advocate
	:	Mr. Ashutosh Kumar Pandey, Advocate
	:	Mrs. Ridhima Dwivedi, Advocate



CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

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Heard Mr. Syed Firoz Raza, learned counsel for the petitioners and Mr. Shashi Sekhar Dwivedi, learned senior counsel for the opposite parties.

2. This Civil Revision application has been filed by defendant-petitioners challenging the judgment and decree dated 11.03.2019, passed by the Munsif – 1st, Darbhanga, in Eviction Suit No. 22 of 2005, which was filed by the plaintiff-opposite parties for eviction of the defendants on the ground of personal necessity of the plaintiffs for the suit premises.

3. It appears that the aforesaid Eviction Suit is filed by the plaintiff-opposite parties under the Bihar Building (Lease, Rent and Eviction) Control Act (hereinafter referred to as the B.B.C. Act) in which special procedure is being adopted under Section 14 of the B.B.C. Act.

4. The case of the plaintiffs, in short, is that the plaintiffs are the owner of the suit premises and in the said premises, defendants are the tenants of the plaintiffs. Holding 19 is the shop of the father of the plaintiff Nos. 1 and 2, who separated the holding in several parts in which the father of the plaintiff Nos. 1 and 2 let out Holding Nos. 19 (B) and 19 (C) to the defendants on month to month tenancy. The further case of



the plaintiffs is that the premises is an ancestral property of the plaintiffs and in the family of the plaintiffs, partition took place and a suit for partition bearing Partition Suit no. 147 of 1956 was filed in the Court of Sub-Judge, Darbhanga, which was later on compromised and the land over which the suit premises was allotted in the share and *Patti* of mother of the plaintiff Nos. 1 and 2 and grandmother of the plaintiff No. 3 and after the death of the mother of the plaintiff Nos. 1 and 2, they came over the possession of the suit premises being heirs and legal representatives of the deceased-mother and the plaintiff Nos. 1 and 2 and the grandfather of the plaintiff No. 3 let out the suit premises to defendant Nos. 1 and 5 on the monthly rental of Rs. 100/- (One Hundred) each per month and both the premises let out to the defendant Nos. 1 and 5 and they came in possession over the suit premises as tenant and paid the rent of the premises to the plaintiff Nos. 1 and 2 as month to month tenant and got rent receipts and later on defendant No. 5, namely, Talha Ansari left his business because he was unable to do the same due to old age and the entire premise came under the possession of defendant Nos. 1 to 4 and they paid the rent of the premises till February, 2004. Thereafter, the defendants stopped the payment of rent from March, 2004 to July, 2005 and the rent of Rs.



5,100/- (Five Thousand One Hundred) and Rs. 3,400/- (Three Thousand Four Hundred) total Rs. 8,500/- (Eight Thousand Five Hundred) was due against the defendants. Further case of the plaintiffs is that the plaintiff Nos. 1 to 3 are unemployed and are ready to start their own business for which the entire suit premises, detailed and described in Schedule – 1, is essential for their business and the suit premises will fulfill the requirements of the plaintiffs. The plaintiff No. 3 completed the course of Computer Training and was ready to start a Computer Training Center and the suit premises is required for starting the business and filed the instant suit for eviction on the ground of personal necessity. The plaintiffs repeatedly requested the defendants to vacate the suit premises but the defendants on one pretext or the other deferred the matter and lastly refused to vacate the premises on 21.07.2005. Hence, the plaintiffs had necessity to file the suit for eviction.

5. After seeking the leave from the Court, defendants filed their written statement in three sets and in all the three sets of written statement, same statement has been given by the defendants. On 22.02.2008, apart from ornamental reply, the defendants contended that the suit suffers mis-joinder and non-joinder of the necessity party i.e. second wife of Akhtar Shikari



and her son Khalilullah. The suit filed by the plaintiffs is for declaration of title and recovery of possession and unless the plaintiffs properly value the suit and pay *ad volrem* Court fee, the suit cannot be proceeded. The suit premises was under possession of the father of the plaintiff Nos. 1 and 2 and plaintiffs had no manner of concern with the suit premises. It is admitted by the defendants that the rent of the suit premises is Rs. 100/- (One Hundred) per month. Defendant Nos. 2 to 4 were neither the tenant nor they were in possession of the suit premises, only defendant Nos. 1 and 5 are the tenants. Defendant Nos. 1 and 5 separately paid the rent of the suit premises to the plaintiffs @ Rs. 100/- (One Hundred) each per month. The defendants denied the story of enhancement of rent of Rs. 200/- (Two Hundred) and Rs. 300/- (Three Hundred) total Rs. 500/- (Five Hundred). It is contended that if there is any document showing enhancement of rent, it is forged and fabricated and the rent was regularly paid either personally or through money order. It is contended that there is no personal necessity of suit premises and plaintiff No. 3 is running S.T.D. Internet and Mobile business in the Market complex in the side of busy road and let out the premises to other persons of the said Market complex to several tenants. Partition Suit No. 37 of 2007



is pending in the Court of Sub-Judge, Darbhanga and the suit premises, in question, are also the subject matter of the aforesaid partition suit.

6. Learned Trial Court considered the material on records, evidence adduced by the parties and submissions advanced by the learned counsel for the parties. The said suit was decreed by the learned Munsif, Darbhanga holding that there was relationship of landlord and tenant between the parties, which is being proved by Ext. 1 series.

7. So far question of personal necessity of the plaintiffs is concerned, it is subsequently claimed by them that they were unemployed and wanted to start a business as well as the plaintiff No. 3 wants to start Computer Training business.

8. One of the main arguments on behalf of the defendants is that the plaintiffs have several vacant premises which may be used for their personal use. The defendant No. 3 Faheem Akhtar, who is one of the defendants in this case, has stated in paragraph No. 70 of his cross-examination that he did not know that shops which were vacant in Lohiya Chowk upon which the case was going on with Chaudhary Vidyanand, Advocate. D.W. 8, namely, Balram Mishra, has stated in paragraph No. 29 of his cross-examination that the disputed land



is at the flank of the main road.

9. Learned Trial Court discussed other evidences also and held that plaintiffs have successfully been able to prove that they have personal and *bona fide* need of the suit premises.

10. So far as question of partial eviction is concerned, it is apparent that plaintiffs had pleaded that they had *bona fide* personal requirements of the entire premises for Computer Training business, which required bigger space for keeping the Hardwares and other products. The necessity of plaintiffs could not be satisfied by partial eviction.

11. It is well-settled law that the landlord cannot be saddled with the onus of proving as to whether the *bona fide* requirement can be substantially satisfied by the order of partial eviction as once the landlord has proved his *bona fide* necessity of the premises and the onus shifts upon the tenants.

12. Learned Trial Court has held that defendants have failed to prove that the needs can be satisfied by partial eviction. The plaintiffs have successfully proved that they required the premises for their personal and *bona fide* use and the same cannot be fulfilled by the partial eviction. It is further held that the plaintiffs have themselves conceded that the defendants have paid rent till filing of the suit and the rate of rent was @ Rs.



100/- (One Hundred) per month.

13. Learned counsel for the petitioners mainly challenged the impugned judgment and decree on the ground that the said judgment and decree was passed against a dead person. It is submitted that during the pendency of the eviction suit defendant No. 5, namely Talha Ansari had died. Plaintiff have filed a petition for substitution on 17.04.2015 for substituting the heirs and legal representatives of the deceased-defendant No. 5, who died on 13.05.2015, during the pendency of the eviction suit but the order for substitution of the heirs and legal representatives of the deceased-defendant no. 5 was neither passed by the learned Court nor notices were issued to the heirs and legal representatives of the defendant No. 5. Therefore, the judgment and decree passed by the learned Trial Court against the dead person is judgment in nullity. It is further submitted that the heirs and legal representatives of the deceased-defendant No. 5 has neither appeared in the suit nor contested the same.

14. Learned counsel for the petitioners relied upon a decision in support of his submission in the case of *Mrs. Gladys Coutts Vs. Dharkhan Singh and others* reported in *AIR 1956 PAT 373*, which reads as follows:



*“Where, however, the case cannot proceed in the absence of one of the parties to the action, a decree passed in respect of a dead person must be held to be a nullity; and when an application is made for setting aside abatement and substituting the heirs of the deceased party on the record, such application must be dealt with by the Court in which the abatement occurred. The same view was expressed in **Amarsingji Indrasinghi Vs. Desai Umed, 1925 Bom 290 (AIR V 12) (H)**, a decision which was approved of in the Letters Patent Appeal in **1952 Pat 267 (AIR V 39) (C)**.*

*On a consideration, therefore, of the cases cited before us, I am of the opinion that the proper procedure to follow in the present case is the procedure which was followed in **1952 Pat 267 (AIR V 39) (C)**. I would accordingly allow the appeal, set aside the decree passed by the Court of appeal below and remand the appeal for a fresh hearing in accordance with law. The application which the appellant has filed in this Court for setting aside abatement and substituting the heirs of Gudar Singh should be sent to the Court of appeal below for disposal according to law.”*

15. Learned counsel for the petitioners further relied



upon another decision in the case of *Shankar Lal and another Vs. Sakil Ahmed and others* reported in (2001) 9 SCC 342, which reads as follows:

“Coming to the next question, suffice it to say that under the provisions of the Code of Civil Procedure as they existed at the relevant date, it was for the plaintiff to have taken steps for substitution of Defendant 2 and in the absence of such steps suit was to abate. Merely because Defendant 1 participated in the proceedings before the trial court without any kind of objection, it does not mean that the defendant had disentitled himself to raise the plea before the first appellate court. In fact, non-raising of objection before the trial court would not amount to waiver or acquiescence or condonation of default committed by the plaintiffs. Since the plaintiffs had not taken any steps for substitution of Defendant 2 the suit had abated under Order 22 Rule 4(3).

For the aforesaid reasons, we are of the view that this appeal deserves to succeed. We, accordingly, set aside the decree of the trial court as affirmed by the High Court. The appeal is allowed. Suit No. 49 of 1973 shall be treated as having abated. There shall be no order as to costs.”

16. The facts of the present case is totally different.



After the death of defendant No. 5, the plaintiffs had filed substitution petition on 17.04.2015 stating therein that defendant No. 5 died during the pendency of the suit on 14.03.2015, leaving behind his four sons, whose details were mentioned in the petition itself (annexure-3) and the rejoinder was also filed by the defendants stating therein that affidavit dated 17.04.2015 and 07.09.2017 filed by the plaintiffs are neither maintainable in law nor on facts. It is further contended that the plaintiffs have not filed the death certificate to the effect that defendant No. 5 died on 14.03.2015. It is necessary in the interest of justice that the plaintiffs would have been asked to furnish the death certificate of the defendant No. 3, wrongly written as defendant No. 3 in place of defendant No. 5. The said rejoinder was filed on 15.03.2018 which is on record.

17. An interlocutory application bearing I.A. No. 1 of 2019 has been filed in the present Civil Revision application on 15th May, 2019. In paragraph No. 10 of the said application, it is contended that the date of death of defendant No. 5 (father of petitioner No. 2) has been incorrectly shown as 17.03.2015, in the substitution petition, whereas, the actual date of death of defendant No. 05 is 20.04.2015, which is supported by death certificate *vide* Annexure – 4 of the interlocutory application.



18. It is apparent from the rejoinder dated 15.03.2018, filed by the defendant-petitioners that there is nothing mentioned about the actual date of death of defendant No. 5. The actual date of death of defendant No. 5 was never raised before the Lower Court and the said substitution petition was filed within the statutory period of limitation. In both the aforesaid decisions relied by the learned counsel for the petitioners it has been held that the substitution petition filed after the statutory period of limitation amounts to abatement of suit and on that petition no order was passed for setting aside the abatement. Such an application for setting aside the abatement can only be dealt with by the learned Court below where the abatement occurred and the Court of appeal or revision have no jurisdiction unless the decree is set aside by the Court who is in seisin of the case. There is no abatement in the present eviction suit because of the fact that the substitution petition of defendant No. 5 was filed in time and the learned Trial Court had not passed any order with regard to substitution of heirs and legal representatives of defendant No. 5.

19. In the present situation, the judgment and decree is not in nullity. It only requires formal order on the application of substitution petition. However, the petitioner No. 2, who is



one of the sons of defendant No. 5, has assailed the judgment on merit.

20. In view of the principles laid down by the Hon'ble Apex Court in the decision reported in *AIR 1970 SC Page 1 (Para 6)*, this Court is exercising the revisional jurisdiction under Section 14 (8) which is a part of general appellate jurisdiction of the High Court as a Superior Court particularly when the tenant's only remedy against eviction decree in a suit tried through special procedure, is revision under Section 14(8) of BBC Act and this revision is practically the continuation of the original suit and, therefore, this Court possesses the same powers which the original Court possessed. Thus, even though the due to over site or accidental mistake an order could not be passed on the substitution application with respect to deceased tenant filed well within 90 days of the death, still this Court in exercise of its revisional powers as stated above, hereby allows the aforesaid substitution petition dated 17.04.2015, in the interest of justice and direct the Court below to make the necessary correction in the decree.

21. In this fact and circumstances of the case, the Court finds that the judgment relied by the learned counsel for the petitioners is not applicable in the case of the petitioners as



the facts of this case is different from the case relied by the learned counsel for the petitioners.

22. In the aforesaid background, this Court is not persuaded to hold that the judgment and order passed by the Court below for eviction is not in accordance with law.

23. This Civil Revision application is, accordingly, dismissed.

(Khatim Reza, J)

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