

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.47 of 2018

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Bijay Kumar Mandal Son of Late Bhagwan Mandal, resident of Mohalla Mungeri Ganj Ward No. 8 New Ward No. 13 P.S. Anchal and District Begusarai.

... .. Appellant/s

Versus

- 1.A. Pravin Kumar Agrawal son of Late Pramod Kumar Agrawal
1.B. Krishna Gopal Agrawal son of Late Pramod Kumar Agrawal
1.C. Ekta Agrawal daughter of Late Pramod Kumar Agrawal
1.D. Versa Agrawal daughter of Late Pramod Kumar Agrawal
2. Om Prakash Agrawal alias Balajee son of Late Prabhu Narain Agrawal

All residents of Mahalla Mungeriganj Ward No. 8 New Ward No. 13
P.S. Anchal Subdivision and District Begusarai.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Nand Kishore Prasad Sinha, Advocate
For the Respondent/s	:	Mr. J.S. Arora, Sr. Advocate
		Mr. Randhir Kumar No.1, Advocate
		Mr. Manish Dhari Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

16 05-05-2023 1. This Second Appeal has been filed against the judgment and decree dated 13.09.2017 passed by Additional District Judge VIII, Begusarai in Title Appeal No. 43 of 2010 whereby judgment and decree dated 18.09.2010 passed by Munsif 1st, Begusarai in Title Eviction Suit No. 05 of 1999 has been affirmed.

2. The plaintiff is the appellant who purchased the suit land on 20.07.1998 measuring an area of 8 dhurs from S.P. No. 1486 and 1490 from Mohan Narayan Agarwal through two sale



deeds (4 dhurs each) where defendant was tenant. The defendant purchased 4 dhurs out of 8 dhurs from S.P. No. 1486 and 1490 comprising building along with disputed shop room through 4 registered sale deeds dated 11.01.1999 and 21.08.1999 from Prakash Kumar Agarwal and Pradeep Kumar Agarwal from the northern side of the 8 dhurs who are co-sharers of the vendor of the plaintiff. The dispute between the parties that the defendants were tenant of Mohan Narayan Agarwal and Gopal Narayan Agrawal and plaintiffs claims to have purchased the suit land from Mohan Narayan Agrawal. The said eviction suit has been filed on the ground of default for the arrears of rent for the period from August 1998 to January 1999. The suit was dismissed by the trial court holding that there is no relationship of landlord and tenant. Aggrieved by the said judgment and decree of trial court, the appellant move before the lower appellate court and filed title appeal bearing Title Appeal No. 43 of 2010. The learned trial court has discussed all the issues involved in this case and framed three issues, which are as follows:-

I. Whether the findings of the learned Lower Court on the main issue no. 5 is correct?

II. Whether the plaintiff appellant is entitled to get a



decree as claimed in the plaintiff with respect to suit premises?

III. Whether the decree passed by the learned court below is fit to be maintained or to be set aside?

3. Before deciding the issues as framed, the learned appellate court draws his attention towards the order of this court passed in a case bearing CWJC No. 364 of 2002 which was filed by the plaintiff-appellant before this court. After hearing, the Hon'ble Court dismissed the aforesaid Writ application on 16.08.2002 observing that in a suit for eviction filed under the provision of Bihar Building (Lease, Rent and Eviction) Control Act, the title of the parties can be looked into *prima facie* but in case of question of title being complicated and intricate such question cannot be finally decided or adjudicated upon in an eviction suit. It was also held that if the plaintiff-appellant wanted to get his title determined, he must convert the eviction suit into a regular title suit. The learned appellate court has rightly pointed out that the plaintiff had never made any attempt to convert the eviction suit into a regular title suit. However, defendant has filed a regular title suit bearing Title Suit No. 116 of 2001. When the eviction suit was going on at that time, the said Title Suit No. 116 of 2001 is still pending before the Sub Judge, Begusarai. The learned appellate



court has held that the present eviction suit is completely on question of title which can be decided only by title suit and both the courts has held that there is no relationship of landlord and tenant between the plaintiff and defendants and therefore, the suit filed by the plaintiff for eviction of the defendants is not maintainable.

4. From perusal of the impugned judgment and materials available on record, I find that this Second Appeal is against the concurrent finding. The said findings are covered by questions of fact. There is no question of law much less any substantial question of law is involved in this case.

5. Accordingly, this Second Appeal is dismissed at the stage of admission under Order 41 Rule 11 CPC.

6. However, since the defendants have already filed Title Suit No. 116 of 2001, which is still pending before Sub Judge, Begusarai, the concerned Sub Judge is directed to conclude the trial within one year from today since the matter is of the year 2001.

(Khatim Reza, J)

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