

Hiralal Bosak @ Hiralal Basak S/o Alam Chand Bosak Resident of Beni
Bahadurganj, P.s.- Bahadurganj, Distt.- Kishanganj

... .. Appellant

Versus

1. Mangal Kumar Bosak S/o Noger Prasad Bosak Resident of Beni Bahadurganj, P.s.- Bahadurganj, Distt.- Kishanganj
2. Satyanarayan Kumar S/o noger Prasad Bosak Resident of Beni Bahadurganj, P.s.- Bahadurganj, Distt.- Kishanganj

... .. Respondents

For the Appellant : Mr. Diwakar Sinha
For the Respondents : Mr.

7 18-01-2023 Heard Mr. Diwakar Sinha, learned counsel for the
appellant.

This Second Appeal has been filed by the defendant-appellant against the judgment and decree of affirmance passed in Eviction Appeal No. 01 of 2017 dated 12.03.2019 by the learned District Judge, Kishanganj whereby the order dated 18.03.2017 passed in Eviction Case No. 01 of 2013 by the learned Munsif-I, Kishanganj has been affirmed.

The respondents/plaintiffs have filed an Eviction Suit No. 01 of 2013 in Court of Munsif 1st, KishanGanj for eviction of appellant/defendant under the provision of Section 11(1) (c) (d) (e) of the Bihar (Lease, Rent and Eviction) Control Act, 1982, on the ground of personal necessity, default and expiry of



tenancy and also arrears of rent contending therein to have leased out the suit premises to the defendant on monthly rental of Rs. 300/- as per English calendar and a lease agreement dated 04.05.2005 for 11 months purported to have been counter signed by the defendant/appellant. The further case of the plaintiffs is that the defendant was a habitual defaulter since March, 2011 to August, 2013 and also claim for expiration of lease deed and personal necessity of the suit premises. The further case of the plaintiffs/respondents is that they are absolute owner of the land and building fully described in the Schedule 'A' at the foot of the plaint. The defendant is a monthly tenant of the plaintiffs at the rate of Rs. 300/- (Rupees Three Hundred) only per month. The suit premises consists of lands and rooms purchased by the plaintiffs from lawful owner with valuable consideration *vide* registered sale deed dated 24.01.2004 and paid ground rent to the State of Bihar and also paid holding tax *vide* holding 777 Ward No. 8 of Nagar Panchayat, Bahadurganj. The suit premises was leased out to the defendant commencing from 01.05.2005 to 31.03.2006, for a period of 11 months only. After expiry of the unregistered lease deed, defendant paid rent to the plaintiffs and the plaintiffs accepting the rent under the compulsion granted rent receipt for the suit premises. Since March, 2011,



the defendant stopped the payment of rent till August, 2013, hence, the defendant became defaulter under the Bihar Building (Lease, Rent & Eviction) Control Act, 1982. The further case of the plaintiffs is that the demised premise is required for personal necessity by plaintiff No. 1, namely, Mangal Kumar Basak for the purpose of his own business of General Store for selling *Masala* (Spices) and etc. The plaintiffs have several times requested to vacate the suit premises but the defendant refused to do so. It is further submitted by the mother of the plaintiffs, namely Tila Devi demanded the due rent from the defendant and the defendant gave several threatening to her and fractured her leg in rage and as such the brother of the plaintiffs namely Ganesh Prasad filed a petition before Bahadurganj police station and after the submission of enquiry report before learned S.D.M., Kishanganj. Thereafter, the proceeding was initiated under Section 144 Cr.P.C. vide Case No. 583M of 2012. After hearing both the parties the proceeding was dropped with a direction to file a suit before competent Court. The plaintiffs sent a pleader's notice to the defendant through registered post with A/D on 16.04.2012, mentioning therein, to pay all the due rent and vacate the suit premises.

After issuance of summon, the defendant (appellant)



appeared and filed his written statement and had denied the contents of the plaint. The defendant also denied the title of the plaintiff of the suit premises. The defendant also denied the signature made over alleged lease deed dated 04.05.2005. It is also submitted that no unregistered sale deed was executed for the period since 01.05.2005 to 31.03.2006, for the monthly rent of Rs. 300/-.

Further case of the defendant is that the unregistered lease deed which has been filed by the plaintiffs is totally manufactured, the signature which has been shown in the lease deed is fraudulent and manufactured, the defendant never put his signature in any lease deed. He also denied the relationship of landlord and tenant. The question of requirement of personal need and necessity for the purpose of his own business of the plaintiff for General Store for selling masala (spices) does not arise, the alleged necessity is hypothetical and mere desire and a come-out of personal grudge. The learned counsel for the appellant submits that both the courts misconstrued the deposition of DW.-5 namely Hira Lal Basak (appellant) adduced that all the documents as filed and got exhibited on behalf of the plaintiffs are legal and genuine documents. Learned counsel for the appellant further submitted that the nature of the suit land is



“Gair Majarua Bihar Sarkar” mentioned in the *khatiyān* and its remarks column it is mentioned “Bakabje Gopal Basak, S/o Kantu Basak. This shows that Gopal Basak had no marketable title over the land in the suit and he had also no right to transfer the land in question in favour of Ashutosh @ Din Bandua Basak and thereafter, Ashutosh @ Din Bandhu Basak transferred the suit premises to the plaintiff, since title of the suit premises did not pass in favour of Ashutosh @ Din Bandhu Basak, therefore, the plaintiff had no locus standi to file eviction Suit. It is also submitted that the *khatiyān*, Exhibit-B has not been considered at all. It is also submitted that lease deed executed by Satya Narayan Basak had not been examined by the plaintiffs. Lastly, he denied the relationship of landlord and tenant.

Both the learned courts below after considering the pleadings and evidence of the parties came to a definite conclusion that the right, title and possession of the plaintiff was proved by valid document such as registered deeds of transfer (Ext. 3 and 3/A), rent receipt issued by the Govt. of Bihar (Ext. 1) and rent receipt issued by Nagar Panchayat, Bahadurganj, whereas, defendant-appellant failed to prove his title and possession by any valid evidence and even claim of adverse possession. The defendant-appellant claimed that the ancestor of



defendant occupied the suit land belonging to State of Bihar in the year 1962 by dispossessing the State of Bihar and since then, the land without any resistance from the State of Bihar the defendant constructed *Pakka* room and the defendant has perfected the title as against the State of Bihar, which has not been proved by the defendant rather defendant-appellant(D.W.5) admitted that the documents as filed and got exhibited on behalf of the plaintiffs are legal and genuine documents. D.W. 5, namely, Hira Lal Basak (appellant) has admitted this fact in his evidence of his cross-examination in respect of sale deed (Ext. 3, 3/A) and other documents of the plaintiffs are real and genuine documents. The learned courts below after perusal of Ext. 'A', which is order passed by learned S.D.M., Kishanganj, dated 20.12.2012 in Case No. 583M of 2012 under Section 144 Cr.P.C. (Ganesh Basak Vs Hira Lal Basak) Ganesh Basak is the brother of the plaintiffs. In this order, learned S.D.M. is of the opinion that shop in question belongs to Ganesh Prasad (first party) and Hira Lal Basak (second party) is tenant in one room. The learned courts below considering the documents filed by defendant i.e. Ext-B, *khatiyan* of suit premises, as mentioned i.e. Plot No. 306/683 and described as *Makan/Dukan* of Gopal Basak, who has already executed sale deed on 17.01.1964 in



favour of Ashutosh @ Din Bandhu Basak (Ext.3/A). Later on, Ashutosh @ Din Bandhu Basak has executed sale deed in favour of plaintiffs on 20.01.2004 (Ext. 3). The learned courts below after considering the title and possession in favour of plaintiffs-respondents and had also concurrently held relationship of landlord and tenant existed between the plaintiffs and the defendant. Further, the courts below has also found the personal necessity of the tenanted shop for livelihood of the plaintiffs' family. The lease deed (Ext.5) mentions duration of lease w.e.f. 01.05.2005 to 31.03.2006, which already expired and was not renewed and the defendant became defaulter since March 2011.

In the aforesaid facts and circumstances, this Court does not find any illegality in the impugned judgments and decree of the learned courts below nor does it find any substantial question of law in the instant Second Appeal, which is, accordingly dismissed at the stage of hearing under Order XLI Rule 11 of the Code of Civil Procedure.

(Khatim Reza, J)

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