

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.253 of 2016

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Md. Samsul Islam Son of Late Hafiz Nurool Islam Resident of Village P.O.-
Lakshminiya, SDSR Pargana and Anchal P.S.- Balia, District- Begusarai.

... .. Petitioner/s

Versus

Tabbasum Ara Wife of Md. Ekbal Ahmed Resident of Village- Wazidpur
Pargana Balia, Anchal P.S.- Balia SDSR, District- Begusarai.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Shyam Nandan Choudhary, Advocate Mr. Ravi Shankar Pankaj, Advocate
For the Opposite Party/s	:	Mr. Sunil Kumar Karn, Advocate Mr. Rajesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

20 19-04-2023 Heard learned counsel for the petitioner and
learned counsel for the opposite party.

1. This Civil Revision application has been filed against the judgment and decree dated 31.05.2016 passed by the learned Sub-Judge III, Begusarai in Title Suit No. 257 of 2012 whereby the learned Court below has decreed the suit in favour of the plaintiff directing the defendant to vacate the suit premises within two months from the date of judgment. The plaintiff filed eviction suit bearing Title Suit No. 257 of 2012 for eviction on the ground of personal necessity.

2. The plaintiff's case in short is that the plaintiff has purchased the suit property from one Smt. Malti Sahay through registered sale deed dated 26.09.2011. The land along



with Shop in question was owned and possessed by Smt. Malti Sahay, who had purchased the same from one Rajesh Sahay @ Raju through registered sale deed dated 20.11.1989. Further case of the plaintiff is that the defendant was tenant in the suit premises and he remained tenant after the purchase of the suit premises by the plaintiff. Further, the case of the plaintiff is that after the execution of sale deed, Smt. Malti Sahay the vendor of the plaintiff introduced the plaintiff to the defendant as the landlord and the defendant accepted the same and started paying rent to the plaintiff since 01.10.2011 and paid the rent upto the month of December, 2011, which was paid in the first week of January, 2012 at the rate of 4,000/- per month. It is contended that after receiving the rent of December, 2011, the plaintiff requested the defendant to vacate the premises as she required the same for her personal use. It is contended that the husband of the plaintiff as well as father-in-law of the plaintiff is running an optical shop in a rented premises and in this way plaintiff required the suit premises in a bona fide manner to start same shop in her own shop premises. It is further contended that the shop in question was purchased with an intention to shift the business (optical shop) in her own shop premises. It is stated that when the plaintiff asked the defendant to vacate the shop in



suit, the defendant did not vacate and, thereafter, the defendant stopped the payment of rent. Further, the case of the plaintiff is that the defendant had agreed to vacate the premises within three months but subsequently he used to defer the matter on one and another grounds and lastly when the plaintiff through her husband asked the defendant to pay the rent and vacate the premises, the defendant flatly refused to do the same. The cause of action arose when the plaintiff purchased the suit premises on 26.09.2011 and also on 03.01.2012 when the plaintiff asked the defendant to vacate the premises and on several dates when the plaintiff asked the defendant to vacate the same but the defendant declined to vacate the premises.

3. The defendant appeared and filed his written statement and raised common ornamental objections. The case of the defendant is that defendant was the tenant of Smt. Malti Sahay and he used to pay the rent regularly to her. Further, the case of the defendant is that the rent was enhanced time to time and the rent gradually enhanced up to Rs 1150/- per month. He further denied the rent of Rs 4,000 per month. The defendant further contended that Smt. Malti Sahay introduced the plaintiff as the landlord to the defendant, rather, the plaintiff herself came to the defendant with the alleged sale deed and asserted that she



had become the new landlady and the defendant being a simple man *prima facie* accepted the version of the plaintiff and any how started making payment of the rent to her since 01.10.2011 at the same rate of Rs 1150/- per month. Further case of the defendant is that the plaintiff never requested the defendant to vacate the suit premises and the husband and father-in-law of the plaintiff are running an optical shop in a shop at lesser rent at a better location so there is no real and reasonable necessity of the suit premises to the plaintiff.

4. After hearing the averments made on behalf of the parties and after perusal of material on record, the learned Court held that the sale deed Exhibit-1 is title deed of the suit premises of plaintiff and the defendant in his written statement has admitted that on the introduction of the plaintiff as new landlady he *prima facie* accepted and started making payment of the rent. This admission in this written statement of the defendant is alone sufficient to establish the fact that there is a relationship of landlord and tenant between the plaintiff and defendant.

5. So far question of personal necessity of the plaintiff is concerned, it had been specifically claimed by them by the plaintiff that her husband and father-in-law of the



plaintiff are themselves running their business (optical shop) in a tenanted premises. As such, the plaintiff requires the suit premises for their business and this fact has not been denied by the defendant. PW-1 husband of the plaintiff has stated in his testimony that they required the suit land for their own use and plaintiff had bonafide personal requirement of the suit premises. So far question of partial eviction is concerned, it is quite apparent that the plaintiff had pleaded that she had bonafide personal requirement for the shop in question but the defendant nowhere pleaded that requirement of the plaintiff would be satisfied by partial eviction. The learned trial court held that the witnesses adduced by the defendant have stated that if there is a partial eviction the need of defendant could be fulfilled. The learned trial court further held that it would be seen that whether by partial eviction the need of the plaintiff could be fulfilled or not. None of the defendant witnesses have stated that by partial eviction the need of the plaintiff could be fulfilled, rather, they have repeatedly stated that by partial eviction the defendant need could be fulfilled.

6. On analyzing the impugned judgment as well as material on record and submission made by the parties, the relationship of landlord and tenant is accepted by the defendant



himself in the written statement as well as in his deposition. Plaintiff had specifically claimed that her husband and her father-in-law is running their business in a tenanted premises and as such they required the suit premises for their business. This fact has been admitted by the defendant. In the said circumstances, the finding of the learned trial court is that the plaintiff had 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 Cases of ***Tip Top and others Vs Smt. Indramani Devi*** reported in ***AIR 1982 Patna 190***, ***Smt. Jasbir Kaur @ Raj Rani and Another Vs Rabindra Kumar Yadav*** reported in ***2008 (4) PLJR 386***, ***Hira Lal Das and Another Vs Loknath Newatia*** reported in ***2014 (4) PLJR 476*** and ***Gopal Kumar Khetriwal @ Gopal Khetriwal Vs Smt. Geeta Devi Dokani and others*** reported in ***2017 (4) PLJR 59***. The defendant nowhere pleaded that the requirement of the plaintiffs could be satisfied by partial eviction although it is a settled law that once personal necessity is proved, the ownership of the tenant is to show that partial eviction shall satisfy the personal necessity of the plaintiffs. Reference in this regard may be made to two 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 Limited Vs Dr. Md. Qamruzzama* reported in *1993 Vol 1 PLJR 87 (DB)*.

7. Further more from paragraph no. 8 of the judgment of the learned trial court it is quite manifest that the said court was aware of the point of partial eviction and hence, compliance of the relevant provision is complete and the judgment cannot be legally held to be bad for non consideration of the issue of partial eviction.

8. In the said circumstances, this court doesn't find any jurisdictional error or irregularity in the impugned judgment.

Accordingly, this Civil Revision application is dismissed.

(Khatim Reza, J)

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