

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.269 of 2022

Maharana Pratap Singh Son of Late Mukhdeo Singh, Resideth of Village - Kolh Manjhauli (Koch Manjhauli), P.S. Mali, district- Aurangabad. At present residing at Mohalla - Pali Dehri, Behind C.I.D. office Dehri, P.S. Dehri, P.O. Dehri, District - Rohtas.

... .. Appellant/s

Versus

Ambika Prasad Singh Son of Late Munder Singh, R/o Bose Bagan, Lal Bangla, P.O. Dalmianagar, P.S. Dehri, District- Rohtas.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. K.N. Choubey, Sr. Advocate
	:	Mr. Ambuj Nayan Chaubey, Advocate
	:	Mr. Ashok Kumar Garg, Advocate
	:	Mr. Yogendra Kumar Dwivedy, Advocate
For the Respondent/s	:	Mr. Pandit Jee Pandey, Advocate
	:	Mr. Nawneet Kumar Tiwary, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
C.A.V ORDER

6 12-01-2023 This second appeal has been filed by defendant-appellant against the judgment and decree of affirmance. Title Suit No. 15 of 2018 has been filed by plaintiff-respondent for eviction and also for realisation of the default rent as well as future rent. The suit was filed for eviction on the ground of personal necessity and future rent is fully shown in schedule 1 and schedule 2 of the plaint. The said suit was decreed by learned Munsif, Dehri (Rohtas) by judgment and decree dated 28.06.2019, against which the defendant filed Title Appeal No. 52 of 2019, which was dismissed by the learned Additional District Judge-11, Rohtas at



Sasaram by his judgment and decree dated 10.06.2022, which is under challenge in the instant Second Appeal.

Heard Mr. Kamal Narain Chaubey, learned Senior counsel for the appellant and Mr. Pandit Ji Pandey, learned counsel for the sole-respondent.

The case of the plaintiff-respondent in brief is that the plaintiff is the *Karta* and Manager of the Joint Hindu Family, governed by Hindu Mitakshra School of law and the plaintiff has filed the present suit as Karta and co-parcenor of the Joint Hindu Family as well as in individual capacity. In the year 1998, the vendors of the plaintiff had inducted the defendant as tenant in the suit premises on monthly rent of Rs. 500, on an oral agreement of tenancy. The terms of tenancy was that the rent was to be paid in the first week of the subsequent month and the defendant shall have to vacate the suit premises in case of default of payment of rent for two consecutive months and on the ground of personal necessity of the plaintiff. Originally, the suit land and premises belonged to Anil Kumar Sen, Parash Nath Sen and other co-sharer. Original owners Parash Nath Sen and others had absolute title over the suit land. The



plaintiff purchased the suit land consisting of building and Sehan land and *Aangan* appertaining to it as fully detailed in schedule 1 of the plaint from Anil Kumar Sen and other co-sharer by virtue of three registered sale deeds dated 14.09.2002 and 18.01.2007 one in the name of Sanjay Kumar Singh, the other in the name of Abhay Kumar Singh and the third one in the name of the plaintiff and they came in possession after the purchase of the said premises the Municipal survey Khatian of the disputed land has been numbered as M.S. Plot No. 11, 12 and 13 (ka), 13(kha), 13(gha) corresponding to C.S. Plot Nos. 335 and 336 C.S. Khata No. 22 and 16. The M.S. Khatian of which has wrongly been prepared in the name of Sri Radha Govind Ji. The vendors of the plaintiff informed through their attorney to the defendant that the suit premises were transferred to the plaintiff and his family members and, therefore, the rent will be received by the plaintiff. The defendant accepted the terms of tenancy after the transfer of suit premises and paid rent of the disputed premises to the plaintiff till December, 2007, but committed default in payment of the rent since January, 2008, and hence, the defendant is



defaulter and he is liable for eviction. It is further stated that the suit premises is very old and is in dilapidated condition and requires a fresh reconstruction. It is also stated that the plaintiff has to start a fresh business in the suit premises. The plaintiff as such has got a bona fide personal necessity in good faith.

After service of summons, the defendant appeared and filed his written statement and denied the claim of the plaintiff and has further contended that the plaintiff have no *locus standi* to file the suit. Claim of the plaintiff is wrong. The defendant has denied the relationship of landlord and tenant with the plaintiff and himself. According to him, the description of the suit premises is correct to some extent but it has been wrongly asserted by the plaintiff that M.S. Khatian has wrongly been prepared in the name of Sri Radha Govind. The land of the suit premises never belonged to Anil Kumar Sen and others (vendors of the plaintiff) nor they executed any legal and valid sale deeds on any date in favor of the plaintiff. Since, Anil Kumar Sen had no title over the suit premises the alleged purchaser plaintiff did not derive any title. Since, the alleged



vendors of the plaintiff never inducted the defendant as tenant on any rental and therefore his being a tenant does not arise and no question of asking by the vendors of the plaintiff to the defendant to pay the rent which shall be received by the plaintiff is acceptable. It is further contended that the defendant and the plaintiff never accepted the terms of tenancy. The question of construction in the suit premises by the plaintiff does not arise because he is not at all concerned with the suit premises and as such there does not arise any question of personal necessity of the plaintiff or default in payment of rent. It is further the case of the defendant is that Late Mukhdev Singh, father of the defendant had purchased C.S. Plot No. 336 orally for Rs. 85 in the year 1955-56 from the rightful owner, namely, Bhagwan Singh and since then he has been enjoying the disputed premises. The C.S. Plot No. 335 was interested to the defendant to look after by Pooranmal Agrawal, Secretary of Radhey Govind Trust. The defendant has asserted that there exists several documents regarding residing of the defendant in the suit premises. It has further contended that the sale deeds of the plaintiff



bears only homestead land. There is no mention of any building.

On the aforesaid ground prayer was made to dismiss the suit, it cannot be disputed that the respondent-plaintiff had brought the suit for eviction against the defendant on the basis of tenancy, respondent-plaintiff clearly accepted that he purchased the suit premises from Anil Kumar Sen and others by virtue of three registered sale deeds in the year 2002-2007. It is also stated that after aforesaid purchase respondent-plaintiff became owner of the suit premises and fact was brought to the notice of appellant who attorned the tenancy and agreed to pay at the rate of 500 per month to the respondent in place of his vendor. It has been pleaded that the appellant paid the rent to respondent till December, 2007 thereafter, stopped the same. Respondent has given the details of the suit premises in schedule 1 of the plaint regarding which the appellant-defendant in his written statement has admitted the description of the suit premises. He has not challenged the identity of the suit premises the case of appellant-defendant is that his father Mukhdeo Singh



had purchased C.S. Plot No. 336 orally for a consideration amount of 85/- in the year 1955-56 from the rightful owner Bhagwan Singh. It is also settled principle of law that when a tenant denies the title of landlord the tenant is liable to be evicted without any proof of default. The learned Courts below have held that exhibit 18 and exhibit 19 through which M.S. Khatian in the name of Radha Govind Ji has been declared wrong and the title was declared in favour of respondent-plaintiff. It is further held that Exhibit A and Exhibit- A-1 appears to have no relevancy in context of the suit. The Courts below held that Exhibit-C is the certified copy of the judgment related to Eviction Suit No. 04 of 2003 filed by vendors of the plaintiff against Harizan Thana and State of Bihar and others over portion of plot nos. 334, 331 and 335 against the said judgment plaintiff's vendor had filed title appeal no. 47 of 2014 in the Court of 3rd Additional District Judge, Rohtas and obtained eviction decree against the Harizan Thana situated in the portion of the said plot no. 335.

Learned counsel for the appellant has raised objection regarding execution of sale deeds



through power of attorney holders which does not satisfy Section 4 of the Power of Attorney Act, 1882. It is also argued that the power of attorney holder, who has executed the sale deed of the plaintiff-respondent do not appear to support the case of the plaintiff-respondent.

In respect of subsisting tenancy and default the Hon'ble Supreme Court held in ***AIR 2005 Supreme Court 24, 64 (Dr. Ambica Prasad vs. Md. Alam and Anr.)*** held:-

“After the transfer of lessor's right in favour of the transferee, the later gets all right and liabilities of the lessor in respect of subsisting tenancy. It is further, held that the Section does not insist that transfer will take effect only when the tenant attorns. It is well-settled that a transferee of the landlord's right steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of subsisting tenancy”.

In the written statement, the defendant-appellant has stated that he resides in the suit premises and the title of the plaintiff has been established on the basis of sale deeds of the plaintiff and, therefore, the residing of the defendant-appellant in the suit premises establishes the fact of his being the tenant. The relationship of landlord and tenant is established beyond



doubt. Further, in the case of ***Samim Ara Naz and ors.***
vs. Md. Qumaruddin reported in ***1997 (1) PLJR 526*** it
is held:-

“When prima facie found that the plaintiff establish his ownership over the suit premises then the application ought have not been rejected on the ground that there is no evidence of payment of rent by the defendant to the plaintiff or his vendor.”

The relationship of landlord and tenant and the default on these points both the lower Courts had concurrently held that the plaintiff proved his case with regard to relationship of landlord and tenant and the default and has so far as the question of personal necessity is concerned it had been claimed by him (plaintiff) that he and his family members want to run their business in the suit premises after demolition and reconstruction and as such the said requirement of the landlord was not specifically challenged by the defendant. It is apparent from the concurrent finding that the sale deeds in favour of the plaintiff establishes his ownership and the defendant-appellant who challenged the sale deed, failed to succeed in his effort and his averments in the written statement of residing in the suit premises leads to coming to conclusion that he



is there as a tenant.

The finding upon question of relationship of landlord and tenant between the parties is concurrent, the defendant did not produce any unequivocal document or evidence in support of oral purchase of the suit premises, whereas the relationship of landlord and tenant was proved by the plaintiff's written statement. The question of relationship of landlord and tenant is a question of fact which has been decided concurrently by the courts below. Hence, there being no legal perversity in the said finding nor there been any error of law on record or even non-consideration of any materials, there is no occasion for this Court to interfere with the said finding.

It is apparent that the defendant-appellant had been residing in the suit premises as averred in the written statement itself and failed to prove that plaintiff has no title over the suit premises and since the date of purchase of the premises by the plaintiff, the defendant had been attorned and, therefore, finding of both the courts below on the point of payment of rent @ Rs. 500/- per month from January, 2008 does not require



interference.

Considering the aforesaid facts and circumstances, as well as the materials on record, it is quite apparent that judgments and decree of the courts below are covered by the finding of the facts and no question of law much less substantial question of law arises for consideration 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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Kumar/Annpurna-

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