

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.351 of 2022

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Shyam Lal Jain S/o Late Mangal Jain R/o- Shyam Vastralaya, Station Road,
P.O.- Dalmianagar, P.S.- Dehri-on-Sone, Dist.- Rohtas.

... .. Appellant

Versus

Panna Lal S/o- Ram Nandan Prasad R/o- Idgah, P.S.- Dehri-on-Sone, Dist.-
Rohtas.

... .. Respondent

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Appearance :

For the Appellant : Mr. Brij Bihari Tiwary, Advocate
For the Respondent : Mr. Surendra Kishore Thakur, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

10 22-03-2023 Heard learned counsel for the appellant.

2. This Second Appeal arising out of concurrent finding of judgment and decree dated 26.08.2022, passed in Title Appeal No. 04 of 2021 by the learned IV Additional District Judge, Rohtas at Sasaram, whereby, judgment & decree dated 14.12.2020 passed in Eviction Suit No. 06 of 2014 by the learned Civil Judge, Junior Division, Munsif, Dehri (Rohtas) has been affirmed.

3. The suit bearing Eviction Suit No. 06 of 2014, was filed for eviction on the ground of default in payment of rent and personal necessity.

4. The case of the plaintiff is that the plaintiff has two sons, namely Vishal Kumar and Aman Kumar constituting a Joint Hindu Mitakshara Family of which plaintiff is the *Karta* of



the family. It is submitted that the suit premises belong to family and the aforesaid suit has been filed by the plaintiff in individual capacity. It is contended that the plaintiff has inducted the defendant in Schedule 'A' rooms of the plaint on a rental of Rupees 2000/- (Two Thousand) per month fifteen years ago. The rent has been increased from time to time and since the year January 2014, defendant is paying rent of Rupees 3,300/- (Thirty Three Hundred) per month to the plaintiff. The defendant is the tenant in shop detailed in Schedule 'A' of the plaint at present rental of Rupees 3,300/- (Thirty Three Hundred) per month and defendant is carrying on the business of retail cloth shop in the name and style of "*Shyam Vastralaya*" in the suit premises. There was oral agreement between the plaintiff and defendant that the defendant will pay rent month to month in the first week of the subsequent month and plaintiff will grant rent receipt to the defendant. It was agreed that if the tenant makes any default of rent for two months then the tenant shall vacate the premises without any objection. Further, it has been contended that the defendant made default in payment of rent for the month of July 2014 to October 2014 without any lawful excuse in violation of terms of agreement in between them. The details of arrears of rent of the suit premises have



been given in Schedule 'B' of the plaint. Plaintiff has personal necessity of the suit premises as his son, namely, Aman Kumar intended to start his own business of Showroom of electronic items i.e. T.V., Freez, Computer and other electric goods. It is further stated in the plaint that the business intended to be established is in the interest of family of the plaintiff to improve the economic and financial condition of the family members of the plaintiff as the family members of the plaintiff are increasing. Aman Kumar is a married person and had got children and for bonafide necessity requires suit premises. The suit premises selected by him was fit for carrying the business as desired. Thereafter, plaintiff requested the defendant to vacate the suit premises to accommodate the personal requirement of the plaintiff and his son since a year before from the institution of the suit but the defendant refused to vacate the same.

5. After service of summons, defendant appeared and filed his written statement stating therein that defendant is monthly tenant in the suit premises since 1984 and initially rent was fixed at Rupees 780/- (Seven Hundred Eighty) per month. Further case of the defendant is that plaintiff was in need of money and he had given him Rupees 28,000/- (Twenty Eight Thousand) as advance in the month of February 1984 on the



condition that plaintiff would return the same and if not possible the amount shall be adjusted against the rent. Plaintiff neither returned the aforesaid amount of money nor adjusted the same against the rent rather he enhanced the rent and utilized the monthly rent from January 1997 to May 2004 at the rate of Rupees 1,200/- (Twelve Hundred) and after that he enhanced the rent several times. Lastly, he enhanced the monthly rent at the rate of Rupees 3,300/- from the month of January, 2014, which was paid till December 2014 by the defendant. Further case of the defendant is that it was agreed in between the plaintiff and defendant that plaintiff shall grant receipt of the payment of rent. Despite the payment of rent at the rate of Rupees 3,300/- from the month of July to December 2014, the plaintiff did not grant the receipt at the instance of unavailability of receipts. The plaintiff again proposed to enhance the rent without any lawful and reasonable ground. The defendant resisted, protested and also requested that the amount of Rupees 28,000/- with interest should be returned. It is further pleaded by the defendant that no rent was due as alleged by the plaintiff as the defendant had already paid the rent till January 2015. The plaintiff's son, namely Aman Kumar does not reside in Dehri and he is engaged in job, facts stated by the plaintiff's son stating him idle and



unemployed is false, therefore, he has no personal necessity in the suit premises.

6. Learned counsel for the appellant submits that both the courts have failed to consider the notice through learned counsel which was sent for granting rent receipt on payment of rent, which was not followed by the defendant-landlord.

7. After hearing the parties and considering the materials on record, learned IVth Additional District Judge, Rohtas at Sasaram dismissed the appeal confirming the judgment and decree of the Trial Court and allowing the claim and suit of the plaintiff. The learned courts below held that plaintiff and his son, namely, Aman Kumar would start his Showroom of Electronic items. The plaintiff himself is P.W.-1, who has deposed before the Court that his son, namely, Aman Kumar is sitting idle after completing his studies and he wanted to engage his son in a business of Electronic goods and he has further stated that to improve his financial condition he wanted to employ his son in a business of Electronic goods, and for that vacation of suit premises is essential. All the witnesses of plaintiff have corroborated the fact relating to personal necessity of the plaintiff as has been stated by the plaintiff in his plaint as well as in his evidence. Witnesses have been examined at length



but nothing has been found inconsistent or contradictory to disbelieve them with regard to personal necessity of the plaintiff. The evidence given by the defendant is not sufficient to disprove the fact that the plaintiff has no personal necessity as stated by him in the plaint.

8. So far as question of default in payment of rent is concerned, as per pleadings of the defendant-appellant, he had made payment of rent from the month of July to December 2014, but respondents did not grant him receipts for payment of the same. It has been admitted by the appellant-defendant that he has no documentary evidence to show that he had paid alleged amount of rent for the said period and the plaintiff did not grant him receipts. With regard to the story of giving advance money of Rupees 28,000/- (Twenty Eight Thousand), given in the year 1984 to the landlord with condition to return and if not returned would be adjusted against the rent, the defendant-tenant has not filed any document with regard to receipts of such advanced money and no reason has been assigned on behalf of defendant-appellant, as to under what circumstances he had not got the said advanced amount of money from respondent.

9. Learned Appellate Court held that the claim of



payment of advanced money appears to be false and without any basis. Learned Courts below held that defendant-appellant could not be able to prove the fact that he had paid the rent of disputed area. However, the question of partial eviction is concerned, the learned Trial Court while considering the aspect of partial eviction has held that plaintiff has proved his personal necessity of the suit premises by his son, namely, Aman Kumar for the business of Electronic goods as his son is still unemployed and plaintiff has right to chose suit premises for his personal necessity. Learned Trial Court also mentioned that the suit premises is a single shop and as per the pleadings and evidences Panna Lal (plaintiff) wants to open a shop in suit premises. The defendant had not made out a case that the requirement of plaintiff will be met out even if he has vacated partially. The area of the suit premises is 38ft. X 14ft., thus, learned Trial Court has held that the requirement of plaintiff will not be met if partial eviction of the defendant takes place.

10. Considering the facts and circumstances of the case as well as the materials on record, it is quite apparent that the judgments and decree of the Courts below are covered by the findings 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 admission under “Order 41 rule 11 of the Civil Procedure Code”.

(Khatim Reza, J)

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