

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.234 of 2019

-
-
- 1.1. Asif Hussain son of Late Md. Jahid @ Md. Zahid Hussain, resident of Amir Hasan Lane, Tatarpur, P.O. and P.S.- Tatarpur, District- Bhagalpur, Bihar- 812002.
- 1.2. Amir Hussain son of Late Arif Hussain, grand son of Late Md. Jahid @ Md. Zahid Hussain, resident of Amir Hasan Lane, Tatarpur, P.O. and P.S.- Tatarpur, District- Bhagalpur, Bihar- 812002.
- 1.3. Kazim Hussain son of Late Arif Hussain, grand son of Late Md. Jahid @ Md. Zahid Hussain, resident of Amir Hasan Lane, Tatarpur, P.O. and P.S.- Tatarpur, District- Bhagalpur, Bihar- 812002.

... .. Petitioner/s

Versus

1. Sri Ajay Kumar Saha Son of Late Kaushal Kishore Saha, Resident of Mohalla- Dr. Rajender Prasad Road, Khaliphabagh, P.S.- Kotwali, District- Bhagalpur.
2. Sri Pankaj Kumar Saha, Son of Late Kaushal Kishore Saha, Resident of Mohalla- Dr. Rajender Prasad Road, Khaliphabagh, P.S.- Kotwali, District- Bhagalpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Md. Najmul Hodda, Advocate Mr. Najeed Ahmad, Advocate
For the Opposite Party/s	:	Mr. Deepak Kumar Sinha, Advocate Mr. Vijay Chandra Ray, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

12 12-05-2023

1. Heard Mr. Md Najmul Hodda, learned counsel for the petitioners and Mr. Deepak Kumar Sinha, learned counsel for the opposite parties.

2. This Civil Revision Application has been filed



under Section 14 (8) of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982, against the judgment and decree dated 23.08.2019 passed by Sri Ranjan Kumar Raina, Munsif II, Sadar, Bhagalpur in Eviction Suit No. 37 of 2011, who has decreed the suit on contest.

3.The learned counsel for the defendants-petitioners submits that the defendants-petitioners deny the relationship of landlord and tenant. It has wrongly been held that original defendant was the tenant of the plaintiffs and also raised objection with regard to partial eviction which is mandatory in nature, and that has not been decided by the trial court.

4. Learned counsel for the plaintiffs-opposite parties submits that the plaintiffs have filed two evictions suit bearing Title Eviction Suit No. 36 of 2011 and Title Eviction Suit No. 37 of 2011 on the ground of personal necessity to occupy the said premises. Against the judgment and decree passed in Title Eviction Suit No. 36 of 2011, a Civil Revision Application was filed by the petitioner which was dismissed on 03.06.2020 by a Co-ordinate Bench of this Court.

5. The learned counsel for the opposite parties drew my attention to the paragraph nos. 13 and 18 of the said order of this court passed in Civil Revision No. 69 of 2019. The two



aforesaid questions raised by the petitioner is also discussed in Civil Revision No. 69 of 2019 and negated the answer against the petitioner.

6. Before deciding the questions raised by the learned counsel for the petitioners, it is necessary to deal with the case of the parties. The plaintiff's case in brief is that the suit property previously owned and possessed by Ganga Prasad Saha bearing Holding No. 26 (A), Ward No. 8 (old), 7 (new) situated at Mohalla- Khalifabagh Chowk, Dr. R.P. Road P.S.- Kotwali, under Bhagalpur Municipal Corporation District- Bhagalpur, who had constructed two thatched rooms and had inducted the original defendant as a tenant and since then the defendant came in occupation on the basis of oral agreement and carrying the business of Saw Mills up-till now. Ganga Prasad Saha constructed two *pukka* rooms and one tin shed along with an office and thereafter had inducted again the defendant as a tenant and handed over possession of the same to him. After death of Ganga Prasad Saha his four sons partitioned all the properties amongst themselves on 20.01.1984 through *Khangi Batwara*. The tenanted premises, which was in occupation of the petitioner, ad-measuring 0.460 hectares, fell in the share of Shyamal Kishore Saha (Eastern part) now deceased and western



part allotted to Kaushal Kishore Saha (father of the plaintiffs) equally. Name of the sons of Ganga Prasad Sah were mutated accordingly in terms of the partition in the revenue records as well as Bhagalpur Nagar Nigam whereafter, they were paying rent and getting rent receipts. After the death of Kaushal Kishore Saha, the plaintiffs-opposite parties inherited the suit property and came in possession. Accordingly, it is contended in the plaint that the plaintiffs are owners of the land bearing Khata No. 404, Plot No. 1104 (Part) an area 0.0230 hectors out of 0.0460 hectors on the western side *vide* holding no. 26 (A), ward no. 8 (old), 7 (new) Mohalla- Khalifabagh Chowk, District- Bhagalpur. It was further contended that the original defendant was carrying on his business of Saw Mill in the suit premises at a monthly rent of Rs. 1100/- (Eleven Hundred Rupees) per month as a tenant on month to month basis on an oral agreement and defendant was paying rent and got rent receipts till February 2007 at the rate of Rs. 1100 per month. The plaintiff no. 1 granted the rent receipts regarding the same in the prescribed form. The defendant subsequently stopped paying rent since March 2007. The plaintiffs sent two legal notices on 09.06.2009 and 26.08.2011 and requested him to pay the arrears of rent and vacate the suit premises and also mentioned that the plaintiffs



were in the urgent need of the premises in question for their personal use of carrying on their business. In spite of that the defendant neither gave any reply nor vacated the tenanted premises.

7. In order to make out the case of their bonafide requirements, the plaintiffs contended that the original plaintiff no. 3 namely, Sri Pankaj Kumar Saha is practicing as an advocate in the Civil Court, Bhagalpur and for the purpose of setting up his office along with residential purpose, the plaintiff nos. 1 and 2 allotted the suit land for the purpose of establishing his office in the front side along with his residential house in the back side. The original plaintiff nos. 1 and 2 at present are running business of steel utensils etc. situated at Variety Chowk, and residing with another family members in the old house situated at Dr. Rajendra Prasad road, Bhagalpur. It is further asserted that there are only three rooms in their occupation hence, the plaintiff nos. 1 and 2 allotted suit land to plaintiff no. 3 for carrying his office along with residential purposes after making new construction over it. Further case of the plaintiff is that plaintiff nos. 1 and 2 are jointly carrying their business of steel utensils etc. at Variety Chowk, Bhagalpur and plaintiff no. 3 is practicing as a lawyer and there is no any vacant land in the



hand of plaintiffs to establish the office of the plaintiff no. 3 and the plaintiffs have personal need and requirement of the suit premises for personal use and occupation of the plaintiff no. 3 who is in urgent need of vacant land for the purpose of construction of his office-cum-residential house. It is further pleaded that the dimension of the suit premises in the front was only 23 feet 5 inch *vide* facing east to west and except from the front side road of Dr. Rajendra Prasad, there is no way to egress and ingress in the suit premises, and hence, about 10 feet front portion land will be separated or bifurcated in the *Rasta* for egress and ingress in the back portion of the premises. Hence, requirement of the plaintiff no. 3 cannot be satisfied by the partial eviction of the suit premises.

8. The case of the defendant as pleaded in the written statement is that the plaintiffs were not the owner of the suit property since after the death of Ganga Prasad Saha, Partition Suit No. 201 of 1993 between his heirs was pending adjudication before the Sub-Judge VIII, Bhagalpur and therefore, it could not be said that the plaintiffs were exclusive owners of the suit property. It is further contended that father of the defendant namely, Abdul Majid was the original tenant of the suit property, who was inducted by virtue of an unregistered



agreement under a *Kirayanama* dated 24.02.1955 and at the time of creation of the said tenancy, the demise premises was a *parti* piece of land having not even thatched roof over it for the purpose of starting business in timber and the rate of rent was Rs. 88 per month. It is further contended that after the death of the original tenant Abdul Manjid, a fresh *kirayanama* was executed in favour of this defendant by the son of Ganga Prasad Saha (since deceased) namely, Brij Kishore Saha and his three other brothers and the rate of rent was enhanced to Rs. 150/- per month against which the defendant had filed a case under Bihar Building (Lease, Rent and Eviction) Control Act before the House Controller, Bhagalpur for fixation of fair rent which was numbered as House Controller Case No. 28 of 1968 wherein, plaintiff no. 1 had filed a show cause jointly in the said case and they contended that the tenanted premises which was let out to the defendant on rent was a *parti* piece of land. It was also mentioned in the said show cause that it was let out to the defendant for running the wooden logs with right to the defendant-tenant that the tenant would be entitled to raise temporary construction and structure on the said land for restoring the wooden log and raised objection with regard to maintainability of the suit under Bihar Building (Lease, Rent



and Eviction) Control Act. The House Controller had rejected the claim of the petitioner in the said proceeding that the suit property could be said to be building within the meaning of the Act. The said proceeding ultimately culminated in CWJC No. 13 of 1976. A Division Bench of this Court by judgment and order dated 17.11.1978 passed in CWJC No. 13 of 1976 held that premises, in question, was not a building within the meaning of the Act. Therefore, provisions of the Act had no application. Defendant further contended in his written statement that the rent of the premises was never raised to Rs. 1100/- per month and at no point of time, the defendant ever paid such amount towards rent. There was no relationship of landlord and tenant at any point of time. He had never paid any amount to the plaintiff towards rent of the premises occupied by the defendant.

9. On analysing the impugned judgment as well as material available on record, I find that decision rendered in Civil Revision No. 69 of 2019, *Md. Zahid Hussain versus Babul Kumar Saha and Another* decided on 03.06.2020 covers the legal question involved in this case and this court has already held on the issue whether there existed relationship of landlord and tenant between the plaintiffs and defendant. The court below has taken note of the stand taken by the defendant before the



House Controller in Rent Control Case No. 28 of 1968 which was prepared by the defendant (petitioner) for fixation of fair rent. He had taken specific plea before the House Controller that father of these plaintiffs and others had legally enhanced the rent of the land in question. The court below, thus, concluded that the defendant had admitted the relationship of landlord and tenant and he did not mention anywhere in the written statement as to when this relationship of landlord and tenant between defendant and plaintiffs came to an end. The court below upon analysing of the fact on record, both oral and documentary, concluded that there existed relationship of landlord and tenant between the plaintiff and defendant. Hence, there being no any legal perversity in the said finding nor their being any error of law or record or even non consideration of any material, there is no occasion for this court to interfere with the said finding.

10. So far the question of partial eviction is concerned, it is quite apparent that the plaintiffs had pleaded and adduced their evidences i.e. P.W. 2, P.W. 3, P.W. 4, P.W. 5, P.W. 6, P.W. 7 that they had bonafide personal requirment for the entire premises and specifically pleaded that requirement of the plaintiff no. 3 cannot be satisfied by the partial eviction of the suit premises. Moreover, defendant did not plead that the



requirement of the defendant can be fulfilled by partial eviction. Moreover, the defendant contended that the requirement of the plaintiffs can easily be fulfilled from the land held and occupied by the plaintiffs and also plaintiffs have sufficient space/place for their residence and as such the plaintiffs do not require the suit premises reasonably or bonafidely without adducing any evidence on that point. It is quite apparent that plaintiffs had pleaded that they had bonafide personal requirement of the entire premises but the defendant nowhere pleaded that the requirement of the plaintiffs would be satisfied by partial eviction although it is settled law that when once personal necessity is proved the onus shifts on the defendant to show that partial eviction shall satisfy the personal necessity of the plaintiffs. In this regard reference may be made to two decisions of this court in case of **Food Corporation Of India and Others Versus Vishun Properties and Enterprises and Others** reported in **1995 BBCJ 711** as well as in case of *M/S Bata India limited Versus Md. Qamruzzama* reported in **1993(1) PLJR 87 (DB)**.

11.Furthermore, from paragraph 12 of the impugned judgment of the lower court below, it is quite manifest that the said court deals with the point of partial eviction and hence



compliance of the relevant provision is complete and the judgment cannot be legally held to be barred for the non-consideration of the issue of partial eviction. On the question of partial eviction, this court has also dealt with the question in Civil Revision Case No. 69 of 2019. This court has also held that the defendant could not successfully establish the bonafide requirements of the plaintiffs for occupation of the land in question for their personal use which would be satisfied by partial eviction. There was no pleading on the point of partial eviction by the defendant nor any evidence led on his behalf before the court below. Despite that, the finding recorded by lower court that the requirement of the landlord could not be satisfied by partial eviction cannot be said to be unwarranted in view of the *proviso* to Clause (c) to sub-section (1) to Section 11 of the Act.

12. In the aforesaid facts and circumstances and materials available on records and considering the judgment passed in Civil Revision No. 69 of 2019 on 03.06.2020, I am of the view that the findings recorded by the trial court is based on evidences and pleadings available on record. The findings cannot be said to be suffering from any perversity and such infirmity as would have required interference in exercise of



revisional jurisdiction.

13. Accordingly, this Civil Revision Application is dismissed.

(Khatim Reza, J)

Sankalp/-

U		T	
---	--	---	--

