

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.140 of 2021

1. Shri Madhurendra Kumar Singh Son of Late Kedar Singh, at present residing at Village- Bhikhanpura, Post Office-Khabra, Police Station- Sadar, District- Muzaffarpur and permanent resident of Village- Tariyani Chhapra, Post Office and Police Station- Sheohar, District- Sheohar.
2. Kamendra Singh, Son of Late Kedar Singh, at present residing at Village- Bhikhanpura, Post Office-Khabra, Police Station- Sadar, District- Muzaffarpur and permanent resident of Village- Tariyani Chhapra, Post Office and Police Station- Sheohar, District- Sheohar.

... .. Appellant/s

Versus

1. Smt. Asha Devi Wife of Shri Ram Vinod Singh, resident of Village- Bhagwanpur, Post Office and Police Station- Sadar, District- Muzaffarpur.
- 2.1. Sunil Kumar Singh Son of Late Sharda Devi and Late Dr. Basant Kumar Singh Permanent resident of Village- Dahiyani Tola, Chhapra, P.O. and P.S.- Chhapra, District- Chhapra, at present residing at Daljeet Tola, Jai Prakash Nagar, Balliya, P.S.- Baliya, District- Balliya, under State of U.P.
- 2.2. Sudhir Kumar Singh Son of Late Sharda Devi and Late Dr. Basant Kumar Singh Permanent resident of Village- Dahiyani Tola, Chhapra, P.O. and P.S.- Chhapra, District- Chhapra, at present residing at Daljeet Tola, Jai Prakash Nagar, Balliya, P.S.- Baliya, District- Balliya, under State of U.P.
- 2.3. Santosh Kumar Singh Son of Late Sharda Devi and Late Dr. Basant Kumar Singh Permanent resident of Village- Dahiyani Tola, Chhapra, P.O. and P.S.- Chhapra, District- Chhapra, at present residing at Daljeet Tola, Jai Prakash Nagar, Balliya, P.S.- Baliya, District- Balliya, under State of U.P.
- 2.4. Smt. Bina Singh D/o Late Basant Kumar Singh and Late Sharda Devi and Wife of Om Shri Vishnu Hari Resident of Mohalla -B Block, Flat No.- 402, Ishwari Enclave Vidyapati Nagar, Kanak Road, Ranchi (Jharkhand).
- 2.5. Smt. Nutan Singh Daughter of deceased Late Sharda Devi and Late Dr. Basant Kumar Singh, Wife of Kaushal Kishore Singh Resident of Quarter No.- 2157, Sector 4-F, Bokaro Steel City, Bokaro (Jharkhand).
3. The State of Bihar, through the Collector, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sunil Kumar Verma, Advocate Mr. Suman Kumar Verma, Advocate Mr. Anish Kumar, Advocate Mr. Amresh Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Rajendra Narayan, Sr. Advocate Mr. Sunil Kumar Pandey, Advocate



CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

C.A.V. JUDGMENT

Date : 15-04-2024

This Second Appeal under Section 100 of Code of Civil Procedure (hereinafter referred to as 'CPC') has been filed against the judgment and decree dated 24.12.2019 and 06.01.2020 respectively passed in Title Appeal No.67 of 2015 by learned Additional District Judge-1, Muzaffarpur (hereinafter referred to as 'the appellate Court') whereby the said title appeal has been dismissed and affirmed the judgment dated 26.09.2015 and decree dated 10.10.2015 passed in Title Suit No. 424 of 2004 by learned Sub-Judge-4th, Civil Judge, Senior Division, Muzaffarpur (hereinafter referred to as 'the Trial Court') partly decreeing the suit on contest without cost in favour of the plaintiff.

2. The plaintiff/respondent no.1 Smt. Asha Devi filed Title Suit No. 424 of 2004 for declaration that the plaintiff has got right and title over the disputed land mentioned in Schedule-I of the plaint and sale deed no. 26560 dated 16.12.2005 in favour of defendant no.1 with respect to disputed land which is hit by *lis pendens* is void, collusive, inoperative and not binding on the plaintiff. The plaintiff further prayed for declaration that defendant 1st party/appellants herein have been tenant in the suit



premises and decree for eviction of the defendant nos.1 and 2 from the disputed land and the house standing thereon on the ground of personal necessity of plaintiff. It is further prayed for damages in favour of the plaintiff from the date of sale deed dated 07.10.2003 till delivery of possession and cost of the suit and also a decree for any other relief or reliefs to which the plaintiff be deemed fit and entitled be passed in favour of the plaintiff and against the defendant nos.1 and 2.

3. The subject matter of dispute is the land with building standing thereon with respect to R.S.P. Nos. 143 (area 20 decimal), 142 (area 3 decimal), 147 (area 17 decimal) and 144 (area 6 decimal) total area 46 decimals situated in Village – Brahampura, P.S.- Sadar, District- Muzaffarpur.

3.1. The recorded tenants of R.S.P. No. 143 area 20 decimals, namely, Shri Nand Kishore Singh, Baleshwar Singh, Rajeshwar Singh, Deo Narayan Singh, Laxmeshwar Singh and Nageshwar Singh have title and possession thereon sold away the same to Smt. Sharda Devi (defendant no.3) by two registered sale deeds dated 10.03.1980 against the consideration and put her in possession.

3.2. The legal heirs of recorded tenant Dwarika Singh of R.S.P. No.147, namely, Ram Kishore Singh, Baidyanath



Singh and Bhagrashan Devi sold away an area of 17 decimals out of the said plots to Smt. Sharda Devi (defendant no.3) by virtue of two registered sale deeds dated 01.10.1980 against the consideration amount and put her in possession thereof.

3.3. The lands of R.S.P. No.144 was the raiyati lands of Sita Ram Singh and Hardeo Singh sons of Ram Pratap Singh and they were in possession of the same although the R.S.P. No.144 was recorded in the name of the State of Bihar under Khata No.102 and in remark columns, their names were recorded in the *khatian*. Sita Ram Singh died issueless. Hardeo Singh conveyed title and possession over lands of R.S.P. No.142 (3 decimal recorded in the name of Sita Ram Singh & Hardeo Singh), 144 (6 decimal recorded in the name of Bihar Sarkar) along with 136 (11 decimal) (which is not the subject matter of dispute in this proceeding) to Prabhunath Singh, Kedar Nath Singh and Rameshwar Prasad Singh by virtue of a registered sale deed dated 11.04.1977 and put them in possession thereof who sold the said lands to Sharda Devi (defendant 3) for consideration and conveyed the title and possession over the same vide registered sale deed dated 24.02.1982.

3.4. The case of plaintiff is that by virtue of aforesaid five registered sale deeds, defendant no.3 acquired right, title



and possession over an area of 46 decimals in dispute having got her name mutated, began paying rent and getting receipt for the same. The defendant no.1 and his brother defendant no.2 being contractor took the house in suit as monthly tenant and began paying rent to defendant no.3.

4. Defendant no.3 executed a registered sale deed in favour of plaintiff on 07.10.2003 for consideration of Rs.3 lacs and thereafter defendant no.3 asked defendant nos.1 and 2 to pay rent to the plaintiff who agreed to pay the same. The plaintiff having personal need of house for her own residence and giving proper education to children asked defendant nos.1 and 2 to vacate the premises but they refused the same. In spite of repeated demands and lawyer's notice, defendant nos.1 and 2 are not ready to vacate the suit property and started denying the title of plaintiff and relationship of landlord and tenant. Hence, this suit has been filed.

5. Defendant nos.1 and 2 appeared in suit on summons and have filed their written statement as well as additional written statement and denied the relationship of landlord and tenant between the plaintiff and defendant nos.1 and 2. They claimed that they are owner of the same. The case of defendant nos.1 and 2 is that they gave Rs.15,000/- through



an agreement with Babu Hardeo Singh in the year 1985, who was in possession over the disputed land, gave the said land to defendant no.1 and out of the said land, defendant constructed a *pucca* residential house over an area of 8 decimals out of his own cost and began living in the said house and also using the vacant land for keeping the tools and equipment required for carrying out the business of contract. Later on, Hardeo Singh agreed to execute sale deed in the year 1991 on consideration of Rs.4,95,000/- which was paid in two installments but due to sweet and cordial relationship, they did not become very sincere for getting any sale deed executed as per the contract. However, to avoid any future complications he executed a registered sale deed dated 16.12.2005 in favour of defendant no.1 and thus defendant no.1 has become absolute and exclusive owner of the disputed property. Defendant no.3 had no right or title to sell the disputed land to the plaintiff and the sale deed dated 07.10.2003 by defendant no.3 in favour of plaintiff is nothing but mere a bag of wind.

5.1 It is stated that the disputed property (specified in Schedule I of the plaint) belonged to Deo Narayan Singh whose descendants are Ram Pratap Singh and Dwarika Singh who were cousins themselves. Ram Pratap Singh died leaving behind



two sons, namely, Sita Ram Singh and Hardeo Singh. Sita Ram Singh died unmarried leaving joint with Hardeo Singh. Thus, Hardeo Singh became owner to the extent of one half and remaining one half was of the two sons of Dwarika Singh, namely, Ram Kishore Singh and Baidyanath Singh. During revisional survey proceeding between 1962 to 1972 Dwarika Singh taking advantage of upper hand in the family got in the remark column of R.S.P. No.144 recorded the name of Hardeo Singh and Sita Ram Singh and also got the names of Sita Ram Singh and Hardeo Singh sons of Ram Pratap Singh recorded with respect to R.S.P. No.142 area 03 decimal. Dwarika Singh got R.S.P. No.147 area 20 decimals recorded in his own name and got the name of his friends and relations, namely, Nand Kishore Singh, Nageshwar Singh, Deo Narayan Singh and Laxmeshwar Singh recorded over R.S.P. No.143 area 20 decimals who had no right, title and possession over the said land. After revisional survey, there was private agreement between Hardeo Singh in one side and Ram Kishore Singh and Baidyanath Singh both sons of Dwarika Singh on the other side and in the aforesaid arrangement, the entire disputed land was allotted to the exclusive share of Hardeo Singh and other ancestral properties were allotted to the sons of Dwarika Singh.



5.2. Defendant no.3 Sharda Devi (now deceased represented by her legal representatives) has filed written statement supporting the claim of plaintiff that after acquiring the land by way of registered sale deeds and mutation she was in peaceful possession over Schedule I land, after feeling need to sell the land, sold the same to the plaintiff and plaintiff came in peaceful possession of the same after giving full consideration money.

5.3. Defendant no.5 State of Bihar has filed written statement stating that the survey entry with respect to R.S.P. No.144 is in favour of the State of Bihar so there is presumption i.e. property belongs to the State. It is also submitted that the sale deed dated 16.12.2005 which has been brought into existence during pendency of the suit is hit by *lis pendens* and no title or claim can be made on the basis of sale deed dated 16.12.2005.

6. On the basis of these pleadings, the learned Trial Court framed the following ten issues:

1. Is the suit as framed maintainable?
2. Has the plaintiff valid cause of action or right to sue?
3. Is the suit under valued and court fees paid insufficient?
4. Is the suit barred by limitation, waiver, estoppel and acquiescence?
5. Whether the plaintiff has got right, title over



the disputed land mentioned in schedule-I of the plaint?

6. Has the defendant 3rd party given the suit premises to the defendant 1st and 2nd party as tenant standing over the disputed lands?
7. Was the defendant 1st party defaulter of defendant 3rd party and liable to eviction?
8. Is the plaintiff entitled to damages?
9. Is the plaintiff entitled to decree as claimed for?
10. To what other relief or reliefs, if any, the plaintiff is entitled?

7. Learned Trial Court decided Issue Nos.(6), (7), (8) and (9) against the plaintiff, however, Issue Nos.(1), (2), (3) and (4) were decided in favour of the plaintiff. Issue No.(5) and (10) partly decided in favour of the plaintiff.

7.1. The Trial Court on the basis of material on record has given finding that the plaintiff alleged that defendant nos.1 and 2 were tenant in the premises for the monthly rent of Rs.1500/- but no any payment receipt has been exhibited on behalf of the plaintiff or by her vendor which would show that defendant nos.1 and 2 have paid the amount. The legal notice served on behalf of plaintiff cannot be the proof of relationship of landlord and tenant. There is no documentary proof on record which could draw inference that the defendant no.3 gave the suit premises to defendant nos.1 and 2 as tenant. Since there is no relationship of landlord and tenant between plaintiff and defendant no.1, there is no question of default of defendant no.1



against defendant no.3 and claim of damages. Accordingly, Issue Nos.(6), (7), (8) and (9) are decided against the plaintiff.

7.2. The Trial Court held that the sale deed dated 16.10.2005 executed by Hardeo Singh in favour of Madhurendra Kumar Singh (defendant no.1/appellant no.1) is hit by principle of *lis pendens* and the same is void having no legal sanctity in the eyes of law. The Trial Court also has given finding that although the plaintiff has failed to establish the relationship of landlord and tenant between the plaintiff and defendant nos.1 and 2 but the fact is that defendant nos.1 and 2 are in unauthorized possession over R.S.P. Nos.143, 147, 142 and 144 and, therefore, defendant nos.1 and 2 will be trespasser in the suit land having no right and accordingly, they are liable to be evicted from the premises and the building.

7.3. The Trial Court also held that the plaintiff has valid right, title and interest over R.S.P. Khata No.32, R.S. Plot No.143 area 20 decimals, R.S. Khata No.29 R.S.Plot No.47 area 17 decimals and R.S. Khata No.90 R.S. Plot no.142 area 3 decimals. However, it is further held that the plaintiff has no right, title and interest over R.S. Khata No.102, R.S. Plot No.144 area 6 decimals which belong to the State of Bihar.

8. Being aggrieved by the said judgment and decree of



the Trial Court, the first appeal was preferred on behalf of defendant nos.1 and 2.

9. Before the first appellate Court the point for determination for adjudication was whether the finding arrived at by the learned court below as to the declaration of title over the suit land is proper, genuine and according to the provision of law. The learned first appellate Court has given finding that the plaintiff/respondent failed to succeed in establishing the relationship of landlord and tenant in between the parties but in view of the valuable documents discussed in the judgment it was found that the plaintiff has succeeded in proving the title with respect to R.S. Khata No.32 R.S. Plot No.143 area 20 decimals, R.S. Khata No.29 R.S. Plot No.147 area 17 decimals, R.S. Khata No.90 R.S. Plot No.142 area 3 decimals. The land of R.S. Khata No.102 R.S. Plot No.144 area 6 decimals belong to the State of Bihar. The appellants/defendants could not succeed in establishing the right, title and interest over the suit land. Thus, it is found that the possession of appellants/defendants is illegal as being trespassers, thus, they are liable to be evicted. Hence, the appeal was dismissed.

10. The cross-objection was also filed by the respondent no.1/plaintiff against the judgment and decree of



Trial Court with prayer that those issues, which have been decided against the plaintiff, be decided in her favour but the same has been dismissed by the learned first appellate Court in the impugned judgment, which is not the subject matter in the Second Appeal.

11. The Second Appeal was admitted vide order dated 03.03.2022 and following substantial questions of law were formulated:

(i) Whether in a suit under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982, seeking a declaration of eviction of the defendants on the ground of personal necessity and default and claiming their tenancy, were the courts below justified in decreeing the suit in providing the equitable relief to the respondents exercising power under Order VII, Rule 7 of the Code of Civil Procedure?

(ii) Whether the courts below were justified in making out a third case of defendants/appellants being trespassers in absence of any pleading by the parties to that effect and decreeing the suit?

(iii) Whether the title of the plaintiff can be declared only on the basis of R.S. entry and revenue records when there is no pleading in this respect?

(iv) Whether the suit as framed is maintainable when seeking recovery of possession under the Bihar Building (Lease, Rent and Eviction) Control Act, 1982, the plaintiff also claimed declaration of title? Is the alternative relief is permissible under the



scheme and scope of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982?

12. Heard learned counsel for both the parties at length and perused the record.

Substantial Question of Law Nos.(i) and (iv)

13. Learned counsel appearing for the parties have submitted that the substantial questions of law as framed in point (i) and (iv) are inter-connected and related to scope of jurisdiction under Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as 'BBC Act'). Accordingly, both the points have been taken up together for the sake of convenience, convergence and coherence.

13.1. Learned counsel for the appellants would submit that it is well settled position in law that the question of title cannot be gone into in an eviction suit and in this case the suit as framed was inherently defective and is not maintainable. He has further submitted that when the Trial Court as well as appellate Court find that there is no relationship of landlord and tenant over the suit property which is *sine qua non* then under the powers conferred upon it by the BBC Act, the Court cannot inquire into the title of the plaintiff since it is beyond the scope of the learned courts below exercising the jurisdiction under the



BBC Act as no alternative relief can be granted and the provisions of Order VII Rule 7 of the Code of Civil Procedure are not attracted. He has further submitted that it is well settled that the question of title of the parties to the suit premises is not relevant when the suit has been filed for eviction under BBC Act which is a special Act having limited jurisdiction to try suits on the grounds specified in the special Act and cannot pass a decree of eviction on a ground other than the one specified in the Act. The scope of such suit is very limited and the question of title cannot be looked into because suit would be eventually dismissed even if plaintiff succeeds in proving title but fails to establish contract of tenancy.

14. On the other hand learned senior counsel appearing for respondent no.1/plaintiff has submitted that the suit of the plaintiff has not been filed under BBC Act and the provisions of BBC Act are not applicable in this case. The suit filed by plaintiff was not pure suit for eviction, it was a complex suit for declaration of title along with other reliefs which is permissible. In case of dispute over the title of landlord, the plaintiff can ask for eviction of the tenant on the basis of her title on the suit property and the alternative relief as provided under Order VII Rule 7 of C.P.C. The courts below on



considering the evidence on record held that the plaintiff has valid right, title and interest over the suit land except over R.S. Khata No.102, R.S. Plot No.144 area 6 decimals which belong to the State of Bihar and the defendant nos.1 and 2 have no manner of right, title and interest over the suit land and possession of the defendant over the suit land is illegal and that of trespassers and they are liable to be evicted from the suit land. He has further submitted that the suit was filed for declaration of title and, accordingly, paid *ad valorem* court fee. He has further submitted that the case and conduct of defendants/appellants is such that no prudent man would believe the case. The plaintiff failed to establish that defendant nos.1 and 2 are tenant of suit premises and accordingly, appellants are not entitled to be protected under the BBC Act When the appellants are neither owner nor tenant nor lessee then they can be said to be trespassers and liable to be evicted.

15. The question of title if disputed in an eviction suit under BBC Act, may incidentally be gone into in connection with the primary question for determining the main question about the relationship between the parties.

16. The Hon'ble Supreme Court in case of **Tribhuwanshankar vs. Amrutlal** reported in (2014) 2 SCC



788 considered the earlier decisions of Hon'ble Supreme Court in cases of **LIC vs. India Automobiles & Co.** reported in **(1990) 4 SCC 286**, **Dr. Ranbir Singh vs. Asharfi Lal (1995) 6 SCC 580** and **Rajendra Tiwary vs. Basudeo Prasad (2002) 1 SCC 90** and held that there is difference in exercise of jurisdiction when the Civil Court deals with a *lis* relating to eviction brought before it under the provisions of Transfer of Property Act and any special enactment pertaining to eviction on special grounds. However, it has been held that if the alternative relief is permissible within the ambit of the Act, the position would be different. It has further been held that the Court can decide the issue of title if a tenant disputes the same and the only purpose is to see whether the denial of title of the landlord is *bonafide* in the circumstances of the case.

16.1. Now it is well settled that in a suit for eviction, the Court is not required to decide the title of the plaintiff in a full fledged manner where complicated question of title arises, the Court may ask the plaintiff to seek relief in a properly constituted suit or may convert the suit into a regular title suit, decide the question of title on payment of proper court fee and in appropriate case, grant the plaintiff the decree of eviction on the basis of title under Order VII Rule 7 of CPC.



16.2. This Court in **Sukhdeoji vs. Purushottam Sharma & Ors. (2014) 1 PLJR 332** observed that the scope of jurisdiction of the Court under Order VII Rule 7 CPC in eviction suit to grant a decree to the plaintiff on the basis of general title even when the relationship of landlord and tenant has not been established is by now well settled. It is the defendants themselves who had raised the question of title of the plaintiff and the said question of title had been determined in favour of the plaintiff although in another suit where these defendants were parties. Therefore, there is no scope for any surprise or prejudice to the defendants if the equitable relief under Order VII Rule 7 CPC is granted to the plaintiff.

16.3. In the present case, admittedly regular title suit has been filed by the plaintiff for declaration of title along with other reliefs including the eviction of defendants/appellants by paying proper court fees. The issue with respect to right and title over the disputed land mentioned in Schedule I of the plaint has also been framed in this case.

16.4. Order VII Rule 7 CPC does not bar the court from granting relief which is not specifically stated if the relief to be given after trial is incidental to the general and larger relief, and such relief can be granted by court in the interest of



justice. Order VII Rule 7 CPC read as under :-

“7. Relief to be specifically stated.- Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.”

16.5. The emphasis in Order VII Rule 7 is “other relief which may always be given as the Court may think fit.” Even if a relief is not asked for, and if such lesser relief comes within the general relief claimed, the relief cannot be denied. Appendix ‘A’ of CPC contains various forms of pleadings. It is a general practice that most of the plaints have a prayer in general terms “such other relief as the Court may deem fit and proper” or “such further or other relief as the nature of case require.” Such general relief would be sufficient to empower the Court to grant a lesser relief. For instance, in a suit for possession and *mesne profits*, the Court can grant future relief, even if not asked for expressly or specifically and in a suit for recovery of money, the Court can award future interest on the sum determined to be due even if it is not claimed by the plaintiff.

16.6. It is well settled that when a larger relief is prayed for and the claim for same is not duly proved or



established by evidence justifies grant of smaller relief then in that condition granting of smaller relief is permissible under the provision of Order VII Rule 7 CPC. However, under the guise of the said provision, a relief larger than the actual claimed by plaintiffs in the suit cannot be granted.

16.7. Order VII Rule 7 casts upon a duty over the plaintiff also to seek specific relief which the plaintiff intends either simple or in alternative. Although general or other relief may also be given as the Court may think just to the same extent as if it has been asked for.

16.8. It is clear from perusal of the plaint that the instant suit is a regular title suit for declaration of title along with other reliefs including eviction of defendants/appellants and it cannot be said that the suit is purely eviction suit under BBC Act which governs the relationship of landlord and tenant. The plaintiff has valued the suit for declaration of title and paid the court fee accordingly. Indisputably, the issue as regards title over a property can be decided only by a Civil Court and, therefore, there cannot be any doubt whatsoever that the suit was maintainable.

16.9. It is well settled that imparting of justice is always uppermost in the mind of the Court to exercise its



discretion under Order VII Rule 7 of CPC. While exercising such a discretion, the Court has to keep the facts of the case in its mind and to see as to whether it should exercise its discretion on equitable considerations by invoking the provision under Order VII Rule 7 of CPC granting a decree of eviction as against the tenant on the basis of the general title of plaintiff as to enable it to do complete justice to the parties.

16.10. In the present case, in the facts and circumstances and the legal principles discussed above, this Court is unable to hold that the appellate Court erred in confirming the decree passed by the Trial Court declaring right and title of plaintiff of the suit property and order to appellants to deliver the vacant possession of Schedule I land (excluding the land of R.S. Khata No.102) on the ground that the plaintiff has got right and title over the disputed land and the Court has jurisdiction under Order VII Rule 7 CPC to order for eviction of defendants/appellants who are in unauthorized possession of the suit premises.

16.11. Therefore, substantial question of law nos.(i) & (iv) go against the present appellants.

Substantial Question of Law No.(ii)

17. Learned counsel for the appellants contends that



the courts below had made a new case for the plaintiff for ejectment decree against defendant nos.1 and 2/appellants on the ground of trespasser on the disputed property which is not permissible in law. The plaintiff came to the Court with a clear and specific case of earlier tenancy between her vendor and defendants/appellants and after purchase of the suit premises between her and appellants, the same has been rejected, the claim of the plaintiff for ejectment should have been rejected. He has submitted that it is well settled that decision of a case cannot be based on grounds outside the pleadings of the parties.

17.1. On the other hand, learned senior counsel for the respondent no.1/plaintiff would submit that there is no question of any new plea or ground arises in this case as substantial matters in the suit were relating to the title of parties to the suit and when it is decided that defendants/appellants are not the tenant of the suit property and the plaintiff is owner then the Court is competent to pass the order for ejectment of appellants from the suit property even no prayer of the same is expressly made. However, the plaintiff in the present case has expressly asked the eviction of the appellants from suit premises, therefore, the learned court below having jurisdiction are fully justified in decreeing the suit and ordered for their ejectment.



17.2. The Hon'ble Supreme Court in **Bhagwati Prasad vs. Sri Chandramaul**, AIR 1966 SC 735 had observed that "There can be no doubt that if a party asks for a relief on a clear and specific ground, and in the issues or at the trial, no other ground is covered either directly or by necessary implication, it would not be open to the said party to attempt to sustain the same claim on a ground which is entirely new. The Hon'ble Supreme Court further observed that if a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issue, and evidence has been laid about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case.

17.3. There can be little doubt that the defendants/appellants knew what they have specifically pleaded.



He denied the title of the plaintiff in regard to suit property and set up a case that they constructed a *pucca* residential house over an area of 8 decimals out of their own cost and began living in the said house and also using vacant land and they were not the tenant of the suit premises and they have purchased the same on payment of consideration money and Hardeo Singh, the owner of the property executed the registered sale deed dated 16.12.2005 and they became absolute and exclusive owner of the disputed property. In such a case, the status of appellants would be either that of a landlord/owner or that a licensee or trespasser. No other alternative is logically or legitimately possible. When both the parties laid evidence in this case, clearly they were conscious of this position and when the Trial Court came to the conclusion that landlord-tenant relationship between the plaintiff and defendants/appellants had not been proved and the plaintiff has got valid right, title and interest over the disputed premises and the sale deed dated 16.12.2005 executed by Hardeo Singh in favour of defendant no.1 is void having no legal sanctity in the eyes of law, accordingly, defendant nos.1 and 2 are in unauthorized possession over the suit property and they will be trespasser in the suit property. Once this conclusion was reached, the question



as to whether any relief can be granted to plaintiff or not was a mere matter of law and deciding this point in favour of the plaintiff for eviction of defendant nos.1 and 2 from suit premises, it cannot be said that any prejudice had been caused to the defendants/appellants.

17.4. Therefore, substantial question of law no.(ii) goes against the appellants.

Substantial Question of Law No.(iii)

18. Learned counsel for the appellants submits that both Trial Court and appellate Court have wrongly and incorrectly considered sale deed dated 07.10.2003 executed in favour of plaintiff by defendant no.3, five sale deeds in favour of defendant no.3 Sharda Devi by the vendors of suit land whose claim is based upon revisional survey *khatiyani* as document of title. He further submits that revisional survey *khatiyani* is not and cannot be a document of title of a person whose name stands in revisional survey *khatiyani*. He has further submitted that the Trial Court failed to consider that the defendants/appellants have purchased the suit property vide registered sale deed dated 16.12.2005 from Hardeo Singh who was the owner of the suit property. The preparation of revisional survey *khatiyani* made under Chapter X of Bihar



Tenancy Act has been named as Record of Right is not a document of title and the same is only a best evidence of possession and title cannot be declared on the basis of revisional survey *khatiyani*.

19. On the other hand, learned senior counsel for plaintiff/respondent no.1 submits that the plaintiff is not claiming her title on the basis of survey *khatiyani* rather she is claiming her title on the basis of sale deed dated 07.10.2003 in her favour executed by defendant no.3 Sharda Devi who acquired suit property by way of five registered sale deeds in her favour vide sale deeds dated 10.03.1980, 01.10.1980 and 24.02.1982 for the raiyati lands belonged to the vendors. He further submits that the vendor of the suit property, namely, defendant no.3 had acquired right, title and possession of suit property having got her name mutated, paying rent and getting receipt of the same. The said registered sale deeds in favour of Sharda Devi have not been challenged by the defendants/appellants and adverse inference against the appellants may be taken and there is presumption of validity of those sale deeds in favour of Sharda Devi and the plaintiff. He would further submit that there is no evidence or document of alleged agreement of 1985 on record. He has referred the



judgment of Hon'ble Supreme Court in **K.N. Aswathnarayan Setty (Dead) through LR's and others vs. State of Karnataka and others** reported in **AIR 2014 SC 279** wherein it has been pointed out that the *lis pendens* purchaser cannot deprive the successful plaintiff of the fruits of the decree if he had purchased the property *pendente lite*. It is further submitted that Hardeo Singh having no right, title and possession of suit property executed sale deed dated 16.12.2005 in favour of defendant no.1/appellant no.1 during pendency of the suit.

20. The learned senior counsel would submit that the defendant failed to take steps for cancellation of the registered sale deeds in favour of plaintiff and her vendor and accordingly, the appellants cannot take contrary plea with respect to title on the basis of subsequent sale deed in favour of defendant no.1 during pendency of the suit. He has referred the judgment of **Md. Noorul Hoda vs. Bibi Raifunnisa and Ors**, reported in **1996 (7) SCC 767** wherein the Hon'ble Supreme Court observed that when the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have



that decree, instrument or contract cancelled or set aside or rescinded. Section 31 of the Specific Relief Act, 1963 regulates suits for cancellation of an instrument which lays down that any person against whom a written instrument is void or voidable and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, can sue to have it adjudged void or voidable and the Court may in its discretion so adjudged it and order it to be delivered or cancelled.

21. He has further submitted that the issue of title of suit property in favour of plaintiff is concluded by both the courts below on the basis of evidence which is finding of facts which is not required to be re-appreciated in this Second Appeal.

22. It is trite law that revenue records are not documents of title. It merely raises a presumption in regard to possession. The Hon'ble Supreme Court in **Union of India vs. Vasavi Coop. Housing Society Ltd. & Ors, AIR 2014 Supreme Court 937 : (2014) 2 SCC 269** held as under:-

*“17. This Court in several judgments has held that the revenue records do not confer title. In **Corporation of the City of Bangalore vs. M. Papaiah and another (1989) 3 SCC 612** held that “it is firmly established that revenue records are not documents of title, and the question of interpretation of document not being a document of title, and the question of*



*interpretation of document not being a document of title is not a question of Law.” In **Guru Amarjit Singh vs. Rattan Chand and others (1993) 4 SCC 349** this Court has held that “the entries in Jamabandi are not proof of title”. In **State of Himachal Pradesh vs. Keshav Ram and others (1996) 11 SCC 257** this Court held that “the entries in the revenue papers by no stretch of imagination can form the basis for declaration of title in favour of the plaintiff.”*

23. The Hon’ble Supreme Court in **Sawarni vs. Inder Kaur and Ors. (1996) 6 SCC 223** held that mutation in revenue records neither creates nor extinguishes title, nor does it have any presumptive value on title. All does it entitle the person in whose favour mutation is done to pay the land revenue in question. This was further affirmed in **Balwant Singh & Ors. vs. Daulat Singh (Dead) by LRs and Ors. (1997) 7 SCC 137** wherein the Hon’ble Supreme Court held that mere mutation of records would not divest the owners of a land of their right, title and interest in the land.

24. In **Jitendra Singh vs. State of Madhya Pradesh and Ors. 2021 SCC OnLine SC 802** the Hon’ble Supreme Court after considering a catena of judgments, reiterated the principle of law that “mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose”.



25. The Trial Court and the appellate Court considered in detail with respect to title of plaintiff of suit property on the basis of sale deed available on record as evidence. It is rightly observed that the title of plaintiff is dependent upon the title of Sharda Devi whose title is based on the sale deeds executed by recorded tenant. It appears from paragraph nos.34 to 36 of the impugned judgment dated 24.12.2019 that the appellate Court considered the sale deeds (Exts.1/A, 1/B, 1/C, 1/D, 1/E and other evidence) and concluded in paragraph no.37 that the learned Trial Court has rightly come on conclusion of title over the suit land in favour of plaintiff excluding the land of Khata No.102 Plot No.144 area 6 decimal incorporated in the name of State of Bihar.

26. In the facts and circumstances of the case and the legal provisions as stated above, it cannot be said that the title of plaintiff is based on R.S. Entry and revenue records but it is based on the registered sale deed dated 07.10.2003 in her favour executed by vendor defendant no.3 who had purchased the suit property vide five registered sale deeds dated 10.03.1980, 01.10.1980 and 24.02.1982 in her favour which are not in dispute.

27. Thus, substantial question of law no.(iii) goes



against the appellants.

28. Thus, as a final result, the instant Second Appeal fails and, the impugned judgment and decree passed by the first appellate Court is confirmed. This Second Appeal stands dismissed.

29. Parties shall bear their litigation cost to their own.

30. The Interlocutory Application, if any, stands closed/disposed of.

31. Accordingly, the order dated 29.03.2022 regarding stay of further proceedings of Execution Case No.01 of 2015 till the disposal of this Second Appeal stands vacated.

32. The Lower Court Records be sent back forthwith.

(Sunil Dutta Mishra, J)

Harish/-

AFR/NAFR	NAFR
CAV DATE	19.01.2024
Uploading Date	15.04.2024
Transmission Date	15.04.2024

