

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.90 of 2014

Sunil Kumar Son of Sri Parmeshwar Ram Resident of Mohalla Devi Asthan,
Gol Bagicha, Police Station Kotwali, District Gaya.

... .. Petitioner/s

Versus

Anjum Shireen wife of Late Habibur Rahman resident of Mohalla Bazaza
Road, Police Station Kotwali, District and Town Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Md. Waliur Rahman Mr.S.P.Singh
For the Respondent/s	:	Mr.Abdul Mannan Khan Mr. Avinava Kumar Mr.Hafiz Shahbaz

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

CAV JUDGMENT

Date :03 -09-2024

I have already the learned counsel for the parties.

2. This civil revision application has been preferred against the judgment and order dated 22.04.2014, passed by the learned Munsif-I, Gaya in Eviction Suit No. 08 of 2010, whereby the learned Munsif has decreed the suit in favour of the plaintiff (respondent herein) and directed the defendant (petitioner herein) to vacate the suit premises and deliver the possession thereof to the plaintiff/respondent within 60 days from the date of judgment.

3. The brief fact of the case is that the plaintiff/respondent Anjum Shireen filed a suit for eviction against the defendant/petitioner on the ground of personal necessity of her second son Faiz Khan, who was unemployed and was sitting idle as he had no work to do. The premises sought to be vacated is a shop measuring 24 ft north to south



and 10 ½ ft east to west. The plaintiff/respondent Anjum Shireen instituted Eviction Suit No. 08 of 2010 for eviction of her tenant, Sunil Kumar (the defendant/petitioner) with the averment that the premises was purchased by her husband Late Habibur Rahman Khan, who died on 13.10.2006 due to Hepatitis B, leaving behind his widow, the plaintiff/respondent and three sons, namely, Arif Habib Khan, Faiz Khan and Asif Habib Khan and a daughter Reshmi Habib Khan, who went to her matrimonial home after her marriage. Her family is a trader family of good reputation in the field of cloth business. The eldest son Arif Habib Khan was running a cloth shop after its being vacated by Salahuddin (one of the tenants). Salahuddin vacated the premises on 19.03.2010 and thereafter Arif Habib Khan, her eldest son, started ready made garment business in that premises. Her second son, Faiz Khan, after graduation, had no work to do and he was sitting idle. Faiz Khan was interested in carrying on cloth business in the suit premises, which is most suitable place. The plaintiff/respondent requested the defendant/petitioner to vacate the premises to which he took six months time, but he did not vacate the same. Ultimately, on 31.05.2010, the defendant/petitioner refused to vacate the shop. The plaintiff/respondent requires the suit premise reasonably



and in good faith for her son to carry on ladies and kids ready made cloth business and the suit premise is suitable place for such enterprise/business and Faiz Khan requires to construct a showcase, racks, shelf, counter frame north to south and trial room on the south west corner of the suit premises for the purpose to check the fitness of the garments by the ladies customers.

4. The defendant/petitioner filed his written statement and also filed additional written statement along with the affidavit. Amongst *inter alia*, the ground of personal necessity of the plaintiff/respondent was denied in two written statements. He has also averred in the written statement that the husband of the plaintiff/respondent entered into an *Ekrarnama* (Ext.A) with the Defendant/petitioner on 25.01.1994. That *Ekrarnama* was for a fixed term of 35 years which was to end in the year 2028. The rent was fixed at Rs.1300/- per month. It has been mentioned in the written statement that, as a matter of fact, the *Ekrarnama* was a memorandum of the terms and conditions as per agreement between the husband of the plaintiff/respondent and the defendant/petitioner. The plaintiff/respondent suppressed the *Ekrarnama* in her plaint which indicates her *mala fide* intention. It has also been



mentioned that Rs. 3,25,000/- was raised by Late Habibur Rahman Khan as advance rent. The defendant/petitioner paid Rs. 3,25,000/- to Late Habibur Rahman Khan. The defendant/petitioner was inducted into the premises as fixed term tenant for a period of 35 years. It has been denied that the family of the plaintiff/respondent was a trader family and they had knowledge of business. It has been mentioned in the written statement that after execution of *Ekrarnama* dated 25.01.1994, the defendant/petitioner was regularly paying rent till August, 2006 and the receipt was granted by Late Habibur Rahman Khan and after his death in October, 2006, the plaintiff/respondent made a pressure on him to pay Rs. 2,00,000/- as an advance and Rs.4000/- as monthly rent, otherwise a suit for eviction shall be filed. Thereafter, the defendant/petitioner started transmitting the rent through the money order @ Rs.1800/- per month. It has been mentioned that Faiz Khan is not sitting idle and he is not going to start any business. This plea has only been taken with intention to vacate the suit premises on purely *mala fide* and unreasonable ground. It is pleaded in the additional written statement that Faiz Khan had gone to Saudi Arabia and he was running a tailoring shop to earn his livelihood. It has also been mentioned that a suitable



place for opening a shop is available on the first floor of the premises, where Faiz Khan may run his cloth business. It has also been mentioned that the plaintiff/respondent had several shop rooms and all have been let out to the tenants. As many as seven shop rooms have been mentioned in the written statement belonging to the plaintiff/respondent with details of the tenants to whom those shops were let out.

5. From the plaintiff's side six witnesses have been examined. P.W.1 is Chunni Singh, who proved Ext.1 which is monthly holding tax receipts showing the premises was belonging to the plaintiff/respondent. P.W.2 is the plaintiff herself. P.W.3 is Arif Habib Khan, the eldest son of the plaintiff. Arif Habib Khan also proved Ext. 2 to 2/C which are money order coupons showing tendering of rent of the month of May, June, July and August of the year 2012. P.W.4 is Abutarab Mohammad Bashirat. P.W.5 is Faisal Nezami. P.W.6 is Quanain Khan and P.W.7 is Faiz Khan for whom the premises was sought to be vacated.

6. From the defendant's side eight witnesses were examined. D.W.1 is Kauleshwar Prasad. D.W.2 is the defendant/petitioner himself. D.W.3 is Rajesh Kumar who is a worker in the shop of the defendant/petitioner. D.W.4 is



Birendra Singh, who proved Ext.B (rent receipt no. 108 dated 06.09.2006). D.W.5 is Santosh Kumar. D.W.6 is Baliram Singh, who proved Ext.C to C/20(money order receipts. D.W.7 is Umashankar Prasad, who proved Ext.C/21 and C/22. (money order receipts) and D.W.8 is Shankar Kumar.

7. The learned counsel for the defendant/petitioner submits that Ext.A which is *Ekrarnama* dated 25.01.1994 stipulates explicitly that tenancy was for a fixed terms of 35 years which will end in the year 2028. He submitted further that as a matter of fact, it was not a *Kirayanama* (lease deed), rather it was a memorandum for the terms and conditions of an oral agreement between the defendant/petitioner and Late Habibur Rahman Khan. As per the submission of the learned counsel, the learned court below committed illegality in holding that as per Section 17(1)(d) of the Registration Act, 1908 (for short 'the Act of 1908 ') and Section 107 of the Transfer of property Act, 1982 (for short 'the Act of 1982'), the lease deed (Ext.A) which is for a period exceeding one year is a compulsorily registrable document.

8. He has submitted further that it is true that a lease deed of movable property for a period exceeding one year must be compulsorily registered, but Ext.1 is not a lease deed,



rather it is a memorandum of oral agreement entered into between the parties, and as per Section 49 of the Act of 1908 even despite not being a registered deed (Ext.A), is admissible in evidence for collateral purposes.

9. This point has elaborately been discussed in para-9 to para-15 of the impugned judgment. The learned court below has rightly observed that admittedly the agreement between the parties itself is inoperative and invalid because as mandated by law, this agreement should have been compulsorily registered as per the provision of Section 17(1)(d) of the Act of 1908 as well as Section 107 of the Act of 1982.

10. Section 106 of the Act of 1982 provides that a lease for any purpose other than agricultural or manufacturing purposes is to be deemed to be a lease from month to month. As such, in the present case, the lease in question shall be presumed to be a lease from month to month, and not a lease for a fixed period.

11. So far as Section 49 of the Act of 1908 is concerned, it has been held in the case of ***Satish Chand Mukhan and others Vs. Goverdhan Das Byas and others*** (AIR 1984 SC 143) that the terms of the lease are not “collateral purpose”. In my view, the learned court below rightly observed



that it was not a tenancy for a fixed term, rather it was a tenancy from month to month, as per the presumption laid down in Section 106 of the Act of 1982.

12. So far as the ground of personal necessity and the *bona fide* need of the premises is concerned, this issue has also been elaborately discussed by the learned court below.

13. In his written statement, the defendant/petitioner has mentioned that Faiz Khan was running a tailoring shop in Dubai, but during cross-examination of P.W.2, the plaintiff as well as P.W.3, the first son of the plaintiff, it was asked by the defense in suggestion that Faiz Khan was working in Delhi which is contrary to the pleading of the written statement.

14. It has been argued that the plaintiff/respondent is habitual to get her premises vacated on the ground of personal necessity and then let out the premises on rent. It has also been argued that one of the tenants namely, Salahuddin, had vacated the premises on the ground of business of eldest son of the plaintiff/respondent, but after vacating thereof, the same was let out to someone else. The learned court below has quoted the oral evidence of Salahuddin in its judgment in which Salahuddin had admitted that he was aged about 65-70 years



when he vacated the shop. He vacated the shop because of his inability to run the shop. It has also been mentioned that Salahuddin also admitted that he vacated the shop six months before filing of the present suit, as such, it appear that during pendency of the suit, the plaintiff/respondent did not let out her commercial premises. The witnesses examined on behalf of the plaintiff/respondent have stated categorically that Faiz Khan is sitting idle having no work. The learned court below, in my view, did not commit any illegality or impropriety in holding that the suit premises was needed by the plaintiff/respondent reasonably and in good faith for his son.

15. In my opinion, the learned court below did not commit illegality, irregularity or impropriety in passing the decree of eviction.

16. The revision application is accordingly dismissed.

(Nawneet Kumar Pandey, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	12.01.2024
Uploading Date	09.2024
Transmission Date	

