

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.53 of 2018

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Ali Ahmad Son of Md Saquor, Resident of Hospital More, Siwan, P.S.- Siwan
Town, District- Siwan.

... .. Appellant/s

Versus

1. Haroon Yusuf Son of Late Md. Yusuf, Resident of Village- Darbar Gulzar Manjeel Siwan, P.S.- Siwan Town, District- Siwan.
2. Shafi Ahmad Son of Md. Saquor, Resident of Hospital More, Siwan, P.S.- Siwan Town, District- Siwan.
3. Imteyaz Ahmad Son of Late Nabi Ahmad, Resident of Hospital More, Siwan, P.S.- Siwan Town, District- Siwan.
4. Meraj Ahmad, Son of Late Nabi Ahmad, Resident of Hospital More, Siwan, P.S.- Siwan Town, District- Siwan.
5. Reyaz Ahmad, Son of Late Nabi Ahmad, Resident of Hospital More, Siwan, P.S.- Siwan Town, District- Siwan.
6. Faiyaz Ahmad, Son of Late Nabi Ahmad, Resident of Hospital More, Siwan, P.S.- Siwan Town, District- Siwan.
7. Amir Ahmad, Son of Late Nabi Ahmad, Resident of Hospital More, Siwan, P.S.- Siwan Town, District- Siwan.
8. Shahida Khatoon, Wife of Late Nabi Ahmad, Resident of Hospital More, Siwan, P.S.- Siwan Town, District- Siwan.
9. Ladli Daughter of Late Nabi Ahmad, Resident of Hospital More, Siwan, P.S.- Siwan Town, District- Siwan.
10. Zaki Ahmad, Son of Md. Saquor, Resident of Hospital More, Siwan, P.S.- Siwan Town, District- Siwan.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ranjeet Kumar, Advocate Mr. Shikhar Mani, Advocate Mr. Kanishk Kaustubh, Advocate
For the Respondent/s	:	Mr. Ranjan Kumar Dubey, Advocate Mr. Kumar Gaurav, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

26 30-09-2024 Heard learned Counsel for the appellant as well as

learned Counsel for the plaintiff-respondent.

2. This second appeal has been filed against the



judgment and decree dated 21.12.2017 passed in Eviction Appeal No. 06 of 2009 by the learned Vth Additional District Judge, Siwan whereby the learned Lower Court reversed the part finding of the Trial Court passed in Eviction Suit No. 21 of 1986 by the learned Munsif I, Siwan.

3. The Eviction Suit No. 21 of 1986 was filed for eviction of the defendant on the ground of personal necessity and default. The case of the plaintiff is that the plaintiff is the owner and in possession of the suit premises which he got by registered deed of gift dated 20.03.1972. It is submitted that the plaintiff's father, Md. Yusuf left the suit premises in favour of defendants at a monthly rent of Rs. 75/- which started from 1st July, 1972. It is also stated that a *kirayanama* was also prepared between both the parties and the copy of *kirayanama* was handed over to both the parties.

4. It is submitted that the defendant no. 1 along with his son-defendant no. 2 started his business in the suit premises in the month of July, 1972 and was paying rent at the rate of Rs. 75/- per month to the plaintiff.

5. Both the parties agreed to enhance the rent of the suit premises from Rs. 75/- to Rs. 100/- per month and accordingly, the defendant no. 2 had prepared the *kirayanama*



and was paying rent to the plaintiff and *karpardaz* of plaintiff used to enter the rent taking the signature of the defendant no. 2 from the month of August, 1986. The defendant no. 2 stopped the payment of rent and the rent for the month of August to October become due and because of which the defendants became defaulter. The plaintiff is unemployed and doing no business and he is in personal need of the shop for opening his footwear shop for his earning and employment. The *kirayanama* dated 01.01.1979, 01.10.1982 and 01.01.1985 written by the defendant no. 2 in favour of plaintiff is in possession of plaintiff. It is also pleaded that the plaintiffs several times demanded the rent of the suit premises and asked to vacate the suit premises but the defendants are delaying the same. The plaintiff prayed for a decree of eviction of the suit premises and for payment of arrears of rent alongwith the cost of the suit.

6. On summon, defendants appeared and filed their written statement and challenged the maintainability of the suit. Defendants have also challenged the title of the plaintiff and submitted that the plaintiff alone is not the owner of the said premises and his sister, Shamima Begum is also title holder of the suit premises. The plaintiff and Shamima Begum have several shops and the shop in question is in exclusive



possession/share of Shamima Begum and she is in exclusive possession over the same from about 15 years. The defendants denied the agreement of *kiryanama* which was executed with the plaintiff. It is also contended that the defendant has paid the rent of the suit premises from July, 1972 to the plaintiff. The defendant no. 2 never opened a shop. The defendant nos. 1 and 2 never paid the rent at the rate of Rs. 100/- per month to the plaintiff. Further case of the defendant is that from June, 1980, he took the suit premises on rent from Shamima Begum on oral agreement and he has been regularly paying the rent of the suit premises and no rent is due.

7. It is submitted that the defendant has accepted that he is tenant of the suit premises but denied the relationship of landlord and tenant with the plaintiff and asserted that relationship of landlord and tenant is with Shamima Begum.

8. Upon considering the aforesaid averments made by the parties as also materials available on record as well as impugned judgement specially judgement of Appellate Court, which is final Court of facts, both the courts concurrently held that there is a relationship between the plaintiff and defendant as landlord and tenant. Question of relationship of landlord and tenant between the parties is a question of fact, which has also



been decided by the learned Court of Appeal below, and hence there being no legal perversity in the said finding, nor there being any error of law or record or even non consideration of any material facts, there is no occasion for this court to interfere with the said findings.

9. So far question of personal necessity of the plaintiff is concerned it had been specifically claimed by him that he (P.W. 5) is unemployed and he is in personal need for opening his footwear shop for his earning and employment, on this point he has not been cross examined by the defendant and this fact has not been denied by the defendant. In view of the materials on record, the learned trial court wrongly disbelieves the averments and oral evidences adduced by the plaintiff (P.W. 5), the finding of the learned Court of Appeal below that plaintiff had bonafide personal requirement of the suit premises appears to be legal and proper.

10. So far question of default in payment of rent is concerned, it is nowhere the case of the defendant that he had paid rent to the plaintiff rather his case throughout had been that he had paid rent to Shamima Begum. The learned Appellate Court below rightly held that when the plaintiff is landlord, there is no question of giving rent to Shamima Begum and that



is why, it held that defendant is a defaulter. In the aforesaid circumstances non-payment of rent to the plaintiff remains an admitted fact, it requires no interference by this Court.

11. In the aforesaid facts and circumstances, this Court does not find any illegality in the impugned judgment and decree of the learned lower court of appeal below nor does it find any substantial question of law involved in the instant Second Appeal, which is accordingly, dismissed at the stage of hearing under Order XLI Rule 11 CPC.

(Khatim Reza, J)

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