

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.721 of 2009

- 1.1. Mithilesh Devi Wife of Late Ram Kishore Choudhary, Resident of Village- Harpur Andar @ Keota, P.O. Keota, Police Station- Dalsingh Sarai, District- Samastipur.
- 1.2. Uday Kumar Choudhary Son of Late Ram Kishore Choudhary, Resident of Village- Harpur Andar @ Keota, P.O. Keota, Police Station- Dalsingh Sarai, District- Samastipur.
- 1.3. Vijay Kumar Choudhary Son of Late Ram Kishore Choudhary, Resident of Village- Harpur Andar @ Keota, P.O. Keota, Police Station- Dalsingh Sarai, District- Samastipur.
- 1.4. Bindu Devi @ Bindu Shekhar Wife of Shudhanshu Shekhar (Daughter of Late Ram Kishore Choudhary), Resident of Village and Town and P.O. and P.S. Riga, District- Sitamarhi.
- 1.5. Archana Kumari Wife of Binod Kumar Singh (Grand Daughter of Late Ram Kishore Choudhary), Resident of Village- Panapur Kariyat, P.O. and P.S. Panapur, District- Muzaffarpur.
- 1.6. Sapan Kumar Son of Kamini Ranjan Singh (Grandson of late Ram Kishore Choudhary), Resident of Village Pokhrai P.O. Gidha, P.S. Saraiya, District- Muzaffarpur.
- 1.7. Manvesh Kumar Shandilya Son of Sri Ravindra Nath Singh (Grandson of Late Ram Kishore Choudhary), Resident of Village and Town- Bathnaha, P.O. and P.S. Bathnaha, District- Sitamarhi.
2. Rajesh Kumar Choudhary, Son of Late Awadesh Kumar Choudhary Resident of Village & P.O.: Keota, Police Station- Dalsingh Sarai, Dist:- Samastipur.

... .. Petitioner/s

Versus

Nand Kishore Choudhary, son of Late Raghupati Choudhary, resident of Village: Bhagwanpur Chaksekhu, P.O. & P.S.: Dalsinghsarai, District: Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajit Kumar, Advocate Mr. Prafull Chandra Jha, Advocate Mr. Satish Kumar Singh, Advocate Mr. V.K. Verma, Advocate
For the Opposite Party/s	:	Mr. Sunil Kumar Sharma, Advocate Mr. Nishant Choudhary, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT

Date : 10-12-2024

The present revision application has been filed against the judgment and order dated 27.02.2009 passed by the learned Additional District Judge, Fast Track Court-Ist, Samastipur in Eviction Appeal No. 05 of 2007 whereby, the learned lower Appellate Court after setting aside the judgment and decree of



the Trial Court dated 02.08.2007 passed by the Munsif, Dalsinghsarai in Eviction Suit No. 07 of 2005 remanded the matter to the trial court to take evidence of both the parties on the issues framed by the lower Appellate Court.

2. The case of the plaintiff is that, the plaintiffs have filed Eviction Suit No. 07 of 2005 against the defendant-petitioner for eviction of the suit premises described in Schedule 1 of the plaint on the ground of personal necessity of occupation of his sons in the suit premises. His sons are unemployed and he wants to start their business in the suit premises. It is further contended that plaintiffs are the landlords of the suit premises and defendant is tenant of the suit premises. An agreement for Kirayanama was executed by the plaintiffs and defendant on 01.09.1999 stating therein, that the monthly rent of Rs. 600/- was to be paid by the defendant to the plaintiffs. The conditions mentioned in the Kirayanama dated 01.09.1999 was accepted by the defendant and he started his business in the suit premises. The defendant occupied the suit premises on monthly rent at the rate of Rs. 600/- per month as per the terms and conditions stipulated in Kirayanama dated 01.09.1999 and started his business in the suit premises. The payment of rent was to be paid positively by 05th day of each English Calendar month



without fail and in token of payment the tenant will take the rent receipt failing which the payment of rent of the tenant will not be considered by the landlord and if the payment of rent is not made upto two consecutive months then the tenant will be treated as defaulter. It is further contended that the terms and conditions of the Kirayanama dated 01.09.1999 was agreed by the plaintiffs and defendant. The terms and obligation mentioned in the Kirayanama dated 01.09.1999 are as follows:-

a) That, tenant will pay the monthly rental at the rate of 600/- only and payment will be made positively upto the 5th day of each calendar months without fail and in token of payment the tenant will take the rent receipt from the landlord failing which the payment of rent of the tenant will not be considered by the landlord.

(b) That if, the tenant will not pay the monthly rental consecutively for two months in that case the tenant would be defaulter and will be liable to be evicted from the suit premises automatically.

(c) That the tenant will be liable to make the payment of interest Rs. 2/- per hundred on the rental dues amount to the landlord.

(d) That the tenant will be liable to make the payment



of monthly rental per month with enhancement of 10% suo moto after completion of each five years tenancy.

(e) That the tenant will be liable to make the fresh kiryanama after completion of 11 months of the tenancy with the landlord failing which the tenancy will be terminated and the tenant will be liable to vacate the suit premises after getting the security amount from the landlord and if the tenant will continue in the suit premises without making kiryanama in that circumstances the tenant will be liable to make the payment of double amount of monthly rent to the landlord upto the occupied period as compensation and damage.

(f) That, the tenant will be liable to make the payment of holding tax and Electric bill of consumption of electrical energy of the suit premises.

(g) That the tenant has to maintain the suit premises and cannot make any alteration and addition in suit premises and nor change the position of suit premises as well as the tenant will use the suit premises for business and not for other purposes and the suit premises shall not be sublet to others.

(h) That the tenant will be liable to vacate the suit premises from the period of kiryanama by way of notice one month prior that the tenant will be liable to vacate the suit



premises on demand of personal necessity of the suit premises to the landlord.

(i) That the tenant will be entitled to get the security amount from the landlord after accounting of the dues amount between the parties just after vacating and handing over the suit premises to the landlord.

3. Defendant is liable to vacate the suit premises on expiry of the period of tenancy as agreed by both the parties which was started on 01.09.1999 and was renewed just after completion of 11 months of the year on different dates i.e. 29.09.2000, 30.08.2001, 01.08.2002, 01.08.2003 and 01.08.2004. It is pleaded that the last Kirayanama was not renewed by the plaintiffs since 01.08.2004. It is further contended that the defendant is liable to vacate the suit premises on the expiry of fixed period of tenancy as per the Kirayanama dated 01.08.2004. The defendant stopped the payment of monthly rent of Rs. 600/- per month from the month of February, 2004. The total amount of rent of Rs. 10,800/- upto the month of July, 2005 is due amount of the plaintiffs, therefore, defendant is defaulter in making payment of rent to the plaintiffs. It is further pleaded that the plaintiffs did not claim about the arrears of rent which is lying with the defendant



because of the fact that such arrears of rent will be adjusted in the security amount of the defendant as per the terms and conditions stipulated in the Kirayanama.

4. It is further case of the plaintiffs-petitioners that it was decided by the plaintiffs and defendant with mutual consent that defendant will deposit Rs. 80,000/- earnest money as a security deposit. The said security money of the tenant shall be deposited with the plaintiffs without any interest and the same will remain deposited with the plaintiff despite that, tenancy was not renewed after 01.08.2004. The plaintiffs have sent registered pleader notice dated 15.10.2004 to the defendant for vacating and handing over the suit premises on the ground of personal necessity but the defendant did not vacate the suit premises and when another notice was sent to the defendant for the same purpose, in its reply the defendant refused to vacate the same. Hence the suit was filed on the ground of personal necessity and expiry of Kirayanama dated 01.08.2004 which was not renewed.

5. On summons, the defendant appeared and filed his written statement and denied the claim of the plaintiffs. Apart from ornamental plea, the defendant raised objection and stated that the ancestor of the plaintiffs heard about the preparation of business to be established by the defendant-opposite party and



at that time defendant was in search of shop premises. The ancestor of the plaintiffs approached the defendant and desired to construct shop on the portion of vacant land of S.P. Plot no. 517 and 518 on their own cost and told that cost of the shop will be adjusted towards the rent of the shop and as such, the defendant constructed a shop and started business therein and converted the vacant land into commercial land and the ancestors of the plaintiffs and other co-sharers also agreed with the cost of the construction of shop which was Rs. one lakh. In the meantime, since the lands of the plaintiffs and their other co-sharers was converted into commercial land, they desired to construct market complex after removing the construction made by the defendant and accommodated the defendant in the same in one of the shops within the complex to which the defendant agreed. Market complex was completed and defendant was accommodated.

6. It is further claim of the defendant that story of Kirayanama dated 01.08.2004 which was to be renewed from 01.07.2005 and the question of default never arose against the defendant. On the effort of the defendant the vacant land was converted into commercial land and the rent of Rs. 600 got adjusted after several years on the request of the plaintiffs and



on the pretext of other tenants the said Kirayanama was brought in existence although the same is not effective in respect of this defendant, since this defendant is tenant at will. All the terms and conditions were laid down in the Kirayanama only to show to other tenants so that they may not differ or desist in executing Kirayanama. It is further pleaded that there is no personal necessity of the plaintiffs for the shop, in question, rather there are several shops lying vacant which are suitable for any kind of business, if the plaintiffs choose for the same. Further, it is submitted that contents of advocate notices are concocted one. The plaintiffs do not require business as they are engaged in agricultural work. There is no arrears of rental against the defendant nor it is the matter of eviction and as such the present suit may be dismissed.

7. The trial court has returned the findings on the issues in favour of the plaintiffs and granted the decree for eviction by the judgment and decree dated 02.08.2007 passed in Eviction Suit No. 07 of 2005 by the learned Munsif, Dalsingsarai.

8. Being aggrieved by the judgment of learned trial court, the defendant-opposite party preferred Eviction Appeal No. 05 of 2007 before the District Judge, Samastipur which was



finally heard by the Additional District and Sessions Judge F.T.C.-Ist, Samastipur on 27.02.2009. The learned Appellate Court remanded the Eviction Suit No. 07 of 2005 to the trial Court after framing four issues and further directed to take evidence on aforesaid issues of both the parties and give his findings on the aforesaid issues. After findings, the learned court below was also asked to send back the lower court records with evidences of both the parties and the findings to the court for just decision of this appeal.

9. The learned Appellate Court upon considering the issues framed by the Trial Court and after perusal of pleadings of both the parties has opined that some important issues has not been framed by the learned lower Court which are essential for the just decision of the Eviction Suit No. 07 of 2005 and framed four issues which are as follows:-

- i. Whether the defendant is defaulter in payment of rent of suit premises to the plaintiff ?
- ii. Whether the defendant is liable for breach of contract (Kirayanama) which has been executed by both the parties and the stipulated period of such kirayanama has expired?
- iii. Whether the partial eviction of suit premises



fulfills the necessity of plaintiffs and the defendant will agree for that?

iv. Whether the defendant has constructed the shop on the parti land of S.P. No. 517 and 518 of the ancestor of the plaintiffs with their consent at his own cost and cost of constructed shop was Rs. 1 lac which will be adjusted in the rental of the shop ?

10. Learned Appellate Court further directed the learned Trial Court for additional evidences on aforesaid issues and called for the findings on issues framed by the Appellate Court along with lower court records within three months from the date of receipt of the order.

11. From perusal of the learned Trial Court judgment, it is clear that the aforesaid issues have not been discussed in a composite suit with regard to personal necessity, default in payment of rent as well as expiry of Kirayanama dated 01.08.2004. So far personal necessity is concerned, the trial court has held that plaintiffs have proved their case on the point of personal necessity while learned Appellate Court kept pending the findings with regard to personal necessity which has to be decided finally after receiving of the finding of the Trial Court on the point of issues which has been framed by the



Appellate Court.

12. The Eviction Suit is of the year 2005, on the ground of personal necessity, default and termination of tenancy as being expiry of fixed term.

13. In such view of the matter, the learned Appellate Court has rightly remanded the matter under Order 41 Rule 25 of the Code of Civil Procedure to the Trial Court for deciding the issues as noted above within three months.

14. Since the Eviction Suit is pending since 2005, the learned Trial Court is directed to decide the matter within six months from the date of receipt of order and send the findings to the concerned Appellate Court. The Appellate Court is further directed to decide the appeal on merit in accordance with law within three months from the date of receiving of the findings on the point of issues which were framed by him.

15. Accordingly, the instant Civil Revision Application is dismissed with the above directions.

(Khatim Reza, J)

Sankalp/-

AFR/NAFR	NAFR
CAV DATE	10.12.2024
Uploading Date	12.12.2024
Transmission Date	NA

