

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.695 of 2023

Remi Am. David @ Remy Michael David S/o Late m David, R/o- Muhalla Christen Quarter Lal Bazaar Road Ward No. 24, P.O. Bettiah, P.S. Bettiah, District - West Champaran.

... .. Petitioner

Versus

Shyam Sundar Prasad S/o Late Bhrigunath Prasad, R/o Muhalla Kalibag Joda Inar Ke Pas, Ward No. 3 PO Bettiah, P.S. Bettiah Town, District-Bettiah.

... .. Respondent

Appearance :

For the Petitioner/s	:	Mr. Chandra Kant, Advocate Mr. Ravi Bhushan Bharat, Advocate Mr. Navin Kumar, Advocate Mr. Lallan Pandey, Advocate
For the Respondent/s	:	Mr. Ajeet Kumar Bhardwaj, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 06-02-2024

Heard the learned counsel for the parties and I intend to dispose of the instant petition at the stage of admission itself.

02. The present petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 15.04.2023 passed by the learned Munsif, Bettiah in Eviction Suit No. 01 of 2020, whereby and whereunder the learned Munsif, Bettiah has rejected the petition filed by the petitioner under Section 15 of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (hereinafter referred to as 'the BBC Act').

03. Learned counsel for the petitioner submits that the petitioner is plaintiff before the learned trial court and has filed Eviction Suit No. 01 of 2020 for decree of eviction against the



defendant/respondent and had also prayed for handing over the possession of the suit property apart from payment of arrears of rent. The respondent is the tenant and an agreement was executed between the petitioner and respondent on 01.06.2019 and it was agreed that the defendant would pay monthly rent @ Rs. 3,000/- per month apart from electricity bill. The respondent paid the rent to the plaintiff till 30.11.2019 and thereafter stopped the payment of rent since December, 2019. The respondent also violated the terms of agreement. After expiry of lease period on 01.04.2020, notice was given to the respondent to vacate the premises, but the respondent did not vacate the premises and thereafter eviction suit was filed by the plaintiff/petitioner. Learned counsel further submits that after notice, the defendant appeared before the learned trial court and filed his written statement denying the title of the plaintiff and relationship of landlord and tenant. The respondent claimed that an agreement to sale was executed by the petitioner in favour of the respondent on 10.06.2019 and the consideration amount was Rs. 80,000,00/- (eighty lacs) out of which the respondent paid Rs. 65,00,000/- (sixty five lacs) on different dates. As the petitioner refused to execute the sale deed in faovur of the respondent, the respondent filed Title Suit No. 254 of 2022 for specific performance of contract. The defendant further claimed that as per deed of



agreement there was no relation of tenant and landlord between the parties.

04. Learned counsel further submits that after completion of pleadings of the parties, petitioner filed a petition under Section 15 of the BBC Act for payment of rent claiming arrears of rent dues amounting to Rs. 87,000/- @ 3,000/- per month. In his rejoinder, the respondent stated that he was not liable to pay rent to the petitioner as respondent was tenant of petitioner till 04.06.2019 and thereafter the respondent was in possession in terms of the agreement of sale and has paid Rs. 65,00,000/- (sixty five lacs) to the petitioner and balance amount of Rs. 15,00,000/- was to be paid at the time of execution of sale-deed. Learned counsel further submits that the learned trial court after hearing the parties rejected the petition of the petitioner filed under Section 15 of the BBC Act by a cryptic order. Learned counsel further submits that the learned trial court failed to exercise the jurisdiction vested in it by passing a non-speaking order. The learned trial court did not consider the fact that tenancy was admitted and if any agreement was made between the parties it would not confer title over the person who has got an agreement of sale in his favour. Unless the rights are decided by a competent court, no title will pass to the defendant as he has no right in property. Learned counsel further submits that the



relationship of landlord and tenant is admitted and payment of rent is also admitted, though there is different version of petitioner and respondent about the period till the rent was paid. Further, the petitioner has nowhere admitted execution of agreement of sale in favour of the respondent and as the respondent has taken up this defence, the option available to the respondent is to get the right enforced for specific performance of contract and the respondent does not get any right unless the agreement is performed by the plaintiff. On this aspect, learned counsel relies on a decision of the of this Court in the case of ***Ramashish Rai Vs. Baijnath Mishra & Anr.***, reported in **1998 (3) PLJR 862** submitting that in this case the question for consideration was whether the plaintiff has a legal right to restrain the defendant from alienating the suit land by obtaining an order of interim injunction on the basis of agreement of sale and a Co-ordinate Bench of this Court held that an agreement to sale creates a right in *personam* and it does not create any right in the property. The same proposition was reiterated in the case of ***Bindhyachal Prasad & Ors. Vs. Sitaram Patwa & Ors.***, reported in **2023 (1) BLJ 708**. Learned counsel further submits that if any agreement is entered into between the parties and pursuant to that agreement possession is handed over, it becomes essential for the parties to get the documents registered and



without any registration of document, possession cannot be handed over. Learned counsel further submits that order of the learned court below is erroneous and bad in the eye of law without exercising the jurisdiction vested in it.

05. Learned counsel appearing on behalf of respondent vehemently contends that there is no landlord and tenant relationship. The respondent entered into an agreement for sale and pursuant to that he was in possession of the suit property. The respondent got the agreement of sale executed for 11 dhur land on 10.06.2019 and earlier on 04.06.2019, the respondent made payment of Rs. 30,00,000/- to the petitioner and thereafter again on 10.06.2019 when the agreement of sale was executed further payment of Rs. 30,00,000/- was made. Till June, 2019, total Rs. 65,00,000/- including earnest money of Rs. 5,00,000/- which was adjusted in favour of the petitioner, was paid. A *panchnama* was also prepared after dispute arose wherein the petitioner admitted entering into the agreement and gave an undertaking that he would withdraw the eviction suit. Learned counsel further submits that after execution of the agreement to sale, the petitioner admitted that the respondent did not remain his tenant and he was not entitled to take further rent from him. On refusal of the petitioner to execute the sale-deed, the respondent filed Title Suit No. 254 of 2022 before the learned



Sub. Judge, Bettiah for specific performance of contract. Learned counsel, however, admits that the agreement to sale is not registered and all the payments have been made in cash.

06. I have given my thoughtful consideration to the rival submission of the parties. When the parties are on agreement over the fact that there existed a relationship of landlord and tenant between the parties, mere entering into an agreement of sale would not confer any right on the respondent. Since the respondent has admitted that he entered into a rent agreement with the petitioner and pursuant to that agreement he made payment to him, all in cash, his denial on the ground that now he has become the owner of land on the basis of an agreement of sale is simply not sustainable. Rights will be created in favour of the respondent only when that agreement to sale is given effect to after execution of the sale deed on the basis of the agreement to sale. The respondent is already before a court of competent jurisdiction to enforce the specific performance of contract against the petitioner and all issues raised by him could be decided by the said court. In the eviction suit before the court of learned Munsif, Bettiah, relevant issue at this point of time is that whether there is a relationship of landlord and tenant between the plaintiff and the defendant and whether the rent is admitted. Both the issues are undisputed. It is immaterial that the



defendant claimed that subsequent to entering an agreement for rent, he entered into another agreement for sale of the suit property. This claim of the defendant needs to be proved before the court of competent jurisdiction and I am of the considered opinion that the learned trial court erred when it held that the relationship of landlord and tenant was not clear. Further, I find merit in the submission of learned counsel for the petitioner that the order of the learned trial court is cryptic and without any discussion of the points involved in the matter and the points of law, it has passed the order. The learned trial court was required to confine itself to the material available before it on record and *prima facie*, it had to see the admitted position of the parties such as the relationship of landlord and tenant between the parties and, at this stage, it should not have ventured into uncharted territory on the basis of unregistered document like agreement to sale where the rights are yet to be decided.

07. Accordingly, the order dated 15.04.2023 passed by the learned Munsif, Bettiah in Eviction Suit No. 01 of 2020 stands set-aside and the petition under Section 15, BBC Act filed by the plaintiff/petitioner is allowed and defendant/respondent is directed to pay arrears of rent from December, 2019 to up till now @ Rs. 3,000/- per month, within three months from the date of this order and the defendants shall also pay the monthly rent



of Rs. 3,000/- per month on or before 15th of each month during pendency of the eviction suit before the learned trial court.

08. In the result, the present Civil Misc. Case stands allowed with the above observation.

09. This Court has not expressed anything on the merits of the case in any manner and whatever has been observed, is only for the purpose of disposal of the present petition and the learned trial court will dispose of the eviction suit without being prejudiced by any of the observations made by this Court. The learned trial court is also reminded of the order dated 09.10.2023 of the Co-ordinate Bench regarding expeditious disposal of the case.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13-02-2024
Transmission Date	NA

