

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.651 of 2023

Remi Am. Devid @ Remy Michael David S/o Late M David, R/O Muhalla Christen quarter Lal bazaar road ward no 24, PO Bettiah, PS Bettiah, district West Champaran.

... .. Petitioner/s

Versus

1. Pintu Kumar Saraf W/o Late Nand Kishor Prasad, R/o Muhalla Purani Gudari gas lal Chauk ward no 3 PO Bettiah, PS Bettiah, District West Champaran.
2. Shyam Sundar Prasad S/o Late Bhrigunath Prasad, R/o Muhalla Kalibag Joda Inar ke pas, ward no 3 PO Bettiah, PS Bettiah town, District Bettiah.

... .. Respondent/s

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. Shiv Kumar Dwivedi, Advocate 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. 02 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. 02 of 2020 for decree of eviction against the respondent no.1 and had also prayed for handing over the possession of the suit property apart from payment of arrears of rent. Learned counsel further submits that in the case in hand the respondent no. 2 is the proforma respondent as no relief has been sought against him and he has been made party only because he was impleaded as defendant no.2 in Eviction Suit No. 02 of 2020 before the learned trial court and the petitioner has already filed Civil Misc. No. 695 of 2023 against respondent no. 2 of this case praying for the same relief. The respondent no.1 is the tenant and an agreement was executed between the petitioner and respondent no. 1 on 01.06.2019 and it was agreed that the respondent no.1 has to pay monthly rent @ Rs. 3,000/- per month apart from electricity bill. The respondent no.1 paid the rent to the petitioner till 31.12.2019 and thereafter stopped the payment of rent since January, 2020. The respondent no. 1 also violated the terms of agreement. After expiry of lease period on 30.04.2020, notice was given to the respondent no. 1 to vacate the premises, but the respondent no. 1 did not vacate the premises and thereafter eviction suit was filed by the petitioner. Learned counsel further submits that after notice, the



respondent no.1 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 no.1 claimed that an agreement to sale was executed by the plaintiff in favour of the respondent no.1 on 15.02.2020 and the consideration money was Rs. 15,10,000/- out of which the respondent no.1 paid Rs. 10,00,000/-. The respondent no.1 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. 84,000/- @ 3,000/- per month. In his rejoinder, the respondent no.1 stated that he was not liable to pay rent to the petitioner as respondent no.1 was tenant of plaintiff till December, 2019 and thereafter the respondent no.1 has paid Rs. 10,00,000/- to respondent no. 1 and only Rs. 5,10,000/- 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 respondent no. 1 as he has no right in property. Further, the respondent no. 1 has not filed any suit for specific performance against the petitioner even after expiry of period of three years as provided in so called agreement to sale. 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 no.1 about the period till the rent was paid. Further, the petitioner has nowhere admitted execution of agreement of sale in favour of the respondent no.1 and as the respondent no.1 has taken up this defence, the option available to the respondent no.1 is to get the right enforced for specific performance of contract and the respondent no.1 does not get any right unless the agreement is performed by the petitioner. 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 respondent no.1 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 no. 1 vehemently contends that there is no landlord and tenant relationship. The respondent no.1 entered into an agreement for sale and pursuant to that he was in possession of the suit property. The respondent no. 1 got the agreement of sale



executed for 03 dhur land on 15.02.2020, when the agreement of sale was executed in which the agreement was prepared for consideration amount of Rs. 15,10,000/- out of which, the respondent no.1 paid Rs. 10,00,000/- to the petitioner. Learned counsel further submits that after execution of the agreement to sale, the petitioner admitted that the respondent no. 1 did not remain his tenant and he was not entitled to take further rent from him. Learned counsel for the respondent submits that petitioner has not come before this Court with clean hands as the petitioner is having three tenants and has filed suit against two of them, so equity does not favour the petitioner and he could not be entitled to any relief. On this aspect, learned counsel relies on the decision of Hon'ble Apex Court in the case of *Ramjas Foundation and Anr. Vs. Union of India and Ors.*, reported in *(2010) 14 SCC 38*.

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 no. 1. Since the respondent no. 1 has admitted that he entered into a rent agreement with the petitioner and pursuant to that



agreement he made payment to him, 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 no.1 only when that agreement to sale is given effect to after execution of the sale deed on the basis of the agreement to sale. 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 respondent no.1 and whether the rent is admitted. Both the issues are undisputed. It is immaterial that the respondent no.1 claimed that subsequent to entering an agreement for rent, he entered into another agreement for sale of the suit property. This claim of the respondent no.1 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. So far as contention of learned counsel for the respondent that the petitioner has not come before this Court with clean hands as the petitioner is having three tenants and has filed suit against two of them, so there is bonafide requirement and equity does not favour the petitioner and he could not be entitled to any relief, is concerned, the same touches upon the merits of the case and there is no occasion for this Court to delve into the matter at this stage. Furthermore, petitioner/plaintiff has every right to evict any of the tenants on the ground of personal necessity as he is the best judge to decide about the personal necessity and bonafide requirement.

07. Accordingly, the order dated 15.04.2023 passed by the learned Munsif, Bettiah in Eviction Suit No. 02 of 2020 stands set-aside and the petition under Section 15, BBC Act filed by the petitioner is allowed and respondent no.1 is directed to pay arrears of rent from January, 2020 to up till now @ Rs. 3,000/- per month, within three months from the date of this



order and also to pay the monthly rent @ 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 not be prejudiced by any of the observations made by this Court. The learned trial court is also reminded of the order dated 10.10.2023 of the Co-ordinate Bench regarding expeditious disposal of the eviction suit.

(Arun Kumar Jha, J)

Ashish/-

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

