

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.108 of 2019

Kapil Deo Mandal Son of Late Jahuri Mandal Resident of Mohalla- Keshopur
(Gurudwar Chowk), Town Jamalpur, P.S. and P.O.- Jamalpur, District-
Munger.

... .. Petitioner/s

Versus

1. Abodh Sharma Son of Late Uchit Sharma Resident of Mohalla - Keshopur
(Gurudwar Chowk), Town- Jamalpur, P.S. and P.O. Jamalpur, District-
Munger.
2. Sunita Devi Wife of Abodh Sharma Resident of Mohalla - Keshopur
(Gurudwar Chowk), Town- Jamalpur, P.S. and P.O. Jamalpur, District-
Munger.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Md. Waliur Rahman, Advocate Mr. Nishant Kumar Sinha, Advocate Mr. Arvind Kumar, Advocate
For the Opposite Party/s :		Mr. Nagendra Dubey, Advocate Mr. Ratnakar Ambastha, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

8 08-10-2024 This Civil Revision application has been filed under

Section 14(8) of the Bihar Buildings (Lease, Rent & Eviction)
Control Act, 1982 (hereinafter referred to as 'BBC Act') against
the judgment and decree dated 30.04.2019 passed by the Civil
Judge, Junior Division, Munsif-I, Munger in Eviction Suit No. 5
of 2011 (CIS No. 114 of 2013) by which eviction of the
defendant/petitioner has been sought from the suit premises on
the ground of personal necessity alone. The plaintiffs have
pleaded that they required the suit premises for their furniture
manufacturing shop which is the most suitable place in the



market of Jamalpur by demolishing the old house and by constructing a new house as per their requirement on the suit premises which cannot be fulfilled by partial eviction.

2. The case of the plaintiffs is that plaintiff no. 1 has purchased the suit property measuring 2 katha 17 dhurs 10 dhurkis with old structure of house in the name of his wife/plaintiff no. 2, namely, Sunita Devi through registered sale deed dated 01.03.2011 from one Satnarayan Sah. On 01.03.2011, opposite parties asked Satnarayan Sah and others for vacating the tenants. The said Satnarayan Sah along with opposite party and some witnesses came to the tenant and told him that he has sold the premises to the plaintiffs/opposite parties so he has to vacate the house immediately. The defendant/tenant assured the plaintiffs to vacate the house by 20th October, 2011 and in token thereof he paid rent Rs. 2,000/- for the month of March, 2011 to the plaintiffs as per the oral agreement and accordingly admitted the plaintiffs/opposite parties as landlord. Thereafter from April, 2011, the defendant/petitioner paid rent to the plaintiffs/opposite parties and further assured that he will vacate the suit premises till 20th October, 2011. On 03.10.2011, the plaintiffs/opposite parties went to the defendant/petitioner and asked him to vacate the suit premises by 20th October, 2011 as assured by him. The defendant/petitioner straightway refused to vacate the same.



Hence, the necessity of suit arises.

3. On summons, defendant/petitioner appeared and filed a written statement denying the title of the plaintiffs. It is further contended that the land was barren and the structure was erected by father of the defendant about three decades ago, he constructed house over the same consisting of three room and started residing thereafter. It is further pleaded that in the year 2009, the electricity department had filed a case against the defendant. Moreover, the father of the defendant in the year 1996 had taken loan from the bank over the premises in question for establishment of Pulses Mill. Hence, there is no relationship of landlord and tenant between the plaintiffs and defendant.

4. Upon completion of pleadings and upon consideration of rival contentions, the following issues were framed by the trial court:-

(i) Whether the relationship of landlord and tenant exist between the plaintiffs and defendant in respect of the suit premises?

(ii) Whether the plaintiffs have bonafide personal necessity of the suit premises?

5. The plaintiffs in support of their claim on the aforesaid issues, adduced altogether 7 witnesses and got exhibited 8 documents as exhibits.



6. On the other hand, the defendant/petitioner examined himself as defendant witness in the suit but did not adduce/exhibit any documentary evidence?

7. Learned trial court after considering the facts and circumstances of the case and the evidence brought on record and after hearing the parties decreed the suit and ordered to vacate the suit premises within three months from the date of judgment and decree. Learned trial court has held that the plaintiff has proved in his evidence that the defendant is the tenant of the plaintiffs. P.W.-1 in para 3 of his cross-examination, has deposed that the defendant was the tenant of his vendor, namely, Satnarayan Sah. Further P.W.-2, P.W.-3, P.W.-4 and P.W.-5 have also supported the case of the plaintiffs. On perusal of oral and documentary evidence adduced by the plaintiffs and defendant, the learned trial court has held that there was relationship of landlord and tenant between the parties.

8. So far question of personal necessity of the plaintiffs is concerned, the learned trial court has held that the defendant/petitioner has not laid any credible evidence either oral or documentary in support of his case denying his tenancy with the plaintiffs/opposite parties or their vendor or his ownership in respect of the premises, in question, whereas, the plaintiffs/opposite parties have laid both oral and documentary



evidence in support of eviction from the suit premises. The plaintiffs have proved that their personal necessity cannot be satisfied by partial eviction in the suit. This plea of the plaintiffs has not been contested by the defendant either in written statement or in his cross-examination. The defendant/petitioner has only denied the ownership of the plaintiffs/opposite parties as well as tenancy with the opposite parties. Personal necessity of the opposite parties cannot be satisfied with the partial eviction of the defendant/petitioner from the suit premises.

9. Mr. Waliur Rahman, learned counsel for the petitioner submitted that the trial court has not properly considered the evidence of the parties and therefore the findings are vitiated. It has been contended that the court below has adopted wrong procedure and applied wrong legal test in deciding the issue of personal necessity. Learned counsel submitted that the findings arrived at by the court below on the issue of personal necessity and other incidental issues are perverse in law. Mere assertion on the part of the landlord that he requires the premises for his own personal necessity is not decisive. It is for the court to determine the truth of the assertion as to whether it is bonafide. The word “required” signifies that mere desire on the part of the landlord is not enough but there should be an element of need and burden is on the plaintiffs to



prove that he genuinely requires the premises for personal necessity. Reliance has been placed on the judgment in the case of *Sachida Nand Prasad Vs. Smt. Savitri Sahay* reported in *(1998) 3 PLJR 541*. Learned counsel for the petitioner further submitted that the learned trial court has not properly considered the proviso to Clause (c) of Sub-Section (1) of Section 11 of the BBC Act with regard to partial eviction. Learned trial court has to consider the aforesaid provision and order for eviction for the entire premises could be made only if a decree for partial eviction in the matter provided could not substantially satisfy the landlord's requirement. Learned counsel for the petitioner has further denied the relationship of landlord and tenant. At the time of occupation of the said land, the land was barren and the father of the defendant constructed a house over the same consisting of three rooms and was residing therein. It is also submitted that the father of defendant in the year 1996 had taken loan from the bank over the disputed premises for starting *Dalmil* and as such, the plaintiffs/purchaser is not the landlord of the tenant.

10. Per contra, learned counsel for the plaintiffs/opposite parties has submitted that the learned court below has not committed any error while evaluating the evidence on record and the findings are according to law. Learned counsel for the opposite parties contended that the necessary facts with



regard to the requirement of personal necessity were stated in the pleading and the pleading was proved by the evidence adduced by the plaintiffs. He has also contended that in a suit for eviction on the ground of personal necessity, an attornment by the tenant in favour of transferee of the land is not necessary for creating a subsisting tenancy between them. Learned counsel for the plaintiffs/opposite parties submitted that the learned court below has considered the question of partial eviction as required by the proviso to Section 11(1)(c) of the BBC Act and has rightly come to the conclusion that the entire premises will fulfill the reasonable requirement of the plaintiffs and the partial eviction will not substantially satisfy the reasonable requirements of the plaintiffs. Reliance has been placed in the case of ***Kalawati Tripathi & Ors. Vs. Damayanti Devi & Ors.*** reported in (1992) **2 PLJR 214.**

11. Upon considering the submissions on behalf of the parties and on perusal of the impugned judgment, it is manifest that the plaintiff/opposite party no. 1 purchased the suit premises in the name of his wife, namely, Sunita Devi (O.P. No. 2) through registered sale deed dated 01.03.2011 executed by Satyanarayan Sah and others, who were original landlord of the defendant/petitioner. The transfer took place with all incidents of right, title and interest of the lessor and the transferee is entitled



to sue the existing tenant on the ground of personal necessity even if the tenant has not attorned to his tenancy under him. This view has been taken in the case of ***Dinesh Kumar Purbey Vs. Mahesh Kumar Poddar*** reported in ***(1991) 1 PLJR 650***. In the case of ***Kalawati Tripathi(supra)***, the Division Bench of this Court has held that the attornment by tenant is not essential to give validity to the transfer made in favour of the transferee and, in that view of the matter, the title of the assignee is complete. The assignor goes out, divested of his title and ceases to be the landlord; comes in the assignee vested with his assignor's title, the title of the landlord. So, the assignee is the landlord.

12. So far the question of partial eviction is concerned, it is quite apparent that the plaintiffs have pleaded that they had bonafide personal requirements for the suit premises, but the defendant nowhere pleaded that the requirement of the plaintiffs would be satisfied by partial eviction. Although it is settled law that once personal necessity is proved, the ownership shifts on the tenant to satisfy that partial eviction would satisfy the personal necessity of the plaintiffs. Reference in this regard may be made to the decision of this Court in the case of ***Food Corporation of India and Others Vs. Vishun Properties and Enterprises & Ors.*** reported in ***1995 BBCJ 711*** as well as in the case of ***M/s Bata India Ltd. v. Dr. Md. Qamruzzama*** reported



in **(1993) 1 PLJR 87 (D.B.)** and also in the case of **Hira Lal Das v. Loknath Newatia** reported in **(2014) 4 PLJR 476**. The learned trial court has discussed about the partial eviction and has held that the plaintiffs have proved that their personal necessity cannot be satisfied by partial eviction in the suit. This plea of the plaintiffs has not been contested by the defendant either in written statement or in his cross-examination and it has been categorically held that personal necessity of the plaintiffs/opposite parties cannot be satisfied with the partial eviction of the defendant/petitioner from the suit premises. Reference in this regard may be made to a decision of the Hon'ble Apex Court in the case of **Anamika Roy v. Jatindra Chowrasiya & Ors.** reported in **(2013) 6 SCC 270**. The Hon'ble Supreme Court has held that :-

“Defendant neither before the appellate court nor before the trial court or in the High Court has asserted that a portion of the premises will satisfy the requirement of the plaintiffs/appellants.”

13. The evidence adduced by the plaintiffs came to clear findings that the court below has rightly held that the plaintiffs are entitled to bring the suit for personal necessity and is in good faith. As such, the plaintiffs require the suit premises for his business and this fact has not been denied by the



defendant.

14. In the said circumstances, the findings of the learned court below that the plaintiffs have bonafide personal requirements of the suit premises appears to be legal and proper.

15. In view of the judgment of the Constitution Bench of the Apex Court in the case of ***Kasthuri Radhakrishnan Vs. M. Chinniyan*** reported in ***(2016) 3 SCC 296***, the revisional jurisdiction under the rent control acts is circumscribed by limitation and the revisional court is only to see whether order for eviction is according to law or not. The Lordships have observes as follows:-

“..... so far as the issue pertaining to exercise of revisional jurisdiction of the High Court while hearing revision petition arising out of eviction matter is concerned, it remains no more res integra and stands settled by the Constitution Bench of this Court in Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh [Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh, (2014) 9 SCC 78 : (2014) 4 SCC (Civ) 723] . R.M. Lodha, C.J., the learned Chief Justice speaking for the Bench held in para 43 thus : (SCC pp. 101-102)

“43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact



recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its



power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

16. For the foregoing reasons, this Court, does not find that the learned court below has committed any error of jurisdiction and illegality in passing the impugned judgment. This Court is also not persuaded to hold that the judgment and order by the Court below for eviction is not in accordance with law.

17. The revision application is, accordingly, dismissed.

18. Pending Interlocutory Application(s), if any, shall stand disposed of.

(Khatim Reza, J)

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