

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.1 of 2018

1. Smt. Sima Mishra and Ors wife of Late Amrendra Kumar Mishra
2. Shri Gautam Kumar Mishra
3. Shri Uttam Kumar Mishra Both sons of Late Amarendra Kumar Mishra
4. Shri Satyendra Kumar Mishra son of Late Murari Mishra All residents of Mohalla - Kalabganj, P.S. Mojahidpur, District Bhagalpur.

... .. Petitioner/s

Versus

Smt. Usha Mishra wife of Shri Sanjay Kumar Mishra resident of Baijnathpur, P.S. Sahkund, District Bhagalpur presently residing at mohalla Deep Nagar, Mansoorganj, P.S. Adampur Kotwali, District Bhagalpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sandeep Patil, Adv.

For the Respondent/s : Mr. Diwakar Upadhyaya, Adv.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT

Date : 18-10-2024

Heard learned counsel for the parties.

2. This Civil Revision application has been filed under Section 14(8) of the Bihar Building (Lease Rent and Eviction Control) Act, 1982 (hereinafter referred to as BBC Act) against the judgment and decree dated 15.09.2017 passed by the Munsif-II, Sadar, Bhagalpur, in Eviction Suit No. 07 of 2006, which was filed for seeking eviction of the defendants/petitioners for the suit premises on the ground of personal necessity alone.



3. The plaintiff has pleaded that she along with her family members require the suit premises for her residence therein as she is presently residing in a tenanted premise. The defendants denied the title of the plaintiff and there is no relationship of landlord and tenant between the plaintiff and defendants.

4. The brief facts of the case is that plaintiff/opposite party is the owner and land lady within the meaning of BBC Act in respect of the suit premises which was purchased by the plaintiff from Shri Murari Mishra, Narendra Mishra and Stayendra Mishra besides other minors through two registered sale deeds on 01.02.1996 after payment of full consideration amount for which separate money receipts were granted by the lenders of the deeds and after purchase, the plaintiff mutated her name in the revenue records of State of Bihar as well as in the record of Bhagalpur Municipal Corporation on payment of rent/taxes obtaining up-to-date rent receipts. It is further pleaded that plaintiff after purchase constructed four rooms, veranda having brick walls and temporary thatched roofs and construction was going on and there remained some parti land also. The defendants were vendors of the said sale



deeds and were residing and carrying on business of flour mills and others in their own portion of land which is adjacent to west of the suit land.

5. It is further contended that as husband of the plaintiff is in service outside Bhagalpur so the plaintiff was not in a position to live in her newly constructed house at the time of construction and the defendants approached the plaintiff to look out the premises to the defendants for some time and will vacate the same whenever required by the plaintiff.

6. It is further pleaded that the defendants are the members of a joint family governed by Mitakshara School of Hindu Law and the defendants came in occupation of three rooms of the aforesaid premises since May, 2000 on a monthly rental of Rs. 200/- only. The rent of each month was payable by the last date of each succeeding months. The defendants have paid the monthly rent of the suit premises till the month of August, 2005.

7. Further case of the plaintiff, is that now the family members of the plaintiff have increased and her daughters were aged about 8 years and 6 years and one son aged 5 years



were school going children and for their daughters education and for other purpose, the plaintiff decided to reside in her own newly constructed house which is situated at township of Bhagalpur. The plaintiff approached the defendants to vacate the suit premises but the defendants evaded the matter on some pretext or other. The plaintiff had no other alternative accommodation except the suit premises. She took a rented house at Mohalla Deepnagar, Mansurganj, P.S.-Adampur, District-Bhagalpur. Hence, the plaintiff requires the suit premises for her personal use and occupation for their residence therein as she is presently residing at a tenanted premise.

8. Further, the case of the plaintiff is that the partial eviction of the suit premises will not serve the requirement of the plaintiff. Hence, she requires the entire suit premises. The plaintiff and her husband on several times approached and requested the defendants after realizing her personal requirement. They assured the plaintiff and her husband that they will vacate the suit premises on or before 31.12.2005 but did not vacate the same and on 15.01.2006 they finally refused



to vacate the suit premises. Hence, the necessity of filing of the aforesaid suit arose.

9. On the other hand, the claim of the defendants is that they were never a tenant of the plaintiff rather they are the owners of the suit property. The husband of the plaintiff, namely, Sanjay Kumar Mishra, who happened to be a relative of these defendants had easy access to the house of these defendants, who had greedy eyes in respect of the property, in question, as such the said Sanjay Kumar Mishra, the husband of the plaintiff got several documents prepared in his name or in the name of his wife by saying that he will repay the loan taken from Khadi Gram Udyog but the plaintiff or her husband never paid any loan taken by the defendants or by their family members and the plaintiff's husband cheated all the times to these defendants.

10. Further, case of the defendants is that the plaintiff or her husband never paid any amount either to the Khadi Gram Udyog or to these defendants and if any papers and documents are lying regarding the payment of price of the said land, they are forged and fabricated documents. The alleged sale deed which is the basis of the case of the plaintiff



never intend to be acted upon as no single penny has been paid by the plaintiff to these defendants till date. Even a draft worth of Rs. 75,000/- was made in the name of the defendants on 15.06.2000 for the repayment of loan to Khadi Gram Udyog but unfortunately, the defendants fell ill and husband of the plaintiff came to these defendants house and began assuring to these defendants and told the defendants that the plaintiff will pay the full amount to the Khadi Gram Udyog at Patna by depositing the draft in the concerned office but after taking the draft got the same cancelled and no payment was made either by the plaintiff or by the husband of the plaintiff and the plaintiff's husband without making any payment wanted to grab the suit land. After knowledge of the said fraud, the defendant no. 2 instituted a criminal case under Sections 420, 406 and 120(B) of the Indian Penal Code against the plaintiff and her husband and her associates due to which the plaintiff's husband remained in jail for some time and the said criminal case is under trial in the Court of Judicial Magistrate-Ist Class, Bhagalpur.

11. Further, case of the defendants is that the defendants got the sale deed cancelled stating all the real facts



therein. The cancelled deed was registered on 21.07.2000 and 29.07.2000 in the office of the Sub-Registrar, Bhagalpur. It is further contended that the plaintiff and her husband by playing fraud upon these defendants and their family members never came in possession of the land and never got title over the suit property. It is further submitted that the plaintiff by concealing the real facts has filed the present suit without any title and possession of the suit property. The present suit was filed on 03.03.2006 after cancellation of the sale deeds on 21.07.2000 and 29.07.2000 which was registered by the Sub-Registrar, Bhagalpur.

12. Upon completion of pleadings and upon consideration of rival contentions of the parties, the Trial Court framed issues and decided the suit on the basis of evidence and materials on record and held that the plaintiff has succeeded to prove that she is rightful owner of the suit premises and it is further held that evidence of PW-2, PW-4 and PW-3 (plaintiff) have proved that the plaintiff has rented out the suit premises on the monthly rental of Rs. 200/- per month. The plaintiff is residing with her family members in a tenanted house and she requires the suit premises for their



residence and there is no other accommodation of the plaintiff except the suit premises. So far issue with regard to partial eviction is concerned, the learned Trial Court has held that the defendants have nowhere pleaded or adduced any evidence that the requirements of the plaintiff would be satisfied by the partial eviction.

13. On the basis of materials on record and evidence adduced by the parties, the learned Trial Court has given the finding on the issue in favour of the plaintiff and granted the decree for eviction by the impugned judgment and decree.

14. Mr. Sandeep Patil, learned counsel for the petitioners has submitted that the learned court below has not properly considered the evidence of the parties and therefore findings are vitiated. It has been contended that the plaintiff has not produced any documents with regard to tenancy of the suit premises. There is no relationship of landlord and tenant between the parties. The plaintiff never came in possession over the suit premises on the basis of sale deeds which was cancelled much before on non-payment of consideration amount to the defendants. The defendants are themselves the owner of the suit premises not as a tenant. The defendants are



all along in peaceful possession of the suit premises. Learned counsel has placed reliance on the judgement in the case of ***Raju Mahton and Ors. Vs. Hossaini Mian and Anr.*** reported in ***AIR 1920 Pat 774*** wherein the Court has held that:-

“mere registration of the documents in this case did not pass the title to the plaintiffs. The consideration money in the sale deed did not at all pass. The sale deed in question remained throughout in the possession of the defendants and was not given to the plaintiffs.”

15. Learned counsel for the petitioners has also relied upon a decision in the case of ***Baldeo Singh and others vs. Dwarika Singh and others*** reported in ***AIR 1978 Pat 97*** wherein this Court has held that:-

“though the sale deed may recite that the consideration money has been paid, but there is nothing to prevent the parties from adducing evidence to show that a recital is untrue and that, in fact, the consideration money was not paid; this will not be barred under Section 92 of the Evidence Act.”

16. In the present case there is no dispute so far as the second aspect is concerned, the sale deed in question recites that the consideration money has been paid and there is



nothing due from the vendee to whom the possession has also been delivered. But the plaintiff has admitted that neither the consideration money was paid nor possession was delivered to them at the time of execution and registration of the aforesaid deed. On consideration, this Court in the aforesaid case has held that the plaintiff did not acquire title on mere execution and registration of the sale deed. Learned counsel for the petitioner further submits that there is no relationship of landlord and tenant between the parties and decree of eviction cannot be granted only on the basis of title. He has also placed reliance on the judgment in the case of ***Chandeshwar Prasad Vs. Rajiya Devi and others*** reported in ***2015 (4) PLJR 797*** wherein this Court has held that:-

“decree for eviction cannot be granted only on the basis of title and if no relationship is proved, no decree of eviction can be granted.”

17. Learned counsel for the petitioners submits that in the present case also no relationship of landlord and tenant is established, therefore, there is no question of eviction on the ground of sale deed alleged to be executed by the defendants. Hence, the suit may be dismissed on the aforesaid ground alone.



18. Upon considering the submissions made on behalf of the parties, evidence adduced and materials on record as well as impugned judgment, it is manifest that the plaintiff/opposite party purchased the suit premises through two registered sale deeds on 01.02.1996 although the defendants/petitioners take stand that the sale deed dated 01.02.1996 Deed No. 1087 has been cancelled on 21.07.2000 and another Sale Deed No. 1088 dated 01.02.1996 has been cancelled on 18.08.2005 on the ground of non-payment of consideration amount by the Sub-Registrar, Bhagalpur. It is settled law that a sale deed can be set aside only by a competent Civil Court. There is no scope for cancelling of sale deed unilaterally executed without knowledge and consent of the other parties to the sale deed and without complying with the provision of Sections 32 and 32 A of the Registration Act. Having regard to the above provision, in my opinion, a registered sale deed, if sought to be cancelled, registration of such deed be at the instance of both the parties viz, bilaterally and not unilaterally. However, the power of cancelling and declaring the registration as null and void vests with the Civil Court, as the veracity of allegation that the sale



deed has been fraudulently registered cannot be decided in summarily inquiry as there arises both civil and criminal liability. Unless there is a declaration by the Civil Court that the deed is vitiated by fraud, a registered deed cannot be cancelled by the Registrar. The existing provisions of Registration Act do not confer the Registrar with power to cancel a document which has already been registered even in case of fraud or forgery. The Registration Act does not confer such a power on the Registrar to cancel the registered instrument unilaterally.

19. In the landmark judgment in the case of ***Satya Pal Anand Vs. State of Madhya Pradesh and others*** reported in ***(2016) 10 SCC 767***, the Supreme Court of India has held that:-

“there is no express provision in 1908 Act which empowers the Registrar to recall the registration.....once the document is registered, it is not open to any Authority under the 1908 Act to cancel the registration.....The power conferred on the Registrar by virtue of Section 68 cannot invoked to cancel the registration of documents already registered.”



20. In view of the aforesaid decision of the Hon'ble Apex Court, the sale deeds dated 01.02.1996 are valid unless the said sale deeds are not declared null and void by a competent Civil Court, therefore, the petitioner is rightful owner of the suit property well within the meaning of BBC Act and the petitioner is entitled to sue the existing tenant on the ground of personal necessity even if the tenant has not accepted his tenancy under him.

21. So far the question of relationship of landlord and tenant between the parties is concerned, it is admitted fact that the petitioners are vendor of the opposite party, they executed sale deed in favour of the plaintiff/opposite party. The said transfer took place with all incidents of the right, title and interest of the vendor in favour of vendee. There is specific case of the plaintiff that the defendants entered into the tenancy of the plaintiff in the month of May, 2000 at the rate of Rs. 200/- per month. PW-2, PW-4, PW-5 and PW-3 (plaintiff) have supported the case through their evidence. After sell out by the defendants and on the request of the defendants, the plaintiff had permitted to reside the defendants as tenant in the said premises. The question of relationship of



landlord and tenant between the parties is a question of fact. The learned Trial Court has rightly held that defendants/petitioners are tenant of the plaintiff/opposite party. So far the question of personal necessity of the plaintiff is concerned, it has been specifically claimed by the plaintiff that he is residing in a tenanted premises along with his children and as such they require the suit premises for the same. This fact has not been denied by the defendants. The plaintiff has bonafide personal requirement of the suit premises which appears to be legal and proper. The reference in this regard may be made to a decision of this Court in the case of *Tip Top and Ors. Vs. Smt. Indramani Devi* reported in *AIR 1982 Pat 190 (23)* as well as in the case of *Dr. Hemchandra Jha Vs. Smt. Anjana Lal* reported in *1987 PLJR 582 (13)*.

22. So far the question of partial eviction is concerned, it is quite apparent that plaintiff had pleaded that they had bonafide personal requirement for the entire premises for her residence but the defendants nowhere pleaded that the requirement of the plaintiff would be satisfied by the partial eviction, although, it is a settled law that once personal



necessity is proved, the onus shifts on the tenant to show that partial eviction shall satisfy the personal necessity of the plaintiff. The reference in this regard may be made to a decision of this Court in the case of *Food Corporation of India and others Vs. Vishun Properties and Enterprises and others* reported in *1995 BBCJ 711* as well as in the case of *M/s Bata India Ltd. vs. Dr. Md. Qamruzzama* reported in *1993 (1) PLJR 87 (DB)* and also in the case of *Hira Lal Das and another vs. Loknath Newatia* reported in *2014 (4) PLJR 476*. The learned Trial Court has discussed the partial eviction and the plaintiff has proved that her personal necessity cannot be satisfied by partial eviction in the suit. This plea of the plaintiff has not been contested by the defendants either in their written statement or in cross examination and it has been categorically held that the personal necessity of the plaintiff/opposite party cannot be satisfied with the partial eviction of the defendants/petitioners from the suit premises. The reference in this regard may be made to a decision of the Hon'ble Apex Court in the case of *Anamika Roy vs. Jatindra Chowrasiya and others* reported in *2013 (6) SCC 270*. The Hon'ble Supreme Court has held that:-



“defendants 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 plaintiff/opposite party.”

23. The evidence adduced by the plaintiff came to clear finding that the Trial Court has rightly held that the plaintiff is entitled to bring the suit for personal necessity and it is in good faith. As such, the plaintiff requires the suit premises for her residence and this fact has not been denied by the defendants.

24. In the said circumstances, the findings of the learned court below that the plaintiff has bonafide personal requirements of the suit premises appears to be legal and proper.

25. 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. Their Lordships have observed 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 re-appreciation 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 re-appreciate 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.”

26. Having regard to the discussions made hereinabove, this Court is not persuaded to hold that the



judgment and order passed by the court below for
eviction is not in accordance with law.

27. Accordingly, this Civil Revision
application is dismissed having no merit in it.

(Khatim Reza, J)

Prabhat/-

AFR/NAFR	NAFR
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