

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.9 of 2018

=====

Sumesh Kumar @ Sumesh Prasad Son of Late Chhathi Lal Sah Resident of Mohallah- Dahiyawan, P.O.- Chapra, P.S.- Chapra Town, District- Saran.

... .. Petitioner/s

Versus

- 1.1. Buchi Devi Daughter of Late Gautam Prasad Resident of Mohallah- Daldali Bazar, P.O.- Chapra, P.S.- Chapra Town, District- Saran.
- 1.2. Anju Devi Daughter of Late Gautam Prasad Resident of Mohallah- Daldali Bazar, P.O.- Chapra, P.S.- Chapra Town, District- Saran.
- 1.3. Radha Devi Daughter of late Gautam Prasad Resident of Mohallah- Daldali Bazar, P.O.- Chapra, P.S.- Chapra Town, District- Saran.
2. Arun Kumar, Son of Late Gautam Prasad Resident of Mohallah- Daldali Bazar, P.O.- Chapra, P.S.- Chapra Town, District- Saran.
3. Anil Kumar, Son of Late Gautam Prasad Resident of Mohallah- Daldali Bazar, P.O.- Chapra, P.S.- Chapra Town, District- Saran.
4. Ajay Kumar, Son of Late Gautam Prasad Resident of Mohallah- Daldali Bazar, P.O.- Chapra, P.S.- Chapra Town, District- Saran.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Ved Prakash Srivastva
For the Respondent/s : Mr.Nagendra Rai

=====

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV ORDER

17 06-05-2024 I have already heard the learned counsel for the parties.

2. This civil revision application has been preferred against the judgment dated 22.09.2017 and decree dated 13.10.2017 passed by the learned Civil Judge (Junior Division), Chapra in Eviction Suit No. 12 of 2005, whereby a decree of eviction was granted to plaintiffs/opposite parties on the ground of their personal necessity envisaged under Section 11 (c) of the



Bihar (Buildings, Lease, Rent and Eviction) Control Act, 1982, hereinafter to be referred to as 'the Act'. The petitioner/defendant was directed to deliver the possession of the disputed shop to the plaintiffs/opposite parties within a period of sixty days from the date of the order, failing which the plaintiffs/opposite parties would be entitled to take recourse of the court for getting the premises vacated.

3. The brief facts of the case is that Smt. Sushila Devi, the mother of opposite party nos. 2 to 4, who are her three sons, lodged Eviction Suit No. 12 of 2005 on the ground of personal necessity of the premises let out to the petitioner, as her second son (opposite party no.3) was unemployed and for his business the premises was required. Sushila Devi died during the pendency of the aforesaid suit and her three sons were impleaded as opposite parties. As per the averments made in the plaint, father of opposite parties, namely, Gautam Prasad and his brother Lalan Prasad constructed shops jointly. The shops situated in the western side were given in the share of Gautam Prasad and shops situated in eastern side were given to Lalan Prasad. A passage of four ft. was existing between the shops of the two brothers. The petitioner/defendant took the shop situated in northern side and the share of Gautam Prasad was let out to



him at his request at the rent of Rs. 750/- per month. The tenancy commenced from first January, 1995. As per the terms and conditions of the agreement, the petitioner/defendant had to vacate the premises as and when required by the plaintiffs/opposite parties. As per the averments of the plaint, one of the plaintiffs, Anil Kumar, was unemployed and he was in dire need of the premises for his business. The premises in question was suitable for his business. The ground of default in payment of rent was also taken in the plaint by mentioning therein that the petitioner/defendant discontinued the payment of rent since July, 2004 and he became defaulter.

4. The petitioner/defendant denied the ground of personal necessity in his written statement, pointing out that the opposite parties/plaintiffs, with the assistance of anti social elements, tried to forcefully eject him from the premises. The petitioner/defendant filed Title Suit No. 88 of 2005 to protect himself from the forceful dispossession of the premises. It has also been mentioned in the written statement that the petitioner/defendant never defaulted in payment of rent and opposite parties/plaintiffs refused to give the receipt of payment of rent. It has also been mentioned in the written statement that the petitioner/defendant paid Rs. 21000/- as advance to the



opposite parties/plaintiffs. It has also been claimed that the monthly rent of the premises was not agreed as Rs. 750/-, rather it was agreed for Rs. 400/- per month. When the petitioner/defendant went to pay the rent of the month of October, 2005, opposite party no.2 asked the petitioner/defendant to pay the monthly rent of Rs. 1150/- from the next month and when the petitioner/defendant did not become ready to pay Rs. 1150/- per month, he threatened to lock the premises. It has also been mentioned that the claim of *bona fide* necessity of opposite party no.3, Anil Kumar, is not a bona fide claim. As a matter of fact, the opposite parties/plaintiffs are affluent persons. They also have four shops, excluding the disputed shop, and they used those shops as godown. The opposite parties also own a shop, which is situated at Mauna Chowk, Chapra.

5. Altogether, seven witnesses were examined on behalf of the opposite parties/plaintiffs and seven witnesses have also been examined on behalf of the petitioner/defendant.

6. The following documentary evidences have been adduced by the opposite parties/plaintiffs:-

Ext.1	Partnership deed
Ext.2	Municipality Map
Ext.3	Sales Tax Registration Certificate



Ext.4 to 4/2	Photographs of the disputed premises
--------------------	--------------------------------------

7. The learned counsel for the petitioner/defendant submitted that the claim of the opposite parties/plaintiffs of *bona fide* need of the premises is not *bona fide*, rather it is *mala fide*. He submitted further that the opposite parties/plaintiffs are the affluent persons and they have other shops also, except the premises in dispute. It was also argued that the learned court below did not consider the ground of partial eviction of the premises, which was mandatory as per law. He has also submitted that Ext. 3, which is a Firm Registration Certificate in Bihar Saltes Tax Office, shows that the name of the Firm has been mentioned as M/s Arun Kumar and Anil Kumar which shows that Anil Kumar is not an unemployed person, rather he is also a proprietor of the shop along with his elder brother Arun Kumar. He further argued that the opposite parties/plaintiffs did not disclose the name of the business, for which they required the premises in dispute.

8. On the other hand, the learned counsel for the opposite parties/plaintiffs submitted that the learned court below has considered the ground of partial eviction in para-10 at page 9 of the judgment, as such, it is factually incorrect to say that the



learned court below did not consider the point of partial eviction of the premises. He also submitted that Ext. 3 itself shows that in column of proprietor the name of Arun Kumar, the elder brother of Anil Kumar has been mentioned. As such, Ext. 3 shows that the proprietor of the Firm is Arun Kumar, and not Anil Kumar. He further submitted that, as per the settled law, it is the option of the landlord as to which of the rented premises he chooses to vacate. The tenant cannot question his right of selection of the premises.

9. From perusal of Ext. 3, it appears that the proprietor of the Firm is Arun Kumar, and not Anil Kumar. The witnesses in their statements have also stated that Anil Kumar is an unemployed person. The learned court below rightly held that, being an unemployed person, Anil Kumar was in dire need of the premises to be vacated for starting his own business.

10. It has been settled law that the nature of business, which is going to be started, is not mandatorily required to be disclosed in the plaint.

11. So far as the submission of the learned counsel for the petitioner/defendant that the ground of partial eviction of the premises was not considered by the learned court below is factually incorrect. In para-10 at page 9 of the judgment, the



learned court below has specifically mentioned the length and breadth of the premises as 7-8x6 ft. The area of the premises is too small to be re-partitioned and incapable of catering to the need of the opposite party no.3, Anil Kumar. The Judgment and decree of the learned court below is well-reasoned and do not need revisional interference.

12. Considering the above-mentioned facts and circumstances, this revision application is dismissed.

(Nawneet Kumar Pandey, J)

HR/-

U			
---	--	--	--

