

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.44 of 2024

1. Krishna Kumar @ Krishna Sharma S/o Late Shiv Pal Sharma @ Late Sripal Sharma, resident of Mani Manjil Compound near Garhi Mohinee Enterprises Gas Gali, Dehri, P.O. & P.S. Dehri, Dist. Rohtas & also holding shop in Mohalla Puli Road, Dehri, P.S. Dehri, District- Rohtas.
2. Kanhaiya Sharma @ Kanhai Sharma, S/o late Shiv Pal Sharma @ Late Sripal Sharma, resident of Mani Manjil Compound near Garhi Mohinee Enterprises Gas Gali, Dehri, P.O. & P.S. Dehri, Dist. Rohtas & also holding shop in Mohalla Puli Road, Dehri, P.S. Dehri, District- Rohtas.
3. Murari Sharma, S/o late Shiv Pal Sharma @ Late Sripal Sharma, resident of Mani Manjil Compound near Garhi Mohinee Enterprises Gas Gali, Dehri, P.O. & P.S. Dehri, Dist. Rohtas & also holding shop in Mohalla Puli Road, Dehri, P.S. Dehri, District- Rohtas.
4. Arti Devi, D/o late Sripal Sharma W/o Hari Narayan Sharma, resident of Mani Manjil Compound near Garhi Mohinee Enterprises Gas Gali, Dehri, P.O. & P.S. Dehri, Dist. Rohtas & also holding shop in Mohalla Puli Road, Dehri, P.S. Dehri, District- Rohtas.
5. Radhika Devi @ Radha Devi D/o late Sripal Sharma W/o Ram Pravesh Vishwakarma, resident of Mani Manjil Compound near Garhi Mohinee Enterprises Gas Gali, Dehri, P.O. & P.S. Dehri, Dist. Rohtas & also holding shop in Mohalla Puli Road, Dehri, P.S. Dehri, District- Rohtas.
6. Sharda Devi, D/o late Sripal Sharma W/o Pappu Vishwakarma, resident of Mani Manjil Compound near Garhi Mohinee Enterprises Gas Gali, Dehri, P.O. & P.S. Dehri, Dist. Rohtas & also holding shop in Mohalla Puli Road, Dehri, P.S. Dehri, District- Rohtas.
7. Malti Devi, D/o late Sripal Sharma W/o Amit Kumar Sharma, resident of Mani Manjil Compound near Garhi Mohinee Enterprises Gas Gali, Dehri, P.O. & P.S. Dehri, Dist. Rohtas & also holding shop in Mohalla Puli Road, Dehri, P.S. Dehri, District- Rohtas.
8. Sharma Shanti @ Shanti Devi D/o late Sripal Sharma W/o Abhiranjan, resident of Mani Manjil Compound near Garhi Mohinee Enterprises Gas Gali, Dehri, P.O. & P.S. Dehri, Dist. Rohtas & also holding shop in Mohalla Puli Road, Dehri, P.S. Dehri, District- Rohtas.
9. Kanti Kumari @ Kanti Devi, D/o late Sripal Sharma W/o Amresh Kumar, resident of Mani Manjil Compound near Garhi Mohinee Enterprises Gas Gali, Dehri, P.O. & P.S. Dehri, Dist. Rohtas & also holding shop in Mohalla Puli Road, Dehri, P.S. Dehri, District- Rohtas.

... .. Appellant/s

Versus

Ruchi Singh W/o Shri Abhay Kumar Singh, Resident of Mohalla Bose Bagan, Lal Banglow, P.s- Dehri, P.o- Dalmianagar, District- Rohtas.

... .. Respondent/s



Appearance :
For the Appellant/s : Mr. Md. Waliur Rahman, Advocate
Mr. Puneet Siddhartha, Advocate
Mr. Aryan Sinha, Advocate
For the Respondent/s : Mr. S. S. Dwivedi, Sr. Advocate
Mr. Pandit Jee Pandey, Advocate
Mr. R.P. Tripathi, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

7 01-05-2025 This Second Appeal has been filed by the defendants–respondents–appellants against the judgment and decree passed by the learned Court of Appeal below.

2. The matter arises out of Eviction Suit No. 1 of 2007, filed by the plaintiff–appellant–respondent for eviction of the appellants on the grounds of *bona fide* personal necessity and default in payment of rent. The original defendant, namely Sripal Sharma (now deceased and duly substituted by his heirs during the pendency of the suit), contested the claim by denying the title of the plaintiff and further disputed the suit on the ground that no relationship of landlord and tenant existed between the parties, and therefore, the question of default in payment of rent does not arise.

3. The Eviction Suit was dismissed by the learned Civil Judge (Junior Division)–cum–Munsif, Dehri- On-Sone, Rohtas, vide judgment and decree dated 21.12.2020 passed in Eviction Suit No. 1 of 2007, which was thereafter challenged by the plaintiff by preferring Eviction Appeal No. 01 of 2021.



Upon hearing the parties and considering the materials available on record, the learned 4th Additional District and Sessions Judge, Rohtas at Sasaram, vide judgment and decree dated 05.01.2024 passed in Eviction Appeal No. 01 of 2021, set aside the judgment and decree of the learned Trial Court and decreed the suit in favour of the plaintiff.

4. Aggrieved by the judgment and decree passed by the learned Court of Appeal below, the defendants have preferred the present Second Appeal.

5. The case of the plaintiff, in brief, is that the suit premises belonged to and were owned by Shri Paresh Nath Sen, Ashok Kumar Sen, Kedar Nath Sen, and other co-sharers of the Sen family. The plot in question is recorded as C.S. Plot No. 337 under C.S. Khata No. 26, corresponding to Municipal Survey Plot No. 19, Municipal Khata No. 404, as described in Schedule 'A' of the plaint. It is further pleaded that the plaintiff acquired the suit premises, along with other plots of land, from Paresh Nath Sen and other co-sharers by virtue of two registered sale deeds; one executed and registered on 02.09.2002 and the another on 14.09.2002. Subsequently, the plaintiff came into possession of the purchased land, including the suit premises as the owner and title holder of the same since the date of



purchase. It is further pleaded that the vendors of the plaintiff had constructed a room, covered by a shed over the land of the suit premises. The original defendant, namely Sripal Sharma, father of the appellants, was inducted as a tenant by Paresh Nath Sen and others on a monthly rent of Rs. 1,000/-. The original defendant used to pay rent to the vendors of the plaintiff in accordance with the terms of an oral agreement.

6. It was further agreed that the original defendant would vacate the suit premises in the event of default in payment of rent for a period of two consecutive months. It was also agreed that the defendant would vacate the suit premises whenever the owner required the same for personal necessity. The defendant has been occupying the suit premises and carrying on the business of welding as a tenant. After the purchase of the suit premises, Paresh Nath Sen and others informed the defendant that the premises had been sold to the plaintiff, in presence of witnesses, and directed the defendant to pay rent to the plaintiff thereafter. It is also pleaded that the suit premises have been managed and looked after by the plaintiff through her father-in-law, Shri Ambika Prasad Singh. Thereafter, in the month of September 2002, after the purchase of the suit premises, the defendant and the plaintiff negotiated



and settled the terms of their agreement afresh through Shri Ambika Prasad Singh. It was agreed between the parties that the defendant would vacate the suit premises whenever the plaintiff requires the same for construction of a house or building. It was further agreed that the original defendant would pay rent for the suit premises at the rate of Rs. 1,000/- (Rupees One Thousand) per month, the rent for each current month was to be paid in the subsequent month.

7. The further case of the plaintiff is that the defendant regularly paid rent for the suit premises to the plaintiff until November 2005. The plaintiff used to collect the rent through her father-in-law, Shri Ambika Prasad Singh. It is further pleaded that the plaintiff was in need of constructing a building over the suit land and the other amalgamated portion of the plot. Accordingly, the plaintiff requested the defendant to vacate the suit premises by the end of December 2005, which made the defendant upset. After that, the defendant stopped paying rent from December 2005, as a result of which, the original defendant had not paid rent for more than two months. It is further case of the plaintiff that the M.S. Khatian of the disputed land was incorrectly recorded in the name of Radha Govind Jee. A suit for the correction of the Khatian is pending



before the competent Civil Court. When the original defendant refused to vacate the suit premises, the plaintiff filed an eviction suit against the original defendant, Sripal Sharma. The defendant appeared and filed his written statement, but he later died during the pendency of the suit and was substituted by his heirs.

8. The case of the defendant is that the suit premises, along with other lands, have been in possession of Shri Radha Govind Jee Temple/Trust, situated at Shivganj, Dehri, since 02.07.1938. It is further asserted that Paresh Nath Sen, Kedar Nath Sen and Tarak Nath Sen are the ancestors of the vendors of the plaintiff. The defendant contends that the said ancestors, on several occasions, attempted to usurp the property belonging to Shri Radha Govind Jee. The suit property is recorded in the Survey Khatian in the name of Shri Radha Govind Jee. It is further submitted that Tarak Nath Sen and Kedar Nath Sen filed writ application bearing CWJC No. 5186 of 1988 before this Court, wherein, by an order dated 19.09.1995, this Court restrained Tarak Nath Sen and others from alienating or transferring any property owned by Shri Radha Govind Jee. Further, it is submitted that the devotees of Shri Radha Govind Jee have filed Title Suit No. 33 of 2003 (Vinod Singh and others



vs. Anil Kumar Sen and others) with respect to the suit land, wherein the present plaintiff is impleaded as one of the defendants. The defendant further submits that another Title Suit No. 10 of 2004 has been filed by the vendors of the plaintiff before the Court of the learned 2nd Munsif, Sasaram, for a declaration of title with respect to the suit premises along with other lands, which is presently pending for adjudication.

9. The further case of the original defendant is that pursuant to the direction of this Court dated 19/09/1995, the Bihar Hindu Religious Trust Board, Patna, passed an order on 27/12/2004, declaring that the Radha Govind Jee Temple/Trust, Shivganj, is a public temple. The order further declared that the property, including Schedule A of the plaint, belongs to the temple and shall be treated as temple property. Therefore, the plaintiff has no right or title over the property mentioned in Schedule A of the plaint. It is further submitted that the vendor of the plaintiff filed an objection before the Assistant Superintendent Officer, who confirmed that the property, including Schedule A, is temple property. This order was not challenged by the vendor of the plaintiff and, therefore, stands as final and unchallenged. The defendant further contends that the plaintiff neither possessed nor owned the suit premises by



virtue of the alleged void sale-deeds; thus, no question of ownership arises. The defendant further submits that he has also raised objections regarding the nature of the suit land. It is further contended that the defendant was never a tenant either of the plaintiff or of her vendor. The defendant has been occupying the suit premises with the permission of the *Mandir* (temple) and has never paid any rent to the plaintiff up to November 2005. It is also submitted that Ambika Prasad Singh, the father-in-law of the plaintiff, was never authorized to collect rent in respect of the suit premises. In the absence of a landlord-tenant relationship, the question of stoppage of rent does not arise, and the plaintiff is not entitled to any relief.

10. After hearing the submissions made on behalf of the parties and perusing the material on record, including the judgment and decree of the learned court below, it appears that the learned appellate Court, being the final court of facts, after considering the pleadings of the parties and the evidence adduced, arrived at a clear finding that the defendant, in unamended paragraph 16 of the written statement, read with paragraph 2 of the plaint, admitted that the plaintiff purchased the suit premises and land from Paresh Nath Sen and his family through two sale-deeds. It is further observed that the stay order



passed by this Court on 30/12/1995 was not in relation to the suit property. Through a subsequent amendment to the written statement, the appellants-defendants claimed that the plaintiff purchased only a portion of plot no. 337, i.e., the *parti* land, with defined boundaries. This amendment was allowed after the conclusion of the trial, during which the defendant was permitted to withdraw the clear admission regarding the 'premises' existing on the land. The mention of 'Parti Awasiya Land' in the sale deed, was allegedly made by mistake, which conferred a right on other party (plaintiff). Further, the lower appellate Court held that this amendment changed the nature of the suit, resulting in its dismissal and causing significant injustice to the plaintiff. In light of the above legal considerations, the order dated 24/01/2020, wherein the amendment to the written statement was allowed, was set aside by the learned lower appellate court and it has been held that in view of the unamended written statement, the suit falls within the purview of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (for short 'the Act'), as the 'shed' is covered under the definition of 'building' given under Section 2(b) of the Act. Therefore, the lower appellate court held that the suit is maintainable.



11. With regard to the landlord-tenant relationship, the learned appellate Court has held that the plaintiff claimed that the original defendant paid rent from September 2002 to November 2005. However, when the plaintiff requested the original defendant to vacate the suit premises for personal necessity (i.e., for business expansion, as the suit premises are surrounded by the plaintiff's land), the defendant stopped paying rent. On the other hand, the defendant, in his original written statement, admitted the title of the plaintiff's vendor and the execution of the sale deeds, but contended that the sale deeds were void. This assertion was based on the fact that the vendors of the plaintiff were restrained by this Court in CWJC No. 5186 of 1988, by order dated 19-09-1995, from alienating the land/property of the Radha Govind Jee Temple, including the suit premises.

12. It is the admitted case of the original defendant that he is residing in the suit premises with the permission of the Radha Govind Jee Temple/Trust. However, he is neither paying rent nor license fees to the Temple/Trust, nor he is depositing the same in Court. During the course of arguments, the defendant also challenged the title of the plaintiff's vendor and claimed that Ext. 7 is a forged document. He contended that the



vendor of the plaintiff, namely Zamindar Mangal Prasad Singh, was not authorized to lease the said land to the ancestor of the plaintiff's vendor, as there is no evidence of the land being surrendered by Hanuman Ahir, who was the recorded raiyat in the Khatiyani for Fasali 1323 and 1327. It is further observed that the ancestor of the plaintiff's vendor, namely Shambhu Nath Sen, was a religious person who donated all property, except the suit property, to the Radha Govind Jee Trust. Subsequently, the legal heirs of Shambhu Nath Sen filed cases in the Calcutta High Court and obtained the release of land in return for a compensation sum of Rs. 25,500/-. Later, the Bihar Religious Trust Board claimed that the Trust was a public trust, against which the legal heirs of Shambhu Nath Sen filed a writ petition bearing CWJC No. 5185/1988 before this Court. This Court directed the Bihar Religious Trust Board to decide the issue by 30/12/1995. Meanwhile, this Court also restrained the petitioners from alienating the Trust property. The suit premises, i.e., Plot No. 337, was transferred in 2002, and moreover, this plot was not part of the Trust property. Ext-X, the Trust deed dated 02/07/1938; Ext-12, the order dated 29/03/2012 passed in Title Suit No. 54 of 2007; and Ext-16, the decree of Title Suit No. 248 of 2002, clearly establish that CS Plot No. 337 was/is



not part of the Trust deed dated 02/07/1938. It is further observed that the defendant disputed the title of the vendors, whereas neither the Radha Govind Jee Trust nor the legal heirs of Hanuman Ahir, the recorded raiyat in the year 1915, have filed any case or disputed the title of either the plaintiff or the vendors of the plaintiff. On the contrary, the descendants of Hanuman Ahir, namely Surajnath Singh and Vishwanath Singh (examined as PW-2 and PW-3, respectively, in Title Suit No. 54 of 2007), have fully supported the settlement of the land Vide Ext-7. Further, vide Ext-19, title in favour of the plaintiff over CS Plot No. 337, CS Khata No. 26, situated in village Pali, Dehri, has already been declared. In view of the aforesaid evidence and documents brought on record, the plaintiff has successfully established the entitlement of her vendors and her valid title over CS Plot No. 337, i.e., the suit property. It is further observed that the defendant has admittedly been residing in the suit premises with the permission of the Radha Govind Jee Temple/Trust. However, he has failed to produce any authorization letter on record or to examine any officer of the said Trust who could substantiate his claim of residing there with the permission of the temple. The plaintiff has proved through Ext-X that the suit premises, i.e., Plot No. 337, were



never part of the Radha Govind Jee Temple/Trust property. In these circumstances, it is difficult to understand how the temple could have given permission to the defendant to reside in the suit premises. Further, it is held that Ext-12 and Ext-16, read with Ext-X, clearly show that CS Plot No. 337 was/is not a part of the Deed of Trust dated 02/07/1938. It is also confirmed that an entry in the Khatiyan does not create or extinguish any right, title or interest in the property. It is also held that the Radha Govind Jee Trust has not filed any suit against the plaintiff reclaiming the suit premises. The learned appellate Court further held that the plaintiff-appellant has established her title over the suit premises, as her sale-deed has neither been challenged nor cancelled. Regarding the defendant's claim that tenancy has not been attorned, it is settled law that attornment is not essential. This view finds support in the case of ***Dr. Ambica Prasad Vs. Mohd. Alam & Anr***, reported in ***AIR 2015 SC 2459***, wherein the Hon'ble Supreme Court held that “*after the transfer of lessor's right in favour of the transferee, the latter gets all rights and liabilities of the lessor in respect of subsisting tenancy. It is further, held that the section does not insist that transfer will take effect only when the tenant attorns. It is well settled that a transferee of the landlord's right steps into the shoes of the*



landlord with all the rights and liabilities of the transferor landlord in respect of subsisting tenancy." The learned appellate court further held that when they were residing in the suit premises, as admitted by the defendants, and the plaintiff established her title through the sale-deed, the relationship of landlord and tenant was established beyond doubt, as held in the case of ***Maharana Pratap Singh Vs. Ambika Prasad Singh***, reported in **2023 (2) PLJR 321**.

13. Reliance has been placed in the case of ***Shamim Ara Naz & Anr. Vs. Mohammad Quamruddin***, reported in **1997 (1) PLJR 526** wherein this court has held that "*When the learned court below has come to a prima facie finding that the plaintiff established his ownership over the suit premises then the application ought not to have been rejected on the ground that there was no evidence of payment of rent by the defendant to the plaintiff or their vendor*". The defendant's assertion that he is residing in the premises with the permission of the temple has been carefully considered, but he has failed to substantiate this claim. The learned appellate Court further held that during the arguments, the plaintiff brought to the notice of this Court that several tenants, including Harijan Thana, Dehri, initially resisted vacating the rented premises on the grounds that no



landlord-tenant relationship existed between the plaintiff and the defendant. However, the court subsequently directed them to vacate the premises. The learned appellate Court further held that when a tenant denies the title of the landlord, the tenant is liable to be evicted without requiring evidence of default. Accordingly, the judgment and decree was set aside, and the suit filed by the plaintiff-appellant was decreed in her favour.

14. From the aforesaid facts and circumstances and the material available on record, it is quite apparent that the premises and the plot, in question, are not part of the Radha Govind Jee Trust/Temple. The defendant has denied the title of the plaintiff. It is also an admitted case of the defendant that he is residing in the suit premises. Moreover, the sale deed executed in favour of the plaintiff has neither been challenged nor cancelled by any Civil Court. In view of the judgment rendered by the Hon'ble Apex Court in the case of **Maharana Pratap Singh** (supra), there is no requirement of attornment by the tenant. The defendant claimed his right over the suit premises on the basis of permission granted by the Radha Govind Jee Trust/Temple. In this regard, the defendant has neither produced any oral nor documentary evidence to establish his case that he is a licensee under the Radha Govind Jee



Trust/Temple. Further, the suit premises constructed over C.S. Plot No. 337 within C.S. Khata No. 26, corresponding to Municipal Survey Plot No. 19, Municipal Khata No. 404, are not part of the Radha Govind Jee Trust deed dated 02.07.1938 (Ext. X). In the case of **Samim Ara Naz** (supra), this Court has held that *“when the learned court below has come to a prima facie finding that the plaintiff established his ownership over the suit premises then the application ought not to have been rejected on the ground that there was no evidence of payment of rent by the defendant to the plaintiff or their vendor. It is well settled that in a case where defendant denies the relationship, the court has to examine the material then available and come to a conclusion whether such denial or a dispute as to title of the plaintiff is bonafide or a mere pretence and if the court finds that there is no prima facie merit in the said denial then the defendant can be called upon to make deposit of rent”*.

15. In the present case, although the original defendant denied the title of the plaintiff and claimed his right as a licensee under the Radha Govind Jee Trust/Temple, after scrutiny of the material on record, the defendant has miserably failed to establish his claim of being a licensee.

16. In the aforesaid facts and circumstances, this



Court does not find any illegality in the impugned judgment and decree of the learned Court of Appeal below, nor does it find any substantial question of law involved in the instant Second Appeal, which is accordingly dismissed at this stage of hearing under Order XLI Rule 11 CPC.

(Khatim Reza, J)

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