

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.122 of 2025

1. Binod Kumar Son of Late Manik Chand Chaurashiya, Resident of Lah Bazar Salimpur, P.S. Chhapra, District- Saran.
2. Madan Prasad, Son of Late Manik Chand Chaurashiya, Resident of Lah Bazar Salimpur, P.S. Chhapra, District- Saran.
3. Murari Prasad, Son of Late Manik Chand Chaurashiya, Resident of Lah Bazar Salimpur, P.S. Chhapra, District- Saran.
4. Pramod Kumar, Son of Late Manik Chand Chaurashiya, Resident of Lah Bazar Salimpur, P.S. Chhapra, District- Saran.
5. Manoj Kumar, son of Late Manik Chand Chaurashiya, Resident of Lah Bazar Salimpur, P.S. Chhapra, District- Saran.
6. Rajesh Kumar, Son of Late Manik Chand Chaurashiya, Resident of Lah Bazar Salimpur, P.S. Chhapra, District- Saran.
7. Mira Devi, Wife of Late Mohan Prasad, Resident of Lah Bazar Salimpur, P.S. Chhapra, District- Saran.

... .. Appellant/s

Versus

Rajendra Prasad Son of Late Harsewak Prasad, Resident of Mohalla- Utsav
Vatika Salempur Kahari Station Road, P.S. Chhapra, District- Saran.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. J.S. Arora, Sr. Adv. Mr. Rakesh Kumar, Adv. Ms. Supriya Kumari, Adv. Ms. Prakriti Prakash, Adv. Mr. Prabhat Ranjan Singh Adv.
For the Respondent/s	:	Mr. Nagendra Rai, Adv. Mr. Navin Nikunj, Adv. Mr. Koshalendra Rai, Adv.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

8 31-10-2025 Heard Mr. J.S. Arora, learned senior counsel assisted

by Mr. Rakesh Kumar, learned counsel for the

defendants/appellants and Mr. Nagendra Rai, learned counsel

for the plaintiff/respondent.

2. This Second Appeal has been filed against the



judgment of affirmance passed by learned Additional District Judge-XIII, Saran at Chapra, on 09.01.2025 in Eviction Appeal No. 2 of 2023 whereby, the judgment and decree dated 18.09.2023 passed by the learned Sub-Judge-XIII, Saran at Chapra, in Eviction Suit No. 01 of 2016 has been upheld. The plaintiff/respondent had filed the suit for eviction on the ground of personal necessity and default in payment of rent from October, 2015 till filing of the suit and also for arrears of rent for nine months at the rate of Rs. 10,000/- per month total amounting to Rs. 90,000/-.

3. The case of the plaintiff, in short, is that Holding No. 605 is ancestral property and Holding No. 604 is self-acquired property of the father of the plaintiff/respondent. The father of the plaintiff was *Mokhtar* and acquired so many lands and houses. Both the aforesaid holdings were in one bloc having an area of 10,000 Sq. ft. i.e. approx 7 *Kattha* land, wherein, several tenants resided at various time and against them the plaintiff and his ancestors filed eviction cases. It is further pleaded that two rooms of *pucca* house bearing Holding Nos. 604 and 605 and *Sahan* land (Schedule-I land) of that room was earlier under the tenancy of Parmeshwar Singh and rest of this house and *Sahan* (Schedule-1) was under tenancy of father of



the defendant, namely, Manikchand Prasad and his grandfather Kaptan Prasad, which was let out on 01.11.1966 by the elder brother of the plaintiff, namely, Jugal Prasad, who was *Karta* of the joint family only for one year. Earlier, Parmeshwar Singh was tenant of the said premises, who vacated the same 15-20 years back through process of court in Eviction Suit.

4. Further case of the plaintiff is that the father of the defendant, namely, Manikchand Prasad and grandfather Kaptan Prasad, who were permanent residents of Mohalla-Katra, P.S. Bhagwan Bazar, requested the plaintiff's elder brother, namely, Jugal Prasad for tenancy of the land in dispute for residential as well as business purpose and the same was let out by Jugal Prasad. A rent agreement was executed by Jugal Prasad in favour of Manikchand and Kaptan Prasad on 30.10.1966 for one year that continued even after lapse of the said period. Earlier, rent was Rs. 75/- per month and monthly rent was enhanced time to time. After the death of Kaptan Prasad, his only son Manikchand Prasad continued to reside with his family and run his coal and grocery business in the premises, in question, which still continues. Out of seven sons of Manikchand Prasad, one son died during lifetime of his father, who are defendants in the present suit. Defendant No. 1, namely, Binod Kumar is elder



among all brothers and is the *Karta* in his joint family. After death of Manikchand Prasad, Defendant No. 1 was paying rent to the plaintiff. At the time of commencement of said tenancy, old roofed house and *Sahan* land was situated in the East and South direction of the house but later on the request of Manikchand Prasad, Jugal Prasad built 1044 Sq.ft. tin shed in West direction of Southern *Sahan* area and constructed a small tin shed room in eastern part of the house. In this shed room defendant runs *Aata Chakki* and grocery shop and uses the land in dispute for residential as well as business purpose. The rent of the said suit premises was enhanced time to time and in the month of January 2010, the rent was enhanced to Rs. 10,000/- and was paid by Manikchand Prasad and after his death, the Defendant No. 1 as *Karta* paid the same to the plaintiff. The plaintiff took grocery from the shop of the defendants and the amount was also adjusted in rent. It is further case of the plaintiff that, initially, Jugal Prasad used to take rent and after him plaintiff used to take rent because younger brother, namely, Lalan Prasad was residing outside for job. It is further contended that Jugal Prasad used to maintain a Register for rent receipts. Later on, due to old age being unable, he could not issue rent receipts and also couldn't maintain the said Register



but when the plaintiff started getting the rent, he used to mention the received rent amount in the defendants notebook. The said Jugal Prasad died issueless leaving behind his two full brothers. Later on, a partition took place between Lalan Prasad and the plaintiff. Hence, area of 7 *kattha* having Holding Nos. 604 and 605 from East and West direction was allotted to Lalan Prasad and the plaintiff respectively. The plaintiff used to give rent share of the said premises to Lalan Prasad. It is further contended that Lalan Prasad constructed a three storied building in his own share and let out the same to different persons. Two rooms of the building, in question, which was under tenancy of Parmeshwar Singh was also demolished and covered under newly constructed building. It is further pleaded that in the year 2015, during lifetime of Manikchand Prasad, the plaintiff requested for enhancement of rent amount but, in the meantime, Manikchand died without any increment in rent. Later on, when plaintiff requested for the same to Defendant No. 1, he evaded, then he filed a Rent Fixation Suit No. 02 of 2016 before the House Controller-cum-SDM for rent fixation due to which the defendant got annoyed and stopped payment of rent from November 2015 till filing of the suit.

5. It is further case of the plaintiff that he has personal



and *bonafide* necessity of the suit premises, in question, as his two sons are unemployed and in necessity for starting a hotel business and the said premises is situated in prime commercial area and the said premises is fit to run a hotel and there is a need of parking area also. Hence, partial Eviction is not sufficient to fulfill the requirement of the plaintiff. The plaintiff requested the defendant to pay the rent and vacate the suit premises for his personal necessity but the defendant evaded to vacate the suit premises and started creating nuisance. Hence, the suit was filed.

6. It is further pleaded in the plaint that in a rent fixation case, the defendants appeared and filed their written statement and accepted only Jugal Prasad as a title holder of the premises in question. In the written statement, he further contended that the said building/premises was in a dilapidated condition and vacant since long that was occupied forcefully by Kaptan Prasad (father of Manikchand Prasad). Since then defendants are residing in that premises and had also constructed/ repaired the same.

7. On the other hand, the defendants/appellants appeared in the suit and filed their written statement and denied the relationship of landlord and tenant between the parties and



contended that defendants' grandfather Kaptan Prasad forcefully entered into the premises in question on 19.02.1971. The suit premises, in question, was never let out by Jugal Prasad to Manikchand Prasad and Kaptan Prasad. The deed of lease dated 30.10.1966 is forged and fabricated and refused to accept that after death of Manikchand, his eldest son Defendant No. 1 became *Karta* of the joint family and paid rent to the plaintiff and also denied that Jugal Prasad had constructed room on the said premises. Manikchand never paid rent to the plaintiff at the rate of Rs. 10,000/- per month. Defendants also denied title, possession and partition between plaintiff and his brother Lalan Prasad regarding the suit premises. The building in question having Holding Nos. 604 and 605 were under tenancy of Rameshwar Singh and was demolished and covered under newly constructed three storied building by Lalan Prasad and let out the same to the different persons and also denied the arrears of rent amounting to 90,000/-, unemployment of the plaintiff's sons and the personal necessity of the suit premises.

8. Further case of the defendants is that the suit premises was of Jugal Prasad and the house, in question, was in a dilapidated condition lying vacant for several years and no one was residing. It is further contended that grandfather of the



defendant Kaptan Prasad with his family entered in the said house forcefully on 19.02.1971 and ousted Jugal Prasad. Since then Kaptan Prasad and his successor defendants are in possession over the said premises. The house was repaired and made habitable by Kaptan Prasad and he started residing in the said premises. Later on, *Aata Chakki* (flour mill) and grocery shop were opened by the defendants and also a godown was constructed. The defendants further pleaded that there was no right, title and possession of the plaintiff over the disputed land and it was only share of Jugal Prasad. Defendants and his ancestors are residing since 19.02.1971 till date in the said premises. Some are residing for more that 12 years which confers title due to adverse possession. Further, it is contended that the written statement was filed by Defendant No. 1 in Rent Fixation Case No. 02 of 2016 is correct. In rent fixation proceeding, the plaintiff neither mentioned the date of commencement of the tenancy nor the amount of the previous rent was mentioned by him. The deed of lease and rent agreement dated 30.10.1966 is forged and fabricated.

9. On the basis of pleadings and upon consideration of rival contentions, the following issues were framed by the Trial Court which is as follows:-



- (i). Whether the present suit is maintainable?
- (ii). Whether the plaintiff has sufficient cause of action to file this suit?
- (iii). Whether there is landlord and tenant relationship between plaintiff and defendants with regard to Schedule-I property?
- (iv). Whether the plaintiff's personal necessity of the suit premises is *bonafide*?
- (v). Whether partial eviction will satisfy the plaintiff's requirement?
- (vi). Whether the plaintiff is entitled to get the rent from the defendants as fixed by the House Controller?
- (vii). Whether defendant has become defaulter due to non payment of rent?
- (viii). Whether the plaintiff is entitled to get compensation or any relief against the defendants?

10. The plaintiff in support of his claim on the aforesaid issue adduced altogether five witnesses and got exhibited eight exhibits i.e. Exhibits 1, 2, 3, 4 , 5, 5A, 6, 7 and 8 in Series. On the other hand, defendants/appellants examined seven witnesses and got exhibited Ext. A to Ext. L.



11. The learned Trial Court after considering the materials brought on record and upon hearing the parties, decreed the suit and ordered the defendants to vacate the suit premises mentioned in Schedule-I of the plaint and pay the arrears of rent from October, 2015 to July, 2016, total ten months at the rate of Rs. 10,000/- as well as further directed to pay rent from date of filing of the suit till the vacation of the suit premises at the rate of Rs. 41,340/- per month. The learned Trial Court while deciding the Issue No. 3 held that the defendants have set up the case of their title in their written statement on the basis of adverse possession while the plaintiff has proved the tenancy and relationship of landlord and tenant. It is further held that the plaintiff has *bonafide* requirement of the suit premises for starting hotel business for his sons. The plaintiff on the point of non-payment of rent has examined himself and got decided that the defendant is a tenant of the plaintiff and hence due to non-payment of rent, it is established that the defendants are the defaulter in payment of rent. On the basis of rent fixed by the House Controller, the plaintiff is entitled to the entire rent till the recovery of possession. The learned Trial Court also considered the partial eviction and held that the plaintiff has stated that partial eviction shall not satisfy his requirement since hotel



business would require parking, kitchen, staff rooms etc. and since the defendants had already been held to be defaulter hence they are required to be evicted from whole of the premises.

12. Being aggrieved, the defendants filed Eviction Appeal No. 02 of 2023 against the judgment and decree dated 18.09.2023 passed in Eviction Suit No. 01 of 2016. The learned Appellate Court after hearing the parties and considering the materials on record including the judgment of Trial Court dismissed the appeal and affirmed the judgment and decree passed by the Trial Court.

13. Having regard to the facts and circumstances, submissions of the parties and materials on record including the judgments of the courts below, it appears that the learned court of appeal below, which is the final court of facts, after considering the pleadings of the parties and the evidence adduced by them came to a clear finding that there is relationship of landlord and tenant between the parties and it is admitted by the defendants that the suit premises belonged to Jugal Prasad which was in dilapidated condition and was lying vacant for several years. Grandfather of the defendant, namely, Kaptan Prasad with his family members entered in the said house forcefully on 19.02.1971 and since then they are residing



i.e., for more than 12 years which confers title due to adverse possession. The agreement of tenancy Ext. 8 has established the relationship of landlord and tenant between the plaintiff and father and grandfather of the defendants. It is apparent from the record that defendants have not made any statement regarding non-payment of rent, rather, has claimed themselves as title holder. It is established that the defendants are the tenants of the plaintiff and it was clear view of the learned Trial Court that the defendants on account of non-payment of rent has become defaulter. The rent was fixed by the House Controller at the rate of Rs. 41,340/- per month. It is admitted case of the parties that rent was not paid ever. The suit premises is needed by the plaintiff for personal necessity and examination of the persons to do business is not necessary. The plaintiff has proved his *bonafide* requirement. The learned Appellate Court also discussed about the partial eviction. The question of partial eviction is not rebutted and pleaded by the defendants and the witnesses of the plaintiff has successfully proved that the premises in question is required for hotel business and which also requires parking, kitchen, staff rooms etc. which have been proved by the witnesses of the plaintiff. Since the defendants had become defaulter, they would be evicted from whole of the



premises. This issue has been decided by the courts against the defendants. It is further held that there is no infirmity or illegality in the judgment of the Trial Court. Hence, the Appellate Court affirmed the judgment of the learned Trial Court.

14. Considering the aforesaid facts as discussed above, the defendants had accepted the ownership of the suit premises of Jugal Prasad, who is full brother of the plaintiff. The said Jugal Prasad died issueless. After his death, Holding Nos. 604 and 605 was partitioned between Lalan Prasad and the plaintiff. PW-1 (plaintiff himself) and PW-2 proved the Exts. 1 to 1E, PW-3 proved the factum of relationship between the plaintiff and the defendant, PW-4 proved the rent receipt issued by Chapra Nagar Parishad and Ext. 2 to 2C notice issued by Nagar Parishad (Municipality). It is apparent from Ext. 7A that Title Suit No. 56 of 1979 was filed by the plaintiff, Lalan Prasad and mother of the plaintiff and widow of Jugal Prasad which shows the title of the plaintiff. In Title Suit No. 56 of 1979, Parmeshwar Singh filed written statement, which is Ext. 7A. In the said exhibit *vide* paragraph no. 14, it is clearly stated that Manikchand Prasad was also tenant of the said suit premises. The decree passed in Title Suit No. 56 of 1979 (Ext. 3A) proves



the title of the plaintiff. From Ext. 4, which is compromise decree passed in Partition Suit No. 184 of 1986, it reveals that Holding Nos. 604 and 605 were partitioned between the plaintiff and his brother Lalan Prasad some 30 years before the filing of the present suit. *Kirayanama* i.e. Ext. 8 is executed by Jugal Prasad in favour of Kaptan Prasad and Manikchand Prasad. The claim of the defendants that the said *Kirayanama* is forged and antedated has not been established by any cogent evidence. Apart from the said documents, Ext. 6 and 6A proves that rent was received by Jugal Prasad and Manikchand Prasad and Parmeshwar Singh paid the rent which was mentioned in the notebook of Jugal Prasad. The said notebook also reveals that the tenants also paid the rent to Jugal Prasad which reveal that the father of the defendants were the tenant of Jugal Prasad.

15. Considering all aspects of the matter, it is held that there is relationship of landlord and tenant between the plaintiff and the defendants.

16. 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 defendants assertion that grandfather, namely, Kaptan Prasad entered in the suit premises forcefully and ousted Jugal Prasad and since then they are residing for more than 12 years which confers title due to adverse possession. The claim of adverse possession has not been established by any cogent evidence nor the same is required to be looked into in the Eviction Suit. When the tenant is in possession of the suit premises, no question of adverse possession arise. Both the courts below have held that the plaintiff has bonafide and reasonable requirement of the suit premises for personal necessity as his sons required the suit premises to establish hotel business.

17. In the case of ***Balwant Singh @ Bant Singh Vs. Sudarshan Kumar*** reported in (2021) 15 SCC 75, the Apex Court has held that "*adequacy or otherwise of the space available with the landlord for the business in mind is not for the tenant to dictate.*" The plaintiff has been able to prove that the defendants are defaulter in payment of rent of the suit premises and the plaintiff is in reasonable and *bonafide* need of the suit premises. Hence, the learned courts below are quite



justified in arriving at the finding with regard to default as well as *bonafide* requirement.

18. Having considered 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 question of law much less substantial question of law involved in the instant Second Appeal.

19. Accordingly, this Second Appeal is dismissed at the stage of hearing under “Order XLI Rule 11 CPC.”

20. Pending interlocutory applications, if any, shall stand disposed of.

(Khatim Reza, J)

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