

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.153 of 2024

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1. Mostt Shanti Sar Sahay wife of Late Shyam Sundar Sar Sahay, resident of Mohalla Sikargarh Tola Kahalgaon P.S. Kahalgaon District Bhagalpur.
 2. Rakesh Kumar Sar Sahay, son of Late Shyam Sundar Sar Sahay, resident of Mohalla Sikargarh Tola Kahalgaon P.S. Kahalgaon District Bhagalpur.
 3. Rajesh Sar Sahay @ Rajesh Kumar Sar Sahay, son of Late Shyam Sundar Sar Sahay, resident of Mohalla Sikargarh Tola Kahalgaon P.S. Kahalgaon District Bhagalpur.
 4. Ravi Kumar Sar Sahay, son of Late Shyam Sundar Sar Sahay, resident of Mohalla Sikargarh Tola Kahalgaon P.S. Kahalgaon District Bhagalpur.

... .. Appellant/s

Versus

1. Prabhat Kumar Sah son of Late Nitya Nand Sah and Late Malti Devi, resident of Mohalla Chaudhary Tola Ward No. 12 Kahalgaon, P.S. Kahalgaon, District Bhagalpur.
2. Shekhar Sah @ Shekhar Kumar, son of Late Nitya Nand Sah and Late Malti Devi, resident of Mohalla Chaudhary Tola Ward No. 12 Kahalgaon, P.S. Kahalgaon, District Bhagalpur.
3. Pratima Kumar, wife of Vishwajeet Sah, Daughter of Late Nitya Nand Sah and late Malti Devi, resident of Mohalla Chaudhary Tola Ward No. 12 Kahalgaon, P.S. Kahalgaon, District Bhagalpur.
4. Poonam Kumari Bhagat, wife of Shomen Bhagat, Daughter of Late Nitya Nand Sah and late Malti Devi, resident of Mohalla Chaudhary Tola Ward No. 12 Kahalgaon, P.S. Kahalgaon, District Bhagalpur.
5. Prerna Kumari, wife of Chandan Sah, Daughter of Late Nitya Nand Sah and late Malti Devi, resident of Mohalla Chaudhary Tola Ward No. 12 Kahalgaon, P.S. Kahalgaon, District Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Suman Kumar, Adv. Mr. Amar Nath Singh, Adv. Mr. Satya Prakash, Adv. Mr. Subodh Chandra Jha, Adv.
For the Respondent/s	:	Mr. Mahesh Narayan Parbat, Sr. Adv. Mr. Ved Prakash Srivastva, Adv.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

4 26-09-2025 Heard learned counsel for the appellants as well
as learned senior counsel for the respondents.



2. This Second Appeal has been filed against the judgment and decree dated 29.02.2024 passed in Title Eviction Appeal No. 141 of 2017 by the learned Additional District Judge-15th, Bhagalpur whereby the judgment and decree dated 05.07.2017 passed by the learned Munsif, Kahalgaon in Title Eviction Suit No. 01 of 2013 has been reversed.

3. The defendant is the appellants and the plaintiff is the respondents in this appeal.

4. The Eviction Suit has been filed on the ground of personal necessity and default. The learned Trial Court has dismissed the suit on both the counts.

5. Being aggrieved by the aforesaid judgment of the Trial Court, the plaintiff preferred Title Appeal No. 141 of 2017, which was allowed and accordingly, decreed the suit.

6. Considering the submissions made by the parties and materials on record as well as judgments of courts below, it is apparent from the judgment of Appellate Court, which is final court of facts specifically held that DW-4 himself admitted that he has no proof of payment of



rent for the month of March, 2013 and April, 2013. The said facts have been stated in cross examination at paragraph 52 of his cross examination and further held that defendant was defaulter of paying rent of two consecutive months i.e. March, 2013 and April, 2013. It is also mentioned that despite the order of Trial Court with regard to payment of rent from March, 2013 to May, 2017 itself shows that the defendant was defaulter from March, 2013 to May, 2017 despite that the learned Trial Court failed to consider that during pendency of the suit, the defendant also defaulted for payment of rent since March, 2013 to May, 2017. So far personal necessity is concerned, the learned Appellate Court elaborately discussed the evidence of the plaintiff and also evidence of the defendant. Especially, PW-4, Shekhar Kumar, who is one of the sons of original plaintiff, who specifically stated in his evidence that he is in necessity to open a grocery shop in the suit premises. PW-5, Malti Devi (plaintiff) herself deposed in her evidence that she has two sons, who are unemployed and further deposed that she is in necessity to get the rented shop vacated as she wants to open a grocery shop for her unemployed son. The learned



Appellate Court specifically mentioned the evidence of DW-4 (defendant), who stated that both sons of Malti Devi are not doing any job and thereafter he contradicted his statement saying that Shekhar Kumar has his own business at Kahalgaon but he did not know where he was doing his own business. The defendant failed to prove that Shekhar Kumar was engaged in any business and also he is not unemployed. The defendant also did not controvert that the plaintiff has any other shop except the present one.

7. After considering the evidence of the parties, the learned Appellate Court has held that Malti Devi (plaintiff) has no shop or building except this one, therefore, she has personal necessity of shop for use of her son's business, for grocery, reasonably and in good faith.

8. So far question of partial eviction is concerned, the learned Appellate Court has considered that width of the shop is mentioned as 13.09 feet x 10 feet and *verandah* 13x9x6 feet adjacent South of the shop and considering the nature of requirement of business is not possible by partial eviction. There is neither any averment/pleading of the defendant with regard to partial eviction nor any cross



examination on this point and hence, the learned Appellate Court decreed the suit on both the grounds.

9. Having considered the submissions made by the parties and materials on record, it is admitted fact that there is relationship between the plaintiff and the defendant with regard to tenancy. The question of default has been proved by the order passed by the Trial Court with regard to payment of arrers of rent from March, 2013 to May, 2017 which reveals that the defendant has not paid during pendency of the suit and there is no case of defendant that the plaintiff has already paid rent from March, 2013 to May, 2017. This default itself proves that the defendant has failed to pay the rent from March, 2013 to May, 2017. The question of necessity has been proved by the plaintiff as well as the defendant also admitted that sons of plaintiff are unemployed. It is also apparent from the record that the defendant DW-4 admitted that he had not paid rent which is mentioned in paragraph 52 of his deposition that he has no proof of payment of rent for the month of March, 2013 and April, 2013.

10. Considering the aforesaid facts and



circumstances of the case and submissions made by the parties, it is apparent from the record that the learned Appellate Court has rightly decided the case in favour of the plaintiff and decreed the suit. There is no question of law much less substantial questions of law involved in this case.

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

(Khatim Reza, J)

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