

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.201 of 2019

-
1. Satyajit Das S/o Late Sushanto Kumar Das Resident of Day Market, P.s.- Kishanganj, Distt.- Kishanganj
 2. Sujit Kumar S/o Late Sushanto Kumar Das Resident of Day Market, P.s.- Kishanganj, Distt.- Kishanganj

... .. Appellant/s

Versus

1. Dr. S A Hasnat Since deceased represented by his legal heirs on substitution, Resident of Line Mohalla, P.s.- Kishanganj, Distt.- Kishanganj
- 2.1. Sahera Begum wife of Late Syed Shamsu Zoha, resident of Line Masjid, Ward No. 16, Police Station-Kishanganj, District-Kishanganj.
- 2.2. Salma Zoha daughter of Syed Shamsu Zoha, resident of Line Masjid, Ward No. 16, Police Station-Kishanganj, District-Kishanganj.
- 2.3. Wajeda Shams Parween, daughter of Syed Shamsu Zoha, resident of Line Masjid, Ward No. 16, Police Station-Kishanganj, District-Kishanganj.
- 2.4. Saba Shams Parween, daughter of Syed Shamsu Zoha, resident of Line Masjid, Ward No. 16, Police Station-Kishanganj, District-Kishanganj.
3. Sayed Badru Joha S/o Dr. S. A. Hasnat Resident of Line Mohalla, P.s.- Kishanganj, Distt.- Kishanganj
4. Mrs. Afjalum Nisha D/o Dr. S.A. Hasnat Resident of Line Mohalla, P.s.- Kishanganj, Distt.- Kishanganj
5. Mrs. Aisa Bano D/o Dr. S. A. Hasnat Resident of Line Mohalla, P.s.- Kishanganj, Distt.- Kishanganj
6. Mrs. Johra Yasmin D/o Dr. S. A. Hasnat Resident of Line Mohalla, P.s.- Kishanganj, Distt.- Kishanganj
7. Mrs. Rozina Shamim D/o Dr. S. A. Hasnat Resident of Line Mohalla, P.s.- Kishanganj, Distt.- Kishanganj

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Mahasweta Chatterjee, Advocate
For the Respondent/s	:	Mr. Gautam Bose, Sr. Advocate
		Mr. Rohit Mishra, Advocate
		Mr. Indraneel Sen Gupta, Advocate
		Mr. Ajay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

13 07-01-2025

This Second appeal has been filed against judgment
and decree of concurrent finding dated 25.04.2016 passed in



Eviction Appeal No. 04 of 1996 by the Additional District Judge-II, Kishanganj whereby, the judgment and decree dated 14.03.1996 passed by Munsif 2nd, Kishanganj in Eviction Suit No. 05 of 1990 has been upheld.

2. The aforesaid suit has been filed for eviction of the defendants from the suit premises on the ground of default. It is further case of the plaintiffs that original defendant was his tenant at the rental of Rs. 120/- per month and after payment of rent, rent receipt was being issued in favour of defendant by the plaintiffs. It is further case of the plaintiffs that original defendant has defaulted in payment of rent from the month of September, 1989 upto the month of April, 1990 i.e. total eight months amounting to Rs. 960/- and thus he is liable to be evicted from the suit premises. It is further pleaded that suit property has been recorded in the Revisional Municipal Survey Khatiyan in the name of plaintiffs. Accordingly, the plaintiffs are paying the ground rent to the State of Bihar and holding tax to the Municipality. It is further pleaded that the Karpardaz of the plaintiffs several times requested the defendant to pay the current rent as well as arrears of rent but defendant on one pretext or other evaded payment of the same. The plaintiffs constrained to file the present suit against the original defendant



for vacating the suit premises on the ground of non payment of rent of eight months.

3. On summons, the defendant appeared and filed the written statement and denied the relationship of landlord and tenant between the plaintiffs and defendant. The original defendant admitted that he was inducted into the suit premises by late Abdul Hayat (brother of plaintiffs) on monthly rental of Rs. 20/- in the year 1957 and since then the defendant has been paying rent to the landlord till he stopped payment after the death of Abdul Hayat. The suit property is joint property of heirs of Syed Abdul Quadir. Plaintiffs are not the exclusive owner of the said property. It is vehemently contended that the suit is bad for non joinder of necessary parties, who are co-sharers of the suit property.

4. After hearing the parties and scrutinizing the pleadings and materials on record as well as evidence adduced by them, the learned Trial Court held that there is a relationship of landlord and tenant between the parties and defendant-tenant is defaulter in payment of rent. Thus, he is liable to be evicted from the suit premises and decreed the suit.

5. Being aggrieved by the aforesaid judgment and decree, the defendant-tenant filed Eviction Appeal No. 04 of



1996. On considering the submissions of the parties and materials on record, the learned Appellate Court has affirmed the judgment of Trial Court and held that the plaintiffs have succeeded in proving the relationship of landlord and tenant and original defendant himself admitted that he has not paid the rent after 31.08.1966 and consequently, the defendant has been declared as a defaulter.

6. The learned counsel for the appellants submits that the original defendant was the tenant of Abdul Hayat and not the brother of Abdul Hayat. Learned counsel further submitted that P.W. 13 namely, Syed Shamsuzzoha (plaintiff) stated in his cross examination that the property in question, originally belongs to his ancestor (grandfather). However, in absence of any partition, the plaintiff could not have to be considered to be the 16 Annas owner of the property. It is also admitted by the original defendant that he stopped payment of rent on service of notice under Section 106 of T.P. Act in the year 1966. The relationship of landlord and tenant was till 31.08.1966. It is further submitted that some documents have been filed by the defendant to show that he is in possession of the suit premises i.e. sanction letter for repair of building and electricity bill in support thereof.



7. On the other hand, learned counsel for the plaintiffs submitted that some documents have been filed on behalf of the plaintiffs i.e. rent receipts issued by the plaintiffs, which shows the relationship of landlord and tenant between the plaintiffs and defendant. The Trial Court has said that the relationship of landlord and tenant has been established by the plaintiffs and there is default in payment of rent which has been affirmed in appeal by the learned Appellate Court below.

8. Considering the aforesaid facts and circumstances of the case as well as averments made by the parties and materials on record, the main question raised by the appellants-defendant is that the suit is not maintainable in absence of other co-sharers who have share in the suit premises and the question of title is also raised by the appellants. It is well settled principal of law that any co-owner or co-landlord can file a suit for eviction and question of title to the suit premises is not germane for the decision of the eviction suit. The defendant never claimed any title while admitting that he is tenant of Abdul Hayat, who is full brother of original plaintiff.

9. Having considered the submissions of the parties as well as materials on record, it is quite apparent that the impugned judgment and decree of the courts below are covered



by the findings of fact and no question of law, much less substantial questions of law arises for consideration in the instant Second Appeal.

10. Accordingly, this appeal is dismissed at the stage of hearing under Order XLI Rule 11 of the Code of Civil Procedure.

11. Interlocutory applications, if any, shall stand disposed of.

12. The order of stay dated 07.08.2019 passed in the instant Second Appeal stands vacated.

(Khatim Reza, J)

Sankalp/-

U			
---	--	--	--

