

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.323 of 2023

=====

Amrendra Narayan Pathak S/o Late Junglee Pathak R/o Village and Post-
Neazipur (Raghuvansh Pathak ke Dera) P.S. and Anchal Simri District-Buxar.

... .. Appellant/s

Versus

1. Sumit Saurabh S/o Late Rajeev Ranjan Lal R/o Village-Badka Sindhanpura,
P.S. and Anchal-Simari Dist-Buxar (Bihar) at Present Kamal Path Dumrao
Behind Raj Petrol Pump, P.O. Dumrao Textile, District-Buxar.
2. Suman Saurabh S/o Late Rajeev Ranjan Lal R/o Village-Badka
Sindhanpura, P.S. and Anchal-Simari Dist-Buxar (Bihar) at Present Kamal
Path Dumrao Behind Raj Petrol Pump, P.O. Dumrao Textile, District-Buxar.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Shashi Shekhar Dwivedi, Sr. Advocate Mr. Parth Gaurav, Advocate
For the Respondent/s	:	Mr. Rajendra Narayan, Sr. Advocate Mr. Shashank Shekhar Sinha, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

12 29-04-2025 Heard Mr. Shashi Shekhar Dwivedi, learned senior
counsel for the appellant and Mr. Rajendra Narayan, learned
senior counsel for the respondents.

2. This Second Appeal has been filed against the
judgment and decree dated 17.07.2023 passed in Eviction
Appeal No. 36 of 2019 by the learned Additional District Judge
III, Buxar whereby the judgment and decree dated 24.04.2019
passed in Eviction Suit No. 01 of 2004 by the learned Munsif,
Dumraon, Buxar has been affirmed.

3. The aforesaid Eviction Suit was filed on the ground
of personal necessity and default in payment of rent. The said



suit was decreed. Against that Eviction Appeal No. 36 of 2019 was filed which too was dismissed.

3. The case of the plaintiff is that the suit premises was purchased by the mother of the plaintiff on 24.01.1989 having an area of 5 kathas. The mother of the plaintiff-respondent constructed the boundary wall as well as a room covered by tin shed. The defendant approached the plaintiff for letting out the suit premises. The tenant-defendant inducted in the suit premises in March, 1990 at the monthly rental of Rs. 500/-. The defendant-tenant did not make the payment of rent from January, 2001 to December, 2003. The plaintiff sent Advocate's notice to the defendant for payment of arrears of rent and also for vacating the suit premises, in question, as the plaintiff has personal necessity for the suit premises. On refusal, the present suit was filed.

4. On summon, defendant appeared and filed his written statements and denied the relationship of landlord and tenant. It is further submitted that that actually the suit premises was taken in the name and style "D&P Pharma Enterprises". It is also asserted that the suit land was purchased jointly by the defendant as well as plaintiff and the consideration money for the same was paid equally by them. It is also stated in the



counter claim of the defendant that the suit property was purchased through a registered sale deed and it belongs to both the plaintiff and defendant as both of them have paid a sum of Rs. 10,000/- as consideration money and both are owners of equal proportions of purchased land and that on this basis the disputed suit property be partitioned in equal half.

5. It is also pleaded that the plaintiff had entered into partnership deed wherein plaintiff agreed that defendant would be liable to half share of the purchased land. It is submitted that on 21.07.1987 defendant borrowed Rs. 25,000/- from Chanki Branch of the Indian Bank. It is also pleaded that on 15.09.1989 plaintiff and defendant borrowed another Rs. 25,000/- from the same bank and from this money the disputed suit land was purchased. On 23.11.1990 another sum of Rs. 37,550/- was borrowed from the same bank and from this money the boundary wall and a room and tin shed was constructed at the disputed suit premises.

6. Considering the averments made by the parties as well as judgments of the learned Court below, the learned Appellate Court, which is final court of facts, has clearly held that the plaintiff has successfully proved her case on the point of default in payment of rent. The claim of the plaintiff is that since



the property, in question, was not jointly purchased, there is no question that any right and title of the defendant. This aspect of the matter has been dealt by the learned Trial Court as well as Appellate Court. The plaintiff has filed registered sale deed (Ext. 1) which shows that the said property was purchased by the original plaintiff (mother of respondents). The defendant has not filed any chit of paper to show that the said land was purchased by both plaintiff and defendant jointly.

7. Apart from the above facts, all the oral evidences adduced by the plaintiff supported the case of the plaintiff. On comparison, the defendant has vehemently denied the title of plaintiff but has failed to produce any document that the defendant has got valid title over the disputed suit property. It is also admitted by the defendant that he handed over the suit premises to his brother namely, Kailash Bihari, who runs the Pole and Beem factory from 1992. The plaintiff has proved and established the relationship of landlord and tenant. Since the property, in question, was registered in favour of original plaintiff, the presence of defendant is deemed to be a tenant. It is specific case of the plaintiff that since 2001 the plaintiff has not paid the rent of the suit premises.

8. Moreover, during the pendency of this appeal, the



defendant-appellant has been evicted through the process of Court in Execution Case No. 02 of 2019 on 07.03.2025.

9. In the aforesaid facts and circumstances of the case, I am not inclined to interfere with the concurrent findings of the learned Courts below and there is no question of law, much less substantial question of law involved in this Second Appeal.

10. Accordingly, the instant Second Appeal is dismissed at the stage of Order XLI Rule 11 CPC.

11. Pending interlocutory application(s), if any, shall stand disposed of.

(Khatim Reza, J)

Sankalp/-

U			
---	--	--	--

