

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.70 of 2022

- 1.1. Aditya Raj Son of Late Manmohan Singh @ Fucho Singh Resident of North Hajipur, near Durgasthan, Ward No. 13, Sanhauli, Khagaria, Police Station and District - Khagaria, Bihar.
- 1.2. Abhishek Kumar Son of Late Manmohan Singh @ Fucho Singh, Resident of North Hajipur, near Durgasthan, Ward No. 13, Sanhauli, Khagaria, Police Station and District - Khagaria, Bihar.
- 1.3. Sandhya Kumari D/o Late Manmohan Singh @ Fucho Singh, Resident of North Hajipur, near Durgasthan, Ward No. 13, Sanhauli, Khagaria, Police Station and District - Khagaria, Bihar.
- 1.4. Amrita Kumari D/o Late Manmohan Singh @ Fucho Singh, Resident of North Hajipur, near Durgasthan, Ward No. 13, Sanhauli, Khagaria, Police Station and District - Khagaria, Bihar.

... .. Defendants/ Petitioners

Versus

Kumari Kavita Sinha wife of Ashok Kumar Jamiyar, Resident of North Hajipur Under Municipality Khagaria, Ward No. 13, P.O.- Khagaria, District- Khagaria

Plaintiff/Respondent

Appearance :

For the Petitioners	:	Mr.Jitendra Prasad Singh, Senior Advocate Mr. Abhishek, Advocate
For the Respondent	:	Mr. Ranjan Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 15-05-2025

Present Civil Revision application is directed against judgment and decree dated 24.9.2022 passed by Learned Sub-Judge-I, Khagaria in Eviction Suit No.02/2011 (NET No.02/2016) by which eviction suit filed by the plaintiff/opposite party has been decreed.

2. Brief facts giving rise to the present civil revision is as follows:-

Plaintiff/ opposite party filed Eviction Suit. In the plaint,



she stated that she owns a dilapidated Khaparposh bricks made house in Mauza Hajipur, Police Station- Khagaria, Ward No.3 bearing Tauzi No.525, Khata No.156, Thana No.267, Kheshra No.5(M) having an area of 770 sq.ft. purchased by her from one Uma Shankar Jamaiyar, who happens to be uncle of her husband vide registered sale deed No.619 dated 1.2.2011 as described in the Schedule-1 of the plaint. Plaintiff pleaded that she has two sons who are not employed properly and therefore she has purchased schedule-I property from her Stridhan with the sole purpose to start business for her sons by reconstructing the suit property. She has further pleaded that vendor of the plaintiff had let out the suit property to two tenants, namely, Dilip Kumar Sahu occupation of one room on the monthly rent of Rs.1000/- and rest three rooms with courtyards had been coming in occupation of defendant/petitioners as tenant of vendor, who has been paying monthly rent of Rs.2600/-. Vendor of the plaintiff informed the tenants about the transaction and requested for vacating the suit property for which they asked some time. One of the tenants, namely, Dilip Kumar Sahu executed agreement of rent for 11 month but defendant/petitioner refused to execute agreement and also refused to vacate the suit house and even stopped payment of rent from March, 2011.



3. Plaintiff further pleaded that her husband approached local Administration by filing application to get the suit premises vacated but finding no solution plaintiff filed eviction suit having urgent need of Schedule-2 property for their sons and therefore eviction suit has been filed on the ground of personal necessity on bona fide requirement.

4. Defendant/original petitioner appeared in the eviction suit and filed written statement stating therein that there is no relationship of landlord and tenant between the parties. He also denied allegation leveled in the plaint stating therein that the vendor of the plaintiff, namely, Uma Shankar Jamaiyar had executed a Mahadnama (agreement for sale) dated 10.8.2010 in favour of defendant for sale of 8 dhurs of land with house standing over khata no.156, plot no.5 on the receipt of earnest money in which it has been stipulated that Uma Shankar Jamaiyar will execute sale deed on 28.1.2011 after receiving the remaining consideration money. He further stated that vendor of plaintiff and executants of Mahadnama, despite repeated request through notices dated 11.1.2011 and 27.1.2011, evaded to execute sale deed in favour of defendant/petitioner, as such, Title suit no.89 of 2011 has been filed for specific performance of contract and therefore present eviction suit is a counter blast



of the title suit filed by the defendant. Defendant also stated that plaintiff have no means to purchase the property in question and she is the wife of Ashok Kumar Jamaiyar, who is the nephew of Uma Shankar Jamaiyar (vendor) and in order to defeat legal claim of the defendant for specific performance of contract, present suit has been filed on 12.10.2011. He further stated that malafide of the plaintiff will also appear that earlier gift deed was executed in favour of plaintiff which was presented for registration before the Registrar but was not registered due to absence of Registrar and when objection was filed before the District Magistrate regarding under valuation of the suit property, thereafter alleged sale deed has been executed in favour of plaintiff which indicates dishonest intention of the vendor to avoid specific performance of contract filed by the defendant-petitioner. It is further stated that so far claim of personal necessity is concerned, two sons of the plaintiff are not unemployed and the husband of the plaintiff is a clerk in the office of Civil Surgeon, Khagaria, therefore, purchase made by plaintiff from her Stridhan is baseless and not sustainable in the eye of law. On the basis of aforesaid pleadings as well as submissions made in the written statement defendant/petitioner objected claim of the plaintiff/ opposite party by filing his



written statement before the trial court. Plaintiff/opposite party had filed Eviction Suit No.02/2011 in the court of learned Sub-Judge-I, Khagaria seeking relief for eviction of the defendant/original petitioner Manmohan Singh @ Fucho Singh (present petitioners are heirs of original petitioners) on the ground of personal necessity as provided Under Section 11 (1) (C) of the Bihar Building (Lease Rent and Eviction) Control Act, 1982 (in short BBC Act). Defendant/original petitioner appeared in the eviction suit and filed written statement controverting the points taken by learned counsel for the plaintiff/ respondent in support of the eviction suit. Trial court, considering the submissions of the rival parties and on going through the materials available on the records, decreed the eviction suit on contest, against the defendant/ original petitioner directing the defendant to vacate the suit premises and deliver its vacant and peaceful possession to plaintiff/opposite party positively within sixty days from the date of decree.

5. Learned counsel for the defendant/petitioners submits that from perusal of Section 11(1) (C) of the B.B.C.Act it appears that for the personal necessity, Plaintiff/Opposite Party is required to produce cogent evidence in order to show the bonafide requirement of the suit premises. In the case at hand



except statement, in paragraph no.9 of the plaint regarding personal necessity, there is no pleading as to what is the bonafide requirement of the Plaintiff for the suit premises. She stated that the premises is required for her son to run business but no statement about the nature of business as well as bonafide requirement has been disclosed and on this ground the plaintiff has failed to prove her case for bonafide requirement.

6. It is next submitted that from perusal of the finding of the trial court start from page no.12, it appears that much emphasis has been drawn on the sale deed dated 1.2.2011 (Ext.1) whereas, prior to that, defendant/petitioner had entered into an agreement dated 10.8.2010 (Ext.B) with the vendor of the Plaintiff/Opposite Party. Legal notices dated 11.1.2011 (Ext.C) and 27.1.2011 (Ext.C/1) were documentary evidences adduced on behalf of Defendant/ Petitioner which indicates that prior to the sale deed of the Plaintiff/Opposite Party, defendant/petitioner entered into an agreement for sale and as such he was not a tenant of the plaintiff/opposite party, rather, he was owner having rightful possession pursuant to the agreement for sale after payment of reasonable consideration money.

7. Learned counsel further submits that the defendant/petitioner adduced these documentary evidences to



show that there is no relationship of landlord and tenant between the parties but surprisingly the trial court has not discussed and considered the vital piece of evidence adduced by the Defendant/Petitioner i.e. Ext.B, Ext.C and Ext.C/I and on this ground alone the impugned judgment is fit to be set aside. In this case, trial court has failed to appreciate that while deciding bonafide requirement, need has to be real one rather than a mere desire to get the premises vacated. In this case, no pleading and cogent evidence has been produced by the Plaintiff Opposite Party to show that bonafide need is real one and as such the finding of the trial court is erroneous not based on valid evidence.

8. Learned counsel has referred to a decision of Hon'ble Apex Court in a case of **Maharaj Singh and others Vs. Karan Singh and others** reported in **2024 (5) BLJ Supreme Court Page 57** in which in paragraph no.16 it has been held that in view of Clause-b of Section 19 of the Specific Relief Act the defendant who are claiming under the sale deed executed after execution of agreement can be subjected to a decree of Specific Performance as the suit Agreement can be enforced specially against such defendant unless they are bonafide purchaser without a notice of original contract. In the present case,



plaintiff/ opposite party who is subsequent purchaser failed to prove that she entered into the sale deed without notice of the agreement therefore in view of Section 19(b) a decree can be passed against her by directing the subsequent purchaser to execute the sale deed alongwith original vendor in favour of the agreement holder. In a case of **Dr.Ramesh Chandra Vs. Smt. Premlata Sinha** reported in **2008 (3) BLJ 163** it has been held that the hand of the High Court in exercising revisional power Under Section 14(8) of the B.B.C.Act is wide enough than the revisional power granted Under Section 115 of the C.P.C. and as such the finding recorded by the trial court has to be examined and considered by exercising the revisional power Under Section 14(8) of the B.B.C.Act to examine as to whether the trial court has arrived at a finding of fact upon consideration or non-consideration of the evidences available on the record. in the case at hand the trial court being the final court of fact under the B.B.C.Act has not considered and adjudicated the documentary evidences adduced by the Defendant/petitioner and has passed the impugned judgment in mechanical manner which is fit to be set aside by this Hon'ble Court in exercising the jurisdiction Under Section 14(8) of the B.B.C.Act.

9. While assailing the aforesaid submissions, learned



counsel appearing for the plaintiff/ opposite party submits that judgment under revision is well explained and has been passed after discussing each and every issues as well considering depositions of witnesses and documents exhibited by rival parties.

10. He submits that trial court after completion of pleading framed altogether 8 issues for adjudication of the rival claim of the parties. In support of her claim, plaintiff produced 13 oral witnesses and certain documentary evidences, whereas in support of the claim, defendant/ original petitioner adduced 7 oral witnesses as well as documentary evidences in order to justify his defence taken by him. Trial court after hearing the parties decided issue no.5, 6 and 7 in paragraph no.8 of his judgment whereby it has been held that while deciding issue no.5 that plaintiff has produced sufficient evidence to prove that she is the owner of suit premises and has stepped into the shoes of landlord and defendant is the tenant in the suit premises. While deciding issue no.6 regarding personal and bonafide requirement of the suit premises, it has been held in paragraph no.8.3 of the impugned judgment that plaintiff has proved her case for personal bonafide and reasonable need of the suit premises and defendant has not produced sufficient evidence to



contract the same. In light of the aforesaid findings, recorded by the trial court, suit of the plaintiff was decreed vide impugned judgment dated 24.9.2022 with a direction to the defendant to vacate the suit premises within the period of 60 days from the date of decree, failing which the plaintiff will be entitled to get the same vacated through the process of the court.

11. Learned counsel for the plaintiff/ opposite party submits that 13 witnesses were produced on behalf of the plaintiff who were examined and cross examined and 22 documents were marked as exhibit 1 to 18 B on behalf of the plaintiff, whereas 7 witnesses were produced on behalf of defendant and 4 documents were produced as exhibit A to C/1 on behalf of the defendant in support of his claim. Issue No. V, VI and VII were decided in favour of the plaintiff, at para 13 and 14 of the judgment, based on oral and documentary evidences. Issue No.III was not pressed by the defendant which shall be evident in paragraph 9 at page 15 of the judgment under revision and accordingly decided in favour of the plaintiff. Issue No.IV was not pressed and Issue No. I & II were also decided in favour of the plaintiff in para 11 of judgment under revision. So far issue No. VIII is concerned, the same was decided against the plaintiff. He submits that based on all documentary and oral



evidences available on record, learned Sub Judge 1" Khagaria arrived at a finding that the plaintiff has proved her case and is entitled to evict the defendant from the suit premises accordingly ordered "the suit is decrees on contest, against defendant, without cost.

12. He further submits that defendant-petitioner has preferred the instant civil revision application on the grounds that the learned trial court has not appreciated the provision of Section 11(1)(C) of the BBC Act while passing impugned judgment. Contention of the defendant-petitioner is without any substance and is not sustainable in the eye of law, for the reason that in paragraph No.2 of the plaint it was specifically pleaded that plaintiff has two sons who are not employed properly i.e. underemployed. Hence, plaintiff had purchased the Schedule I house from her Stridhan and with financial help of her parents and her husband with sole purpose to start shop after reconstructing the same as per requirement of starting business by her sons. Moreover, learned court below has framed issue No.VII "whether the plaintiff is entitled for decree of eviction of defendant from the suit premises as described in Schedule I of the plaint and after analyzing the deposition of PWs and DWs and on examination of exhibits produced by the plaintiff and



defendants, arrived that a finding at page 13 of the judgment that their exists relationship of landlord and tenant in between plaintiff and defendant and that in paragraph no. 8.3 at page no. 14 of the judgment has found that the plaintiff has purchased the suit premises for their personal and bonafide use i.e. for starting Computer Training Institute and Computer Shop for employment of two sons and for engagement of her husband who was due to retire in near future after reconstructing the suit premises. P. W.2 Dilip Kumar Sahu has also deposed that after purchase of the house plaintiff told both the tenants that she has purchased the house for the purpose of employment of her husband and sons for opening Computer Training Institute. Similarly P.W. 3 Kamlesh Kumar Poddar has also deposed that the plaintiff has purchased house to open the Computer Training Institute for her two sons. Similar depositions were made by P.W.7 Asok Kumar Jamaiyar, P.W.8 the plaintiff, P.W.9 Divya Prakash Jamaiyar.

13. It is further submitted that learned court below in paragraph No. 8.4 at page 15 of the judgment has considered the provisions contained in section 11 (1) of the Bihar Building (L.R. & E.) Control Act and found that the grounds for filing suit for personal necessity is held proved and the tenant is liable



to be evicted as such the plaintiff is entitled to a decree for eviction of the defendant from the suit premises and accordingly the issue No. VII was decided in favour of the plaintiff. Next ground for revision is that the learned Court below has committed jurisdiction error and material irregularity while deciding the issue of bona fide requirement against the defendant and in favour of plaintiff which is palpable incorrect, the ground mentioned therein has already been discussed while responding the ground that section 11(1) of BBC Act has not been appreciated. Based upon exhibits B and C, claim of the defendant that there does not exists relationship of tenant and landlord between the defendant and plaintiff has no legs to stand, since issue No. V deals with this aspect and at page 13 of the judgment. Learned Court below has arrived at a conclusion that there exists relationship of landlord and tenant in between plaintiff and defendant. One of the grounds of revision of judgment dated 24.9.2022 is that the learned court below has not applied its mind in regard to legal provision of T.P Act 1882 as well as BBC Act. In this regard, it is stated that while deciding Issue No. V at page 13 of the judgment, Section 109 of T.P Act 1882 was considered as well as various decisions of this Hon'ble court. Learned court below also considered provision contained



in Section 116 of Indian Evidence Act along with decision of the Hon'ble Apex court related thereto and thereafter came to a positive finding that there exists landlord and tenant relationship between plaintiff and defendant. Learned counsel further contends that the statement made in paragraph No.8 of the revision application is partially incorrect. Relationship of landlord and tenant between plaintiff and defendant has been held established. Alleged Mahadanama dated 10.8.2010 is forged and fabricated document which does not contain the signature of Uma Shankar Jamaiyar. It is also not a fact that vendor has received any amount towards alleged Mahadanama nor have undertaken that on receipt of remaining consideration amount shall execute sale deed on 28.1.2011. Last ground of the revision is that during pendency of Title suit No. 89/2011 for specific performance of contract at the instance of defendants, the vendor has executed sale deed in favour of the plaintiff on 01.02.2011 which is factually incorrect, in fact, after execution of registered sale deed on 01.02.2011, Title Suit No. 89/2011 for specific performance of contract was filed on 2.9.2011, i.e., after seven months from execution of Sale deed. It is stated that the eviction suit No. 02/2011 was decided on 24.9.2022, whereas Title Suit No. 89/2011 stood dismissed on 30.7.2019.



Defendant-petitioner has preferred instant Civil Revision application on 07.12.2022, i.e., after much delay of prescribed limitation period under the Indian Limitation Act as required under section 14(8) of the Bihar Building (Lease, Rest and Eviction) Control Act 1982, without filing any limitation petition for condoning the delay, as such, Civil revision application is fit to be dismissed.

14. Heard learned counsel for the defendant/ petitioners and the plaintiff/ respondent as also perused the judgment in question and pleadings filed by the parties.

15. It is settled law that if an eviction suit is filed under section 11(1)(c) of BBC Act, in such suit complicated question of title cannot be decided and court has only to see as to whether there is relationship of landlord and tenant between parties or not. Witnesses have specifically stated regarding bonafide need of plaintiff-opposite party and court below held that plaintiff-opposite party is in bonafide need of disputed shop. Impugned judgment and decree upheld. Reliance can be placed on the decision in case of **Rajendra Prasad Sah vs. Basudev Prasad Gupta, 2018 (1) BLJ 30 (PHC)**.

16. To answer this contention, learned court below has framed Issues no. V, VI and VII which are as follows:-



Issue no. V, VI and VII: The main issues are (1) Whether there exists relationship of Landlord and Tenant in between Plaintiffs and Defendant ? (11) Whether the need of Plaintiff of suit premises be personal, reasonable, bona-fide and in good faith ? And (iii) Whether Plaintiff is entitled for a decree of eviction of the Defendant from the suit premises as described in schedule-I of the plaint ?

(8.1) The main point of controversy in the suit is relationship of Landlord and Tenant in between Plaintiff and Defendant. According to Plaintiff Defendant is Tenant and Plaintiff is the Landlord of suit premises. Defendant has totally denied this relationship of Landlord and Tenant in between Plaintiff and Defendant. Exhibit-1 is Sale Deed No. 618 di 01/02/11 executed by Sri Umashankar Jamaryar in favour of Kumari Kavita Sinha @ Kavita Jamaiyar, w/o Ashok Kumar Jamaiyar, of 770 Square Feet with Khapraposh house situated at Tauzi No. 525, Thana No. 267, Municipal Ward No. 13 Holding No 658, Khata No. 156. Kheshrs No 05Me, North-Road Nagarpalika, South-Gali, East-Cali then Janki Devi, West Ranjeet Prasad Ambastha Exhibit 8 is Receipt No. 53,212 dated 6 of February 2018 of Holding No. 248 sued by Municipal Council Khagarta in favour of Plaintiff Kumari Kavita Sinha Exhibit 8/A is Receipt No 53,211 dated 6 of February 2018 of Holding No. 247 issued by Municipal Council Khagaria in favour of Plaintiff Kumari Kavita Sinha.

17. To decide the aforesaid core issues, learned court below has examined altogether 7 prosecution witnesses, 8 defence witnesses and the principle of Estoppel of Tenant and licensee of person in possession.

18. It appears that on 17 February 2011 when the



Defendant refused to vacate the Schedule-II property the Plaintiff's husband went to the District Janta Darbar and filed an application to this effect which was forwarded to DCLR, Khagaria to look into the matter and decide the same. Subsequently, the learned DCLR called for report from the CO, Khagaria and after getting the report from the concerned CO, Ordered the CO to get the Suit land vacated from the Defendant and even directed him to seek one Section police force from the SDM Khagaria to maintain law and Order because he felt apprehension of breach of peace from the side of the Defendant.

19. It has also gone through decisions in case of **Laxmi Narayan vs Ram Kishan & Others AIR 2015 RAJ p.46 : Vashu Deo vs Balkishan (2002) 2 SCC 50 and 1989 PLJR 381** and has held that it is clear that Plaintiff Kumari Kavita Sinha has produced sufficient evidence to prove that she is owner of suit premises and has stepped into the shoes of Landlord. Defendant Manmohan Singh is Tenant in the suit premises. So there exists relationship of Landlord and Tenant in between Plaintiff and Defendant. Therefore Issue no- V is decided in favour of Plaintiff.

20. It was the contention of the defendant that both sons



of the plaintiffs were working in the company on good salary since long past and they are not unemployed as stated by the plaintiff, therefore, alleged need of plaintiff is imaginary and concoction for wrongful gain. In this regard, learned court below has meticulously examined PW 2, 3, 7, 8, 9 and DW 1, 3, 4, 5 and considered decisions in case of **Sadhu Sharan Sahay & others vs National Seed Corporation Ltd 1989 B.B.C.J. p.126** and **AIR 1995 SC 576**. The court below has held that it is clear that Plaintiffs have produced sufficient evidences for proving their personal, bona fide and reasonable need of the suit shop premises and Defendant has not produced sufficient evidence to contradict the same. Need of Plaintiff of suit shop premises is personal, reasonable, bona fide and in good faith. Issue No. VI is decided in favor of Plaintiff.

21. Learned court below has also taken note of Sec 11(1) of Bihar Building (L.R.&E.) Control Act which states that- "Notwithstanding... Where a Tenant is in possession of any building, he shall not be liable to eviction therefrom except in execution of a decree passed by the court on one or more of the following grounds...". The court below has held that from this provision, it is apparent that if the suit is filed on any ground as mentioned in section 11 of Bihar Building (L.R.&E) Control



Act and such ground is proved, the tenant is liable to be evicted.

22. Trial Court after considering oral and documentary evidence adduced on behalf of parties has held that there is relation of landlord and tenant between plaintiff and defendant and plaintiff has been able to establish that she require suit premises for bonafide personal necessity and has proved her case for personal necessity of suit premises. Defendant/ original petitioner has neither pleaded nor led any evidence on the point of partial eviction. Trial court has found that requirement of plaintiff will not be satisfied by partial eviction. In view of the above mentioned discussions as well as in view of pronouncement of law rendered in several decisions of the Hon’ble Supreme Court as well as of this Court, I do not find any illegality, irregularity and infirmity in the impugned order dated 24.9.2022, passed by learned Sub Judge I, Khagaria in Eviction Suit No. 02/21011.

23. Accordingly, this Civil Revision is dismissed.

(Prabhat Kumar Singh, J)

Shashi

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.5.2025
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