

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.352 of 2024

Rajesh Kumar S/o Late Ramlal Yadav Resident of Village and P.O.- Chhapia,
P.S.- Hussainganj, District- Siwan.

... .. Appellant/s

Versus

1. Jawahar Prasad Srivastava S/o Late Bishwanath Prasad Srivastava R/o Village- Brahmsthan, P.S.- Siwan Town, District- Siwan.
2. Heera Lal Srivastava, S/o Late Bishwanath Prasad Srivastava R/o Village- Brahmsthan, P.S.- Siwan Town, District- Siwan.
3. Madan Prasad Srivastava, S/o Late Bishwanath Prasad Srivastava R/o Village- Brahmsthan, P.S.- Siwan Town, District- Siwan.
4. Vijay Kumar Srivastava, S/o Late Bishwanath Prasad Srivastava R/o Village- Brahmsthan, P.S.- Siwan Town, District- Siwan.
5. Mohan Kumar Srivastava, S/o Late Bishwanath Prasad Srivastava R/o Village- Brahmsthan, P.S.- Siwan Town, District- Siwan.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Syed Firoz Raza, Sr. Advocate with Mr. Hasnain Haider, Advocate Mr. Chandra Kant, Advocate Mr. Sudhanshu Prakash, Advocate
For the Respondent/s	:	Mr. Ranjan Kumar Dubey, Advocate Mr. Kumar Gaurav, Advocate Mr. Ashish Anandi, Advocates

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

11 07-04-2025 Heard Mr. Syed Firoz Raza, learned senior counsel for

the appellant and Mr. Ranjan Kumar Dubey, learned counsel for

the respondents.

2. This Second Appeal has been filed against the
judgment of affirmance.

3. This Second Appeal has been filed against the
judgment and decree dated 29.10.2024 passed in Eviction
Appeal No. 1 of 2019 by A.D.J. 1st Siwan, whereby judgment



and decree dated 26.02.2019 passed by Munsif 1st Siwan in Eviction Suit No. 2 of 2009 has been affirmed.

4. The Title Eviction Suit was filed for personal necessity and default in payment of rent for the period of August, 2008 to December, 2008. The appellant contested the said suit admitting the relationship of landlord and tenant between the parties but denied the claim of default in payment of rent and personal necessity.

5. The plaintiffs/respondents filed Title Suit No. 2 of 2009 for eviction on the ground of personal necessity and default in payment which was decreed by the learned Trial Court on both the issues which was challenged by the defendant in Eviction Appeal No. 01 of 2019. After hearing the parties and considering the materials on record, the learned Additional District Judge 1st Siwan dismissed the said appeal and affirmed the judgment and decree passed by the Trial Court.

6. After hearing the arguments made on behalf of the parties and upon perusal of the materials on record, including the judgment of the learned Courts below, it appears that the learned Court of Appeal below, which is final Court of facts, after considering the pleadings of the parties and the evidences adduced by them came to a clear finding that the defendant



could not prove payment of rent to the plaintiffs either by tender or remittance regularly. Neither the Challan nor money receipts nor evidence of tender and remittance have been produced by the defendant which could show regular payment of sending of rent by the defendant to the plaintiffs. D.W. 1 Ramlal Yadav (original defendant-tenant) stated in his evidence that he paid the rent of 4-5 months at a time to the landlord and in this regard receipts of the same was given by the landlord in a copy. It is specifically stated that he paid the rent of January, 2009 to July, 2009 but for the aforesaid period, receipts have not been endorsed in the said copy thereafter, he sent the money through money order for the month of August and September, 2009. The learned Appellate Court has held that neither remittance nor memo receipts have been produced by the defendant-appellant.

7. After coming to the aforesaid finding on the basis of materials produced by the party especially the defendant, the learned Courts below specifically found that the defendant was defaulter in payment of rent and also held that plaintiffs have successfully proved his case on the point of personal necessity.

8. Considering the aforesaid facts and circumstances of the case as well as materials on record, it is quite apparent that the impugned judgments and decree of the courts below are



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

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

10. At this stage, learned counsel for the appellant undertakes to vacate the premises in question by 31st October, 2025. He further undertakes that within two months from today, he will pay entire arrears of due rent and advance rent up to 31st October, 2025.

11. If the appellant violates the aforesaid undertaking given by him before this Court, the plaintiffs/respondents will be at liberty to file appropriate application before this Court for violation of undertaking given by him before this Court.

(Khatim Reza, J)

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