

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.439 of 2023

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Prem Kumar Son of Late Kailash Prasad @ Kailash Sah, Resident of
Mohalla- Gopal Ji Lane, Chhata Bazar, P.S.- Town, District- Muzaffarpur.

... .. Appellant/s

Versus

1. Smt Sunita Devi Wife of Sri Ranjeet Kumar Sarraf @ Babloo, Resident of
Mohalla- Purani Bazar, Naka No. 4, P.S.- Town, District- Muzaffarpur.
2. Ranjeet Kumar Sarraf @ Babloo, Son of Prahlad Prasad, Resident of
Mohalla- Purani Bazar, Naka No. 4, P.S.- Town, District- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Bishwanath Chaudhary, Adv. Mr. Arif Daula Siddiqui, Adv. Mr. Noumaan Ahmad, Adv.
For the Respondent/s	:	Mr. Muneshwar Prasad

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

8 29-04-2025 This Second Appeal has been filed against the

judgment and decree dated 17.08.2023 passed in Eviction

Appeal No. 02 of 2019 whereby the learned Appellate Court has

affirmed the judgment and decree dated 20.12.2018 passed in

Eviction Suit No. 13 of 2004.

2. The Title Eviction Suit No. 13 of 2004 was filed by
the plaintiffs/respondents for eviction on the ground of personal
necessity as well as for arrears of rent from December, 2003 till
filing of the suit. Later on, the plaintiffs pursued the case only
on the ground of personal necessity which was decreed. Being
aggrieved by the judgment and decree passed by the Trial Court,
the tenant/defendant/appellant filed Eviction Appeal No. 02 of



2019, which too was dismissed by the lower Appellate Court. Hence, this Second Appeal has been filed by the defendant/appellant.

3. Considering the facts and circumstances of this case and averments made by the parties as well as materials on record including the judgment and decree of the court below, the lower Appellate Court, which is the final court of facts, clearly held that it is admitted case of the parties that there was relationship of landlord and tenant between the parties. So far arrears of rent is concerned, the learned Appellate Court has held that there is admission of payment of rent up to April, 2004 at the rate of Rs. 125/- per month by the defendant. It is also held that the claim of the defendant is that the rent was sent to the plaintiffs through money order but no receipt as to the payment of rent through money order has been furnished by him despite claiming as such in paragraph no. 51 of the deposition as DW-1.

4. The case of the plaintiffs stands admitted that the payment of rent by the defendant to the plaintiffs was made at the rate of Rs. 125/- per month and from May, 2004 onwards there is arrears of rent. It is further held that there is no evidence to effect that the rent was supposed to be enhanced at a



particular date after given time interval. Therefore, the plaintiffs are only entitled for payment of rent at the rate of Rs. 125/- per month from May, 2004 to its actual payment to the plaintiffs together with simple interest of 6 per cent. So far partial eviction is concerned, the Trial Court has held that Issue No. 5 the area of the suit premises measuring 12X20 sq. ft. which is not well enough to be divided for both the parties as the plaintiffs have already established bonafide requirement to run business and that too its wideness is mere 12 ft which will make the suit premises useless if divided and thus, the substantial need of the plaintiffs cannot be fulfilled by partial eviction. With regard to bonafide requirement/personal necessity of the plaintiffs is concerned, the plaintiffs sought relief for decree of eviction of the defendant from the suit premises. The relationship of landlord and tenant is well admitted by the defendant. It is apparent from the materials on record that the plaintiffs are doing their business in a tenanted premises. From the deposition of the plaintiffs, especially, PW-4 (plaintiff no. 2), it appears that personal necessity of the plaintiffs is bonafide and is in good faith. The plaintiff no. 2 was running his shop on rent and is now unemployed as he has already vacated his shop at the instance of his landlord.



5. Considering the aforesaid facts and materials on record, there is no illegality in the judgment passed by the lower courts and there is no question of law much less substantial question of law involved in this case.

6. Accordingly, this Second Appeal is dismissed at the state of hearing under Order XLI Rule 11 C.P.C..

7. Pending interlocutory application, if any, shall stand disposed of.

(Khatim Reza, J)

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