

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.12 of 2023

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Pramod Kumar Agrawal Son of late Haridwari Lal Agrawal, Resident of Flat No. 301, Om Complex, S.P. Verma road, Police Station- Kotwali, Town and District- Patna, Pin Code 800001

... .. Petitioner/s

Versus

1. Sanjay Kumar Agrawal Son of Late Hari Prasad Agrawal, Resident of Flat No. 304, Om Vihar Apartment, Kadamkuan, Town and District Patna-800003
2. Ram Autar Agrawal Son of Late Prabhu Dayal Agrawal, Resident of Flat No. A-1, 502, Nutan Tower, P.O. and P.S. Kankarbagh, Town and District Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar, Advocate
For the Respondent/s	:	Mr. Surendra Kishore Thakur, Advocate
		Mr. Manjeet Kumar Roy, Advocate
		Mr. Ravindra Kumar @ Ravindra Kr Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

CAV ORDER

18 06-02-2026 Heard learned Counsel for the petitioner as well as learned Counsel for the respondent.

2. This Civil Revision application has been filed against the order dated 30.11.2022 passed by the learned Sub-Judge 1st-cum-Additional Chief Judicial Magistrate 1st, Patna (hereinafter referred to as 'Trial Court') in Eviction Suit No. 98 of 2011 whereby and whereunder the petition filed by the petitioner/defendant under Section 151 of the Code of Civil Procedure (hereinafter referred to as 'CPC') for dismissal of the suit, as due to subsequent development, the suit became



incompetent and not fit to proceed, has been rejected.

3. The fact of the case, in brief, is that plaintiffs (opposite parties) filed the eviction suit asserting that the defendant (petitioner) was inducted as a monthly tenant in respect of a shop premises situated on the 2nd floor of Khetan Super Market, Patna, at a monthly rent of Rs.11,000/-, under the previous landladies, namely Smt. Savita Agrawal, Smt. Lalita Devi and Smt. Munni Devi, who were the absolute owners in possession of the suit premises. According to the plaint, the defendant regularly paid rent up to January 2010 but thereafter defaulted from February 2010 onwards, resulting in accumulation of arrears. During the subsistence of the tenancy and the period of default, the previous landladies transferred the suit premises in favour of the plaintiffs by a registered sale deed dated 24.08.2011, along with the right to realise and recover the arrears of rent. It is further alleged that the defendant was duly informed of the said transfer and was called upon to pay the arrears and continue payment of rent to the plaintiffs, but he failed and refused to do so. The plaintiffs also claimed *bona fide* personal requirement of the suit premises, stating that they were carrying on their textile business from rented accommodation in the same building under financial pressure



and required the suit premises for their own use and occupation, there being no other suitable or alternative accommodation available. On these assertions, the suit was instituted seeking eviction of the defendant on the grounds of default in payment of rent and personal necessity, along with recovery of arrears of rent amounting to Rs.2,09,000/- for the period from February 2010 to August 2011.

4. The petitioner/defendant appeared before the learned Trial Court and filed written statement contesting the suit in its entirety, raising preliminary objections regarding maintainability, limitation, valuation and payment of court fee, and alleging suppression and misstatement of material facts by the plaintiffs. It was specifically denied that the plaintiffs were the landlords of the suit premises or that the defendant was a defaulter in payment of rent. It was stated that rent had been regularly paid to the erstwhile landladies, who had accepted the same and issued receipts up to March 2011, and that upon their refusal to receive rent thereafter, the defendant continued to tender rent by money order, both to the previous landowners and subsequently to the plaintiffs, which was also refused. The defendant further disputed the genuineness and validity of the registered sale deed dated 24.08.2011, alleging it to be a sham



and collusive document executed without consideration, and contended that the plaintiffs had no right to claim arrears of rent for any period prior to the alleged purchase. The plea of *bona fide* personal necessity was also emphatically denied on the ground that the plaintiffs owned several other shops in *Khetan* Market itself, which were more suitable and sufficient to meet any alleged requirement, and that the suit had been instituted with a *mala fide* intention to forcibly enhance rent and evict the defendant. Moreover, the defendant asserted that there was neither any default in payment of rent nor any genuine personal necessity, and stated that the suit was liable to be dismissed with compensatory costs.

5. During pendency of the Eviction Suit No.98 of 2011, the petitioner/defendant filed a petition under Section 151 of the CPC before the learned Trial Court, asserting a subsequent development, namely that plaintiff no.1/respondent no.2, had sold and transferred his alleged 50% share in the suit premises in favour of the defendant by a registered sale deed dated 09.09.2022. On the strength of the said transaction, the defendant claimed to have become a co-owner of the suit premises along with plaintiff no.2, Sanjay Kumar Agrawal, and submitted that the relationship of landlord and tenant between



the parties stand extinguished. It was, thus, pleaded that the eviction suit had become incompetent and infructuous, and was liable to be dismissed in view of the subsequent change in facts and circumstances of the case.

6. Considering the facts and circumstance of the case and analysing the materials available on record, the learned Trial Court rejected the application filed by the petitioner herein under Section 151 of the CPC by the impugned order dated 30.11.2022. Aggrieved thereby, the petitioner has preferred the present civil revision challenging the legality and propriety of the impugned order.

7. Learned counsel for the petitioner/defendant assailed the findings of the learned Trial Court and submitted that the impugned order suffers from perversity, illegality and thereby not sustainable in eyes of law. It is submitted that the shop premises in question, the detail description of which is fully described in Schedule-1 of the plaint, belonged to the Respondent nos. 1 and 2 jointly, who are not related to each other rather, they are from two separate families, and, out of convenience, they have purchased the property in question jointly with their equally contributed funds. It is further submitted that both the opposite parties were jointly holding the



said property, and the petitioner was continuing in that shop as a tenant from before. As such, the petitioner became the tenant of the opposite parties and continued to pay 50% of the rent to one owner i.e., Respondent no. 1, and 50% to other owner i.e., Respondent no. 2.

7.i. Learned counsel for the petitioner further contended that while the eviction suit was being contested, a subsequent development occurred during its pendency, inasmuch as one of the co-owners, namely Respondent no.2, sold his 50% undivided share in the suit premises to the petitioner by a registered sale deed dated 09.09.2022. It is submitted that upon such purchase, the petitioner stepped into the shoes of the said co-owner and thereby acquired ownership to the extent of 50% in the suit premises, becoming a joint owner along with the remaining co-owner, and consequently, the continuance of the eviction proceedings was rendered untenable.

7.ii. It is further submitted that consequent upon the sale of the said share by the Respondent no.2, the said opposite party ceased to be either the owner or the landlord of the suit premises and, therefore, had no subsisting right to claim rent from the petitioner. It is submitted that since the eviction suit



had been instituted jointly by Opposite Parties Nos.1 and 2 on the grounds of default and personal necessity, the continuance of the suit in its present form became infructuous and unsustainable in law. It is further contended that a decree of eviction could not be granted at the instance of one co-owner against another co-owner by treating the latter as a tenant in respect of the same property.

7.iii. Learned counsel for the petitioner, in support of the aforesaid averments, placed reliance on the decision of the Hon'ble Supreme Court in *M.M. Quasim v. Manohar Lal Sharma & Ors.*, reported in *AIR 1981 SC 1113*, to submit that where an eviction suit is instituted on the ground of personal necessity, the landlord must continue to retain title and interest in the suit property throughout the pendency of the proceedings. It is submitted that if, during the course of litigation, the landlord's title or interest in the property stands extinguished, the suit cannot be maintained or continued thereafter. Learned counsel further urged that even at the appellate stage, being a continuation of the suit, the Court is competent to take judicial notice of such subsequent events and, upon cessation of the landlord's interest, dismiss the suit and set aside the decree passed thereunder.



7.iv. He further placed reliance on the judgment of Hon'ble Apex Court passed in ***Shipping Corporation Of India Ltd v. Machado Brothers & Ors.***, reported in ***AIR 2004 SC 2093*** where it has been held that

“a court before which a suit is pending has inherent power under Section 151 to make suitable order to prevent the abuse of the process and to dismiss the suit after being satisfied if by the subsequent event suit has become infructuous and it is duty of the court to take such action as is necessary in the interest of justice which included disposing of infructuous litigation. It has further been held that it is open to the parties concerned to make an application under Section 151 to bring to the notice of the court the facts and circumstances which have made the pending litigation infructuous.”

7.v. Moreover, under the aforesaid facts and circumstances, the learned counsel for petitioner submitted that the suit for eviction filed by the Opposite Parties Nos. 1 and 2 jointly to get a decree of eviction against the petitioner and during pendency of the suit one of them transferred his 50% share in the property in question in favour of the petitioner himself, then it will not leave any right with the Opposite Party, who has sold his 50% share to get a decree of eviction against the petitioner who is now a co-owner of the said property in



place of one of the owners and, has made the suit incompetent and infructuous, absolutely not fit to be decreed with a decree of eviction against the petitioner who himself is a co-owner now.

7.vi. Lastly, it is submitted that this Civil Revision application is fit to be allowed, the impugned order is fit to be set aside, and the suit is required to be held infructuous, ineffective and is thereby liable to be dismissed.

8. *Per contra*, learned counsel for the opposite parties/plaintiffs favored the impugned judgment and submitted that the eviction suit was filed for eviction on the grounds of personal necessity and default in payment of rent. It is submitted that the petitioner had admitted that earlier he used to pay rent to the vendor of the opposite parties but as soon as it came to his knowledge that opposite parties had purchased the suit property, he started sending the rent amount to them through money-order, therefore, the relationship of landlord and tenant can explicitly be established through such transactions. It is further submitted that after the respondent no.2 executed the registered sale deed for the undecided half-share in favour of petitioner, the petitioner filed an application on 21.09.2022, praying therein that he purchased half of the share in the suit



property so, due to this subsequent development, tenancy has been ceased and prayed for dismissal of the suit with ulterior motive. He further submitted that learned Trial Court has rightly dismissed the application holding that it is not maintainable and by getting undecided half share the tenancy is not terminated.

8.i. Learned counsel for the respondents has put his reliance on the case of *Pramod Kumar Jaiswal & Ors. v. Bibi Husn Bano & Ors.*, reported in *AIR 2005 SC 2877*, where it has been settled that “by getting half share of the suit premises tenancy will not terminate and the tenant has to handover the possession to the plaintiff if the tenant had acquired any right by virtue of sale executed by Co-sharer, he can file a separate Suit for determination of his share”.

8.ii. Learned counsel for the respondent further relied on *T. Lakshmipathi & Ors. v. P. Nithyananda Reddy & Ors.*, reported in *AIR 2003 SC 3983* wherein it was held by the Hon’ble Apex Court that a lessee who has taken assignment of the right of a co-owner, the lessor cannot successfully raise the plea of determination of tenancy on the ground of merger of his lease estate in that of the estate of the landlord. It is thus, clear that there is no substance in the contention of the learned counsel for the petitioner that in the case on hand, it should



have been held that the tenancy stood determined and the application of the respondents for eviction of the tenant to deposit the rent in arrears should have been dismissed.

8.iii. Further, learned counsel for respondent relied on the judgment of Hon'ble Apex Court in ***Gajara Vishnu Gosavi v. Prakash Nanasaheb Kamble & Others***, reported in **(2009) 10 SCC 654**, wherein it has been held that “purchaser of a co-sharer undivided interest in joint family property is not entitled to possession of what he had purchased, he has a right to sue for partition of the property and asked for allotment”

8.iv. Furthermore, learned counsel for the respondents put his reliance on the case of ***Rejendra Tiwary v. Basudeo Prasad*** reported in ***AIR 2002 SC 136*** wherein the Hon'ble Supreme Court has held that existence of relationship of landlord or tenant between the parties is *sine qua non* for granting any relief. The question of title of the parties to the suit premises is not relevant and is beyond the scope of Court exercising jurisdiction under Bihar Building (Lease, Rent and Eviction) Control Act, 1982. Further to substantiate his case, learned counsel submitted that in a similar circumstance, the Co-ordinate Bench of this Court in Civil Miscellaneous No. 55 of 2020 has followed the same principle given in ***T.***



Lakshmipathi (supra) and ***Pramod Kumar Jaiswal (supra)***, and has dismissed the case of the petitioner/defendant for dismissal of the suit. He further submitted that it is crystallised that the purchaser of an unpartitioned share from a co-sharer during pendency of the Eviction Suit cannot claim his right title in an Eviction Suit, and remedy is available for filing of a Partition Suit.

8.v. Learned counsel for the respondents further submitted that it is a settled proposition of law that the existence of the relationship of landlord and tenant is to be examined with reference to the date of institution of the suit, and in the present case, the tenancy of the petitioner stood admitted, notwithstanding the subsequent refusal to accept rent tendered by him. It is submitted that once the tenancy is admitted, the execution of a sale deed in respect of an undivided share by a co-sharer in favour of the tenant during the pendency of the suit is hit by the doctrine of *lis pendens* and does not bring the eviction proceedings to an end. It is, therefore, urged that the impugned order suffers from no infirmity warranting interference in exercise of revisional jurisdiction and that the instant civil revision is liable to be dismissed.

9. Having considered the rival submissions advanced



on behalf of the parties and on perusal of the materials available on record, the point for determination before this Court in the present civil revision is *“whether the impugned order passed by the learned Trial Court, rejecting the plea of the petitioner founded on the alleged subsequent transfer of an undivided share in the suit premises, suffers from any jurisdictional error, illegality or material irregularity so as to warrant interference by this Court in exercise of its limited revisional jurisdiction under Section 115 of the CPC?”*

10. At the outset, it is apposite to delineate the scope and ambit of this Court under Section 115 of the CPC. The revisional jurisdiction is a limited and supervisory jurisdiction, which can be exercised only where the subordinate court has either exercised a jurisdiction not vested in it by law, failed to exercise a jurisdiction so vested, or acted in the exercise of its jurisdiction illegally or with material irregularity. It is well-settled that Section 115 CPC does not confer upon the High Court the power to re-appreciate evidence or to substitute its own findings of fact for those recorded by the learned Trial Court. Interference is warranted only when the impugned order suffers from a patent jurisdictional error, perversity, or manifests a grave miscarriage of justice.



11. Notably, the Hon'ble Supreme Court in *T. Lakshmipathi (supra)* and *Pramod Kumar Jaiswal (supra)* has authoritatively settled the legal position that the purchaser of an undivided and unpartitioned share from a co-sharer during the pendency of eviction proceedings cannot assert or enforce such title in an eviction suit. The Apex Court has also consistently held that questions relating to partition, demarcation or declaration of specific ownership rights fall outside the scope of summary eviction proceedings, and the appropriate remedy for such a purchaser lies in instituting a separate suit for partition before the competent civil forum.

12. At this stage, it is apposite to reproduce the bare provision of Section 111 (d) of the Transfer of Property Act, 1882. It is reproduced hereinunder:

“111. Determination of lease.
—A lease of immovable property determines—

(a)xxx

(b)xxx

(c)xxx

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right:”

13. It is pertinent to note that the law is well settled



with respect to the doctrine of merger when to be applied with respect to cases as such one in hand. Under Section 111(d) of the Transfer of Property Act, a merger occurs only when the entire interest of the landlord and the entire interest of the tenant merge into one person. If the tenant only acquires a 50% share, they are still considered a tenant in the eyes of the other 50% owner. Moreover, in a detailed and firmly reasoned judgment, the Delhi High Court in ***Juglal Ram Chander v. Surinder Pal Jain*** reported in ***2025 LiveLaw (Del) 1315*** upheld an eviction order against a tenant who had tried to claim ownership of the rented premises during the pendency of eviction proceedings by purchasing the undivided share of the landlord's sister. The Hon'ble Court dismissed revision and affirmed the eviction decree in favour of landlord citing *bona fide* requirement of the premises.

14. It is also relevant to reproduce the bare provision of Section 52 of the Transfer of Property Act, 1882 which envisages provision with respect to transfer of property when a litigation is pending. It is reproduced hereinunder:

52. Transfer of property pending suit relating thereto. *During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such*



limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation. For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

15. In furtherance thereto, it is explicit that if a tenant purchases a share of the property during the pendency of an eviction lawsuit, the suit is hit by the doctrine of *lis pendens* and that transaction is subject to the court's final decision, and it cannot be used to defeat the eviction proceedings. However, the law is well-settled on point that a tenant cannot unilaterally extinguish the landlord-tenant relationship by purchasing the



undivided share of a co-owner, especially when the eviction petition had already been instituted. It has been made clear by the Hon'ble Supreme Court in ***Pramod Kumar Jaiswal (supra)*** that any one co-owner is competent to file an eviction petition without requiring the consent or affidavit of other co-owners, unless such co-owners actively oppose the action.

16. Having regard to the facts and circumstances of the present case, it emerges that the 50% share in the suit property claimed to have been transferred in favour of the petitioner by respondent no.2 through the registered sale deed dated 09.09.2022 is an undivided and unspecified share, without any demarcation of the particular portion of the premises. While it is not in dispute that the petitioner has acquired title and interest to the extent of an undivided half share in the suit property, the specific portion that has allegedly vested in his favour remains indeterminate. Consequently, the acquisition of such partial and undivided interest does not, by itself, extinguish the existing relationship of landlord and tenant in respect of the remaining portion of the premises, nor does it confer upon the petitioner any exclusive right to occupy a defined part thereof. In the absence of any clear demarcation, the petitioner continues to hold the status of a tenant in respect



of the balance portion not covered by his ownership claim and remains amenable to eviction in accordance with law. In view of the complexities involved and the limited scope of an eviction proceeding, the questions relating to partition, demarcation or declaration of title over a specific portion of the suit property cannot be adjudicated in the present suit and may be pursued by the petitioner before an appropriate forum.

17. This Court finds that the decisions relied upon by the learned counsel for the petitioner do not suffice to advance his case in the facts and circumstances of the present matter. The said authorities were rendered in situations where title or interest of the landlord stood wholly extinguished, thereby affecting the very substratum of the eviction proceedings. In the present case, however, the petitioner has acquired only an undivided and unpartitioned share in the suit property during the pendency of the eviction suit, which neither determines the specific portion of the premises nor brings an end to the subsisting landlord-tenant relationship in respect of the remaining share. The settled position of law is that questions relating to partition or declaration of title cannot be gone into in an eviction suit and the remedy, if any, lies before the appropriate civil forum. Thus, the precedents cited on behalf of



the petitioner do not suffice to warrant interference with the impugned order.

18. In view of the aforesaid settled principles of law and facts and circumstance of the case, the learned Trial Court rightly rejected the plea of the petitioner seeking dismissal of the eviction suit on the basis of subsequent acquisition of an undivided share, and no jurisdictional error or material irregularity can be attributed to the impugned order warranting interference by this Court.

19. Accordingly, the present civil revision is dismissed.

(Ramesh Chand Malviya, J)

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