

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.525 of 2017

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Jethan Kurmi, son of Late Chalitor Mistry, resident of Village- Hadaspura,
P.S.-Danapur, District- Patna.

... .. Appellant/s

Versus

Smt. Lalmuni Devi, w/o Baidyanath Choudhary, resident of Mahuari Bagicha,
P.S.-Sahpur, at present residing at Village-Hadaspura, P.S.-Danapur, District-
Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. K.M.Joseph, Adv.
Ms. Upasana Vibha Toppo, Adv.

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

4 22-01-2026 This Second Appeal has been preferred against the judgment and decree of affirmance dated 03.06.2017 passed in Title Appeal No. 56 of 2006 by Additional District Judge-II, Danapur, Patna, whereby the judgment and decree dated 30.03.2006 passed by the learned Munsif, Danapur, in Title Eviction Suit No. 15 of 1998 has been upheld.

2. This Second Appeal has been filed by the plaintiff/appellant/appellant against the judgment and decree of the learned courts below.

3. This Second Appeal arises out of Title Eviction Appeal No. 15 of 1998 which was filed by the plaintiff/appellant for declaration of title over the suit property described in Schedule-II and also for a decree of eviction of the



defendant/respondent from the suit property as also for arrears of rent amounting to Rs. 630/-

4. The case of the plaintiff is that one Aklu Kurmi had five sons, namely, Ganpat, Dhanpat, Kali, Jagdeo and Sampat. After the death of Aklu Kurmi, his five sons had partitioned amongst themselves before Cadestral Survey and the Khatiyān was prepared separately in the name of five sons of Aklu Kurmi. Further case of the plaintiff/appellant is that two sons of Aklu Kurmi, namely, Kali and Sampat died issueless and rest three sons of Aklu Kurmi, namely, Ganpat, Dhanpat and Jagdeo got the share of Kali and Sampat. It is further pleaded that after the death of Jagdeo, the property came in possession of Charitar, who had two sons, namely, Ramashish and Jetha Kurmi and they had partitioned among themselves and the property, in question, came in share of the plaintiff/appellant, namely, Jethan Kurmi (plaintiff). It is further case of the plaintiff that the defendant took the house in question on rent from the plaintiff at the monthly rental of Rs. 15/-. The said rent increased gradually and from January, 1995, it became Rs. 30/- per month. The defendant paid the rent till November, 1996, and thereafter, she stopped paying the rent. It is further alleged that during revisional survey, the defendant in collusion with survey Amlas



got Khata opened in her name. When it came to the knowledge of the plaintiff, he filed objection petition before Assistant Settlement Officer. In that regard, he was informed that when a proceeding under Section 103(A) of the Bihar Tenancy Act would be started, he would be informed. It is further pleaded that the plaintiff is in bonafide personal needs of the suit premises and defendant has not paid rent from December, 1996, and he is defaulter. It is further case of the plaintiff that the defendant got a sale deed from Rasgulwa and Ismile in her favour and the said vendor had no concern with the said property hence, the sale deed executed by them in respect of the suit land in favour of the defendant has no value and the sale deed is forged and fabricated and without consideration.

5. On summons, the defendant appeared and filed her written statement. Apart from ornamental objection, the defendant vehemently pleaded that the suit is barred under the provision of Specific Relief Act. The plaintiff in the garb of suit for eviction wants to grab the house of the defendant and wants to get his title declared over the suit property. Further, the plaintiff is in permissive possession as month to month tenant from the defendant. The house standing over Plot No. 574, Khata No. 124, Area 5 decimals as described in Schedule-II of



the plaint was owned and possessed by Most. Bibi Nazmun, Ismile and Bibi Masudan, wife of Wazir Ahmed. The defendant purchased the said house in the year 1968 through registered sale deed from them. In the month of January, 1995, the plaintiff requested the defendant to allow him to live in the suit premises for which he would pay Rs. 30/- as rent. The defendant being *pardanasin* lady, in good faith, allowed the plaintiff and inducted him as tenant but taking advantage of the old age of the defendant, the plaintiff became dishonest and wants to grab the suit land.

6. On the basis of the pleadings of the parties, the learned Trial Court framed issues for deciding the suit. After hearing the parties, considering the materials on record and evidence adduced by the parties, the learned trial court dismissed the suit on contest on 30.03.2006.

7. Being aggrieved by the judgment and decree of the Trial Court, the plaintiff preferred Title Appeal No. 56 of 2006 which too, was dismissed.

8. After hearing the parties and considering the materials on record, the learned Additional District Judge-II, Danapur, Patna also dismissed the said appeal by judgment and decree dated 03.06.2017 affirming the judgment and decree of



the Trial Court. Against the aforesaid judgment and decree of the learned courts below, the instant Second Appeal has been filed.

The learned First Appellate Court considering the pleadings and evidence of the parties framed the points for consideration which are as follows:-

(i). Whether the plaintiff/appellant has his right and title over the suit property described in Schedule-I of the plaint?

(ii). Whether there is relationship of landlord and tenant between the plaintiff and the defendant?

(iii). Whether the suit as framed is maintainable?

9. It appears that learned court of appeal below, which is the final court of facts, after considering the pleadings of the parties and the evidence adduced by them, came to a clear finding that the plaintiff/appellant has not produced any chit of paper regarding the partition as to how the property, in question, came in his share. The certified copy of Khatiyani (Ext.-2) is in the name of Dhanpat Kurmi and the plaintiff/appellant pleaded that after the death of Aklu Kurmi his five sons had partitioned among themselves before Survey and during the Survey, Khatiyani was prepared in their names separately but the appellant has not produced any Khatiyani in the name of his



grandfather Jagdeo Kurmi. However, the Khatian was prepared in the name of Dhanpat Kurmi (cousin grandfather of the plaintiff) but the descendants of Dhanpat Kurmi has not been made party in the suit. The plaintiff specifically stated in his evidence that there is no paper of partition and there is no paper as such through which it can be found out that he got which plot in partition.

10. On the other hand, the defendant pleaded that the suit property is purchased property through registered sale deed dated 17.06.1968 (Ext.-A) hence, the plaintiff failed to establish his right and title over the suit property described in Schedule-II of the plaint.

11. So far relationship of landlord and tenant between the plaintiff and the defendant is concerned, the specific case of the plaintiff/appellant is that the defendant/respondent got the suit property mentioned in Schedule-II from the plaintiff/appellant on rent at the rate of Rs. 15/- per month which gradually increased to Rs. 30/- per month. It is further pleaded that the defendant/respondent paid rent till November, 1996 and thereafter, she stopped paying the rent. On the other hand, the defendant/respondent in her written statement has pleaded that the plaintiff is in permissive possession as month to



month tenant from the defendant. The house, in question, standing over Plot No. 574, Area 5 decimals is her purchased property (Ext.-A) which she purchased from Most. Bibi Nazmun, Md. Ismile and Bibi Masudan and came in possession since the date of purchase i.e. 17.06.1968.

12. The learned First Appellate Court has held that the witnesses of the plaintiff in their evidence have not clearly stated that the plaintiff/appellant had let out the defendant/respondent in the suit premises as a tenant. PW-3, Ram Swaroop Mahto has stated in his evidence that both the plaintiff and the defendant reside in the disputed house. PW-4, Suresh Lal, in his evidence has stated that Jethan Kurmi (plaintiff) has not shown him any paper which could reveal that Lalmuni Devi is a tenant. Except Jethan Kurmi(plaintiff), no one adduced evidence that Lalmuni (defendant) is the tenant. On the basis of evidence adduced on behalf of the plaintiff, the learned Appellate Court held that the plaintiff has failed to prove that the defendant/respondent Lalmuni Devi is his tenant in the house, in question, and also held that the plaintiff claimed his right on the basis of partition but the suit property has been recorded in the Survey Khatiyan (Ext.-2) in the name of Dhanpat Kurmi and the plaintiff/appellant did not make



descendants of Dhanpat Kurmi or other descendants of Ghanpat and Ramvilas, brother of the plaintiff/appellant as party in the suit, hence, the suit is not maintainable due to non-joinder of the necessary party in the suit. The suit was also filed for declaration of title and interest but the relationship of landlord and tenant has not been proved by the plaintiff/appellant. There is no question of default in payment of rent.

13. Having considered the aforesaid facts and circumstances as well as materials on record, it is quite apparent that the plaintiff has filed suit for declaration of title over the suit land and also for eviction of the defendant from the suit land and payment arrears of rent amounting to Rs. 630/-.

14. The suit was filed for eviction of the defendant from Schedule-II property and the title of the property could not be decided in full-fledged manner in the eviction suit. Both the courts have held that the plaintiff *prima facie* failed to establish his title over the suit land and also failed to prove the relationship of landlord and tenant between the plaintiff and the defendant (Lalmuni Devi).

15. There is no material on record to show that the sale deed dated 17.06.1968 (Ext.A) was challenged or set aside by any court of competent jurisdiction. The learned courts



below found that there was no relationship of landlord and tenant between the parties and the plaintiff was not entitled to any arrears of rent.

16. Having regard to the discussions made hereinabove, this Court does not find any illegality in the impugned judgments and decree of the learned courts below nor does it find any substantial question of law in the instant Second Appeal.

17. Accordingly, this second appeal is dismissed at the stage of hearing of admission under Order XLI Rule 11 C.P.C..

18. Pending interlocutory applications, if any, shall stand disposed of.

(Khatim Reza, J)

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