

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.382 of 2024

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Fajal Mahamood @ Pappu (Male) aged about 45 years, son of Late Mohamood Alam, resident of Village-Sakri Darbar Tola, P.O.-Sakari, Police Station-Sakari, District Madhubani.

... .. Appellant/s

Versus

1. Md. Firoj, son of Ajijur Rahman, resident of Village-Balant, Police Station-Sakri, District Madhubani.
2. Md. Anwar Khan, S/o Md. Salimuddin, R/o Village-Chanda Tola, P.S. & P.O.- Sakri, Madhubani
3. Md. Abbas, S/o Md. Suleman, R/o Village- Bauli Tola, Sakri, P.S. & P.O.- Sakri, Anchal-Pandaul, Madhubani

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Arshad Alam, Adv.
For the Respondent/s	:	Mr. Shashi Nath Jha, Adv. Mr. Sunny Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

9 08-01-2026 Heard learned counsel for the appellants and learned counsel for the appellants.

2. This second appeal has been preferred against the judgment and decree dated 31.07.2024 passed by the learned District Judge, Madhubani, in Eviction Appeal No. 03 of 2023 whereby the judgment and decree dated 24.01.2023 passed by the Munsif-1, Madhubani, in Eviction Suit No.04 of 2018 was affirmed.

3. The defendant is the appellant and respondent no. 1 is the plaintiff. The plaintiff filed Eviction Suit No. 04 of 2018 against the defendant Fazal Mahmood @ Md. Pappu, son of



Late Mahmood Alam for eviction on the ground of personal necessity and default in payment of rent.

4. The said suit was decreed by the learned Civil Judge (Junior Division), Madhubani *vide* judgment and decree dated 24.01.2023 against which the defendant/appellant filed Title Appeal No. 03 of 2023, which was dismissed by the learned District Judge, Madhubani by its judgment and decree dated 31.07.2024, which is under challenge in the instant Second Appeal.

5. The case of the plaintiff is that Azizur Rehman had four sons Md. Kais, Md. Owais, Md. Firoz and Md. Shahnawaz. The plaintiff and his brothers have joint business and earning from that joint business. They had purchased through sale deed on 11.06.2009 an area 12.5 dhurs in the name of Shahnawaz and Md. Owais from Azimuddin Hussain @ Cheeku Babu and further through sale deed dated 18.06.2009 they had purchased 12.5 dhurs land in the name of Md. Kais and Md. Firoz (plaintiff) from Azimuddin Hussain @ Cheeku Babu after paying consideration amount to him with respect to the land appertaining Khata No. 15 (old), 988 (new), Plot No. 1142 (old), 2348 (new) admeasuring area 12 and ½ dhurs land each. All the four brothers including the plaintiff sons of Azizur Rehman



came in joint possession over the said land and constructed house thereon. It is further pleaded that the defendant/appellant Md. Pappu was in need of a room for business purpose, as such, he approached the plaintiff and his brother Shahnawaz to let out a room as detailed in Schedule-II of the plaint to him on monthly rent and the same was given to him on monthly rent of Rs. 2700/- and it was agreed that at the end of the month, the tenant will pay rent of the suit premises to Md. Firoz (plaintiff). It was also agreed that after expiry of the tenancy agreement, the defendant himself will vacate the suit premises and handover the tenanted premises to the landlord. The tenant deposited Rs. 20,000/- as security money with the landlord of the premises so that no damage is caused to the house in any manner. If the tenant will vacate the premises, in that circumstance, the landlord of the house will return Rs. 20,000/- to the tenant. A tenancy agreement between the plaintiff and the defendant was prepared and executed on 12.02.2011 and the plaintiff permitted the defendant to live in the suit premises on the condition that when the plaintiff will have necessity of the said premises for his personal purpose, the tenant will have to vacate the same. The tenancy began from 11.01.2012. It is further pleaded that plaintiff's brother Md. Kais has two sons, namely, Md. Hamid



and Md. Khalid and Md. Owais has three sons, namely, Md. Rashid, Md. Sajid and Md. Ashique, who were unemployed and required the suit premises for their business which could not be fulfilled without vacating the premises. The plaintiff and his brothers have joint state of affairs in mess and business and the sons of brothers of the plaintiff were unemployed. So, the plaintiff told the defendant to vacate the premises on which the defendant stopped paying the rent of the tenanted premises to the plaintiff since June, 2018. When the defendant resisted to vacate the premises, then the plaintiff sent an Advocate notice to the defendant on 18.06.2018 through his Lawyer but the defendant did not give any reply due to which the plaintiff felt necessity for filing the eviction suit against the defendant. Since the partial vacation of the premises could not meet the requirement of the plaintiff so, the plaintiff filed eviction suit for vacating the entire tenanted premises.

6. The defendant appeared and filed his written statement denying the relationship of landlord and tenant. The defendant vehemently submitted that he took the premises from one Sayeeda Bano, who is the owner of the said premises and has been running shop named as M/s Bihar Electronic and Electric and paying its rent to Sayeeda Bano.



7. On the basis of pleadings, the learned Trial Court framed issues and after considering the pleadings, materials on record and the evidence adduced by the parties, decreed the suit and clearly held that witnesses adduced on behalf of the plaintiff have supported the case of the plaintiff and he is the landlord of the premises which was let out to the defendant, inasmuch as, the plaintiff has also proved that he along with his three brothers had purchased the land and Sayeeda Bano, PW-4, herself has also denied about her ownership of the disputed land, rather, she has accepted that the disputed land was purchased by the plaintiff. The plaintiff has adduced oral as well as documentary evidence during the trial but neither any oral evidence or documentary was adduced and produced on behalf of defendant nor he advanced his argument during the hearing except filing the written statement. The defendants have not produced any documentary or oral evidence in support of their contentions, simply denying the title and stating that the sale deeds are forged one and will not itself establish their stand. On the other hand, the plaintiff has examined as many as 10 witnesses including the other tenants. The plaintiff has also examined PW-4 Sayeeda Bano, who is alleged to be the real owner as claimed by the defendant. The plaintiff has also filed sale deeds dated



11.06.2009 and 18.06.2009 as well as revenue receipts. The plaintiff has made out a case seeking relief made in the plaint and once the plaintiff discharges such burden by placing sufficient evidence, which remains un-rebutted by non-production of witnesses or supporting documents, the benefit shall go to the plaintiff. The rent agreements have also been marked as Exhibit Nos. 3, 3A and 3B. The amount of rent of the premises is mentioned in the agreement. In such situation, it is established that there was agreement between the parties. The learned Trial Court further held that the suit premises is admeasuring 15x8 feet and the plaintiff has bonafide necessity of the suit premises. After considering the materials on record and evidence adduced by the plaintiff, the suit was decreed.

8. Being aggrieved by the aforesaid judgment and decree, the defendant/appellant filed Title Appeal No. 03 of 2023 stating therein that he had taken the suit premises on rent from Sayeeda Bano and denied the title of the plaintiff. The learned Appellate Court after hearing the parties, dismissed the appeal and affirmed the judgment and decree passed by the Trial Court. The learned First Appellate Court held that there is admission on part of the appellant that they had taken the suit premises on rent from Sayeeda Bano while Sayeeda Bano, who



was examined as PW-4, has confirmed the fact that she has no title to the disputed property. She also asserts that Md. Firoz (plaintiff) is the owner of the property. Simply denying the title doesn't held that the person, who has filed the eviction suit, is not owner of the property. Once the person, who is said to be owner of the property by the defendant, comes to the witness box and states that there is no truth to such assertion, the very foundation of the defendants case is shattered. All the witnesses, who have been examined, categorically stated that the disputed premises is the joint property of four brothers and market built thereon is surrounded by rented premises given to various persons. PW-2, who is one of the business man of the market, states that Md. Firoz is one of the owner of the property. PW-3, who is one of the tenant, also accepts the ownership of the plaintiff.

9. The learned Appellate Court after considering the facts and circumstances as well as materials available on record, dismissed the appeal on the basis of observation made above.

10. Having considered the submissions made on behalf of the appellant and after perusal of materials on record including the judgment of the learned courts below, it appears that the learned court of appeal below, which is the final court of



facts, after considering the pleadings of the parties and evidence adduced by them came to a clear finding that the plaintiff has proved his case and the defendants have neither adduced any evidence nor filed any documents in support of his pleadings during the trial. The defendants except filing the written statement have not produced either any documentary or oral evidence in support of their contentions, simply denying the title of the plaintiff and stating that the sale deeds are forged will not by itself establish their stand. The defendants have sought to raise objection with regard to genuineness of the sale deed executed in favour of the plaintiff. The tenant cannot be permitted to challenge the validity of the sale deeds in eviction suit filed under Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982. The defendant/tenant pleaded in his written statement that he was inducted as tenant by one Sayeeda Bano and was paying rent to her. However, the said Sayeeda Bano, who was examined as PW-4, has stated in her evidence that she has no title to the disputed property and she also stated that Md. Firoz is the owner of the property. There is no case of the defendant that he ever paid the rent to the plaintiff. It is a clear case of default. The agreement between the parties with regard to tenancy has been proved by the plaintiff. Therefore, there is



relationship of landlord and tenant between the parties and the defendant defaulted in paying the rent.

11. Having regard to the facts and circumstances of the case, as discussed above, it is quite apparent that the judgments and decree of the courts below are covered by finding of facts and no question of law much less substantial question of law arises for consideration in the instant Second Appeal.

12. Accordingly, the Second Appeal is dismissed at the stage of admission under Order XLI Rule 11 C.P.C.

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

(Khatim Reza, J)

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