

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.484 of 2025

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Mohammad Hesamuddin Son of Late Sadrul Hasan, resident of Mohalla-
Khetari in front of Ram Chandra Sonar, P.S. Ara Town, District- Bhojpur.

... .. Appellant/s

Versus

1. Mohammad Nasir Son of Late Mohammad Sakir, Resident of Mohalla-
Khetari Old Ward No. 22 New Ward No. 20, P.S. - Ara Town, District-
Bhojpur.
2. Heena Ajmari, D/o - Late Mohammad Sakir, Resident of Mohalla- Khetari
Old Ward No. 22 New Ward No. 20, P.S. - Ara Town, District- Bhojpur.
3. Noor Saba, D/o - Late Mohammad Sakir, Resident of Mohalla- Khetari Old
Ward No. 22 New Ward No. 20, P.S. - Ara Town, District- Bhojpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Syed Firoz Raza, Senior Advocate
Mr. Hasnain Haider, Advocate

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

5 19-03-2026 Heard Mr. Syed Firoz Raza, learned senior counsel

assisted by Mr. Hasnain Haider, learned counsel appearing for

the appellant.

2. The present Second Appeal has been preferred
against the judgment and decree of affirmance dated 17.10.2025
passed by the learned 2nd District Judge, Bhojpur at Ara, in
Title Appeal No. 52 of 2019, whereby the judgment and decree
dated 29.03.2019 passed by the learned Execution Munsif, Ara,
in Eviction Suit No. 15 of 2004 has been upheld.

3. The original plaintiff, Mohammad Sakir, filed the



aforesaid Eviction Suit for eviction of the defendant on the grounds of personal necessity and default in payment of rent as also for recovery of arrears of rent and damages at the rate of Rs. 500/- per month with effect from October, 2004. During the pendency of the suit, the original plaintiff died and his heirs and legal representatives were substituted in his place. It has further been pleaded that the house, in-question, is the ancestral property of the original plaintiff and the names of the original plaintiff Mohammad Sakir and his brother Mohammad Sabir are recorded as the owners of the said house. Exts. 1, 1/a, 1/b and 1/c are the original tax receipts issued in the names of Mohammad Sakir and Mohammad Sabir. The further case of the plaintiff is that the defendant is a resident of a different district and was previously a tenant of other persons. In the year 1994, the defendant was inducted as a tenant in respect of the Schedule-I property on a monthly rent of Rs. 100/- payable on month-to-month basis and he had to also maintain the house, in question. Subsequently, the rent was enhanced to Rs. 200/- per month in July, 1997, which the defendant paid regularly. It has further been pleaded that there was a municipal water tap outside the house from which the defendant used to obtain water. Thereafter, the defendant requested for installation of a



hand pump within the tenanted premises stating that the expenses incurred would be adjusted towards rent. The plaintiff asserted that the original plaintiff was a retired person and did not have sufficient funds for installation of the pump and, therefore, requested the defendant to vacate the premises. Subsequently, a *panchayati* was convened at the instance of the defendant in the presence of local persons including Abu Nasar and Athar Karim wherein, it was agreed that the plaintiff would install the hand pump, repair the ceiling from where seepage was taking place, provide a shed, and complete the construction of a toilet. In lieu thereof, the defendant agreed to pay rent at the rate of Rs. 500/- per month with effect from June, 2000. The parties acted accordingly and the defendant paid rent at the said rate from 2000 to 2003. Thereafter, the defendant by raising disputes and adopting delaying tactics, stopped paying rent and became a defaulter. The plaintiff also asserted personal necessity for the house making it necessary to have the defendant vacate the premises. On several occasions the original plaintiff demanded payment of rent and lastly, on 20.09.2004, demanded arrears of rent for the period from February, 2003 to August, 2004, i.e., 19 months, along with damages at the rate of Rs. 500/- per month. As the defendant failed to pay the dues, the



original plaintiff filed the present Eviction Suit.

4. On summons, the defendant appeared and filed his written statement. Apart from ornamental objections, the defendant pleaded that the plaintiff has no right to file the Eviction Suit and there is no relationship of landlord and tenant between the plaintiff and the defendant. The defendant further pleaded that the premises belong to Bibi Rashida Khatoon, which was orally gifted to her by her father, namely, Mohammad Amir. Later on, in the year 1998, when Bibi Rashida Khatoon was going to Jamshedpur to her in-laws' place, she expressed her desire to sell the same for Rs. 60,000/-. The defendant, at that time, was not having so much money and therefore paid Rs. 5,000/- on 13.02.1998 and thereafter a *Sada Mahadnama* (agreement to sale) was executed by Bibi Rashida Khatoon and her husband signed the document as a witness. Further case of the defendant is that on several occasion the defendant tried to pay the remaining amount to Bibi Rashida Khatoon but, she denied. Thereafter, the defendant sent a notice to Bibi Rashida Khatoon and when Bibi Rashida Khatoon did not respond to the notice, he was constrained to file Title Suit No. 135 of 1999 for Specific Performance of Contract which is pending for deposition before the learned Sub Judge-



V.

5. The defendant further pleaded that Bibi Rashida Khatoon under the influence of the original plaintiff did not execute the sale deed. He denied the assertion that he has been residing in the suit premises as a tenant since 1985. It was also contended that he never paid rent at the rate of Rs. 100/- per month nor was the same ever enhanced to Rs. 200/- or Rs. 500/- per month, as claimed. The defendant's further case is that the house in- question, stands over Khata No. 1053 and there is no house of plaintiff near the house in-question. On such grounds, it is asserted that the original plaintiff has no legal right to file the present suit.

6. The learned Trial Court, after considering the pleadings, the evidence adduced by the parties, and the materials on record, has held that the plaintiff has clearly proved the relationship of landlord and tenant as well as the issue relating to arrears of rent and has established his case. On the other hand, the defendant has failed to prove that he is the tenant of Bibi Rashida Khatoon. In paragraph no. 10 of the written statement, the defendant has admitted that he used to reside in the disputed house, in- question, as a tenant of Rashida Khatoon but, failed to prove that Bibi Rashida Khatoon had



acquired the disputed land through an oral Hibba (gift) from his father. There was no cogent material before the learned Trial Court to establish that the said property belonged to Bibi Rashida Khatoon. On the contrary, in the Municipal Tax receipts, the Tax Collection Book of Nagar Parishad, Ara, and the Municipal Survey Khatian, the names of the original plaintiff Mohammad Sakir and his brother Mohammad Shabir are recorded as the owners of the disputed house to substantiate the case of the original plaintiff. The claim of the defendant is that he is living in the disputed house on the basis of a 'Mahadnama' dated 13.02.1998 in respect of which Title Suit No. 135 of 1999 is *sub judice*. The defendant, Md. Hesamuddin (plaintiff in Title Suit No. 135 of 1999) in his cross-examination in paragraph no. 13, has categorically stated that Eviction Suit No. 15 of 2004 is presently being tried before the learned Execution Munsif. It has also come on record that the defendant was living in the said house as a tenant till the year 1998 and was paying rent at the rate of Rs. 100/- per month. Thus, the relationship of landlord and tenant between the original plaintiff and the defendant stands clearly established. The learned Trial Court further held that the defendant had not paid any rent and had, thus, become a defaulter. It was also held that the plaintiff



required the suit premises for his personal necessity. The Court further observed that the plaintiff, through his oral as well as documentary evidence, had tried to establish his ownership and possession over the disputed property and was, therefore, entitled to damages and *mesne* profits. On the other hand, the defendant failed to establish that he was a tenant of Bibi Rashida Khatoon or that his possession was by virtue of the '*Mahadnama*' (an unregistered agreement to sell). Accordingly, the learned Trial Court decreed the suit in favour of the plaintiff.

7. Being aggrieved by the judgment and decree dated 29.03.2019 passed in Eviction Suit No. 15 of 2004 by the learned Execution Munsif, the defendant-appellant preferred Title Appeal No. 52 of 2019 and after hearing the parties and considering the materials on record, the learned 2nd District Judge, Ara, affirmed the judgment and decree of the Trial Court and dismissed the appeal by judgment and decree dated 17.10.2025, which is under challenge in the present Second Appeal.

8. From the materials available on record, it appears that the learned Appellate Court, being the final court of facts, after considering the pleadings of the parties and the evidence adduced, arrived at a clear finding that the house in-question,



belongs to the plaintiff, who is the owner of the suit premises. It was further observed that Ext. 4 reveals that Bibi Rashida Khatoon denied the execution of the '*Mahadnama*' and further stated that the defendant was a tenant of Mohammad Sakir, the original plaintiff. The Appellate Court further observed that Exts. 5 and 6 reveal that the defendant himself admitted that the disputed house is the ancestral property of the plaintiff and he was residing therein as a tenant. The learned Appellate Court has also taken into consideration that the defendant, both in his written statement as well as in his evidence, admitted that the suit property originally belonged to the father of the original plaintiff. He further admitted that the oral *hibba* was not made in his presence and that he had no personal knowledge thereof. The Court also observed that the defendant failed to produce any documentary evidence to establish that the disputed house belonged to Bibi Rashida Khatoon. On the contrary, the witnesses of the plaintiff supported his case, particularly with regard to non-payment of rent by the defendant. The Appellate Court further observed that although the defendant denied that he was a tenant of the plaintiff as also denied payment of rent, his own statement in the written statement and evidence clearly show that the landlord-tenant relationship existed between the



parties. In view of the aforesaid findings, the learned Appellate Court upheld the judgment and decree of the Trial Court and dismissed the Title Appeal preferred by the defendant–appellant.

9. Both the Courts below having gone through the facts and circumstances of the case have concurrently held that the plaintiff is the owner of the suit premises. This Court places reliance upon the judgment of the Hon'ble Apex Court in the case of *M.M. Quasim vs. Manohar Lal Sharma & Ors.*, reported in *AIR 1981 SC 1113*, in which it has been held that the person in whose favour the subject property was registered/allotted would be deemed to be the landlord for the purpose of conducting eviction proceeding.

10. The defendant claims to have agreed to purchase the suit premises on the basis of an agreement to sell dated 13.02.1998. Pursuant to the said claim, he filed Title Suit No. 135 of 1999 for specific performance of contract. In the said suit, during his cross-examination in paragraph 13, the defendant, who is the plaintiff therein categorically stated that Eviction Suit No. 15 of 2004 was pending before the learned Execution Munsif and admitted that he had been residing in the suit premises as a tenant till the year 1998, and prior thereto, had been paying rent at the rate of Rs. 100/- per month. It is,



therefore, evident from the record that the defendant acknowledged his tenancy prior to 1998 and asserted the status of a proposed purchaser only after the execution of the 'Mahadnama' dated 13.02.1998. The aforesaid Title Suit No. 135 of 1999 is still pending for adjudication. Notwithstanding the same, the defendant has challenged the ownership of the plaintiff over the suit premises. Reliance is placed on the judgment in the case of ***Hindustan Petroleum Corporation Limited Vs. Mohammad Amber Yunus and Anr.*** reported in ***1997 (1) PLJR 230***, wherein this Court has held that "*Once a person is inducted as tenant by a person claiming himself to be the landlord the tenant cannot be permitted in law to challenge the title later on.*"

11. The defendant has himself admitted that prior to 1998 he was a tenant in respect of the suit premises at a monthly rent of Rs. 100/-. He has further asserted that on 13.02.1998 the premises in-question, became the subject matter of an agreement for sale executed by Bibi Rashida Khatoon. However, the said Bibi Rashida Khatoon has categorically denied the execution of any such agreement for sale (*Mahadanama*) and has, on the contrary, stated that the defendant was a tenant of Mohammad Sakir. It is also an



admitted position that the defendant has not paid any rent to the plaintiff. The original plaintiff, in the plaint, has specifically pleaded regarding default of payment of rent and payment of arrears of rent.

12. Having regard to the discussion made here-in-above as well as the facts and circumstances of the case, I am not inclined to interfere with the concurrent findings of the learned Courts below. There is no question of law inasmuch as no substantial question of law is involved in this case.

13. Thus, the instant Second Appeal is dismissed at the stage of hearing ‘under Order XLI Rule 11 of the CPC’.

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

(Khatim Reza, J)

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