

CIVIL REVISION No.1448 OF 2006

MOST.BARANIYA DEVI & ORS -- -- petitioners
Versus
SRI NARAYAN DAS -- -- opposite party

For the petitioners : M/s Hriday Narayan Harshit &
 Ram Naresh Roy, Advocates
For the opposite party: None

P R E S E N T

THE HON'BLE MR. JUSTICE S.N.HUSSAIN

S.N.Hussain,J.

Heard learned counsel for the defendants-petitioners. No one appears for the sole plaintiff-opposite party.

2. This civil revision has been filed under the proviso to Section 14(8) of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (hereinafter referred to as the 'Act' for the sake of brevity) by the defendants-petitioners challenging the order of their eviction by judgment and decree dated 26.06.2006 passed by the learned Munsif, Darbhanga in Eviction Suit no.04 of 2001.

3. The aforesaid suit was filed by the sole plaintiff-opposite party for eviction of the defendants-petitioners from the suit premises, namely the land with house and hut on the ground of personal necessity of the plaintiff. The defendants appeared in the suit and contested the claim of the plaintiff asserting their own title, absence of any relationship of landlord and tenant between the parties and also absence of any personal necessity of the plaintiff.

4. The learned court below framed 10 issues for deciding the suit which are as follows:-

- (i) Is the suit as framed and filed maintainable?
- (ii) Has the plaintiff any cause of action or right to suit?
- (iii) Is the suit barred by law of limitation?
- (iv) Is the suit bad for non-joinder or misjoinder of parties?
- (v) Whether there is relationship of landlord and tenant between the plaintiff and defendants?

- (vi) Whether the plaintiff required the suit premises for personal necessity?
- (vii) Whether the defendant is liable to be evicted from the suit premises?
- (viii) Whether partial eviction will satisfy the plaintiff?
- (ix) Whether the story propounded by the defendant regarding his adverse possession on the suit land is true and sustainable in the eye of law and whether this court can decide that in this suit?
- (x) Is the plaintiff entitled to any other relief?

5. Out of the said issues, issues no.(v) to (ix) are important for the decision of the instant case. So far issue no.(v) with regard to relationship of landlord and tenant between the parties is concerned, it is quite apparent that the learned court below had rightly considered the question of title incidentally and has found that the plaintiff had proved his title by registered deeds, Ext.-1 and Ext.-6 followed by Malguzari receipts (Ext.-2 series) and Khatians (Ext.-3 and 4) and order of mutation (Ext.-5). On the other hand, the defendants could not produce any document of title, rather their defence was only on the basis of some tax receipts and Malguzari receipts and some entries in the khatian claimed by them to be in the name of their ancestors. Hence in the absence of any document of title, the learned court below has rightly held that the plaintiff had been able to prove his right and title incidentally, whereas the defendant has failed to make out any valid case.

6. So far the question of relationship of landlord and tenant between the parties is concerned, the learned court below has specifically found that although there is no documentary evidence with regard to tenancy, but the plaintiff had been able to prove the relationship of landlord and tenant between the parties by several witnesses, such as P.W.1, P.W.2, P.W.3, P.W.4, P.W.7, P.W.8, P.W.9, P.W.10 and P.W.11 (plaintiff). The said witnesses categorically stated that the defendants were put in possession of the suit premises as tenant in the year 1995 and had been paying rent to the plaintiff. Although the witnesses of the defendants tried to contradict the

evidence on behalf of the plaintiffs, but their entire claim revolved around their documents discussed above. Considering the fact and circumstances, the learned court below rightly relied upon the evidence of the plaintiff and held that the plaintiff was able to prove the relationship of landlord and tenant between the parties and the defendants could not disprove the said fact by any reliable evidence.

7. So far the question of personal necessity is concerned, the plaintiff had claimed that he has got a large family including sons and daughters, some of whom are married, and there is dearth of space for accommodating them and hence he required the aforesaid suit premises for bonafide personal requirement. The defendants have denied the claim of the plaintiff that he has a large family, but the claim of the plaintiff has been fully proved by valid oral evidence of P.Ws.2, 6, 7, 8 11 etc., from which it is quite apparent that the house in which the plaintiff is residing has only two rooms and he has got nine persons in his family due to which he is feeling difficulty in residing in the said house and that the suit house contained two rooms measuring 10' X 9' each as well as a hut which would be sufficient for their requirement. This aspect of the matter could not be validly denied by the evidence of the defendants and hence the learned court below rightly came to the conclusion that the plaintiff has proved that he has got large family and he requires the suit premises for his personal use and for bonafide necessity of his family members, including the sons and daughters, and the defendants are liable to be evicted from the suit premises on that ground.

8. So far the question of partial eviction is concerned, from the evidence of the parties, it transpires that there are two rooms of asbestos measuring 10' X 9' each along with a room of phoos measuring 9' X 8'. The plaintiff had pleaded that he required the entire suit premises for his requirement and has also proved the same by valid evidence of several P.Ws including P.Ws. 6, 7 and 11. On the other hand, the defendants had neither pleaded nor proved that the requirement of the plaintiff would be satisfied by partial eviction of the defendants from the suit

premises, although the onus was squarely upon them to prove the same. Reference in that regard may be made to the decisions of this court in case of Food Corporation of India & Ors Vs. Vishun Properties & Enterprises & Ors, reported in 1995 B.B.C.J. 711, in case of M/S Bata India Ltd Vs. Dr. Md. Qamruzzama, reported in 1993 (1) PLJR 87, in case of Om Prakash Sharma Vs. Kishun Mistry, reported in 1985 PLJR 727 and in case of Haveli Ram Bhatia Vs. Smt. Rajwanti devi & others, reported in 1984 PLJR 207. In the said circumstances, learned court below rightly came to the conclusion that the requirement of the plaintiff would not be satisfied by partial eviction of the defendants from the suit premises.

9. So far the question of adverse possession is concerned, learned counsel for the petitioners states that he is not raising the said plea in the instant case.

10. In the aforesaid facts and circumstances, the impugned judgment and decree of the learned court below is legal and valid and requires no interference. Accordingly, this civil revision is dismissed.

(S.N.Hussain,J.)

Patna High Court, Patna
Dated, 24th April, 2008
Sunil/N.A.F.R.