

(2008) 07 PAT CK 0019
In the Patna High Court
Case No : S.A. No. 45 of 2005

Bakaridan Nissa and Others

APPELLANT

Vs

Kaniz Fatima and Others

RESPONDENT

Date of Decision : 29-07-2008

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 12

Citation : (2008) 4 PLJR 320

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—Heard Learned Counsel for the appellants and Learned Counsel for the respondents. This second appeal arises out of Title Suit No. 55 of 1980 which was filed by plaintiff-respondent-respondent first set for eviction of the defendants on the grounds of personal necessity of the plaintiffs with respect to the suit house, default in payment of rent by defendant no. 1 and sub-letting by defendant no. 1 to defendant no. 2.

2. The said suit was decreed by learned Munsif-III, Arrah by judgment and decree dated 10.10.2002, against which heirs of original defendant no. 3 filed Title Appeal No. 03 of 2003 which was dismissed by learned Additional District Judge-cum-Fast Track Court-V, Bhojpur by judgment and decree dated 15.12.2004. Against the aforesaid judgments and decree of the learned courts below, the heirs of defendant no. 3-appellant-appellants have filed the instant second appeal.

3. From the materials on record including the impugned judgments and decree of the learned courts below, it is quite apparent that the learned courts below have arrived at concurrent findings of facts with regard to relationship of landlord and tenant between the plaintiffs and defendant no. 1 as well as sub-letting by defendant no. 1 in favour of defendant no. 2. The learned courts below also

arrived at concurrent findings of facts with regard to default in payment of rent from December, 1977 till March, 1980 at the rate of Rs. 40.00 per month by defendant no. 1 to the plaintiffs. The learned courts below also arrived at concurrent findings of facts that the plaintiffs had bona fide personal requirement of the suit premises.

4. Now the question raised in this Court by heirs of defendant no. 3, who were substituted in the suit and had filed title appeal as well as the instant second appeal, is that original defendant no. 3 was not impleaded in the original plaint nor any statement had been made with regard to him and he had been subsequently added as defendant no. 3 after the filing of the written statement by defendant no. 1, claiming that the suit premises belonged to defendant no. 3 and defendants no. 1 and 2 were living there as family members of defendant no. 3. In the said circumstances, the appellants claim that the order of eviction passed against defendant no. 3 is bad in law as he was neither a tenant nor a sub-lessee and, thus, he was not liable for eviction in an eviction suit filed under the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as "the Act" for the sake of brevity). The learned court of appeal below while considering the arguments raised by defendant 3 series-appellants had found that defendant no. 3 was claiming on the basis of oral gift from one Sarfuhissa but there was no material at all to support the said claim and the said Sarfunissa herself while deposing as a special witness specifically stated that she had no concern with the defendants or their father and she had never made any such gift in their favour.

5. In the said circumstances, the learned court of appeal below had no option but to ignore the said claim of defendant no. 3 series-appellants. Furthermore, in view of Section 12 of the Act, it is an admitted case that defendant no. 3 series-appellants are close relatives of defendants no. 1 and 2 and are living in the suit premises alongwith defendants no. 1 and 2. In this regard, Section 12 of the Act clearly says that where the interest of tenant in any premises is determined for any reason whatsoever and any order is made by the court under the Act for the recovery of possession of such premises, the order shall be binding on all persons who may be in occupation of the premises and vacant possession thereof shall be given to the landlord by evicting such persons therefrom, provided that nothing in the section shall apply to any person who has an independent title to such a premises.

6. Defendant No. 3 series-appellants have failed to show, much less to prove by any semblance of evidence that defendant no. 3 had any independent right, title or interest in the suit property, whereas, it is an admitted fact that defendant no. 3 was close relative of defendants no. 1 and 2 and was living in the same premises and in addition to that it was found by concurrent findings of facts that defendant no. 1 was the tenant of the plaintiffs and defendant no. 2 was sub-tenant of defendant no. 1. Hence, in the aforesaid facts and circumstances, the learned court of appeal below was quite justified in dismissing the appeal and

affirming the judgment and decree of the trial court. The said finding with regard to title of defendant no. 3 was although merely incidental in nature, which would not debar the appellants from raising any such claim in a regular suit but that finding was essential and sufficient to pass a decree of eviction in an eviction suit, under the Act. In the said circumstances, 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 involved in the instant second appeal, which is, accordingly, dismissed.