

**(1998) 12 PAT CK 0023**

**In the Patna High Court**

**Case No : Civil Revision No. 1134 of 1995**

Santoshi Singh Tokhan Singh and Others

APPELLANT

Vs

Ram Chandra Sah and Others

RESPONDENT

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**Date of Decision : 22-12-1998**

**Acts Referred:**

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 11(1)(c)

**Citation :** (1999) 1 BLJR 529 : (1999) 1 PLJR 290

**Hon'ble Judges :** M.Y. Eqbal, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## **Judgement**

M.Y. Eqbal, J.—This Civil revision has come for final hearing after remand by the Hon"ble Supreme Court in Civil Appeal No. 4180 of 1998.

2. It appears that this Civil revision application was filed against the judgment and decree dated 30.5.1995 passed by the Addl. Munsif, Samastipur, in Eviction Suit No. 1/2 of 1987/94 whereby the plaintiffs suit for eviction of the defendant on the ground of personal necessity was decreed. This Court, after hearing the parties, allowed this revision application in terms of the judgment dated 7.5.1997 and set aside the judgment and decree passed by the trial Court. The plaintiff then moved the Hon"ble Supreme Court by filing the aforementioned Civil appeal and the Hon"ble Supreme Court in terms of the order dated 21.8.1998 set aside the judgment and order of this Court and remanded the matter for disposal of Civil revision afresh on merits.

3. The case of the plaintiff-opposite parties, inter alia is that the original plaintiff, Mishri Lal Sah purchased the property described in Schedule I of the plaint by virtue of the registered sale deed dated 19.4.1965 from the Singheshawar Lal, who in his turn, had purchased the same from the heirs of recorded tenant Niyamat All by virtue of sale deed dated 22.7.1963. The plaintiffs further case is that Niyamat All died leaving behind his son. Abdul Hassan, who also died leaving

behind his five sons, namely, Barik Khan, Ismail Khan, Sakoor Khan, Nasiruddin Khan and Makbul Khan and two daughters Wakilan and Tabizan, the plaintiffs further case is that his vendor got his name mutated in the Serista of State of Bihar and was paying rent of the suit property to the State of Bihar and after purchase the plaintiff also got his name mutated and started paying rent to the State of Bihar. The plaintiffs further case is that the suit premises was let out to the defendant-first party through defendant No. 1 who took the house in question on rent as Karta and representative of the joint family of the defendant sometime in the year 1970 on a monthly rent of Rs. 40/-. Subsequently, on the request of defendant the roof of the house in question was made pucca by removing the tiled Chapper and other addition was also made in the house and the rent was also raised to Rs. 110/- per month since January, 1975. The defendant was paying rent regularly to the original plaintiff till June, 1986. Thereafter the defendant stopped payment of rent and, therefore, the present suit was filed on the ground of personal necessity. In the year 1989, original plaintiff Mishrilal Sah, died and the present plaintiff were substituted. Prior to his death, original plaintiff executed a sale deed dated 11.9.1988 in respect of his properties including the suit premises in favour of the present plaintiff. Ram Chandra Sah, which he has got on Court's Partition Suit No. 20 of 1988. The plaintiffs case is that he requires the suit premises for personal necessity of his son who is unemployed and want to start a business of readymade garments.

4. The contesting defendant filed written statement and contested the suit denying and disputing the allegations made in the plaint. Besides other defence, defendant denied relationship of landlord and tenant and raised question of title and stated that the allegation of acquisition of suit property by the plaintiff is false and fabricated. The defendant's further case is that the original plaintiff, Mishrilal Sah, had purchased some lands under old S.P. No. 568 from west and for which new survey plot No. 1405 was prepared in the revisional survey including other purchasers in plot No. 568. Later on defendant purchasers got necessary correction and through two sale deeds Mishrilal Sah had only 17-171/2 and half dhurs in plot No. 568 which is in possession of the plaintiff and other land was in possession of the original plaintiff. Defendant's, further case is that total area of old S.P. No. 568 was 6 kathas 4 dhurs according to entry of survey record of rights standing in the name of Niyamat All, who died leaving behind his one son Abdul Hassan who also died leaving behind six sons who are all heirs and came in possession of old plot No. 568. It is alleged that according to private partition 16 dhurs of aforesaid plot was allotted to Rasool Khan and remaining area came in possession of the heirs of Rasool Khan, The defendant's further case is that Rasool Khan sold the land and house which is subject matter of the suit to the defendant by virtue of registered sale deed dated 3.2.1982 and defendant was put in possession of the said property and since then defendant has been coming in peaceful possession of the same.

5. Upon the pleadings of the parties the Court below framed the following issues:

1. Is the suit as framed maintainable?
2. Has the plaintiff got any cause of action or right to sue?
3. Is the suit barred by law of limitation?
4. Is the suit hit by principle of waiver, estoppel and acquiescence?
5. Is the suit bad for defect of parties?
6. Is there any question of complicated title involved or the claim of the defendant is mere pretext?
7. Has there been any relationship of landlord and tenant between the plaintiff and the defendant?
8. Is the plaintiff got personal necessity as required u/s 11(1)(c) of the B.B.C. Act, 1982?
9. Is the plaintiff entitled for a decree as prayed for?
10. To what order relief or reliefs the plaintiff is entitled?

6. Mr. Sushil Chandra Sinha learned Counsel for the petitioner assailed the impugned judgment and decree passed by the Court below as being illegal, contrary to the facts and evidence on record. Learned Counsel submitted that the finding arrived at by the Court below on issue No. 6 is perverse in law and based on no evidence. Learned Counsel submitted that the trial Court has not at all considered Ext. H which is admission of the original plaintiff Mishri Lal Sah that he has purchased the land of western side situated on plot No. 568 and as such the claim of the plaintiff that he had purchased the suit premises by Ext. 2/D become incorrect. Learned Counsel then submitted that the trial Court has committed serious illegality insofar as it held that the defendant failed to establish that vendor Rasool Khan is the son of Niyamat Ali. Learned Counsel drawn my attention to the deposition of D.W. 1-Md. Sawer Khan who has very categorically stated that Neyamat Ali was his son. It is contended that percentage of the defendant has been supported by the members of the same family who have been examined as witnesses. On perusal of the judgment it appears that in paragraph 22 the trial Court discussed the evidence of the defendant witnesses and came to the conclusion that the defendant has not been able to make out a prima facie case to substantiate that his vendor Rasool Khan is the son of Abdul Hassan Khan who is grand son of Neyamat Ali. In this regard the trial Court relied upon the evidence of D.W. 1, D.W. 3. D.W. 4 and D.W. 6.

7. Now I will examine the evidence of the aforesaid witnesses. D.W. 1 in his deposition has very categorically said that he is the grand-son of Abdul Hassan Khan. He has six sons and two daughters, whose names are Ghani Khan, Ismail Khan, Rasool Khan, Makbool Khan, Sakur Khan and Nasiruddin Khan and Sabichan and Wakilan and his father is Maqool Khan. He has further deposed that Rasool Khan has sold the land and house of his share. D.W. 3 is Santosh

Singh, the defendant No. 1. In paragraph 7 of his deposition he has very categorically stated that initially he was inducted as a tenant by Rasool Khan over 16 Dhurs of land. Subsequently Rasool Khan constructed a Khapraposh house and sold the same to him by registered sale deed. D.W. 4--Rasool Khan the ex-vendor of the defendant also supported the case of the defendant and deposed that he has sold the suit premises to the defendants. He further stated about his parentage. Nothing has come in the cross-examination to ensure that Rasool Khan was not the son of Abdul Hassan Khan or grand son of Neyamat Ali. It appears that the Court below has not appreciated the evidence of the witnesses and in a very casual manner held that the defendants have not made out prima facie case to substantiate the fact that his vendor Rasool Khan was the son of Abdul Hassan Khan or grand son the Neyamat Ali. On the contrary the plaintiff's case is that he purchased the suit premises from Singheshwar Lal by registered sale deed dated 19.4.1965 and Singheshwar Lal had purchased the said property from the recorded tenant Neyamat Ali by virtue of a Kebala dated 22.7.1983. The suit property has been described in Schedule I of the plaint. Originally the area of the suit premises so purchased was given as 4 decimals which are equivalent to 16 Dhurs. Subsequently the plaint was amended by reducing the area of the suit property from 4 decimals to 3 decimals which is equivalent to 12 Dhurs. From perusal of Ext. 6 which is Kerayanama it appears that the tenancy allegedly was in respect of 5 Dhurs. The suit has been filed for eviction of the defendants from 12 Dhur of land and a house. This aspect has also not been considered by the trial Court in the judgment.

8. Having regard to the pleadings of the parties and the evidence adduced by both the parties both oral and documentary I am of the opinion that the finding of the Court below that the vendor of the defendants was not the son of Abul Hassan Khan and the grand son of Neyamat Ali is contrary to the evidence on record. I also come to the conclusion that the case of the plaintiff that he inducted the defendants in the suit property as a tenant has not been conclusively established. I, therefore, hold that the finding arrived at by the Court below on Issue Nos. 6 and 7 are based on no evidence and are perverse in law. Since the plaintiff failed to establish the ownership over the suit property and also failed to establish the relationship of landlord and tenant I do not think it necessary to decide the other issues as the suit is bound to fail on this ground alone.

9. In the result, this application is allowed and the impugned judgment and decree passed by the Court below is set aside. There shall be no order as to costs.