
(2025) 01 JH CK 0151

Jharkhand High Court

Case No: Miscellaneous Appeal No.66 Of 2015

Ramesh Kumar Bajaj

APPELLANT

Vs

Umakant Yadav

RESPONDENT

Date of Decision: Jan. 27, 2025

Acts Referred:

Code of Civil Procedure, 1908 " Order 41 Rule 23, Order 43 Rule 1#Evidence Act, 1872 " Section 114, 116#Registration Act, 1908 " Section 58

Citation: (2025) 01 JH CK 0151

Hon'ble Judges: Gautam Kumar Choudhary, J

Bench: Single Bench

Advocate: Amar Kumar Sinha, Sudhir Kumar Sharma, Pankaj Kumar Choudhary

Final Decision: Allowed

Judgement

Gautam Kumar Choudhary, J

1. Plaintiffs are before this Court in an appeal under Order XLIII Rule 1 of the CPC against the order of remand passed in Title (Eviction) Appeal

No.01 of 2005.

2. Plaintiff's suit for eviction being Eviction Suit No.5/2001 filed under Section 11(i)(d) of The Bihar Buildings (Lease, Rent and Eviction) Control

Act (for short BLA) was decreed by the learned trial Court by recording a finding that there was a landlord-tenant relationship and the

defendant/respondent had committed default in payment of rent. The sheet anchor of the evidence relied upon by the learned trial Court was the

registered lease deed (Exhibit 7) executed by the mother of the plaintiff- Shanti Devi Bajaj in favour of defendant- Umakant Yadav on 25.08.1999.

3. Case of the defendant is that there did not exist landlord-tenant relationship between the petitioner and defendant. It was also denied that the

plaintiff no.2- Sidharth Bajaj, had ever been adopted by Shanti Devi Bajaj, who was the owner of the property.

4. Defendant claimed that Shanti Devi Bajaj had entered into an agreement for sale of the suit premise with the elder brother of the defendant (Exhibit

A), unregistered agreement of sale dated 07.11.1971 for a total consideration amount of Rs.51,000/- out of which Rs.31,000/-was paid in advance.

Very surprisingly, further pleading of defendant in para 15 of the written statement states that elder brother had also died in the year 1970. On the

basis of the said agreement, the defendant entered in possession of land.

5. Learned first appellate Court set aside the judgment and decree of eviction passed by the learned trial Court and remanded the case by holding that

there was no relationship of landlord and tenant between the parties and directed the trial Court to decide the title by permitting the parties to lead

further evidence on the question of title.

6. It is argued by learned counsel on behalf of appellant that the learned first appellate Court has committed egregious error of law by remanding the

matter to the trial Court for deciding the title in the eviction suit filed under Bihar Buildings (Lease, Rent and Eviction) Control Act. The first appellate

Court without any basis held that plaintiff had not relied on the lease agreement which is Exhibit 7. It is contended that this document was filed and

proved on behalf of plaintiff. There was no reason for the first appellate Court to draw an inference that plaintiff was not relying on this document and

it has been simply brushed aside without giving any valid reason for not accepting it. A defence of title is impermissible in a suit for eviction in view of

Section 116 of the Evidence Act. The so-called agreement was executed way back as per the case of the defendant in 1971, but till the date of filing

of the eviction suit in 2001, no suit for specific performance of agreement was filed.

7. Falsity of claim of agreement of sale will be evident from the fact that as per Exhibit A, agreement of sale was entered between Shanti Devi Bajaj

and Ram Narayan Prasad @ Kailash Mistry and Uma Kant Yadav as stated in para 15 of the written statement but Ram Narayan Prasad died in 1970.

8. It is argued that in a suit for eviction under Rent Control Act, the title is not relevant and so is not required to be adjudicated, has been settled in

catena of decisions of Hon'ble Supreme Court. Reliance in this regard has been placed on Kanaklata Das & Others Vs. Naba Kumar Das &

Others, (2018) 2 SCC 352.

Further, it has been held in Rajendra Tiwary Vs Basudeo Prasad and Anr., (2002)1 SCC 90 that where in an eviction suit landlord tenant

relationship is not established, any further inquiry into title is beyond the scope of a Court.

Lastly, it is argued that the first appellate Court remanded the case to the trial Court without following the fundamental principles for remand as laid

down under Order XLI Rule 23 of the CPC and settled in Shivkumar & Others Vs. Sharanbasappa & Others, (2020) SCCR 488

9. Learned counsel on behalf of respondents defends the impugned order. It is argued that specific reason has been assigned by the first appellate

Court for not accepting Exhibit 7 as proof of landlord-tenant relationship. Firstly, except for the said lease deed, there was no other documents to show

that rent was ever paid in pursuant to the said lease deed. No eviction suit was filed by the original owner during her life time and the suit has been

filed by the plaintiff, who claimed himself to be the adopted son. The fact of the matter is that the said adoption had been withdrawn and the suit for

cancellation was also filed by the owner-Shanti Devi Bajaj. Furthermore, in Md. Kamruddin Vs. Brijnandan Prasad & Moti & Others, 2000(2)

PLJR 49 wherein Patna High Court in a suit for eviction under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 directed the

conversion of it into a title suit.

10. Having considered the submissions advanced on behalf of both sides and on perusal of materials on record, it is difficult to fathom the reason on

the basis of which the first appellate Court held that there did not exist landlord and tenant relationship. What impelled the Court to observe that

Plaintiff was not relying on Exhibit 7 is another puzzle. Once a registered lease deed was filed by the plaintiff and duly proved then to hold that the

Plaintiff then there was no reason to hold that it was not relied upon.

11. There is a presumption in favour of due execution of a registered deed under Section 58 of the Registration Act as held in *Ishwar Dass*

Jain(Dead) by LRs. v. Sohan Lal (Dead) by LRs., (2000) 1 SCC 43.4 Thus, on proof of the registered deed, presumption arises under Section 114

of the Evidence Act that the official act of registration has been duly performed and the onus shifted on the defendant to rebut the same. I find no

contrary documentary evidence to rebut the due execution of lease deed made by Shanti Devi Bajaj in favour of Defendants. Rent can be paid in cash

documentary evidence of payment of rent is not a SINE QUA NON to prove the tenancy. Mere absence of proof of rent, cannot be a ground to

disbelieve a duly executed lease of deed and deny the landlord-tenant relationship.

12. Learned trial Court has noted the oral evidence in favour of tenancy. In para 9 of the judgment wherein defendant witness no.1- Babu Lal Rawani

in para 5 had admitted that he was the tenant of Shanti Devi Bajaj and was in possession of the suit property as a tenant. There is also documentary

evidence with regard to landlord-tenant relationship. Exhibit 4/a is the envelope by which legal notice was returned by Uma Kant Yadav and in para 2

of legal notice, it has been stated, in 1968, suit property was taken on rent on Rs.25/- per month which was later on increased to Rs.100/- per month.

In the teeth of these evidences, it is beyond comprehension as to how first appellate Court recorded a finding that there did not exist landlord-tenant

relationship and remanded the case.

13. The so-called agreement of sale was executed way back in 1971, but till 2001, no suit for specific performance of agreement was filed. There are

errors in the date of death of Ram Naresh Prasad Yadav in whose favour, the said agreement is said to have been made in 1971 and in para 15, his

death is said to have taken place in 1970.

14. In Eviction Suit, the plea of title cannot be raised as defence, but the learned first appellate Court not only accepted the plea but also remanded the

appeal for decision on title. The order of remand is unsustainable and is accordingly, set aside.

15. The first appellate Court is directed to decide the appeal within three months from the date of receipt of copy of the order without being prejudiced

by the findings recorded in the present appeal. Both sides to appear before the first appellate court on 10th February 2025. Non-appearance on the

said date to be treated by the first appellate Court as deliberate, and shall proceed as per law accordingly. Let this order be communicated to the

learned trial Court forthwith.

Miscellaneous Appeal is allowed. Interlocutory Application, if any, is disposed of.