

## Dhan Kumar Jain and Another Vs Mahasukh Mangni Lal

**Court:** Jharkhand High Court

**Date of Decision:** May 15, 2007

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Section 100

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

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

M.Y. Eqbal, J.

This appeal u/s 100 of the CPC by the defendant/appellants is against the judgment of affirmance.

Plaintiff/respondent"s

suit for decree for eviction of the defendants from the suit premises and for delivery of possession was decreed by the Additional Munsif,

Hazaribagh in Title Suit No. 1993/1969 and the same was affirmed by the Additional District Judge, Hazaribagh in Title Appeal No. 14/77 in

terms of judgment and decree dated 25.1.1977.

2. Plaintiff"s case inter alia was that plaintiff is owner of Khapra posh house and land bearing plot No. 944 Municipal Holding No. 340 Ward No.

VII of Haharibagh Municipality. Southern block of the said house was let out by the plaintiff to the defendants on monthly rent of Rs. 30/- per

month. The southern block consists of 4 rooms plus kitchen and latrine and was held and possessed by the plaintiff. It was alleged that since

October, 1966, the defendant did not pay rent and became defaulter and made himself liable for eviction under the provisions of Section 11(i)(d)

of the Bihar Building Lease, Rent & Eviction) Control Act, 1947. After serving legal notice by the plaintiff the aforesaid suit was filed.

3. The defendants contested the suit by filing written statement stating inter alia that the suit was frivolous and not maintainable. Defendant denied

ownership of the plaintiff over the suit premises and further that defendant was never inducted as tenant and there was no such tenancy. Defendants

claimed themselves to be the owner of the entire house and there was no relationship of landlord and tenant between the plaintiff and the

defendants. Defendants" further case was that defendants" ancestors migrated to Hazaribagh in search of business prospects and started their

business at different places. The ancestors were four brothers, namely, Shiv Narainlal Seth, Survasukh Ram Seth, Tensukh Ram Seth and Harsukh

Seth who constituted a joint Hindu Mithaksha family and joint business was started in the name of M/s Lachhiram Shiv Narain. Defendants" further

case was that in the year 1917 the condition of the joint family was deteriorated and the family was in heavy debt. Jay Nath Modi and Birju Ram

Modi filed Misc. Case No. 3/1915 against Sarvasukh Ram Seth. The suit premises and the contiguous northern part of the suit were auction sold

and purchased by decree holder Narayan Ram Modi and others but they did not take delivery of possession. On the other hand, the joint family in

order to protect the property filed Title Suit No. 56/1988 against Narayan Ram Modi and others for declaration with interest of the joint family of

the suit. Subsequently, Narayan Ram Modi in order to avoid litigation offered to sell both the holdings on mere returning the decretal amount in

favour of the plaintiff of that suit and they wanted to acquire the property benami by mentioning the name of Dil Sukh Sarangi who was a close

relative of the family. Accordingly, property was acquired by the joint family in the benami name of Dilsukh Rai Sarangi on payment of

consideration amount by the joint family. Defendants" ancestors were plaintiff in Title Suit No. 55/28 purchased the property by getting the sale

deed executed in the name of Dilsukh Rai Sarangi. Various other defenses were taken by the defendants.

4. The Trial Court decreed the suit deciding all the issues in favour of the plaintiff and being aggrieved by the said judgment and decree, defendants

preferred Title Appeal No. 14/77 which was finally heard by Additional District Judge, Hazaribagh who affirmed the decree passed by the trial

court and decreed the suit. The defendants then preferred Second Appeal No. 72/78R which was heard by this Court and the same was allowed

and the matter was remanded back to the court of appeal below for giving a fresh decision.

5. In Second Appeal No. 72/78R, this Court observed that when finding on the question of relationship of landlord and tenant was under challenge

before the lower appellate court, it was the duty of the Additional District Judge to have considered all the relevant materials and circumstances.

This Court further observed that Ext. 16 series should be examined by the appellate court afresh in order to come to a correct finding of fact. The

matter was therefore, remanded back to the court of appeal below for hearing and giving a judgment afresh. In compliance of the remand order,

the matter was finally heard by the 9th Additional District Judge, Hazaribagh who in terms of judgment and decree dated 31.1.2003 again

dismissed the appeal and affirmed the judgment and decree passed by the trial court. The instant Second Appeal was admitted for hearing on

substantial question of law that ""whether the impugned judgment and decree passed by 1st Appellate Court is in accordance with the direction and

observation made by this Court in S. A. No. 72/78.

6. I have heard Mr. Manjul Prasad, learned Counsel for the appellants and Mr. P.K. Prasad, learned Counsel for the respondents.

7. From perusal of the impugned judgment passed by the court of appeal below, it is evident that the court of appeal below not only meticulously

discussed all the evidences both oral and documentary in detail but all exhibits have been discussed separately by the court of appeal below

including Ext. 16 and recorded findings of fact. The court of appeal below came to a finding that there is no manipulation and interpolation in the

documents and Ext. 16 series were being maintained by the plaintiff in ordinary course of business. The Court further held that Ext. 16 series does

not suffer from any type of overwriting and is undoubtedly reliable.

8. As noticed above, the court of appeal below not only discussed the evidences of all the witnesses and all exhibits but also discussed in detail the

appoints raised and the observation made in Second Appeal No. 72/78. In the aforesaid premises, I am of the considered opinion that since all

issues are based on facts and both the Courts have recorded concurrent finding of fact, there is no scope for interference with the finding of facts in

Second Appeal u/s 100 of the Code of Civil Procedure.

9. For the aforesaid reasons, no substantial question of law is involved in this appeal. Hence, this appeal having no merit, is accordingly, dismissed.