

## Urmila Devi and Others Vs Smt. Rani Devi and Others

**Court:** Jharkhand High Court

**Date of Decision:** April 19, 2007

**Acts Referred:** Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 " Section 11, 11(1)(C), 12(1), 2, 5  
Industrial Disputes Act, 1947 " Section 18

**Citation:** (2007) 2 BLJR 1793 : (2007) 3 JCR 321

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

**Bench:** Single Bench

**Advocate:** Debi Prasad, L.K. Lal and N.R. Sinha, for the Appellant; P.K. Prasad and Sarita Gupta, for the Respondent

**Final Decision:** Dismissed

### Judgement

M.Y. Eqbal, J.

This second appeal by the defendants/tenant is directed against the judgment and decree dated 28.9.2002 passed by 2nd

Additional District Judge, Dumka, whereby he has allowed Title Appeal No. 4/2001 and set aside the judgment and decree dated 5.3.2001

passed by Sub Judge-I, Dumka in Title (Eviction) Suit No. 5/96.

2. The original plaintiff-Ram Kumar Sah filed aforementioned suit for decree of eviction of the defendants/appellants from the suit premises on the

ground of expiry of period of lease, subletting and personal necessity. During the pendency of the suit, the original plaintiff -Ram Kumar Sah died

and the present respondent, namely, widow and minor sons and daughters have been substituted in his place. Plaintiffs" case is that defendant was

inducted as tenant in respect of one shop room by the original plaintiff for a fixed period of twelve years by registered lease deed of the year 1963.

The period of lease expired in 1975 and, thereafter, no fresh lease was executed rather on the request of the defendant he was allowed to continue

the possession of the suit premises on payment of rent. Plaintiffs" further case is that he required the suit premises in good faith for extending his

shop of readymade garments which is situated by the side of the shop premises in occupation of the defendants. The original plaintiff desired to

expand his business by amalgamating the suit premises just to increase his source of income. It was also alleged that subletting of portion of the suit

premises by the defendant-tenant was against the interest of the plaintiff.

3. The suit was contested by the appellants controverting the averments made by the plaintiff and stating that the plaintiff does not require the suit

premises reasonably and in good faith.

4. The trial court framed as many as seven issues and decided all those issues against the plaintiff and dismissed the suit. Aggrieved by the said

judgment and decree, the plaintiffs/respondents filed appeal being Title Appeal No. 4/2001. The Appellate Court held that after expiry of lease in

1975, no fresh lease deed was executed and therefore, suit for eviction on the ground of expiry of lease is justified. The Appellate Court also

decided the issue of personal necessity in favour of the plaintiff and decreed the suit. Hence, this Second Appeal.

5. On 13.2.2004 this appeal was admitted for hearing on the following substantial question of law:

Whether the judgment of the first appellate court reversing the judgment of the trial court is vitiated in law for non consideration of the question of

partial eviction and not recording finding on the mandatory requirement of law.

6. Mr. L.K. Lal, learned Counsel for the appellant assailed the impugned judgment passed by the appellate Court as being vitiated in law for non

consideration of question of partial eviction which is mandatory requirement of law. In this connection, learned Counsel relied upon the decision of

the Patna High Court in the case of Nagendra Prasad Barnwal v. Jitendra Prasad Barnwal (1998) 2 PLJR 582. Mr. Lal next submitted that there

is no evidence from the side of the plaintiff that he or she wants to start any business rather plaintiffs' case is that he wants to expand his business.

In such circumstances, partial eviction will fulfill the requirement of landlord.

7. On the other hand, Mr. P.K. Prasad, learned Counsel for the plaintiff/respondents submitted that although there is no specific finding recorded

by the appellate Court with regard to partial eviction but there are sufficient material on record, particularly the evidence of the original plaintiff that

decree of partial eviction will not serve his requirement and the requirement of his family members, the finding of the appellate court cannot be said

to be perverse in law. According to the learned Counsel, therefore, the impugned judgment passed by the Appellate Court needs no interference

by this Court in Second Appeal.

8. Before appreciating the rival submissions of the learned Counsels, I would first like to refer Section 11(1)(c) and its proviso as provided in Bihar

Building (Lease, Rent and Eviction) Control Act 1982. Section reads as under:

11 Eviction of tenants: (1) Notwithstanding anything contained in any contract or law to the contrary but subject to the provisions of the Industrial

Disputes Act, 1947 (Act XIV of 1947), and to those of Section 18, where a tenant is in possession of any building, he shall not be liable to

eviction therefrom except in execution of a decree passed by the Court on one or more of the following grounds:

(a) xx xx xx xx xx xx xx

(b) xx xx xx xx xx xx xx

(c) Where the building is reasonably and in good faith required by the landlord for his own occupation or for the occupation of any person for

whose benefits the building is held by the landlord:

Provided that where the Court thinks that the reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a

part only of the building and allowing the tenant to continue occupation of the rest and the tenant agrees to such occupation, the court shall pass a

decree accordingly and fix proportionately fair rent for the portion in occupation of the tenant, which portion shall hence forth constitute the building

within the meaning of Clause (b) of Section 2 and the rent so fixed shall be deemed to be the fair rent fixed u/s 5;

Explanation I- In this clause the word "landlord shall not include an agent referred to in Clauses (f) of Section 2.

Explanation II- Where there two or ore premises let out by the landlord, it will be for the landlord to choose which one would be preferable to him

and the tenant or tenants shall not be allowed to question such preference.

(d) xx xx xx xx xx xx xx

(e) xx xx xx xx xx xx xx

(f) xx xx xx xx xx xx xx

9. From bare reading of the aforesaid provisions, it is manifestly clear that the Court while recording its finding on the issue of personal necessity

shall also take into consideration as to whether requirement of landlord will be substantially satisfied by evicting the tenant from a part of the

building and allowing the tenant to continue occupation of the rest and the tenant agrees to such occupation. It has been well settled by catena of

decision that court shall comply the requirement as contemplated in the proviso to Section 11(1)(C) of the Act. In the decision relied upon by the

learned Counsel appearing for the appellant (Nagendra Prasad Barnwal case) a Single Bench of the Patna High Court held that even if tenant does

not raise point of partial eviction, the trial court is under an obligation to make an enquiry and record a specific finding if partial eviction would

serve the purpose. There is no dispute with regard to settled proposition of law that court while passing decree for eviction on the ground of

personal necessity shall also give a finding as to whether partial eviction will satisfy the requirement of the landlord.

10. In the case of Om Prakash Sharma v. Kishun Mistry (1985) PLJR 727, the court while considering similar question has held that where the

tenant has averred that premises is too small to be shared, court is not obliged to consider the question of partial eviction separately. Their

Lordship observed:

Mr. Ghose is correct that Section 12(1)(c) mandates the Court to find out whether the requirement of the landlord can be substantially satisfied by

evicting the tenant from a part only of the building. It is further true that the word "substantially" connotes not fully satisfied but reasonably satisfied

(See *Nasirul Haque v. Jitendra Nath Dey* 1094 B.B.C.J. 173 SC : 1984 PLJR 79. The proviso to Section 12(1)(c) further requires that the tenant

agrees to such part occupation. In that event the Court shall pass a decree accordingly and fix a proportionately fair rent. It has been held by this

Court in the case of *Kedarnath Bohri v. Md. Safiulla* 1983 PLJR 759, while determining the question of partial eviction, it is the duty of the Court

to see whether the premises can be shared for two separate business smoothly, conveniently and profitably. The compatibility of two businesses is

also a relevant consideration. In the instant case the defendant himself has averred in his pleading that the shop is too small to be shared by the

landlord and the tenant. This only manifests that two businesses cannot be carried on conveniently from the said small shop. It is, therefore, clear

that the tenant showed his disagreement to part-occupation of the small premises with the landlord. In my opinion, it was in that view of the matter

that the Court did not resort to the proviso to Section 12(1)(c) and consider the question separately. I do not think that the judgment of the court

of appeal below is vitiated on this account.

11. In the case of *Haveli Ram Bhatia v. Smt. Rajwanti Devi and Ors.* (1984) PLJR 207, a question arose in second appeal that both the trial court

and appellate Court have not recorded a finding that partial eviction, which is mandatory in view of the decision of the Supreme Court in the case

referred in *Rehman Jeo Wangnoo Vs. Ram Chand and Others*, , decree of eviction cannot be sustained in law and the matter is fit to be remanded

back to the court below for recording the said finding. The Court held that even if there is no express finding as to whether partial eviction would

have satisfied the personal necessity of landlord, if from materials available on record manifest, Judges awareness of the said question while

decreeing the suit for eviction, the requirement of Section 11(c) shall be deemed to have been satisfied.

12. Against the aforesaid decision, SLP was filed and the same was dismissed after issuing direction to the tenant to handover the possession

within four months, failing which he shall be evicted in accordance with law. The said decision is relied in the same volume of 1984 PLJR 17(SC)

13. Coming back to the instant case, it has come in evidence that the shop room in question is 8 ft.x 15ft adjacent to the shop room in occupation

of the plaintiff area of which is also same. The plaintiff in his evidence very categorically stated in paragraph 6 to 10 of his deposition that partial

eviction of the shop premises will not satisfy their requirements. Plaintiffs also deposed that defendants are having two big shops just 100 yards

away from the shop room where he has also been carrying on business. The defendants have not disputed this fact.

14. As noticed above, the original plaintiff died during the pendency of the suit and after his death, the widow with four minor sons and daughters

have been substituted. After the death of original plaintiff, the widow has to earn livelihood for herself and for her children. Plaintiffs" therefore,

rightly seek eviction of the shop room so that business can be expanded by amalgamating two shops. So far partial eviction is concerned area of

the shop is 8 ft. x 15 ft. If the shop room is divided into two parts i.e. 4 ft. x 15 ft., it will neither serve the purpose of the plaintiffs nor of the

defendants. I am conscious of the fact that in case where there is no finding of partial eviction, the matter has to be remanded back to the court

below for recording a finding on the issue of partial eviction. In my opinion, having regard to the fact that there are sufficient materials available on

record and the suit for eviction is pending since 1996, it would not be proper to remand back the case to the court below, which would be great

hardship for the plaintiff/widow and her children. On the basis of the materials on record and the evidence adduced by the parties, I am of the view

that decree for partial eviction will not satisfy the requirement of the plaintiffs/respondents.

15. In the facts and circumstances of the case, it is fit and proper for this Court not to interfere with the judgment and decree for eviction passed by

the Appellate Court.

16. For the aforesaid reasons, I do not find any merit in this appeal, which is, accordingly, dismissed.