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**(2006) 11 PAT CK 0147**

**Patna High Court**

**Case No:** Civil Revision No. 1383 of 2005

Md. Ainul Haque @ Annu Mian

APPELLANT

Vs

Ashish Kumar @ Trikal Das

RESPONDENT

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**Date of Decision:** Nov. 10, 2006

**Citation:** (2007) 1 PLJR 180

**Hon'ble Judges:** Mridula Mishra, J

**Bench:** Single Bench

**Advocate:** M.P. Bharti and Sunil Kr. No. III, for the Appellant; Anil Chandra, for the Respondent

**Final Decision:** Dismissed

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### Judgement

@JUDGMENTTAG-ORDER

Mridula Mishra, J.

Heard the parties. Petitioner was the defendant in Eviction Suit No. 9 of 2000 against whom a decree has been passed by the trial Court allowing the ground of personal necessity and bona fide requirement of the plaintiff by order passed by the Munsif, Biharsharif, Nalanda, on 31st May, 2005.

2. Plaintiff-opposite party filed Eviction Suit No. 9 of 2000 on the ground of personal necessity. Plaintiff's case was that suit premises situated in Mohalla Sherpur, Old Ward No. 7 and New Ward No. 13 was purchased by him alongwith his brother, Bhushan Kumar, on 30.9.1983, from Ashok Kumar. The suit premises was purchased alongwith three other shops for the purpose of doing their own business. There was a partition among the father of the plaintiff with his sons in which the father was allotted bullion shop in his favour and the sons got cash money. Out of that cash the plaintiff and his brother purchased private holdings, including the shop in question. At the time of purchase there were four tenants in the shops, out of them two tenants, namely, Munir Mian and Jaddu Sao vacated the shops. In the year 1994 partition took place in between plaintiff and his brother. Two shops which were

already vacated by the tenants fell in the share of Bhushan Kumar, brother of the plaintiff and two tenanted shop came in the share of the plaintiff. The plaintiff was unemployed after completing his education, as such, he requested the defendant tenant to vacate the shop but of no avail, as such, a suit was filed on the ground of personal necessity and bona fide requirement.

3. Defendant-petitioner in his written statement denied the bona fide requirement of the plaintiff stating that the plaintiff, his father and brother are still living in jointness. They are in a joint possession of the suit premises as well as the other properties. The plaintiff and his brothers are not unemployed but they are doing business of ornaments alongwith their father. It has also been stated that the story of partition among the father and the sons as well as in different brothers is false. At the time of partition among the father and the sons the plaintiff was minor. He was even minor when the property in question was purchased. The minor is not free to enter into any agreement, as such the story is false and fabricated." The bona fide requirement as shown by the plaintiff is not correct. Plaintiff has no personal necessity of the shop and the plaintiff just wanted to enhance the rent, since it was not agreed by the defendant, Eviction Suit No. 9 of 2000 has been filed showing his requirement of the suit premises which is not bona fide.

4. Plaintiff examined altogether seven witnesses and exhibited rent receipts, sale deeds and a map attached to the sale deeds for proving his case. Defendant examined altogether eleven witnesses and produced 42 rent receipts marked as Exhibits A to A/41 in order to show that the rent has been paid regularly to the owner of the premises. The trial Court framed several issues, decided the issues in favour of the plaintiff and decided the suit. Being aggrieved with the judgment and order present civil revision application has been filed.

5. The petitioner has specifically assailed the finding recorded by the trial Court deciding issue Nos. 5 to 8. These issues were decided in favour of the plaintiff. Issue No. 5 was whether the partition between the plaintiff and the defendant is correct and genuine. Issue No. 6 was whether the plaintiff is entitled for a decree of eviction against the defendant on the ground of personal necessity. Issue No. 7 was whether the partial eviction of the shop will be proper and for fulfilling the personal necessity of the plaintiff. Issue No. 8 was whether there is relationship of landlord and tenant in between the plaintiff and the defendant.

6. Case of the petitioner is that issue No. 5 has been decided in favour of the plaintiff by the trial Court ignoring the evidence on record. On perusal of the impugned order, I find that evidence of the plaintiff and the defendant on this issue has been properly discussed and considered by the trial Court. Even the witnesses of the defendant have admitted the case of partition among the father and the sons as well as in between the brothers. The defendant witnesses have stated that the ornaments shop belonged to the father of plaintiff and the plaintiff and his brother, Bhushan Kumar, are doing grain business. The defendant has also stated that shop

of Munir Mian and Jaddu Sao were vacated by Bhushan Kumar (brother of the petitioner). These witnesses have indirectly supported that the plaintiff, his brother and father were doing separate business. Two vacant shops were got vacated by Bhushan Kumar (brother of the plaintiff) and he is Utilising these shops. The trial Court rightly decided the issue in favour of the plaintiff holding that the story of partition is genuine. So far the title of the shops are concerned, they belonged to the plaintiff on account of the partition which took place in the year 1993. In this partition family business of gold and silver was allotted in the share of the father of the plaintiff. The finding recorded by the trial Court on the bona fide requirement is also well considered. Question of partial partial eviction has also been considered by the trial Court. It has been considered that the area of the shop is 6 ft. in length and 20 ft. in width. If it is partially allotted to the defendant the area which will be allotted to the plaintiff/ petitioner will be 3 ft. In case a wall is erected for partition of the shop then the area will not be sufficient to fulfil the requirement of the plaintiff. I do not find any illegality in the findings recorded by the trial Court.

7. Counsel for the opposite party has submitted that so far the title of the plaintiff, with regard to the suit premises is concerned, it cannot be questioned by the defendant/petitioner. It is settled law that the defendant cannot question the title of the landlord, if he himself is not claiming title. Counsel appearing for the opposite party has placed reliance on a decision reported in 2000(1) PLJR 438 (Abdul Rashid vs. Smt. Kishori Singh Sikriwal) wherein it has been held "in a suit for eviction on the ground of personal necessity tenant has no locus standi to challenge the landlord's title over the suit property on ground of validity of partition decree, specially when the relationship of the landlord is not denied".

8. On consideration of entire facts, I find that there is no error in the findings recorded by the trial Court while decreeing the eviction suit on the ground of personal necessity and bona fide requirement of the plaintiff-opposite party. Accordingly, this civil revision application is dismissed.