

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.178 of 2016

Shyambabu Sah Son of Ram Kishore Sah, Resident of Village- Sheohar, P.O.- Sheohar, District- Sheohar. At present- Shyama Computer, Prop. Shyambabu Sah, P.S.- Sheohar, District- Sheohar.

... .. Petitioner/s

Versus

Shyam Babu Sah Son of Late Bhukhlu Sah, Resident of Village and P.O.- Sheohar, P.S.- Sheohar, District - Sheohar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Surendra Kishore Thakur, Advocate
For the Respondent/s : Mr. Yogendra Mishra, Advocate
Mr. Arvind Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 10-10-2022

Heard Mr. Surendra Kishore Thakur, learned counsel for the petitioner and Mr. Yogendra Mishra, learned counsel for the opposite party.

(2) This Civil Revision Application has been filed under Section 14 (8) of the Bihar Buildings (Lease, Rent & Eviction) Control Act, (hereinafter referred to as the 'Act') on behalf of the tenant/defendant/petitioner for setting aside the judgment and order dated 16.06.2016 passed by the Munsif, Sheohar in Eviction Suit No.03/2008 whereby and whereunder the learned Court below has decreed the Eviction Suit in favour of the plaintiff on the ground of personal necessity.

(3) The plaintiff's case in brief, is that plaintiff purchased



the suit property and constructed rooms for the purpose of establishing a market (known as Bhukhlu Sah market). The defendant/petitioner approached the plaintiff/respondent to let out the room to him for establishing a printing press and after negotiation, the plaintiff/opposite party let out the suit premises to the defendant on monthly rent of Rs.500/-. The plaintiff due to personal requirement for godown to expand his own business and as such needed the tenanted premises in good faith for personal necessity and requested the defendant to vacate the tenanted premises but the defendant is not ready to vacate the premises despite service of legal notice on defendant through speed post on 24.01.2017 and lastly on 29.07.2008. Thereafter, the defendant stopped payment of monthly rent.

(4) In written statement defendant-tenant has denied any relationship of landlord and tenant between the parties. It is stated that suit property is not the self-acquired property of the plaintiff and it is jointly acquired by the plaintiff, his brother (Ram Babu Sah) and his mother (Sumitra Devi) and there is no personal acquisition of the plaintiff. The defendant claimed that the defendant never executed document on 25.12.2005 which is forged and fabricated. The defendant was forced to sign or write on blank stamp paper. He had taken suit property on rent from



the brother of plaintiff i.e. Ram Babu Sah in the year 2002 and executed Kirayanama on 01.08.2002 at monthly rental of Rs.500/-. Ram Babu Sah has got this property through Yadast Batwara between brother and mother on 20.05.2000. The defendant started a printing press and paying monthly rent Rs.500/- to Ram Babu Sah.

(5) The Trial Court on the basis of pleading framed necessary issues for determination by the Court and having considered the evidence, came to the conclusion that plaintiff has rented his premises to the defendant and it clearly established landlord and tenant relationship between the plaintiff and defendant. The Trial Court observed that even the brother of plaintiff Ram Babu Sah who is examined as DW-6 has not mentioned the Yadast batwara in his examination-in-chief. The Trial Court has further held that the suit premises reasonably and in good faith required by the plaintiff for his personal necessity and accordingly decreed the suit and directed the defendant to vacate the suit premises within 60 days from the date of decree. Hence, the present revision.

(6) The power under the proviso to Section 14 (8) of the Act of this Court is limited to extent of seeing as to whether the order of eviction is according to law or not. For this limited



purpose, the Court can reappraise the evidence. However, it cannot reappraise the evidence as an Appellate Court and will not interfere with the order on the ground that on appreciation of evidence a different view can be taken. In other words, the power of this Court is not wide as of an Appellate Court nor it is as limited as of revisional Court under Section 115 of the Code of Civil Procedure. Thus this Court will interfere in case it is found that the order is based on no evidence or the Court below has ignored the material evidence, which has affected the findings or the findings are perverse, unreasonable or having been arrived at without considering the statutory requirements for grant of relief.

(7) Mr. Thakur, learned counsel on behalf of petitioner has submitted that the Court below has not considered the question of partial eviction as required by proviso to Section 11 (1) (C) of the Act, which is the mandatory requirement and no issue of partial eviction was framed by the Trial Court, as such, no evidence was led on this issue nor any finding was recorded by the Trial Court.

(8) Learned counsel further submitted that it is settled proposition of law that Trial Court is bound to consider the mandatory requirement of partial eviction even if no such prayer



is made by the tenant, for which he has to frame issue during the trial of the suit with opportunity to both parties to lead evidence on partial eviction. He has relied on various judgments including the judgment reported in AIR 1994 SC 489 (**Krishna Murari Prasad Vs. Mitar Singh**, 2001 (2) PLJR 837 (**Bimal Kishore Gupta Vs. Smt. Beena Devi & Ors.**

(9) In support of his argument he has also relied on the judgment dated 01.08.2019 of the Co-ordinate Bench of this Court in **Anis Khan Vs. Shyam Babu Sah** (Civil Revision No. 179 of 2016) in which in similar facts, the matter was remitted to Trial Court to consider the issue of partial eviction after granting opportunity to both the parties to lead evidence on partial eviction.

(10) In the judgment of Hon'ble Supreme Court in **Krishna Murari Prasad Vs. Mitar Singh** AIR 1994 SC 489; SCC 1993 Suppli. 439 in Paragraph-3 it is held:-

“3. It is obvious that the High Court proceeded on the basis that a presumption arises that where the premises comprises only of one room, the proviso to Clause (c) of Sub-section (1) of Section 11 of the Act [i.e. Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982] is not attracted since its application is not practicable. Obviously, this assumption is



fallacious since it pre-supposes indivisibility of a premises comprised of one room, irrespective of its dimensions and even when the room is big enough to permit division to satisfy the needs of the landlord as well as tenant. It is a question of fact in each case whether such a partial eviction can be made or not. This enquiry has to be made by the Court after reaching the conclusion that the landlord's requirement for occupation of premises set up by him has been made out. In failing to do so, the Courts below overlooked this statutory requirement.”

(11) This Court in judgment dated 18.04.2001 in **Bimal Kishore Gupta** Vs. **Beena Devi** (C.R. No.2255 of 2000) reported in 2001 (2) PLJR 837, relied by the learned counsel for petitioner, held:-

“The Court below has not mentioned, much less considered the question of partial eviction as required under proviso to Section 11 (1) (c) of the Act. Law on this point is well settled. Duty is cast upon the Court to consider the question of partial eviction even if no such plea is taken by the tenant and while considering this question duty is cast on the Court to consider whether reasonable requirement of the landlord would be substantially satisfied by evicting the tenant from a part only of the premises. The Court is required to determine the extent of



the premises which is required reasonably by the landlord and this has to be decided on the basis of the evidence adduced by the parties. Thereafter, the Court has to consider as to whether the aforesaid requirement is substantially satisfied and to fully satisfied by ordering partial eviction.”

(12) On the other hand, Mr. Yogendra Mishra, the learned counsel for the respondent-plaintiff, has submitted that no plea at all was taken that requirement of the plaintiff can be satisfied by partial eviction and it appears that considering the size of the room measuring 10'x11'=110 sq. ft. having 2.5 ft. entry passage, the defendant-tenant did not raise the plea of partial eviction. He has further contended that since there was no pleading accordingly no issue in terms of Order XIV C.P.C. was framed nor any evidence was led by either party. He next submitted that suit under BBC Act is triable only under the provisions of C.P.C. and since there was no pleading on the point of partial eviction, no any issue was framed nor any evidence was led and learned Trial Court rightly refrained from touching the question of partial eviction.

(13) He has next submitted that the Hon'ble Supreme Court has laid down the necessity of pleading, framing issues and leading evidence to prove the fact and on this point he relied



on the judgment of Hon'ble Supreme Court reported in **AIR 2011 SC1127 (Kalyan Singh Chauhan Vs. C.P. Joshi)**. Since the plea of partial eviction was neither taken in the Trial Court nor in the Civil Revision, it cannot be raised orally without pleading and proof. He has concluded his argument that once the plaintiff proved bonafide requirement of the demised premises, the landlord has choice to occupy the entire premises. He has relied on the judgment of this Court reported in **AIR 1985 Patna 207 (Mrs. Veena Rani and Ors. Vs. Mrs. Ishrati Amanullah & Ors.)**

(14) In **Kalyan Singh Chauhan case** (Supra) it is held that it is settled legal proposition that as a rule relief not founded on the pleadings should not be granted. Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and see just where the two sides differ. It is neither desirable nor required for the Court to frame an issue not arising on the pleadings. The Court should not decide a suit on a matter/point on which no issue has been framed.

(15) In **Krishna Murari Prasad** case (Supra) the Hon'ble Supreme Court held:-



“The proviso to Clause (c) of Sub-section (1) of Section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 lays down that where the Court thinks that the landlord’s reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only and allowing the tenant to continue the occupation of the rest of the premises 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. Obviously, this situation is reached when the landlord has proved his requirement to make out a ground for obtaining eviction of the tenant. In the present case, landlord’s requirement having been found proved, the Court had to consider the matter further according to this proviso and an order for eviction from the entire premises could be made only if a decree for partial eviction in the manner provided could not substantially satisfy the landlord’s requirement.”

(16) On perusal of the aforesaid judgment dated 01.08.2019 in case of Anis Khan Vs. Shyam Babu Sah (Supra) discussed above, which has been referred to and strongly relied upon by the learned counsel for the petitioner, it appears that the facts and circumstances of the present case are



similar to the facts and circumstances of the said case. Since, the Trial Court has failed to consider the said issue in the said case, the matter was remanded back to the Trial Court for giving its finding. Thus, it is submitted by learned counsel appearing on behalf of petitioner this Court too should remand the case to the learned Trial Court.

(17) Learned counsel for the tenant-petitioner did not point out any infirmities in the plaintiff's evidence nor pointed out non-consideration of material evidence by the learned Court below in arriving the findings of fact. In this case, the Court below has found that the requirement of the plaintiff is bonafide and reasonable one and the learned counsel for the petitioner has not been able to assail the aforesaid finding. Thus, it is held that the suit premises are required by the plaintiff reasonably and in good faith and accordingly, the conditions for eviction as provided under Section 11 (1) (c) of the Act have been fulfilled

(18) In view of settled proposition of law that the Trial Court is bound to consider the mandatory requirement of partial eviction for which he has to frame such issue during the Trial of a suit with opportunity to both parties to lead evidence on partial evidence.

(19) For the reasons as stated above the judgment and



decree of the Trial Court is not sustainable for want of any finding on issue of partial eviction, accordingly, the matter is remitted for the limited purpose to Trial Court to consider the issue of partial eviction after granting opportunity to both the parties to lead evidence on partial eviction. The Trial Court is directed to decide the issue of partition eviction and of relief within the period of four months from the date of receipt of certified copy of this judgment.

(20) This Court is not inclined to interfere in respect of other findings as recorded by the Trial Court and same is left undisturbed.

With the aforesaid observation and direction Civil Revision Application is disposed of.

(Sunil Dutta Mishra, J)

kamlesh/-

AFR/NAFR	NAFR
CAV DATE	27.09.2022
Uploading Date	10.10.2022
Transmission Date	NA

