

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.666 of 2017**

Poonam Kumar @ Poonam Singh, Wife of Sri Raman Kumar, resident of Gorakhnath Lane, Boring Road, P.S. Buddha Colony, District- Patna.

... .. Petitioner/s

Versus

Umesh Singh, Son of Dinanath Prasad, resident of Gorakhnath Lane, Boring Road, P.S.- Buddha Colony, District- Patna.

.. ... Respondent/s

Appearance :

For the Petitioner/s : Mr.Dronacharya, Sr. Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

Date : 11-12-2023

Heard learned senior counsel for the petitioner on the point of admission and I intend to dispose of this petition at this stage itself.

2. The instant petition has been filed by the petitioner against the order dated 15.12.2016 passed by the learned Sub-Judge-8th, Patna in Title Eviction Suit No.78/2012 by which the learned court below rejected the amendment petition filed by the plaintiff-petitioner dated 30.06.2016 on the ground that the amendment sought for was for adding the relief based purely on title and if the amendment sought for was allowed then it would change the nature of the case which was not permissible under the scheme of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter called as 'BBC Act').



3. The learned senior counsel for the petitioner submits that the plaintiff-petitioner filed Title Eviction Suit No.78/2012 seeking following reliefs :-

“(i) On adjudication of the facts a decree for Eviction be passed in favour of the plaintiff and against the defendant with regard to Schedule-2 premises of the plaint and thereafter the plaintiff be put in exclusive possession over the same at the cost of the defendant.

(ii) The arrears of rent for four months to the tune of Rs. 28,000/- excluding electric bill be also paid to the plaintiff with interest pendente lite.

(iii) The defendant be restrained by order of temporary injunction from transferring and changing the physical feature of the suit premises as well as cost and for other reliefs”.

4. The learned senior counsel for the petitioner further submits that the plaintiff is rightful owner and possessor of the piece of land including a three storied old residential house in the town of Patna. The property was owned by one Indira Devi, wife of late Dinanath Prasad, who was mother-in-law of the plaintiff and the said property was acquired by the mother-in-law of the plaintiff by virtue of the registered sale deed dated 14.01.1971. After purchase of the land, she constructed three storied building out of her own fund and got entered her name in the municipal records. She had been living separately from



her sons and it was the plaintiff/petitioner who had been looking after her and for her services, the mother-in-law of the plaintiff-petitioner gifted her self acquired property to the plaintiff vide registered gift deed dated 04.05.2012 and the petitioner came in possession of the said property. Accordingly, necessary changes were made in the municipal records. At the same time, the defendant, who was in service in the Government of Jharkhand, prior to the execution of the aforesaid gift deed, requested his mother for accommodation of his family in a portion of the suit property for study of his children and, accordingly, he was permitted to reside there in the house. After execution of the registered gift deed in her favour, the plaintiff requested the defendant to vacate the suit premises on the ground of personal necessity for which the defendant promised to vacate the same within few months. However, later on, the defendant refused to vacate the property and even refused to pay rent which was agreed earlier between the plaintiff and the defendant. Hence, the plaintiff petitioner was compelled to file Title Eviction Suit No.78 of 2012. The defendant appeared after summons and filed his written statement denying the relationship of landlord and tenant between the parties and also submitted that the defendant had



already filed Title Partition Suit No.315 of 2012 which has been pending in the court of learned Sub-Judge-1, Patna against his brothers and sisters claiming unity of title and unity of possession in the suit property. The defendant also claimed that the plaintiff has got fabricated the gift deed dated 04.05.2012. After filing of the written statement by the defendant, the plaintiff/petitioner filed an amendment application dated 30.06.2016 mentioning therein that there was necessity of the amendment in the plaint seeking equitable relief of eviction on the ground of title of the plaintiff in case the relationship of landlord and tenant was not established. Accordingly, the plaintiff/petitioner prayed for certain amendments. A rejoinder was also filed on behalf of the defendant and after hearing the learned counsel for the parties, the learned trial court, vide order dated 15.12.2016, rejected the amendment sought by the plaintiff/petitioner.

5. The learned senior counsel for the petitioner further submits that the order passed by the learned Sub-Judge-8, Patna is open to challenge on a number of grounds. The learned trial court has not considered how nature of eviction suit would change if the plaintiff seeks relief on the basis of her title over the suit property and at the same time as alternative



remedy, the plaintiff can seek relief for eviction on the ground of relationship of landlord and tenant in the eviction suit. Moreover, in case of dispute over the title of the landlord, the plaintiff can ask for eviction of the tenant on the basis of her title on the suit property. Similarly, the learned trial court has not considered that by the amendment, eviction can be sought on the basis of the alternative relief as provided under Order VII Rule 7 of the Code of Civil Procedure.

6. The learned senior counsel for the petitioner further submits that the impugned order of the learned trial court is not sustainable as it is against the provisions of law. The learned senior counsel further submits that in case of eviction, the relationship of the landlord and tenant is *sine qua non*. If court finds that there is no relationship of landlord and the tenant between the parties and the plaintiff has title over the suit property then it can grant relief of eviction in favour of the plaintiff under the provisions of Order VII Rule 7 of the Code of Civil Procedure. Moreover, the court has ample power to grant relief of eviction in favour of the plaintiff based on title subject to payment of court fee over the suit property to be decided by the learned trial court. The learned senior counsel also submits that allowing the amendments would not have



changed the nature of the suit.

7. Perused the records.

8. Having considered the submissions made on behalf of the petitioner, I am entirely not in agreement with the submissions made on behalf of the petitioner. Time and again, the Hon'ble Apex Court has held that the question of title of the parties to the suit premises is not relevant when the suit has been filed for eviction under a Special Act like 'BBC Act'. Further, a court like Rent Controller having limited jurisdiction to try suits on grounds specified in the Special Act cannot pass a decree of eviction on a ground other than the one specified in the Act. The scope of such suit is very much limited and the question of title cannot be looked into because suit would be eventually dismissed even if the plaintiff succeeds in proving title but fails to establish contract of tenancy. Reference could be made to the decisions of Hon'ble Supreme Court in the cases of *LIC v. India Automobiles & Co.*, reported in (1990) 4 SCC 286, *Ranbir Singh v. Asharfi Lal*, reported in (1995) 6 SCC 580 and *Rajendra Tiwary v. Basudeo Prasad*, reported in (2002) 1 SCC 90. However, the question of title if disputed, may incidentally be gone into in connection with the primary question for determining the main question about the



relationship between the parties (*LIC v. India Automobiles & Co. and Ranbir Singh v. Asharfi Lal supra*).

9. The Hon'ble Supreme Court in the case of *Tribhuwanshankar Vs. Amrutlal*, reported in (2014) 2 SCC 788 considered the above-referred its decisions and held that there is a difference in exercise of jurisdiction when the civil court deals with a *lis* relating to eviction brought before it under the provisions of the Transfer of Property Act and under any special enactment pertaining to eviction on specified grounds. However, it has held that if the alternative relief is permissible within the ambit of the Act, the position would be different. It has further held that the court can decide the issue of title if a tenant disputes the same and the only purpose is to see whether the denial of title of the landlord by the tenant is bona fide in the circumstances of the case.

10. In the light of the aforesaid facts and circumstances, the learned court below acting under the powers conferred upon it by the 'BBC Act' cannot inquire into the title of the plaintiff since it is beyond the scope of the learned court below exercising jurisdiction under the said Act as no alternative relief is permissible and no equitable relief can be granted and, for this reason, the provisions of Order 7 Rule 7 of



the Code of Civil Procedure are not attracted since the title of the plaintiff cannot be gone into by the learned trial court. The learned trial court has rightly rejected the application filed by the petitioner for amendment in plaint seeking declaration of title and eviction of respondent/defendant on the basis of title of plaintiff on the suit premises.

11. Under the aforementioned facts and circumstances, I do not find any merit in the instant petition and, accordingly, the same is dismissed.

12. However, it is made clear that the issue of right, title and interest of the parties is open and the petitioner is at liberty to take recourse of law to assert any of her rights.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.12.2023
Transmission Date	NA

