

**Pushkar Kumar Vs. Sobha Devi**

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**SooperKanoon Citation :** [sooperkanoon.com/119604](http://sooperkanoon.com/119604)

**Court :** Patna

**Decided On :** Aug-11-2004

**Judge :** V.N. Sinha, J.

**Acts :** Bihar Building (Lease Rent and Eviction) Control Act, 1982 - Sections 11(1) and 14(8)

**Appeal No. :** Civil Revision No. 1382 of 2002

**Appellant :** Pushkar Kumar

**Respondent :** Sobha Devi

**Advocate for Def. :** Chitranjan Sinha and Shambhu Sharan Singh

**Advocate for Pet/Ap. :** Rajesh Kumar Singh and Anand Vardhan

**Prior history :** V.N. Sinha, J. 1. Heard Sri Rajesh Kr. Singh for the petitioner and Sri Chitranjan Sinha Sr. Advocate for the opposite party. 2. This civil revision application is directed against the judgment and decree dated 8.8.02 passed by the 2nd Addt. Munsif, Muzaffarpur in Eviction Suit No. 25/93 by which he has decreed the Eviction suit and has directed the tenant petitioner to hand over the suit premises to the landlord within a period of 60 days from the date of the said decree. 3. Plaintiff filed

**Judgement :**

**V.N. Sinha, J.**

1. Heard Sri Rajesh Kr. Singh for the petitioner and Sri Chitranjan Sinha Sr. Advocate for the opposite party.

2. This civil revision application is directed against the judgment and decree dated 8.8.02 passed by the 2nd Addt. Munsif, Muzaffarpur in Eviction Suit No. 25/93 by which he has decreed the Eviction suit and has directed the tenant petitioner to hand over the suit premises to the landlord within a period of 60 days from the date of the said decree.

3. Plaintiff filed the instant suit for eviction asserting that she and three of her sisters in law purchased the suit property by virtue of sale deed dt. 31.5.71 Exhibit 3. The plaintiff and the three sister in law came in separate possession of their purchased interest in the property. Plaintiff thereafter developed her portion of the purchased property and raised 3 rooms over the same. In December 1975 those 3 rooms were let out to the defendant petitioner who is the son of Kamla Devi the sister in law of the plaintiff and one of the purchasers of the part of the purchased property under aforesaid sale deed dt 31.5.71 Exhibit 3. Pursuant to the aforesaid arrangement rent was paid until April 1992 whereafter rent has not been paid. The husband of the plaintiff who has his grain business in the premises of the market committee located in the Market yard Muzaffarpur later became sick and desired to shift his business from the premises of market committee located in the market yard to the tenanted premises. The elder son of the plaintiff was also unemployed and wanted to establish an oil mill as such the tenanted premises was required by the plaintiff to accommodate both the husband as also the unemployed son by establishing another business. When the aforesaid necessity arose, a request was made to the defendant to vacate. On his refusal to do so, present eviction suit was filed praying inter alia to evict the defendant on the ground of personal necessity of the landlady and her husband and the unemployed son.

4. On receipt of summons defendant appeared and filed written statement admitting the fact that the suit property was purchased in the name of the 4 ladies vide sale deed dt. 31.5.71 exhibit 3 but it was asserted that the vended property was the personal property of Ramchandra Prasad father of the defendant-

petitioner. On the basis of the aforesaid statement relationship of landlord and tenant was denied and it was submitted that the eviction suit be dismissed.

5. In support of the case, plaintiff examined as many as 9 witnesses and the defendant examined 15 witnesses. Besides they also filed documentary evidence to support their case. Those documents have been duly considered in the impugned judgment.

6. The trial Court having considered the case of the parties by the impugned judgment decreed the suit holding that even though there was no written agreement creating tenancy between the plaintiff and the defendant yet factum of tenancy is established on the basis of the evidence of PWs 3, 4, 6 and 7. The trial Court having considered documentary evidence namely matriculation certificate of the defendant Exhibit G further held that though the defendant appears to be minor in December, 1975 yet there existed a valid contract of tenancy between the parties as from evidence of the defendant-petitioner himself it transpired that he was conducting business independently in the year 1975. In regard to matriculation certificate the trial Court further said that the same cannot be taken to be a conclusive proof of age. The trial Court having recorded the aforesaid finding held in paragraph 7 that the partial eviction from the suit property may not satisfy the need of the plaintiff.

7(a). Learned counsel for the petitioner assailed the judgment on the ground that there could not have been any contract, of tenancy with the petitioner in December, 1975 as by then he was a minor and contract with a minor being void can not be terminated by resorting to the provision of BBC Act, 1982. In this connection he relied upon the case of Firm Bhola Ram Harbans Lal and Anr. v. Bhagat Ram and Ors., AIR 1927 Lahore 24.

7(b). Learned counsel for the petitioner further assailed the aforesaid judgment on the ground that finding in regard to existence of the contract of tenancy between the parties have been recorded on the basis of the evidence of PWs 3, 4, 6 and 7 and those witnesses according to him should not have been relied upon by the Court below as PW 3 was born on 10.1.74 and as such could not have deposed about creation of tenancy in December, 1975 as by then he was only 2 years old.

PW 4 is sought to be impeached on the ground that he happens to be a friend of the husband of the plaintiff and as such interested witness and should not be relied upon. The evidence of PW 6 is assailed also on the ground that he is minor and further his mother another vendor of sale deed dt, 31:5.71 Exhibit 3. has filed eviction suit bearing No. 25/93 against the defendant. PW 7 being the husband of the plaintiff as such is the most interested witness and should not be accepted. Learned counsel further submitted that plaintiff having not been examined in this case the case should fail on that account alone.

7(c). He further submitted that finding recorded by the Court below that partial eviction from the tenanted premises is not possible is also erroneous as according to him two out of three rooms may be sufficient to cater to the needs of the plaintiff to accommodate the grain business of her husband and to establish oil mill for the son.

8(a). On the other hand counsel for the opposite party submitted that the plea that the contract of tenancy between the plaintiff and the defendant being void, as in December 1975 the defendant was a minor could not be annulled by resorting to the provision of the BBC Act, is wholly erroneous as the defendant-petitioner in his written statement never raised any plea that he being a minor in December, 1975 contract of tenancy entered with him could not be enforced or terminated by resorting to the provision of the BBC Act, He further submitted that the plea of minority not raised in the written statement, no amount of evidence in regard to minority and the contract of tenancy being vitiated on that account could be looked into. In this connection learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of Mukund Limited v. Mukund Staff and Association, reported in 2004 (3) PLJR 79 (SC) and the case of Bondav Singh and. Ors. v. Nehal Singh and Ors., reported in 2003 (4) Supreme Court cases 161, where the Hon'ble Court specifically ruled that it is settled law that in absence of plea no amount of evidence led in relation thereto can be looked into. In regard to the age of the defendant-petitioner as recorded in the matriculation certificate Exhibit G, learned counsel, submitted that age recorded at the time of admission in the school, which is the basis of matriculation certificate, is generally reduced for obtaining benefit in later life. In this connection he relied upon the case of Brij

Mohan Singh v. Priya Brat Narain Sinha and Ors., AIR 1965 SC 282. He further submitted that in any case petitioner-tenant should not be allowed to take advantage of his minority at the time he was inducted as a tenant, as then, as per his own admission, he was conducting his business independently. In the alternative learned counsel for the opposite party further submitted that in any case the defendant-petitioner attained majority while the contract of tenancy subsisted and continued to pay the rent thereby rectified the contract. In this connection learned counsel also placed reliance on the case of Firm Bholu Ram Harbans, (supra) in which Division Bench of Lahore High Court categorically ruled that minor on attaining majority is decidedly liable to be called to account for all the transactions that he entered into after attaining majority. In this connection he also relied upon the case of Narendra Lal Khan v. Hrishikesh Mukherjee and Ors., reported in AIR 1919 Calcutta 875.

8(b). It was further submitted by learned counsel for the opposite party that whatever benefit the defendant-petitioner acquired under a void contract he was obliged to restore the same and in this connection he relied upon the case of Tarsem Singh v. Sukhminder Singh, paragraphs 30 and 31 reported in AIR 1998 SC 1400. Learned counsel further relied on the case of Shri Dinesh Nandan Sahay v. Ram Kripal Singh, reported in 1996 (1) PLJR 234 paragraph 21 and on the case of Sheela and Ors. v. Firm Prahlad Rai Prem Prakash, reported in 2002 (3) Supreme Court cases 375 to submit that once defendant-petitioner has paid rent to the landlord until April, 1992, as has been found by the trial Court he is estopped under the principle incorporated in Section 116 of the Evidence Act, to dispute the title and ownership of the landlord over the tenanted premises.

8(c). He further submitted that Exhibit 5 is the application filed by this defendant in another Eviction suit No. 8/93 in which it is admitted that the suit property is recorded in the name of four vendees of the sale deed dt. 31.5.71 Exhibit 3 and the defendant petitioner has been put in possession of the entire vended property including suit property by the vendees of the said sale deed exhibit 3 including the plaintiff in part compliance of another agreement to sell. With reference to exhibit 5 it is urged that stand taken therein is contrary to the stand taken in the written statement that the vended property is personal property of the father of this

defendant as it appears from exhibit 5 that this defendant has admitted therein that owner of the suit property is the plaintiff by virtue of sale deed Dt. 31.5.71 exhibit 3. Learned counsel for the opposite party on that basis submitted that as title of the plaintiff is admitted, over the suit property there should not be any difficulty in granting equitable relief to the plaintiff under order 7 Rule 7 of the Code, of Civil Procedure by maintaining the eviction decree as even if the relationship of landlord and tenant is not established to the hilt yet on the basis of title of the plaintiff admitted in exhibit 5 the eviction decree should not be set aside. In this connection learned counsel relied on a judgment of this court in the case of Kashi Choudhary @ Kashi Pasi v. Mujataba Hassan reported in 1982 BLJR 28. Perusal of the said judgment would indicate that eviction decree passed in the said case against the licensee was maintained by this Court on the basis of title of the person who applied for ejection from the suit property.

8(d). Learned counsel for the opposite party further submitted that true it is PWs 3, 4, 6 and 7 are interested witnesses but in a landlord tenant dispute persons connected with the affairs of the family are only available for examination as witnesses and as such only because those witnesses are interested witnesses their evidence should not be ignored. In this connection learned counsel further clarified that the persons who are acquainted with the affairs of the family are only the competent persons to depose in regard to the development in the family and as such PW 4 being friend of the husband of the plaintiff and PW 7 being the husband of the plaintiff were most competent witnesses and their evidence should be accepted. In regard to creation of tenancy and payment of rent the evidence of PW 4, was not even challenged in cross- examination and as such should be accepted, In this connection he relied upon the case of Karnidan Sarda and Anr. v. Sailaja Kanta Mitra, reported in AIR 1940 Patna 683 to submit that the purpose of cross-examination of a witness is to test his evidence and it must be assumed that when a witness is not tested by challenging his deposition then his evidence should be accepted. In regard to failure of the plaintiff to come to the witness box learned counsel submitted that reasons for non- appearance of the plaintiff has been duly explained by her husband that she was sick and as such she could not be examined as witness and as such her non-appearance should not prejudice her case. Judgment of this Court in the case of Krishna Kant Pandey and Anr. v. Suniti

Bala Sarkar reported in 1988 PLJR 255 paragraphs 19 and 20 has been relied upon to suggest that for good reason plaintiff of a suit may not be examined as a witness and failure to examine the plaintiff may not be fatal.

9. While making the reply submissions learned counsel for the petitioner reiterated his earlier submission and further submitted with reference to the judgment of the Hon'ble Supreme Court in the case of Rajendra Tiwari v. Basudeo Prasad, reported in AIR 2002 SC 136 that no equitable relief could be allowed to the plaintiff-landlord on the basis of his alleged title over the suit property as considering the close relationship between the plaintiff and the defendant, matter is required to be thrashed out in partition suit and not in this summary proceeding under the BBC Act.

10. Having considered the rival submissions of the parties, I am of the opinion that the contentions of the petitioner that contract of the tenancy was void ab initio and could not have been terminated by resorting to the provision of the BBC at appears to be misconceived for the following two reasons :

(a) That the said plea was not raised in the written statement and any amount of evidence in support of the said plea should not be looked into by the Court as the said plea itself was not taken in the written statement.

(b) In December, 1975 defendant-petitioner may be a minor according to his matriculation certificate even then as per his own evidence, he conducted his business affairs independently and attained majority within four years whereafter also he continued to pay the rent of the premises in question until April, 1992 as has been found by the Court below in due consideration of legally admissible evidence of PWs 4 and 7. The evidence of PW 4, has not even been challenged in cross-examination.

11. Further submission that the evidence of PWs 2, 4, 6 and 7 which have been relied upon by the Court below to accept the case of the plaintiff ought not to have been relied upon as they are interested witnesses also appear to be misconceived as in matter concerning family affairs only persons who are known to the family are available to depose in regard to the prevailing state of affairs as such reliance

placed by the Court below over their deposition does not appear to be erroneous. Moreover in spite of my repeated request learned counsel for the petitioner failed to suggest any circumstance which should restrain me from accepting their evidence within the scope of revisional jurisdiction under Section 14(8) of the BBC Act, as thereunder this Court has only to ensure that the Trial Court has neither overlooked material evidence nor relied upon inadmissible evidence and its findings are not perverse and unreasonable. At this stage I am tempted to notice that the defendant petitioner has contradicted himself by espousing two contradictory stands one in the written statement i.e. subject matter or sale deed dt. 31.5.71 Exhibit 3 including the suit house is the self acquisition of Ramchandra Pd. the father of the defendant/petitioner and the other in exhibit 5, the application filed by the defendant/petitioner in Eviction Suit No. 8/93 in which it is admitted that the suit property is the acquisition of the plaintiff and the father of the defendant came in possession by virtue of an agreement to sell. In view of the two contradictory stands of the defendant/petitioner trial Court rightly ignored them and proceeded to accept the consistent case of the plaintiff on the basis of legally admissible evidence.

12. Now coming to the third submission of the learned counsel for the ' petitioner that the Court below did not consider the aspect the partial eviction as per the provision contained in proviso to Sub-section 11 (i)(c) of the BBC Act. Before I proceed to record my finding on the aforesaid aspect, it would be useful to quote the said provision.

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 benefit 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 henceforth 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 under Section 5.

The said proviso has been considered and interpreted by the Hon'ble Supreme Court and this Court from time to time in various cases,

13. This Court having taken note of the earlier decisions of the Hon'ble Supreme Court in the case of Most. Sushila Devi and Ors. v. Sri Lakhan Lal San and Ors., reported in 2004 (I) PLJR 752 has held as follows :

Para 7. According to the proviso the Court has to consider the question as to whether the reasonable requirement of the landlord will be satisfied substantially (not fully) by evicting the tenant from the part of the building and permitting the tenant to continue occupation of the rest and the tenant agrees to such occupation. In case the Court finds that the requirement of the landlord will be substantially satisfied by partial eviction and the tenant agrees, the Court will pass a decree accordingly and fix proportionately fair rent as provided under the aforesaid provision.

Para 8.....

Para 9.....

Para 10. Thus, according to the settled law, the Court while considering the partial eviction has-to consider firstly the extent of the premises and then to consider the reasonable requirement of the landlord which has to be determined on the basis of the evidence on record arid not on the basis of mere desire or wish of the landlord and thereafter the Court has to consider as to whether the said reasonable requirement would be satisfied substantially and not fully by partial eviction.

14. Perusal of the impugned judgment, however, indicates that the Court below has only referred to the size of the suit premises and thereafter on the basis of the evidence of PWs 3 and 7 has concluded that as the plaintiff has no other vacant house within the town as such the suit premises is required by the plaintiff to satisfy the needs of her husband and son. In my considered opinion the Court below under the impugned judgment has not considered as to whether partial eviction of the tenant from the premises would substantially satisfy the needs of

the landlady in providing for reasonable space to satisfy the business requirement of her husband and the son. Failure to consider the same vitiates the judgment in part and as such I set aside the impugned judgment and direct the Court below to reconsider the aspect of partial eviction in accordance with law after giving reasonable opportunity to the parties to lead further evidence in regard to question of partial eviction. The Court below should expedite the hearing of the suit and conclude the proceeding by passing another judgment and decree within a period of three months from the date of receipt/production of a copy of this order.

15. In the result the impugned judgment is set aside in part and matter is remitted back to the trial Court to dispose of the matter afresh in the light of the observation/direction made above.

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