

IN THE HIGH COURT OF JHARKHAND AT RANCHI

C.M.P.No. 964 of 2024

Md. Naseem Khan, Aged about 65 years, S/o Late Abdul Rahman, Resident of Mohalla Near Jama Masjid, Kuldeep Singh Road, Dumka P.O. & P.S. Dumka, Dist. Dumka, Jharkhand.

.... Petitioner

Versus

1. The President, Managing Committee Masjid Dumka, Jama Masjid Campus, Thakurbari Road, Dumka, P.O. & P.S. Dumka, Dist. Dumka, Jharkhand.
2. The President, Managing Committee, Madrasa, Masjid, Jama Masjid Campus, Thakurbari Road, Dumka, P.O. & P.S. Dumka, Dist. Dumka, Jharkhand
3. Anjuman Islamia, Sah Madrasa Committee Dumka, Jama Masjid, Bhagalpur Road, Dumka, P.O. Dumka, P.S. Dumka Town, Dist. Dumka, Jharkhand Opp. Parties

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. Rajiv Sinha, Advocate

For the Opp. Parties : Mr. Suraj Prakash, Advocate

Order No. 02/ dated 18.11.2024

Heard the learned Counsel for the parties.

2. This C.M.P. has been filed on behalf of the petitioner for setting aside the order dated 20.07.2023 passed in Original Suit No.12 of 2020 by the Civil Judge (Sr. Division)-II, Dumka and the order dated 17.08.2024 passed in Civil Misc. Appeal No. 06 of 2023 by the Principal District Judge, Dumka whereby the application filed for substitution as plaintiff after the death of Most Badrun Nisha of Original Suit No.12 has been rejected.

3. The learned Counsel for the petitioner has submitted that Original Suit No. 12 of 2020 was instituted by Most. Badrun

Nisha against three defendants in which she has averred that her husband was the tenant of the property in question since 1962 @ Rs. 10. The rent of the same was also paid by her husband during his lifetime.

3.1 It has also been submitted that the husband of the plaintiff had been residing along with other near blood relatives.

3.2 On 24.05.2017 the husband of the plaintiff namely Abdul Shakur died and after his death he left his widow who was the plaintiff and the blood relative whom they have been taken care since childhood.

3.3 Further it has been submitted that the defendant No.3 has no right, title or interest in the property in question. All the defendants were threatening her to evict her without adopting the due course of law out of the property in question. Hence the suit for permanent injunction was filed not to evict her forcibly without adopting the due course of law out of the property in question.

4. During pendency of the Suit No. 12 of 2020 the sole plaintiff of the suit died on 22.2.2023 and the petitioner Md. Naseem Khan who was the nephew had been residing with the plaintiff Most Badrun Nisha in the property in question had filed the application to be substituted as plaintiff after the death of Most. Badrun Nisha. The copy of the application is

made Annexure No.2 of this petition. Against the same objection were filed on behalf of the defendant of the suit which are Annexure No.3.

5. The learned trial court has rejected the application for substitution as a plaintiff in the suit vide order dated 20.07.2023. Against the same order dated 20.07.2023 the petitioner had preferred Civil Misc. Appeal No. 06 of 2023 in the Court of Principal District Judge, Dumka. The appeal was also dismissed by the Appellate Court and affirmed the order passed by the trial court.

6. The learned Counsel for the Opposite Party vehemently opposed the contentions made by the learned Counsel for the petitioner and contended that the petitioner is not the legal heir of deceased plaintiff Most. Badrun Nisha and the plaintiff Badrun Nisha died issueless. On her death the tenancy itself was terminated on account of having died issueless and the learned trial court and the learned Appellate Court has rightly rejected the application of the petitioner. It is also further submitted that the Eviction Suit is also pending against the tenant of the property in question.

7. From the bare perusal of the plaint which is Annexure No.1 of this petition, it is found that the plaintiff of the suit Most. Badrun Nisha had instituted the simple suit for permanent injunction wherein she has averred that her

husband was the tenant of the property in question on behalf of the defendant No.2 @ Rs. 10/- and in the lifetime of her husband she and her near relative were also residing in the very property in question and after death of her husband on 24.05.2017 she being the widow and resided in the property in question along with the near relative and the rent of property in question has been regularly paid by her. All the defendants were threatening her to evict from the property in question without adopting due course of law. Hence there was no way out to her but to file the suit for permanent injunction against the defendants.

7.1 Admittedly, the plaintiff Badrun Nisha died on 22.2.2023 during pendency of the suit and after her death, the petitioner herein, Md. Naseem Khan who has averred himself to be the nephew of deceased and also averred himself to be legal heir of Most. Badrun Nisha and had also been living with her in the property in question during the lifetime of Badrun Nisha and her husband Abdul Shakur as well.

7.2 The learned trial court has recorded the finding while rejecting the application of the petitioner on the ground that the petitioner does not come within the category of the legal heirs as shown under **Section 5 of Jharkhand Buildings (Lease, Rent and Eviction Control) Act, 2011.**

7.3 From the perusal of the very impugned order passed by the learned trial court, it is found that while rejecting the application of the petitioner, the learned trial court has overlooked the proviso of Section 5 of Tenancy Act. Herein it would be relevant to give the statutory provision of **Section 5 of Jharkhand Building (Lease, Rent and Eviction Control) Act, 2011:**

5. Inheritance to tenancy.-(1) In the event of death of a tenant, the right of tenancy shall devolve to his successor in the following order, namely:-

- (a) Spouse,
- (b) Son or unmarried daughter or where there are both son and unmarried daughter, both of them,
- (c) Parents,
- (d) Daughter-in-law, being the widow of his pre-deceased son.

Provided that the successor has ordinarily been living or carrying on business in the premises with the deceased tenant as a member of his family upto the date of her/his death and was dependent on the deceased tenant:

Provided also that the period of devolution is limited to the unexpired portion of the tenancy and it is open to the landlord and the successor tenant to enter into fresh agreement.

Provided further that a right to tenancy shall not devolve upon a successor in case such successor or his spouse or any of his dependent son or daughter is owning or occupying a building. However, he shall acquire a right to continue in possession as a tenant for unexpired period of tenancy, or a period of one year from the date of death of the tenant, or on his death, whichever is earlier.

(2) The right of every successor, referred to in sub-section (1) to continue in possession of the building shall be personal to him and shall not, on

the death of such successor, devolve on any of his heirs.

(3) Nothing in sub section (1) or sub section (2) shall apply to a non residential building and the vacant possession of such building shall be delivered to the landlord within one year or unexpired portion of tenancy, whichever is earlier:-

- (i) of the death of tenant, in case the tenant is an individual;
- (ii) of the dissolution of the firm, in case the tenant is a firm;
- (iii) of the winding up of the company, in case the tenant is a company;
- (iv) of the dissolution of the corporate body other than a company, in case the tenant is such a corporate body.

Provided that it is open to the landlord and the successor tenant to enter into a fresh agreement.

7.4 In the very proviso first of this Section 5 it has been provided that the successor who has ordinarily been living or carrying on business with the deceased tenant as a member of family up to the date of her/his death and was dependant of the deceased tenant also will come in category of inheritance to tenancy. Herein it is also pertinent to mention that the suit which was filed by the plaintiff-tenant was simple suit for injunction and in view of **Section 2 (11)** of Code of Civil Procedure legal representative have been defined which as under:

Section 2(11) of C.P.C. “ legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative

character the person on whom the estate devolves on the death of the party so suing or sued;”

7.5 From the cumulative reading of **Section 2 (11)** of **C.P.C.** and the **proviso of Section 5** of the **Jharkhand Building (Lease, Rent and Eviction Control) Act, 2011** the petitioner who has averred himself to be the nephew of the deceased-plaintiff and this very fact is very well corroborated with the pleadings of the plaint where the original plaintiff herself has stated that in the tenanted property she had been residing along with her near relative since the lifetime of her husband and after the death of her husband she had also been residing along with her near relative. As such the petitioner is the legal heir of the deceased-plaintiff and tenancy also comes within the category of tenant in view of the proviso of Section 5 wherein the inheritance to tenancy has been provided.

7.6 In view of the above, the impugned order passed by the learned trial court which has been affirmed by the learned Appellate Court is based on perverse finding and same needs interference. Accordingly, this C.M.P. deserves to be allowed.

8. This C.M.P. is **allowed**. The impugned order dated 20.07.2023 passed by the learned Civil Judge (Sr. Division)-II, Dumka in Original Suit No. 12 of 2020 which has been affirmed by the learned Principal District Judge, Dumka vide order dated

17.08.2024 passed in Civil Misc. Appeal No. 06 of 2023 are **set aside.**

9. In consequence thereof the application of the petitioner for substitution as the legal heirs of sole deceased-plaintiff stands allowed and the order of abatement which has been passed by the learned trial court is stood set aside.

10. The learned trial court is directed to permit the petitioner to incorporate the amendment in the original plaint in regard to be substituted as legal heir of deceased plaintiff.

(Subhash Chand, J.)

P.K.S./A.F.R.