

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

Present: Sunita Rani
DJ XXI, Patna

1. Ms. Meena Sahay Widow of Late Sachitanand Sahay, R/o Mohalla-Kankarbagh, near Gaytri Mandir, P.O. Lohia Nagar, P.S. Kankarbagh, Town & District-Patna
(Since deceased substituted through LR's)

i. Smt. Sarita Prasad W/o- Late Sudhir Prasad.

ii. Smt. Saroj Verma W/o Dr. Hemant Kumar Verma.

iii. Smt. Chandani Sinha W/o- Ravi Sinha.

All resident of Mohalla-Kankarbagh, near Gaytri Mandir, P.O. Lohia Nagar, P.S. Kankarbagh, Town & District-Patna.

2. M/s Subh Chandni Gas Agency having it's Office at Mohalla B.M. Das Road, P.O. Bankipur, P.S. Pirbahore, District-Patna through its proprietor Mrs. Meena Sahay.

.....Principal Defendants/Appellants

Versus

1. Smt. Renu Singh, wife of Late Rajeev Kumar Singh

1.a Smt. Sudha Singh, wife of Late Ram Bilash Singh

1.b Abishant Chauhan, minor son of Late Rajeev Kumar Singh, under the guardianship of his mother well-wisher and next friend Smt. Renu Singh.

2. Shashi Bhushan Singh Son of Late Ram Bilash Singh.

All resident of Mohalla-Prithviraj Path, Lohanipur, P.S. Kadam Kuan, District-Patna.

.....Plaintiffs/Respondents

For the Appellants: -Sri Arvind Kumar (Advocate)

For the Respondent: -Sri D.N. Jha (Advocate)

.....

Date of Judgment: - 30.04.2026

Title Eviction Appeal -34 of 2011
CIS NO. 335/2014

Ms. Meena Sahay (Deceased through LR's) & Anr.
Vs.

Renu Singh & Ors.

Sunita Rani
DJ, XXI
Patna

Decided on 30-04-2026

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

JUDGMENT

- 1 Instant Title Eviction Appeal (hereinafter known as “Appeal”) has been preferred by the appellants/defendants against the judgment and decree dated 10/01/2011 passed by Sri Dashrath Mishra Ld. Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997, whereby the learned trial court decreed the suit on contest with cost and directed the defendants no. 1 & 2 to vacate the premises as described in Schedule-1 of the plaint and to hand over the vacant possession thereof to the plaintiff within sixty days. Further ordered the payment of arrears of rent mentioned in schedule II of the plaint with simple interest @ 6 % per annum till the date of realization.
- 2 The Plaintiffs/Respondents filed the aforesaid suit for eviction of the defendants/appellants from the suit premises fully described in Schedule- I of the plaint on the ground of non-payment of rent, for breach of terms and conditions of tenancy by raising illegal construction over the suit premises and termination of tenancy. Besides this, for decree of Rs. 16,200/- as given in Schedule II of the plaint as due rent and other reliefs.
- 3 For the sake of convenience, the parties will be referred hereinafter according to their original status in the eviction suit bearing no. 30 of 1997 before the Ld. Trial court.
- 4 **Shortly put the plaintiffs’ case is as under:-**
 - (i) According to the case of plaintiffs/respondents, in brief, is that both the plaintiffs are full blood brothers and are joint owners of the

Title Eviction Appeal -34 of 2011
CIS NO. 335/2014
Ms. Meena Sahay (Deceased through LR’s) & Anr.
Vs.
Renu Singh & Ors.

Sunita Rani
DJ,XXI
Patna

Decided on 30-04-2026

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

suit premises fully described in Schedule-I of the plaint. The defendant no.1 who is owner and proprietor of a firm running under the name and style of M/s. Subh Chandani Gas, Patna is a tenant in the suit premises at the rent of Rs 450/- per month payable to the plaintiffs and tenancy was month by month. The genealogical table of the erstwhile joint family of Late Ram Pratap Singh is given at the foot of the plaint for proper appreciation of the facts of the suit showing the relationship of landlord and tenant between the plaintiffs and defendants no. 1 and 2 in respect of the suit premises.

(ii) The plaintiffs are the full blood brothers amongst themselves and are the sons of Sh. Ram Bilash Singh, the proforma defendant no. 3. The family of Ram Pratap Singh was a joint family and the plaintiffs are co-parceners of the suit property. The erstwhile joint family of Ram Pratap Singh owned and possessed joint family property and Ram Pratap Singh was the Karta of the joint family consisting of his son and grandsons prior to the Khangi partition which was effected during the life time of Ram Pratap Singh in the year 1975.

(iii) Further case, Ram Pratap Singh died on 03/05/1993 leaving behind the plaintiffs and the proforma defendants no. 3 and 4 as his legal heirs. Defendant no.1 had taken the suit premises as tenant from Ram Pratap Singh, the Karta and manager of the joint family in the year 1975 and the tenancy of the defendant no.1 in respect of the suit premises at Mauza Lohanipur Prithviraj Path, P.S. Kadam Kuan, District Patna, as fully detailed in Schedule-I of the plaint was month

Title Eviction Appeal -34 of 2011
CIS NO. 335/2014
Ms. Meena Sahay (Deceased through LR's) & Anr.
Vs.
Renu Singh & Ors.

Sunita Rani
DJ,XXI
Patna

Decided on 30-04-2026

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

by month and the rent qua the suit premises was payable to the landlord according to English calendar by the Principal defendants @ Rs 450/- per month.

(iv) The plaintiffs became absolute owner and landlord of the suit premises, let out to defendant no.1. The defendant no.1 was doing business in the suit premises for keeping the stock of the business of defendant no. 2, at the premises which was in occupation and tenancy of the principal defendants bearing Holding No. 675/1, Circle no. 19, ward no. 11 forming part of plot no. 480 covering an area of about 6300 sq., ft.

(v) Further case, the principal defendants have failed to make the payment to the plaintiffs for the tenanted premises according to the terms of tenancy since September 1992. The plaintiffs had earlier also filed eviction suit no. 97/1987 in the court of Munsif III, Patna but the suit had been wrongly dismissed on 15-09-1992 by Munsif III, Patna and the appeal bearing no.123/1992 against the judgment was pending at the time of filing the present suit before the Court of Addl. District Judge VIII, Patna.

(vi) Further, the plaintiffs filed fair rent fixation case no. 145/1992 and the fair rent of the suit premises had been fixed by the house controller, Sadar Patna, at the rate of Rs. 5925/- per month and the order of the fixation of fair rent by the house controller on 14-02-1994 was confirmed by the Commissioner Patna on 13-02-1996 and the appeal and revision filed by defendants were dismissed.

Title Eviction Appeal -34 of 2011

CIS NO. 335/2014

Ms. Meena Sahay (Deceased through LR's) & Anr.

Vs.

Renu Singh & Ors.

Sunita Rani

DJ,XXI

Patna

Decided on 30-04-2026

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

(vii) Further case, the defendants since 15-09-1992 have not paid the monthly rent of the suit premises to the plaintiffs and have become defaulter, consequently, the defendants have no legal right to continue in occupation of the suit premises and the defendants dishonestly claimed to have made construction over the suit by themselves, although the said holding stands mutated in the name of the plaintiffs in P.M.C. and the plaintiffs paid the holding tax to P.M.C. in respect of the suit premises.

(viii) Plaintiffs served a notice u/s 106 of the T.P Act to the defendants through registered-post on 31-01-1997 and have terminated the tenancy of the principal defendants in respect of the suit premises, the defendants have no legal right to continue in occupation in suit premises.

ix) Further, the arrears of rent due against the defendants to the tune of Rs. 25,000/- since September 1992 till April 1997, the date of termination of tenancy of the defendants in the suit premises by notice and after termination of tenancy of the defendants, in the suit premises. Plaintiffs claimed the arrears of rent since May 1994 till April 1997 amounting to Rs. 16,200/- within the period of limitation. The defendants illegally in breach of terms of tenancy tried to make construction over the premises without any legal right; compelling the plaintiffs to file a suit for injunction bearing T.S. no. 19/1997 in the court of Munsif III, Patna, against the defendants no. 1 and 2 to

Title Eviction Appeal -34 of 2011

CIS NO. 335/2014

Ms. Meena Sahay (Deceased through LR's) & Anr.

Vs.

Renu Singh & Ors.

Sunita Rani

DJ,XXI

Patna

Decided on 30-04-2026

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

restrain the defendants from making any addition, alteration and construction over the portion of the suit premises.

(x) Lastly, the principal defendants are defaulter for non-payment of monthly rent to the plaintiffs and for committing the breach of terms of tenancy by making illegal construction over the suit premises and the defendants have not vacated the suit premises. Ultimately the plaintiffs have got no option other than to file the present eviction suit.

(xi) During the course of trial, the original plaintiff no.1 (Rajiv Kr. Singh) died on 28-01-2010, his descendants, namely, Renu Singh (wife), Sudha Singh (mother) and Avishrant Chouhan (son) were substituted as plaintiffs no. 1, 1/a, 1/b respectively vide order dated 05-03-2010. Defendant no.3 Ram Bilash Singh also died and his name was deleted vide order 18-04-2007.

5. Shortly put the case of Defendants'no.1 & 2.

(i) The defendants nos. 1 and 2 (principal defendants) filed their written statement, pleaded inter alia, that the suit as framed is not maintainable and the plaintiffs have got no valid cause of action for the suit and the suit is barred by estoppel, waiver and acquiescence and also barred by the limitation & u/s. 34 of the Specific Relief Act & res judicata, the suit is bad for non-joinder & misjoinder of necessary parties and the suit is under-valued.

(ii) Further case, Sh. Ram Pratap Singh, father of the defendant no. 3 and grandfather of the plaintiffs let out perti ditch land to the

Title Eviction Appeal -34 of 2011

CIS NO. 335/2014

Ms. Meena Sahay (Deceased through LR's) & Anr.

Vs.

Renu Singh & Ors.

Sunita Rani

DJ,XXI

Patna

Decided on 30-04-2026

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

defendant no.1 in the capacity of Karta of his joint family. The defendant no.1 filled the land and constructed godown as per sanctioned map for keeping the cooking gas cylinder and spent huge amount over the tenanted premises. Thus, she being the proprietor of defendant no.2, had been using the tenanted premises as godown since the very beginning. She used to repair the godown for the safety of the gas cylinder from time to time according to requirement.

(iii) further, the defendants have admitted the genealogical table but denied the relationship of landlord and tenant between the plaintiffs and defendants no. 1 and 2 in respect of suit land. Further denied, that no partition took place between plaintiffs and defendants no. 3 to 4 in the year 1975. Therefore, plaintiffs are neither exclusive owners nor landlord of the suit premises, hence, the defendants were not liable to pay the rent to the plaintiffs.

(iv) Further denied that defendants had not made any default in payment of rent. Further admitted that after enhancement the rent was increased upto Rs. 450/- per month but denied that rent was payable to the plaintiffs. The rent was being paid regularly to the defendant no. 3 (Ram Pratap Singh) till his death.

(v) Further, the defendant no.1 being the proprietor of defendant no.2, was running business of cooking gas cylinder under the rules and regulations of the department concerned, initially, the place surrounding the tenanted premises was less populated and godown was completely aloof from the residential house from all sides.

Title Eviction Appeal -34 of 2011
CIS NO. 335/2014
Ms. Meena Sahay (Deceased through LR's) & Anr.
Vs.
Renu Singh & Ors.

Sunita Rani
DJ,XXI
Patna

Decided on 30-04-2026

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

(vi) further, the defendants had not committed any breach of the terms of the tenancy much less in payment of rent since September 1992.

(vii) Further, the judgment and decree dt. 15-09-1992 passed by Munsif III, Patna in E.S. No. 97/87 is legal and valid, the cause of action for both the suit is same.

(viii) The proceedings initiated before the House Controller, Patna, had been challenged by the defendants before the Hon'ble High Court, Patna and the order of the revenue courts were stayed by the Hon'ble Court and the matter was sub-judice before Hon'ble Court.

(ix) Further, the rent was remitted regularly to the landlord, therefore she was not defaulter. Since the defendants had not evicted by the court, therefore, she had every right to continue in occupation in suit premises, the plaintiffs in collusion with defendants no. 3 and 4 might have obtained order of mutation in respect of suit premises.

(x) Further, the rent had been paid regularly by the defendants through money-order but the defendant no.3 refused to receive the same, therefore, defendants had no other alternative except to remit through money order.

(xi) The plaintiffs had wrongly claimed Rs, 16,200 as arrears of rent for the period of May 1994 to April 1997, the plaintiffs were not entitled for compensation and the defendants were in legal and valid possession of the suit premise.

Title Eviction Appeal -34 of 2011

CIS NO. 335/2014

Ms. Meena Sahay (Deceased through LR's) & Anr.

Vs.

Renu Singh & Ors.

Sunita Rani

DJ,XXI

Patna

Decided on 30-04-2026

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

(xii) Further, the defendant no.1 was law abiding and peace-loving widow and she had every right to make necessary repairs of the godown for the safety and security of the cooking gas cylinder, therefore, she had not committed any breach of terms of tenancy but the plaintiffs who are litigant and to pressurize the defendants have filed the suit after dismissal of the earlier case.

(xiii) further, under the facts and circumstances, the plaintiffs were not entitled to any relief as claimed and the suit was fit to be dismissed.

6. Shortly put the case of defendant's no.3 &4

(i) The defendants no. 3 and 4 had filed joint W.S., admitted the genealogical table. Further stated, that Ram Pratap Singh died on 03/05/1993 in the state of separation from his son and grandson as the joint family property had got partitioned during the life time of Ram Pratap Singh. Further, admitted that the property in suit on partition was allotted in the takhta of the plaintiffs and the plaintiffs are absolute owner and landlord of the suit premises since after the amicable partition of the family. Further, admitted that properties allotted to Ram Pratap Singh in partition, after his death have been inherited by his widow, son and grandsons.

(ii) Further, pleaded that the plaintiffs are the landlord of the suit premises and are entitled to receive the rent from the defendants being the owner and landlord of the suit premises and they have no claim against the plaintiffs in respect of the suit premises. They had

Title Eviction Appeal -34 of 2011

CIS NO. 335/2014

Ms. Meena Sahay (Deceased through LR's) & Anr.

Vs.

Renu Singh & Ors.

Sunita Rani

DJ,XXI

Patna

Decided on 30-04-2026

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

asked the defendant no.1 to make the payment of monthly rent for the suit premises to the plaintiffs but the defendants no.1 & 2 have failed to make the payment of monthly rent and they are also liable for breach of terms of tenancy, hence, liable to be evicted from the tenanted premises.

(iii) They have no objection if decree of eviction is passed in favour of plaintiffs and against the defendants no. 1 and 2 from suit premises and for realization of the rent of the suit premises.

(iv) Further the defendant no. 3 has filed subsequent W.S. pleading therein that suit for eviction was maintainable against the defendants on grounds and defendants' plea is false and motivated.

(v) It has further pleaded that the defendant no.1 has no right to dispute and deny the partition and allotment to plaintiffs as the other co-sharers were admitting the same and the defendant no.1 could not take advantage of any perverse finding of earlier suit for eviction which was sub-judice in appeal.

(vi) Further, pleaded that alleged plea of tenancy of parti land is false and the suit holding is recorded in the ownership of the plaintiffs, besides above, the dispute is now settled at rest when the house controller fixed the fair rent of the suit holding and treating relationship of land-lord and tenant between the plaintiffs and defendant. The order of the house controller has been confirmed in appeal by the commissioner. Thus, the finding of the house controller as to relationship as well as of the ownership of the building will

Title Eviction Appeal -34 of 2011

CIS NO. 335/2014

Ms. Meena Sahay (Deceased through LR's) & Anr.

Vs.

Renu Singh & Ors.

Sunita Rani

DJ,XXI

Patna

Decided on 30-04-2026

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

operate as res judicata against the defence of the defendants. The defendant no.1 is not entitled to refer and rely the perverse finding of earlier eviction suit which is under challenge and sub judice.

(vii) further, pleaded that no attornment is necessary, further defendant no. 3 admitted the plaintiff's ownership and right to evict the defendant no.1 & 2 from the suit premises.

7. On the basis of the pleadings of both the parties, the following issues have been settled to adjudicate the controversies.

ISSUES

- I. Is the suit as framed maintainable?
- II. Have the plaintiffs got valid cause of action for the suit?
- III. Is the suit barred by estoppel, waiver & acquiescence?
- IV. Is the suit barred by law of limitation?
- V. Is the suit bad for misjoinder and non-joinder of necessary parties?
- VI. Is the suit barred by u/s 34 of the Specific Relief Act?
- VII. Is the suit barred by Principle of res-judicata?
- VIII. Is the suit bad for multifariousness?
- IX. Is the relationship of landlord and tenant between the plaintiffs and defendants?
- X. Is the plea of payment of up to date rent a true one?
- XI. Is the defendant defaulter and liable for eviction?
- XII. Is the plea of personal necessity bona fide and reasonable?
- XIII. Has the tenancy of the defendant legally determined by notice U/s 106 T.P. Act?

Title Eviction Appeal -34 of 2011

CIS NO. 335/2014

Ms. Meena Sahay (Deceased through LR's) & Anr.

Vs.

Renu Singh & Ors.

Sunita Rani

DJ,XXI

Patna

Decided on 30-04-2026

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

XIV. Is the plaintiffs entitled to decree for eviction?

XV. Is the plaintiffs entitled to the arrears of the rent as claimed?

XVI. Is the plaintiffs entitled to the relief sought for?

XVII. To what any other relief or reliefs to which the plaintiffs entitled to?

8. In support of their case, the parties adduced following oral and documentary evidence.

9. **Oral Evidence**

In order to prove it's case, plaintiffs/respondents have produced altogether five witnesses,

(i) PW1 Parmanand Singh (formal witness)

(ii) PW2 Shailesh Prasad (formal witness)

Both PW1 & PW2 have proved the documents of plaintiff as Ext.1, 2, 2/A, 2/B and 3 to 3/A

(iii) PW3 Mehendra Rai

(iv) PW4 Rajiv Kumar Singh (Plaintiff himself)

(v) PW5 Lalan Singh

10. **Documentary Evidence**

Plaintiffs/respondents had produced following documentary evidences: -

(i) Ext.1 Carbon copy of notice dt. 30.01.2007

(ii) Ext.2 to 2/A Receipts of P.M.C. dt. 31.08.1989 and 16.07.1985

Title Eviction Appeal -34 of 2011

CIS NO. 335/2014

Ms. Meena Sahay (Deceased through LR's) & Anr.

Vs.

Renu Singh & Ors.

Sunita Rani

DJ, XXI

Patna

Decided on 30-04-2026

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

(iii) Ext.3 & 3/A Original Malgujari receipt dt. 15.09.1982 and 18.03.1986

(iv) Ext.4 Carbon copy of assessment register of P.M.C

(v) Ext.5 Original Notice sent by P.M.C to Rajiv Kumar dt. 14.02.1983

(vi) Ext.6 to 6/B C.C. of order sheet dt. 30.06.1982, 15.07.1982 and 16.08.1982 of mutation case no.95/1982-83

(vii) Ext. 7 to 7/D Original copy of order passed by the Hon'ble court dt. 11.07.2003 in C.R. no. 714/2003, C.C. of order sheet dt. 23.07.2002, 26.07.2004. 29.11.2004 & 11.07.2003 of C.W.J.C. 8202/2002, L.P.A. 578/2003 with L.P.A. 456/2003, S.L.P. no. 18685/2004 and C.R. 714/2003 respectively.

(viii) Ext.8 Registered Postal Receipt

(ix) Ext.9 to 9/B C.C. of Order sheet dt. 10.04.2001, 28.07.2006, 06.09.2006 of vigilance case no. 137/2000, plan case no. 490/2005 and appeal case no. 58/2006

(x) Ext.10 to 10/D Photocopy of order-sheet dt. 14.10.1994 & 03.08.1995 of B.B.C case no. 145/92 and B.B.C Appeal no. 14 of 94-95, C.C. order sheet dt. 29.08.1995 to 13.02.1996 of case no. 173/1995 of Commissioner, Patna, Photocopy of order of B.B.C case no. 145/92 and order-sheet dt. 03.08.1995 of B.B.C Appeal no. 14 of 94-95, C.C.

11. Defendants no.1&2/Appellants had produced seven witnesses.

Oral Evidence

(i) DW1 Uma Prasad Singh (formal witness)

(ii) DW2 Mithlesh Kumar (formal witness)

(iii) DW3 Sarita Prasad (daughter of original defendant no.1)

(iv) DW4 Deep Narayan Singh (formal witness)

(v) DW5 Prasant Kumar (formal witness)

Title Eviction Appeal -34 of 2011

CIS NO. 335/2014

Ms. Meena Sahay (Deceased through LR's) & Anr.

Vs.

Renu Singh & Ors.

Sunita Rani

DJ,XXI

Patna

Decided on 30-04-2026

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

(vi) DW6 Ramesh Prasad

(vii) DW7 Kapindra Rai (formal witness)

12. **Documentary Evidence**

Defendants No.1&2/Appellants had produced following documents: -

- (i) Ext. A to A/66 Money order coupons
- (ii) Ext. B to B/57 Registry Receipts
- (iii) Ext. C to C/26 Original Rent Receipts
- (iv) Ext. D to D/6 Various letter of I.O.C Limited
- (v) Ext. E to E/2 Rent Receipt of P.M.C
- (vi) Ext. F Notice of P.M.C to Meena Sahay
- (vii) Ext. G C.C of Judgment dt. 15.09.1992 of eviction suit no. 97/87

13. Ld. counsel for appellants submitted that suit was barred by res judicata as earlier Title Eviction suit no. 97 of 1987 had been dismissed by the court of Munsif III, Patna. The appeal was pending against the judgment and decree dated 15/09/1992, was withdrawn by the plaintiffs/respondents. Consequently, the judgment and decree dated 15/09/1992 attained finality. Further contended that finding on issue of maintainability of eviction suit under the BBC Act, as being non-maintainable under the BBC Act, had already been conclusively determined by the court of Munsif, III Patna in earlier title eviction suit by judgment dated 15/09/1992 and that issue attained the finality. It is contended that issue no. (vii) was framed in this regard in title eviction suit no. 30 of 1997 but Ld. trial court wrongly decided the issue

Title Eviction Appeal -34 of 2011

CIS NO. 335/2014

Ms. Meena Sahay (Deceased through LR's) & Anr.

Vs.

Renu Singh & Ors.

Sunita Rani

DJ,XXI

Patna

Decided on 30-04-2026

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

no. (vii). Further contended that defendant was inducted as tenant on parti ditch land without any construction, therefore suit was barred under the BBC Act. Further contended that notice under section 106 of TP Act was served to defendants by the plaintiffs before instituting the suit shows that plaintiffs impliedly admitted that suit was not maintainable under the BBC Act, because defendants were inducted as tenants on parti ditch land.

14. On the other hand, Ld. counsel for respondents contended that recurring causes of action arise in eviction suit. Whenever there is breach of any term or condition or the tenant makes any default in payment of rent, fresh cause of action arises. Notice under section 106 TP Act had been served to defendants but that does not bar the institution of title eviction suit under the BBC Act. Further submits that landlord-tenant relationship and maintainability of suit under the BBC Act was established as the plaintiffs/respondents had approached the fair rent fixation authority and the rent was fixed by the concerned authority which was challenged by the defendants before the appellate authority and the Hon'ble High court Patna. The aforesaid order was confirmed by the appellate authority and Hon'ble High court, Patna.

15. **Point For Consideration**

(i) From the above-mentioned rival contentions and perusal of the findings arrived at, by the trial court, the question therefore, falls for consideration is whether the suit is barred by res judicata as the

Title Eviction Appeal -34 of 2011

CIS NO. 335/2014

Ms. Meena Sahay (Deceased through LR's) & Anr.

Vs.

Renu Singh & Ors.

Sunita Rani

DJ, XXI

Patna

Decided on 30-04-2026

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

findings with respect to maintainability of Eviction Suit under the B.B.C Act had been arrived in eviction suit no.97 of 1987.

(ii) Whether the judgment and decree passed by the Ld. Trial Court is legal, justified, and correct?

FINDINGS

16. Before proceeding further, it would be apt to refer the section 11 CPC relating to Res Judicata:-

11 Res Judicata- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

17. Section 11 CPC enunciates the rule of res judicata: a court shall not try any suit or issues in which the matter that is directly in issue has been directly and indirectly heard and decided in a "former suit". For the purpose of adjudicating on the issue of res judicata it is necessary that the same issue (that is raised in the suit) has been adjudicated in the former suit.

18. General principle of res judicata under Section 11 CPC contain rules of conclusiveness of judgment, but for res judicata to apply, the matter

Title Eviction Appeal -34 of 2011
CIS NO. 335/2014
Ms. Meena Sahay (Deceased through LR's) & Anr.
Vs.
Renu Singh & Ors.

Sunita Rani
DJ,XXI
Patna

Decided on 30-04-2026

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. Further, the suit should have been decided on merits and the decision should have attained finality.

19. It is settled principle of law that basic method to decide the question of res judicata is first to determine the case of the parties as put forward in their respective pleading of their suit and then to find out as to what had been decided by the judgment which operates as res judicata. Therefore, Plea of res judicata is basically founded on the identity of the cause of action in the two suits and, therefore, it is necessary for the defence which raises the bar to establish the cause of action in the previous suit. Such pleas cannot be left to be determined by mere speculation or inferring by a process of deduction what were the facts stated in the previous pleadings.
- 20 From the above settled principles of law, it is culled out that for applying the principle of res judicata, apart from the basic ingredients, the issue or finding has to be identified and the burden lies on the person who raised the same.
21. In the case at hand, the instant title eviction suit 30 of 1997 was filed by the plaintiffs/respondents against the defendants/appellants for eviction of tenanted premises on the ground of non-payment of rent and breach of terms and conditions of tenancy under the BBC Act. Former title eviction suit bearing no. 97 of 1987 was also instituted for eviction on the ground of

Title Eviction Appeal -34 of 2011
CIS NO. 335/2014
Ms. Meena Sahay (Deceased through LR's) & Anr.
Vs.
Renu Singh & Ors.

Sunita Rani
DJ, XXI
Patna

Decided on 30-04-2026

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

personal necessity and non-payment of rent under the BBC Act. The former suit was dismissed on merits.

22. It is a settled position of law that certain grounds for eviction, specifically bona fide requirement (personal necessity) and non-payment of rent, constitutes a recurring cause of action. But it is the contention of the defendants that suit was not maintainable under the BBC Act as decided in former suit, hence, subsequent suit under the BBC Act barred by res judicata.
23. The burden to prove that suit was barred by res judicata lies on defence who raised the plea of res judicata. It is necessary to plead res judicata specifically in written statement/pleadings as well as in evidence and the point on which plea has been raised. Not only the plea has to be taken, it has to be substantiated by producing the copies of pleadings, issues and judgment of previous suit. May be in a given case only copy of judgment in previous suit can be filed in proof of plea of res judicata. On the basis of pleadings of parties, the issue pointing out specifically has to be framed in subsequent proceedings.
24. At this stage, it would be necessary to refer to the relevant para of written statement of defendants in which the plea of res judicata has been raised by the defendants. In para 6 of written statement the defendants averred
6. That the suit is barred by res judicata. The plaintiffs had filed Eviction suit no. 97/87 in the present court against these defendants

Title Eviction Appeal -34 of 2011
CIS NO. 335/2014
Ms. Meena Sahay (Deceased through LR's) & Anr.
Vs.
Renu Singh & Ors.

Decided on 30-04-2026

Sunita Rani
DJ, XXI
Patna

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

for their eviction from the suit premises on the same ground and on contest the suit was dismissed disbelieving the case of the plaintiffs.

From the abovementioned para the plea of res judicata has been raised by the defence but it only indicates towards the grounds for eviction in previous suit. It does not refer that issue on maintainability of suit under BBC Act has been decided in former suit and the subsequent suit is barred for the aforesaid reason. Meaning thereby the identity of the issue decided in former suit which bars the subsequent suit did not establish by the defendants. Numerous issues had been decided in earlier suit no.97/87 by the court, it was the duty of the defence to point out the particular issue on which the plea of res judicata raised, such plea cannot be left to be determined by mere speculation or inferring by a process of deduction what were the facts stated in the previous pleadings.

25. On the basis of pleadings of parties in subsequent suit 30 of 1997, the Ld. Trial court framed issue no. VII as follows:

vii) Whether the suit is barred by res judicata?

It means the issue on finding of maintainability of suit under the BBC Act has not been specifically framed because the same could not be identified from the written statement of defendants.

26. Likewise, in evidence, the defendants have not raised that suit is barred by res judicata as the issue on maintainability of eviction suit under the BBC Act has been decided in earlier suit and same has attained finality.

Neither in plaintiff's nor in defendant's evidence, the plea has been raised

Title Eviction Appeal -34 of 2011

CIS NO. 335/2014

Ms. Meena Sahay (Deceased through LR's) & Anr.

Vs.

Renu Singh & Ors.

Sunita Rani

DJ, XXI

Patna

Decided on 30-04-2026

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

that suit is barred by res judicata due to the reason that issue on maintainability of suit under the BBC Act has been decided in former suit. Only the plea has taken that defendant was inducted as tenant on part of land and the godown over the suit property had been erected by the defendant on suit premises.

27. Ld. Counsel for appellants contends that Ld. Trial Court misconstrued and decided the issue of res judicata on the basis of causes of action of period of default of rent and held that in eviction suit recurring causes of action arises. The reason was, as stated above, the plea on maintainability of suit under the BBC Act has neither raised specifically in pleadings nor in evidence of defendants/appellants.
28. The defendants had placed the copy of judgment also and same is also proved as Ext. G but has not pointed out towards the issue which barred the subsequent suit on the plea of res judicata. Numerous issues had been decided in former suit no. 97/87 by the court; therefore, defendant was under bounden duty to make known the identity of issue on which the plea of res judicata has been raised.
29. In the facts and circumstances, it can be concluded that defendants have failed to discharge the burden of proving the finding on non-maintainability of suit under the BBC Act, had decided in former suit no.97 of 1987, therefore subsequent suit no.30 of 1997 was barred under the BBC Act.

Title Eviction Appeal -34 of 2011

CIS NO. 335/2014

Ms. Meena Sahay (Deceased through LR's) & Anr.

Vs.

Renu Singh & Ors.

Sunita Rani

DJ,XXI

Patna

Decided on 30-04-2026

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

30. Ld. Counsel for appellant contends that notice u/s 106 of TP Act had been served to the defendants before instituting the title eviction suit no.30 of 1997. It is pertinent to mention herein that notice u/s 106 of TP Act does not bar the suit under BBC Act. And the plea of res judicata has to be raised by the party specifically pointing out towards the finding on which res judicata is applicable. It cannot be decided on the basis of implication.
31. In the facts and circumstances, with the above-mentioned reasons and discussion the appeal is hereby **dismissed** on contest being devoid of merits. Parties shall bear their own cost.
32. Office clerk is directed to return the L.C.R. with the copy of this Judgment to the Ld. Court below.
33. Signed, sealed and delivered in the open court on this 30th day of April, 2026, Patna.

Pronounced in open court today.

Dictated and corrected by me

Sd/-

Sunita Rani

DJ XXI, Patna

30/04/2026

Dictated by

Sd/-

Sunita Rani

DJ XXI, Patna

30/04/2026

Title Eviction Appeal -34 of 2011

CIS NO. 335/2014

Ms. Meena Sahay (Deceased through LR's) & Anr.

Vs.

Renu Singh & Ors.

Sunita Rani

DJ, XXI

Patna

Decided on 30-04-2026

IN THE COURT OF DISTRICT JUDGE XXI, PATNA**Title Eviction Appeal No. 34 of 2011****CIS No 335/2014**

(Arising out of Judgment & Decree dated 10-01-2011 passed by the Sri Dasrath Mishra Execution Munsif, Patna in Title Eviction Suit No. 30 of 1997)

Date of Order/Judgment	30-04-2026
Date of Reserving Order	27-04-2026
Uploading Date	22-05-2026
Uploaded by	Priti Kumari/-

Title Eviction Appeal -34 of 2011
CIS NO. 335/2014
Ms. Meena Sahay (Deceased through LR's) & Anr.
Vs.
Renu Singh & Ors.

Decided on 30-04-2026

Sunita Rani
DJ,XXI
Patna