

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5006 of 2015

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Govind Tiwary

.... Petitioner/s

Versus

Sri Ajay Kumar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Dwivedi

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 24-11-2015 **1.** The interlocutory application No.6203 of 2015 has been listed under the heading for orders on petition, however, the learned counsel Mr. Anil Kumar Dwivedi, for the petitioner submitted that instead of hearing the interlocutory application on merit, the writ application itself may be heard in admission matter on merit and accordingly, I heard the learned counsel for the petitioner on merit on his request.

2. This application under Article 227 of the Constitution of India has been filed by the defendant petitioner against the order dated 17.01.2015 passed by the learned Addl. Munsif VIth, Danapur in Title Eviction Suit No.10 of 2006 whereby the Court below rejected the application filed by the defendant petitioner under Order XXVI Rule 9 of the Code of Civil Procedure for appointment of a pleader commissioner to verify as to whether the

plaintiff respondent has other residential houses or not and which is the suitable house for their residence.

3. The learned counsel for the petitioner submitted that the plaintiff respondent has filed aforesaid eviction suit against the petitioner for eviction on the ground of personal necessity and default. According to the defendant, petitioner has pleaded in the written statement that the plaintiff has got three houses where the plaintiff and his family members are residing, therefore, the plaintiffs' requirement is not bonafide requirement. To prove this fact, the defendant petitioner filed the application under Order XXVI Rule 9 for appointment of pleader commissioner to verify the residential house of the plaintiff but the Court below without considering the facts rejected the same.

4. According to the learned counsel, the suit property is not habitable and is a khapraposh. Because there was dispute between the landlord and the petitioner relating to the increase of the rent per month, the plaintiff has filed false case for eviction alleging that the children of the family will reside in the house and will attend the school. On these grounds, the learned counsel submitted that the impugned order be set aside and the application filed by the petitioner be allowed.

5. According to the learned counsel himself, the defendant have not yet started evidence in the eviction suit. It is settled principle of law that for collecting evidence, the Court cannot exercise the jurisdiction under Order 26 Rule 9 of the Code of Civil Procedure. Further according to Explanation II of Section 11 (1) (C) of the Bihar Building (Lease Rent and Eviction) Control Act, 1982, the tenant cannot dictate the landlord to choose which one premises would be preferable to him.

6. From perusal of the impugned order, it appears that the Court below considered all these aspects of the matter and has rejected the application and accordingly, I find no merit in this writ application and thus this writ application is dismissed. Consequently, the interlocutory application is also rejected.

(Mungeshwar Sahoo, J)

Sanjeev/-

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