

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10997 of 2012

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1. Anil Kumar @ Tuntun Son Of Late Kashi Nath Prasad Resident Of Mo.-
Katki Bazr, Tower Chowk, P.O. - Lal Bagh, P.S.- Sadar, District -
Darbhanga

.... Petitioner/s

Versus

1. Khushboo Vastralaya Under Proprietor Ship Of Shiv Kumar Goenka S/O
Late Lok Nath Goenka At Mo - Katki Bazar Holding No 550 Ward No. 10,
Tower Chowk, Po - Lal Bagh, P.S.- Sadar, District - Darbhanga
2. Shahsi Kumar Prasad Son Of Late Kashi Nath Prasad Resident Of Mo. -
Katki Bazar, Tower Chowk, Po- Lal Bagh, P.S.- Sadar, District - Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D. K. Sinha-Sr. Advocate with
Mr. Bajarangi Lal-Advocate
For the Respondent/s : Mr. L. N. Das with
Mr. D. N. Mallik-Advocates

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

9 21-12-2015 Heard the learned counsel for the petitioner as well

as learned counsel for the respondents.

Petitioner has challenged order dated 23.4.2012
passed by Munsif, 1st , Darbhanga, in Eviction Suit No. 13 of 2011
whereby and whereunder the prayer made on behalf respondent
no.2/intervenor in terms of Order I Rule 10(2) of the C.P.C has
been allowed.

Inter se relation being brother is not disputed. The
Learned Counsel for the petitioner submits that intervenor should
not have been allowed to be impleaded as co-plaintiff by the
learned lower court because of the fact that he (petitioner) claims



as well as happens to be absolute owner of the property. Even in worst case, identifying the status of the respondent no.2/intervenor a co-sharer, his presence is not necessary and for that refer to **2005(2) PLJR 14, 1998(2) PLJR 601, Judgment of Allahabad High Court in Ashok Kumar Dublsh Vs. Ajeet Kumr Dublsh and Another decided on 29.10.2002, para-26(7).**

The learned counsel representing the respondent no. 2/intervenor submitted that decision of each case has to be considered in the background of factual aspect. In this case, while the petitioner/plaintiff filed suit for eviction, he claimed himself to be absolute owner of the property and in case the eviction suit is allowed on that very score, which will frustrate future interest of respondent no. 2 /intervener. Therefore, his presence in the suit in question is necessary and that has been considered by the learned lower Court while allowing prayer under Order I Rule 10(2) of the C.P.C. Further more, it has been stated that in all the decision so referred on behalf of the petitioner, there was no absolute claim at the behest of the plaintiff regarding the property under dispute. Therefore, the principle so decided therein are not applicable.

At the present stage, when a query has been made, it has been properly reveled by the learned counsel for the petitioner that his client had filed eviction suit claiming himself to

be absolute owner of the property on personal necessity and in the aforesaid background presence of petitioner as well as identifying him as a co-parcener to protect his interest though happens to be matter of partition, in case there happens to be conflict of interest, however, his presence is not at all found adverse to litigation. More over, once appeared, his effacement will decapitate his interest, as the rest happens to be on personal necessity , and further, respondent no.2/applicant, interest in the background is found to be that of landlord. Apart from this, considering the status of respondent no.2/applicant, it is not the dispute whereunder, his presence will compel the court to decide over factum of landlord. However, it is made clear that in the instant eviction suit, the learned lower court will not indulge into controversies relating to inter se status of plaintiff as well as intervenor/applicant .

With the aforesaid observation, instant petition is disposed of.

(Aditya Kumar Trivedi, J)

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