

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20334 of 2010

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- (i) Nayeema Khatoon W/o Late Sk. Md. Golam Bari
(ii) Aminur Rahman s/o Late Sk. Md. Golam Bari, both resident of Muradpur Masjid P.S. Pirbahore District Patna 800004
(iii) Khurshid Bari s/o Late Sk. Md. Golam Bari resident of C/o Montu Khan village Shahpur P.O. Boikhantopur Distt. Burdwan (W.B.)
(iv) Anisur Rahman s/o Late Sk. Md. Golam Bari
(v) Anjum Bari s/o late Sk. Md. Golam Bari both resident of Muradpur Masjid P.S. Pirbahore District Patna – 800004
(vi) Najma Khatoon d/o Late Sk. Md. Golam Bari, w/o Late Abdul Mannan C/o Montu Khan village Shahpur P.O. Boikhantopur District Burdwan (W.B.)
(vii) Sufia Khatoon D/o Late Sk. Md. Golam Bari W/o Ezaz Uddin Ahmad, C/o Aminur Rahman Muradpur Masjid P.S. Pirbahore District Patna 800004

.... Petitioner/s

Versus

Mamta Kumari @ Janki Devi W/O Late Ram Babu Gupta, resident of Bihari Sao Lane, P.S.- Pirbahore, P.O.- Bankipur, Distt.- Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shiv Kumar Dwivedi
Mr. Anisur Rahman

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 04-09-2015

Heard Mr. Shiv Kumar Dwivedi, learned counsel who was assisted by Mr. Anisur Rahman, learned counsel for the petitioner.

The present proceeding was fixed for ex- parte hearing against the sole respondent in view of the fact that despite valid service of notice, the sole respondent has preferred not to appear. Accordingly, by order dated 5.8.2015 the case was fixed for ex -parte hearing against the sole respondent. Today again, there is non

appearance on behalf of the sole respondent.

The petitioner, invoking writ jurisdiction of this court under Article 227 of the Constitution of India, has prayed for setting aside an order dated 24.5.2010 passed by the learned Munsif Ist, Patna in Title Eviction Suit No. 14 of 2006. By the said order the learned Munsif has rejected the petition filed on behalf of the plaintiff /petitioner under Section 15 of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (hereinafter refereed to as the “B.B.C. Act”).

The plaintiff /petitioner's case is that being owner and title holder of the suit premises, which is holding no. 55 old / 146 new, Circle No. 23 , Ward No. 15 old / 32 new, Municipal Survey Plot No. 270, Tauzi No. 525, Sheet No. 67 situated at Bihari Sao Lane, Muradpur, Pirbahore, Banikipur, Patna, on the ground of non - payment of rent by the petitioner since March, 2004 filed a Title Eviction Suit No. 14 of 2006. Since even during the pendency of the suit monthly rent was not being paid by the tenant, on behalf of the plaintiff /petitioner a petition was filed on 7.3.2008 under Section 15 of the B.B.C. Act. In the said petition the defendant / respondent also filed rejoinder. The defendant / respondent raised dispute on the point of relationship of landlord and tenant. It was objected that the plaintiff /petitioner was not the landlord, rather for some period, in the



capacity of *Mutawalli* of Bihar State Sunni Wakf Board, the petitioner had collected *Najrana* forcefully from the father- in- law of the defendant /respondent. The learned court below on the basis of objection raised by the defendant regarding the relationship of landlord and tenant as well as on the ground that a petition under Order 1 Rule 10 of the C.P.C. filed by the Bihar State Sunni Wakf Board for adding as party in the suit was still pending, by order dated 24.5.2010 rejected the petition which was filed by the petitioner under Section 15 of the B.B.C. Act. Aggrieved with the order impugned the original plaintiff namely Sheikh Md. Gulam Bari @ Sk. Md. Gulam Bari approached this court by filing the present writ petition. However, during the pendency of the writ petition, due to demise of the sole petitioner, substitution petition was subsequently filed which was allowed by order dated 22.5.2015 and as such, legal heirs of the sole petitioner have been substituted in place of deceased petitioner.

Learned counsel for the petitioner submits that in the court below the petitioner had filed registered sale deed in respect of the suit premises. He further submits that before the court below the defendant in the suit had filed written statement and in the written statement despite the fact that defendant was paying rent, a plea was taken that the plaintiff /petitioner imposing himself as *Mutawalli* of the disputed property had collected *najrana* from the father- in- law of the



defendant on behalf of the Wakf Board. It has been argued that the plaintiff had brought on record before the court below number of documents at the time of to satisfy that prima facie material was there to show that plaintiff/ petitioner was the landlord of the suit premises, however, the learned court below ignoring all the documents and contrary to the record has rejected the petition. By way of referring to the second supplementary affidavit, learned counsel for the petitioner submits that the observation of the court below that petition under Order 1 Rule 10 of the C.P.C. filed by the Bihar State Sunni Wakf Board was still pending for disposal at the time of dismissal of the petitioner's petition under Section 15 of the B.B.C. Act is apparently error of record. He submits that the petition filed by Bihar State Sunni Wakf Board under Order 1 Rule 10 of the C.P.C. for being added as party in the suit was rejected long back by the learned Munsif Ist, Patna on 28.11.2008. A photo copy of the order dated 28.11.2008 passed in Title Eviction Suit No. 14 of 2006 has been brought on record as Annexure – 10 to the second supplementary affidavit filed on behalf of the petitioner. He further submits that of -course before the court below by filing written statement the defendant had taken the plea that she was the title owner of the suit premises, but in the petition filed under Order 1 Rule 10 of the C.P.C. by the Bihar State Sunni Wakf Board the



defendant had filed no objection petition to the petition dated 13.11.2007 filed by the Bihar State Sunni Wakf Board and it was stated that defendant had no objection if the prayer of Bihar State Sunni Wakf Board is allowed. He submits that no objection filed by the defendant before the court below was itself sufficient to show that the defendant was in any way not title holder of the suit premises. He further submits that once the plaintiff /petitioner was in a position to satisfy the court below regarding prima facie ownership of the suit premises, the learned court below was required to allow the petition filed by the plaintiff /petitioner under Section 15 of the B.B.C. Act. In support of his submission he has placed reliance on **1997 (1) PLJR 526 (Shamim Ara Naz & anr. Vs. Mohammad Quamruddin)** and he has specifically referred paragraph no. 5 and 6 of the said judgment. Alternatively, it has been argued that since the dispute is being raised by the defendant / respondent regarding the relationship of landlord and tenant, in any event, in view of sub section 2 of Section 15 of the B.B.C. Act the learned court below was required to direct the defendant / respondent to deposit the rent in the court itself, however, the learned court below has not exercised such power also. Accordingly, a prayer has been made to set aside the impugned order.

Besides hearing learned counsel for the petitioner, I have also perused the materials available on record. The petitioner along



with the present writ petition has brought on record a typed copy of the written statement filed by the defendant before the court below. In paragraph no. 8 of the written statement a plea has been taken by the defendant that earlier land in relation to the suit premises was settled by Bihar Subbi Sunni Wajlis Awaqf in favour of great grand father-in-law of the defendant namely, Madanlal Shah and since then defendant was continuing in possession over the suit property and a claim has been made that the defendant has got the right, title and interest over the same. However, in paragraph no. 10 of the written statement the defendant has admitted that she was paying *najrana*. Of- course a plea has been taken that the father –in- law of the defendant was paying *najrana* illegally to the petitioner who acting as *mutawalli* of the disputed property had collected the same. The said collection continued till life time of the father –in- law of the defendant. It would be appropriate to quote paragraph no. 10 of the written statement , which is as follows:-

“10. That the plaintiff was imposed himself as mutawalli of the disputed property started collecting Najrana illegally from the father –in-law of the defendant on behalf of the Wakf Board. This system was continued till the life – time of the father –in-law of the defendant namely Yogendra Sah.”

In view of the facts disclosed in paragraph no. 10 of the



written statement it appears that on the one hand the defendant was claiming as title owner of the suit premises, however, on the other hand, she accepts that payment in respect of the suit premises was earlier collected by the plaintiff /petitioner in the garb of *mutawalli* from her father- in- law during his whole life time. The second point which is required to be noticed is that once the defendant had taken the stand that she was title owner of the suit premises, there was no occasion for the defendant to file a no objection petition before the court below in a petition filed under Order 1 Rule 10 of the C.P.C. by Bihar State Sunni Wakf Board for being impleaded as party in the suit in which virtually the Bihar State Sunni Wakf Board had claimed to be the owner of the suit premises. Aforesaid circumstances at least at the moment creates doubt regarding the claim of the defendant to be the owner of the suit premises, however, without any cogent evidence or material it would not be advisable for this court to record such finding on this issue. Such issue can be examined and adjudicated by the court below itself. The court is of the opinion that the order impugned is liable to be set aside primarily on the ground that despite the fact that petition filed by Bihar State Sunni Wakf Board for being impleaded as party under Order 1 Rule 10 C.P.C. was rejected long back in the year 2008 itself which is evident from Annexure - “10” to the 2nd supplementary affidavit, the learned court

below rejected the petition filed by the petitioner on the plea that the issue was still pending. Secondly the order impugned does not indicate regarding prima facie satisfaction on the point of entitlement of either of the party in respect of suit premises. Accordingly, the order impugned is set aside and the matter is remitted back to the court below to examine the matter afresh keeping in mind the order of rejection of petition filed by the Bihar State Sunni Wakf Board. If fresh petition is filed under Section 15 of the B.B.C. Act by the plaintiff /petitioner, the learned court below may examine the same in its right perspective and pass order in accordance with law preferably within a period of three months from the date of filling of such petition.

The writ petition is hereby disposed of.

(Rakesh Kumar, J)

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