

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17790 of 2010

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1. Abdul Salam Mandal @ Abdus Salam Mandal S/O Lte Ghulam Mustafa Mandal
R/O Mohalla- Kanhauliganj, Pakki Sarai, Chamra Godown Lane, P.S. & Town,
Muzaffarpur, Distt.- Muzaffarpur

.... Petitioner/s

Versus

1. Santosh Kumar Nathani S/O Late Mali Ram Nathani R/O Mohalla-
Kanhauliganj, Pakki Sarai Road, Chamra Godown Lane, P.S. And Town-
Muzaffarpur, Distt.- Muzaffarpur
2. The State Of Bihar Through Collector, Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manojeshwar Pd.sinha
Mr Ratan Kumar Sinha
For the Respondent/s : Mr T.N.Maitin, Sr. Advocate
Mr. Rajeev Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 20-07-2015

Petitioner wants quashing of the order dated 16.10.2009
passed by Special Execution Munsif, Muzaffarpur in Eviction Suit
No.5 of 1993. The Court below refused to grant permission to the
defendant petitioner to produce any evidence on the point of title.

It is important to take note of the fact that earlier the court
below had rejected the written statement of the defendant for the
reason indicated therein. The present petitioner decided to approach
the High Court by filing C.R.2135 of 2006. The learned Single Judge
after taking into consideration the law on the subject did not allow any
benefit to the petitioner with regard to his defence but he did permit

the petitioner to cross-examine the witnesses of the plaintiff which is permissible even in cases where the defence is struck off.

A queer kind of prayer was made before the court below that he be permitted to examine witnesses in defence to prove his title vis- a- vis the plaintiff respondent. The Court uses the word- queer because such permission would have permitted the petitioner and given him freedom to put up his defence independently when his defence itself was struck off in the very first place. In absence of any written statement it will become an unending or unruly proceeding, if not an open proceeding for the petitioner/ tenant to bring evidence in defence when he is not permitted to do so in the very first place. This is the essence of the order passed by the court below in rejecting the prayer for examining the witnesses in defence.

Even otherwise the petitioner cannot get a better right than what the Hon'ble High Court granted him in C.R. No.2135 of 2006. A copy of the said order is Annexure- 1. The court below has granted leeway to the petitioner to cross-examine the witnesses and he cannot make his case any better than that by brining his own witnesses which is not permitted to him.

This Court does not have to look for reasons why such prayer in gross violation of the indulgence shown by the High Court is being sought for. Petitioner is a tenant and he does not seem to be an

honest tenant. He will hang on to the property so long as law is willing to support him legally or illegally. This is a case where the court below is directed to take the proceeding to its logical end because enough time has already been spent in an eviction suit, which is pending since the year 1993.

The time has come when the right and interest of the parties should be decided one way or the other. Enough of petitions have been filed and enough chances have been taken. Writ application is dismissed

The court below is directed to complete the suit now within a period of three months because only arguments are required to be made. The time frame indicated above must be adhered to.

(Ajay Kumar Tripathi, J)

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