

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21593 of 2012

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Madhukar Thakur @ Mithilesh Sharma S/O Late Ramsharan Thakur
Resident Of Mohalla- Amla Tola Ward No. 15 (Old) New Ward No. 30 P.S.
& District- Katihar **Petitioner.**

Versus

1. Madhu Choudhary W/O Late Shankar Prasad Choudhary Proprietor Of
Shiksha Enterprises M.G. Road In Front Of Anand Bhawan Binodpur P.S.
And District- Katihar.
2. Vinod Kumar Singh S/O Trilok Nath Singh Resident Of Mohalla-
Jagannath Puri Barmasia P.S. & District- Katihar **Respondents.**

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Appearance :

For the Petitioner/s : Mrs. Sushmita Mishra, Adv.
Mr Surya Narayan Sah, Adv.
For the Respondent/s : Mr. Abhay Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

5 03-07-2015

Heard the learned counsel for the petitioner and
the learned counsel for the respondent no.2. No body has appeared
on behalf of the respondent no.1.

Calling in question, the impugned order by
which the respondent no.2 has been added as a party in the suit for
eviction filed by the petitioner, this application under Article 227
of the Constitution of India has been filed.

The basic facts are not in dispute that the suit for
eviction was filed in the year 2007 seeking eviction of the
defendant Madhu Choudhary on the ground of default in payment
of rent. The defendant-Madhu Choudhary appeared in the suit and
filed her written statement on 12.02.2007. Thereafter the hearing
of the suit commenced and the evidence of the plaintiff was



complete and closed on 09.01.2009. The evidence of the defendant was closed on 04.03.2011. A petition was filed by the defendant for recall of the order closing the evidence but the same was declined by order dated 04.04.2011 by the court below and ultimately the matter was posted for argument on 13.04.2011. At this juncture, a petition was filed by the respondent no.2 Binod Kumar Singh, seeking his impleadment as defendant in the suit. The said petition was filed on 19.04.2011 and has been allowed by the impugned order dated 05.07.2012.

The learned counsel for the petitioner has submitted that the respondent no.2 is entirely stranger to the tenancy and has been introduced in the suit only to complicate and delay its disposal. It has been propounded by the learned counsel that in a suit for eviction the third party right cannot be adjudicated and that too in a case where the suit is pending since 2007 and the original defendant, at no stage, has disclosed the interest or concern of the respondent no.2 (intervener defendant) in the suit. It has also been urged that the basis of the claim of respondent no.2 that the tenancy was later on transferred to a partnership firm between the original defendant Madhu Chaudhary and the respondent no.2 Binod Kumar Singh, has also not been mentioned at any previous stage of the suit by the defendant-tenant.



Mr. Singh, the learned counsel for the respondent no.2 has, in turn, submitted that the claim of the respondent no.2 to be impleaded as party in the suit has rightly been upheld by the learned court below as he is a partner alongwith the defendant-Madhu Choudhary of the firm Shikha Enterprises which is carrying its business in the suit shop. It has also been submitted by the learned counsel that after the retirement of Madhu Choudhary from the partnership, the firm has come under the proprietorship of the respondent no.2. It has also been pointed out by the learned counsel that the rent of the suit shop is being paid to the real owner/landlord by the respondent no.2 as the plaintiff is not the real owner/landlord and there is no relationship of landlord and tenant between the parties.

After considering the facts and submissions, it is pellucid that the suit has been filed for eviction in the year 2007 and it has been posted for argument on 13.04.2011. It is also evident that the suit has been filed against the respondent no.1 Madhu Choudhary as the sole defendant on the ground of default in payment of rent. The defendant-Madhu Choudhary appeared in the suit, filed her written statement and also participated in the proceeding. However, it does not appear from the records and the learned counsel for the respondent no.2 has also not been able to



point out that the said defendant at any point of time in the suit proceeding, disclosed the existence of the firm in the suit shop and disclaimed her individual right as a tenant in the suit shop. Though, it has been the case of the defendant Madhu Choudhary that the plaintiff is not the real landlord and there was no relationship of landlord and tenant but that is a different aspect altogether. The learned court below has also not referred to any material from which the tenancy of the firm in the suit premises could be established. Though it has been argued on behalf of the respondent no.2 that the original partnership came into existence in the year 2002 and the partnership firm by the name and style of Shikha Enterprises was running in the suit premises since thereafter but no material has been adduced/produced to show that the rent of the suit shop was ever paid by the said firm to any person whom it accepted as its landlord. It is pertinent to mention here that neither the original defendant nor the respondent no.2 has denied their status as tenant in the suit premises. The creation of partnership firm in the year 2002 is also accepted by the defendant-respondent and prior to that the tenancy of the defendant-Madhu Choudhary is also admitted. The defendant-Madhu Choudhary has not disclosed this fact in her written statement in the suit which has been filed in the year 2007. There

is also no pleading or evidence aliunde to show that the defendant-Madhu Choudhary informed the landlord regarding the transfer of tenancy in the suit shop. The law does not permit unilateral transfer of the tenancy by the tenant and such position is manifest from the provision contained in Section 12 of B.B.C.Act. The learned court below has ignored the intent and purpose of the B.B.C.Act including the provision of Section 12 of the said Act and has acted beyond jurisdiction in passing the impugned order.

For the aforesaid premised reasons, this writ application is allowed and the impugned order dated 05.07.2012 passed by the learned court below is set aside with direction to proceed with the suit expeditiously in accordance with law.

(V. Nath, J)

Nitesh/-

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