

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.580 of 2016**

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Shree Narayan Singh

.... Appellant/s

Versus

Saroj Kumar & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kumar Uday Singh

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 07-09-2016

Heard learned counsel Mr. Kumar Uday Singh for the petitioner and learned counsel Mr. Bishwanath Choudhary for respondent no.1.

Perused the impugned orders dated 08.03.2016 and 19.05.2016 whereby the learned Civil Judge (Junior Division) II, Munger has recalled the order allowing the petitioner to intervene in the eviction suit and then thereafter passing a fresh order rejected the intervention application filed by the petitioner under Order 1 Rule 10 CPC.

It appears that the plaintiff-landlord filed eviction suit under the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 against the tenant-respondent no.2. Earlier the intervention application was filed by this petitioner which was allowed by the court below. Subsequently after hearing both parties the said order was recalled by the impugned order dated 08.03.2016 and then

both parties were heard on the application under Order 1 Rule 10 CPC. By the impugned order dated 19.05.2016 the court below rejected the intervention application filed by the petitioner.

According to the learned counsel for the petitioner, the petitioner has already filed Title Suit No.22 of 1997 challenging the transfer of the suit property made by the mother of the petitioner in favour of the plaintiff-respondent. According to the learned counsel, his mother had no title to transfer the suit property. On the basis of the said transfer deed, the plaintiff has filed this eviction suit against the tenant of the petitioner. In such circumstances, in this eviction suit the petitioner is a necessary party.

On the other hand, the learned counsel for the respondents submitted that the question of title between the plaintiff and the defendant cannot be decided in this simple suit for eviction.

The plaintiff-respondent has filed the suit under the special enactment i.e. Bihar Building (Lease, Rent & Eviction) Control Act, 1982 for eviction of respondent no.2 from the suit premises. Admitted fact is that the plaintiff has purchased the suit property from the mother of the intervener-petitioner. The sale deed by which the plaintiff has purchased the properties is under

challenge in Title Suit No.22 of 1997 filed by the present petitioner. If now the present petitioner is added as party in eviction suit then question that the plaintiff has not acquired any title is pure question of title and that cannot be decided in an eviction suit. Further for deciding the question regarding relationship of landlord and tenant between the plaintiff-respondent and defendant-respondent and whether the ground for eviction exists or not, the presence of the present petitioner is not at all necessary. In other words, the petitioner is not a necessary party in an eviction suit.

The Hon'ble Supreme Court in the case of **Rajendra Tiwari Vs. Basudeo Prasad, A.I.R. 2002 Supreme Court 136** has clearly held that the court while hearing the suit for eviction under the Bihar Building (Lease, Rent & Eviction) Control Act the question of title cannot be decided. Admittedly the petitioner has already filed the suit challenging the title of the plaintiff.

In such circumstances, in my opinion, the petitioner is not a necessary party in eviction suit. Thus, this civil miscellaneous application has got no merit and accordingly, it is dismissed.

(Mungeshwar Sahoo, J)

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