

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12988 of 2014

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Smt. Urmila Devi @ Urmila Devi Sah W/o Sri Pawan Kumar Sah Resident of Sangita Apartment, South Gandhi Maidan, P.S.- Gandhi Maidan having her place of business at A.B.C. Complex, Exhibition Road, P.O.- G.P.O., P.S.- Gandhi Maidan, District AND Town- Patna

.... Petitioner

Versus

Syed Tanveer Ashraf S/o Dr. Jamaluddin Ashraf through his constituted power of Attorney Holder Smt. Rashida Jamal W/o Dr. Jamaluddin Ashraf, Resident of Neora House, Bank Road, P.O.- G.P.O., P.S.- Gandhi Maidan, Dist AND Town- Patna

.... Respondent

with

Civil Writ Jurisdiction Case No.12969 of 2014

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Sri Pawan Kumar Sah S/o Late Krishna Lal Sah Resident of Sangita Apartment, South Gandhi Maidan, P.S.- Gandhi Maidan having his place of business at A.B.C. Complex, Exhibition Road, P.O.- G.P.O., P.S.- Gandhi Maidan, District AND Town- Patna

.... Petitioner

Versus

1. Syed Tanveer Ashraf S/o Dr. Jamaluddin Ashraf through his constituted power of Attorney Holder Smt. Rashida Jamal W/o Dr. Jamaluddin Ashraf, Resident of Neora House, Bank Road, P.O.- G.P.O., P.S.- Gandhi Maidan, Dist AND Town- Patna

.... Respondent

Appearance :

(In CWJC No.12988 of 2014)

For the Petitioner/s : M/s Raj Shekhar & Mr. Rajeev Sah

For the Respondent/s : M/s. J.S.Arora, Manoj Kumar & Gaurav Pratap

(In CWJC No.12969 of 2014)

For the Petitioner/s : M/s Raj Shekhar & Mr. Rajeev Sah

For the Respondent/s : M/s. J.S.Arora, Manoj Kumar & Gaurav Pratap

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

3 15-09-2016

Heard Mr. Raj Shekhar, learned Counsel appearing for

the petitioners, and Mr. J.S.Arora, learned Counsel appearing for the

respondent in both the writ applications which have been heard analogously on the prayer made by the learned Counsel for the petitioners.

The assail in both the writ applications is to the order passed by the court below whereby the prayer on behalf of the defendant-tenants for appointment of Pleader Commissioner for physical verification of the suit premises has been turned down.

From the submissions made on behalf of the petitioners in both the writ applications and on the materials on record, it is evident that two suits for eviction have been filed by the respondent against the two defendant-tenants. The ground for eviction is expiry of the lease and default in payment of rent. It is not in dispute that two different agreements (lease) have been executed between the parties creating the tenancy with respect to two shop premises, subject matter of the two suits. It also transpires that earlier the evidence of the defendant-tenants was closed and the said order was, however, quashed by this Court allowing the defendant-tenants to lead and complete their evidence within three months. In the impugned order it has been mentioned that the petition for appointment of Pleader Commissioner has been filed on the last date when the period granted by this Court for adducing evidence to the defendant-tenants expired.

Mr. Raj Shekhar, learned Counsel appearing for the petitioners in both the writ applications, has submitted that the petitioners are entitled to lead the best evidence in the suit and, therefore, the appointment of the Pleader Commissioner to find out

whether the premises are one or different premises, is essential. It has been submitted that the petitioners in these two writ applications are husband and wife and the suit premises is only one on the spot but two different suits have been filed.

Mr. Arora, learned Counsel appearing for the plaintiff-respondent in both the writ applications, however, has submitted that there have been two lease agreements creating tenancy in favour of the respective petitioners for two different suit premises and the fact of those two lease agreements has not been denied. In this backdrop, it has been contended that the prayer for appointment of the Pleader Commissioner is only a ploy to further delay the disposal of the two suits for eviction, which have been filed in the year 2006 and are pending still.

After considering the submission, it is evident that the two suits have been filed against two respective petitioners for their eviction on the ground of expiry of lease and default in payment of rent. The fact of two lease agreements has also not been controverted on behalf of the petitioners in both the writ applications. The contention that the suit premises is one on the spot will not be material for determination of the issues of expiry of lease and default in payment of rent. It is also well settled that a Pleader Commissioner is not to be appointed for gathering evidence on behalf of one or the other party in the suit. This Court is of the firm opinion that the present petition has been filed by the petitioners in the two suits only for prolonging the litigation. This Court, therefore, is not inclined to interfere in the impugned order.

Both the writ applications are dismissed.

It is, however, observed that the learned Court below shall expeditiously dispose of the two suits.

(V. Nath, J)

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