

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23099 of 2012

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1. Sunil Kumar, S/O Sri Ram Lakhan Prasad, R/O Mohalla- New Purendrapur, Sheopath Dupulwa, P.S. Jakkanpur, District- Patna, Proprietor of M/S Swaraj Ply & Decore, Shop No. 1, Ground Floor, Virindavan Kunj Apartment, Exhibition Road, P.S. Kadam Kuan, Patna

.... Petitioner/s

Versus

1. Pramod Kumar Sharma, S/O Sri Ram Lakhan Sharma, R/O Village- Raghuni Bigha, P.S. Belaganj, District- Gaya, presently residing At Saryu Vatika, Near Post Office, Postal Park, P.S.- Jakkanpur, District- Patna

2. Rajni Kant Ranjan, S/O Sri Ram Lakhan Sharma R/O Village- Raghuni Bigha, P.S. Belaganj, District- Gaya, Presently Residing At Saryu Vatika, Near Post Office, Postal Park, P.S. Jakkanpur, District- Patna

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.7142 of 2013

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Pramod Kumar Sharma, S/o Sri Ram Lakhan Sharma, resident of Village- Raghuni bigha, P. S. Belaganj, District-Gaya, At present resident of Saryu Batika, Postal Park Road No.1, Near Post Office, P. S.-Kankarbagh, District-Patna.

.... Petitioner/s

Versus

Sunil Kumar, son of Ram Lakhan Prasad, Shiv Path Dupulwa, Purandarpur, P.O. and P.S. Jakkanpur, District-Patna, at present M/s Swaraj Play, Brindawan Kunj Apartment, Exhibition Road, P.O. -G.P.O., P.S. Gandhi Maidan, District-Patna.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.23614 of 2012

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1. Sunil Kumar, Son Of Sri Ram Lakhan Prasad Resident Of Mohalla- New Purendrapur, Sheopath, Dupulwa, P.S. Jakkanpur, District- Patna, Proprietor Of M/S Swaraj Ply & Decore, Shop No. 1, Ground Floor, Virindavan Kunj Apartment, Exhibition Road, P.S. Kadam Kuan, Patna

.... Petitioner/s

Versus

1. Pramod Kumar Sharma, Son of Sri Ram Lakhan Sharma Resident Of Village- Raghuni Bigha, P.S. Belaganj, District- Gaya Presently Residing At Saryu Vatika, Near Post Office, Postal Park, P.S. Jakkanpur, District- Patna

2. Rajni Kant Ranjan Son of Sri Ram Lakhan Sharma Resident of Village- Raghuni Bigha, P.S. Belaganj, District- Gaya Presently Residing At Saryu Vatika, Near Post Office, Postal Park, P.S. Jakkanpur, District- Patna.

.... Respondent/s

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Appearance :

(In CWJC No.23099 of 2012)

For the Petitioner/s : Mr. Vinay Mistry--Advocate

For the Respondent/s : Mr. Shambhu Sharan Singh--Advocate

(In CWJC No.7142 of 2013)

For the Petitioner/s : Mr. Shambhu Sharan Singh--Advocate

For the Respondent/s : Mr. Vinay Mistry--Advocate

(In CWJC No.23614 of 2012)

For the Petitioner/s : Mr. Vinay Mistry--Advocate

For the Respondent/s : Mr. Shambhu Sharan Singh--Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

03 19-02-2016

C.W.J.C. No.23099 of 2012, C.W.J.C. No.7142 of

2013 and C.W.J.C. No.23614 of 2012 happen to be amongst the same parties arising out of same suit bearing Title (Eviction) Suit No.11 of 2010 (Pramod Kumar Sharma & Ors. vs. Sunil Kumar) pending before the Subordinate Judge-VI, Patna, on account thereof, have been heard together and are being disposed of by a common order.

Heard learned counsel for the petitioners as well as learned respondents.

Considering the prayer, the relief so sought for on behalf of petitioner, Pramod Kumar Sharma (so called landlord as his status has been disputed) in C.W.J.C. No.7142 of 2013, the learned counsel for the petitioners seeks withdrawal of instant petition in the background of the fact that whatever relief has been sought for happens to be redressable under Title (Eviction) Suit No.11 of 2010 and is accordingly, dismissed as withdrawn. However, the aforesaid withdrawal will not prejudice the interest

of the petitioner at any occasion while adjudicating upon the matter so prayed for.

With regard to C.W.J.C. No.23614 of 2012, it is apparent that same has been filed against an order dated 17.09.2012 whereby and whereunder the learned lower court has directed to proceed with an inquiry relating to a petition filed by the respondents/ landlord, Pramod Kumar Sharma for launching of a criminal proceeding after conducting an inquiry under Section 340 of the Cr.P.C. The aforesaid petition happens to be Annexure-2 wherefrom it is evident that there happens to be an allegation against the petitioner/ tenant that he had filed forged and fabricated document in Court. Because of the fact that so alleged creation of forged document happens to be outside the premises of the Court. Therefore, it goes out of purview of Court's jurisdiction in terms of Section 195 of the Cr.P.C. and that being so, an inquiry under Section 340 of the Cr.P.C. was not permissible.

Accordingly, the order dated 17.09.2012 passed by the learned lower Court relating to the Misc. Case No.10 of 2012 arising out of Title (Eviction) Suit No.11 of 2010 is set aside. Petition is allowed. However, it is made clear that the respondent, Pramod Kumar Sharma, if he so desires, will be free to launch a criminal prosecution on his own.

Now, coming to C.W.J.C. No.23099 of 2012, it is

apparent that petitioner/ tenant has challenged the order dated 10.10.2012 passed by the Subordinate Judge-VI, Patna in Title (Eviction) Suit No.11 of 2010.

Gone through the order impugned in consonance with the relevant provisions having under the Bihar Building (Lease, Rent & Eviction) Control Act. It is needless to say that so many grounds are available to a tenant to challenge the Title (Eviction) Suit including that of status of landlord and that being so, whenever such kind of flavour is found, the scope of Title (Eviction) Suit is found expanded. Therefore, confining the status of tenant and further, non-permitting to participate in an Eviction Suit is permissible to the extent only wherever there happens to be uncontroverted version at the end of the tenant accepting the inter se relationship as landlord and tenant and on account thereof, the non-payment of rent will certainly barricade him in terms of Section 15(1) of the Bihar Building (Lease, Rent & Eviction) Control Act, whenever, there happens to be failure of compliance of the order of the Court whereunder rent is directed to be deposited. But, the other parts, having available to him goes out of scope of Section 15(1) of the Bihar Building (Lease, Rent & Eviction) Control Act, though is found competent to be adjudicated upon, even incidentally and on that very score, forbidding the tenant to participate in the proceeding is found

illegal. That being so, the order impugned is found non-sustainable in the eye of law and is accordingly, set aside. Petition is allowed.

However, with regard to allowing the prayer of the petitioner/ tenant for recall of witnesses Rajnikant Ranjan, Pramod Kumar Sharma, Ram Kumar Sinha, Nawal Kishore Sharma, it is apparent from the order impugned that petitioner had himself admitted lapses on his part. That being so, recall of each witness is directed to be on a payment of cost of Rs.5,000/- each. The aforesaid amount should be deposited within 15 days from receipt/ production of the instant order at the end of either side in the background of the fact that this matter is pending since 2010. In case, there happens to be failure on the part of the petitioner/ tenant to deposit the amount within stipulated period, then in that event, the opportunity so allowed in his favour will cease to survive. Furthermore, the learned lower Court is directed to proceed with the trial and conclude the same within six months in the background of nature of the suit being an Eviction Suit as well as period of pendency.

Vikash/-

(Aditya Kumar Trivedi, J)

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