

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1737 of 2016

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Abdus Salam Mandal

.... Petitioner/s

Versus

Santosh Kumar Nathani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Syed Md.Iqbal Hasan Rahmani

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 11-02-2016

Heard the learned counsel, Mr. S.M.Iqbal Hasan Rahmani for the petitioner. At the time of hearing of the I.A., I heard the learned counsel for the petitioner in admission matter on merit.

It appears that the eviction suit was filed by the plaintiff-respondent against this petitioner. The petitioner filed written statement admitting the relationship of landlord and tenant. The petitioner was directed to deposit rent under Section 15 of the B.B.C. Act. He did not deposit the rent, therefore, his defence has been struck off.

Thereafter, the application was filed by this petitioner in the Court below raising various grounds that the petitioner was not the tenant of the plaintiff nor the plaintiff is the owner of the property. Roshan Ara entered into agreement to purchase the suit property from owner-cum-co-sharer and pursuant to the said

agreement, the said Roshan Ara is in possession of the property. The petitioner further alleged in the application that suppressing various facts fraudulently the plaintiff has filed the suit for eviction and, therefore, the suit should be dismissed.

It appears that the learned court below by the impugned order dated 05.12.2015 rejected the said application filed by the petitioner for dismissal of the Eviction Suit No.5 of 1993. The Court below found that the defence of this petitioner has already been struck off.

So far Roshan Ara is concerned, she is not the party in the eviction suit. So far the challenge to the title of the plaintiff is concerned, it appears that since the petitioner has already admitted earlier the relationship of landlord and tenant, now he cannot be allowed to challenge the relation at this subsequent stage when the defence has already been struck off. Further, the petitioner is not claiming title on himself.

In view of the above facts and circumstances of the case, the learned court below has rightly rejected the application filed by the petitioner for dismissal of the suit.

Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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