

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.45 of 2016

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Md. Nawab Ehsan Akhter

.... Appellant/s

Versus

Ajai Kumar Singh & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Amar Nath Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 01-08-2016

Heard learned counsel Mr. Amar Nath Singh for the petitioner and learned counsel Mr. Sudhir Kumar for plaintiff-respondent no.1.

By the impugned order dated 24.02.2016 the learned Munsif, Nalanda at Biharsharif has rejected the intervention application filed by the petitioner under Order 1 Rule 10 CPC in Eviction Suit No.08 of 2013.

It appears that the plaintiff-respondent filed eviction suit against defendant-respondent no.2. The present petitioner filed application for being added as party on the ground that in fact now he is the tenant of the plaintiff. The plaintiff denied this fact and alleged that in fact respondent no.2 is the tenant. The court below by the impugned order has rejected the application filed by the petitioner. However, at the last portion of the order the court below held that if eviction decree is passed the petitioner may

resist the delivery of possession under Order 21 Rule 97 CPC. So far the application under Order 1 Rule 10 CPC is concerned, the plaintiff is not claiming any relief against the present petitioner. The suit has been filed for eviction of respondent no.2 herein on the ground that there is relationship of landlord and tenant between them. In such circumstances the plaintiff cannot be compelled to fight the eviction suit against a person with whom he has got no relation of landlord and tenant. So far the petitioner is concerned, he also cannot have any right to resist the decree in view of Section 12 of the B.B.C. Act. This observation of the court below made in the last portion is surplus, which was not lis i.e. dispute between the parties. Therefore, that part of the observation of the court below is concerned, it is hereby set aside.

Thus, this civil miscellaneous application is disposed of with the aforesaid modification.

(Mungeshwar Sahoo, J)

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