

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4095 of 2014

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Md. Jahangir

.... Petitioner/s

Versus

Shivji Prasad Mahto & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjay Kumar Singh

For the Respondent/s : Mr. Gp-32 Harish Kumar

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 13-01-2016

Heard the learned counsel for the petitioner and the
learned counsel for the State.

The learned Munsif II, Darbhanga by the order dated
03.07.2012 and 28.11.2013 rejected the intervention application
filed by the petitioner in Title Suit No.23 of 2009.

It appears that the plaintiffs-respondents filed aforesaid
suit against the State authorities for declaration that the survey
entry in the name of the state of Bihar with respect to the suit
property is illegal and wrong. The State authorities filed contesting
written statement. The present petitioner filed intervention
application for being added as party in the suit on the ground that
they are in possession of the suit property for more than 20 years.
The Court below rejected the application earlier on 03.07.2012 on
the ground that the petitioner is not claiming title on the suit
property rather the plaintiff has already filed eviction suit against



him and, therefore, the petitioner is neither a necessary party nor the proper party. The said order was not challenged by the petitioner in the higher Court and subsequently, again on the same ground another application was filed which was rejected by order dated 28.11.2013 by the Court reiterating the same fact and on the ground of resjudicata.

It is admitted fact that Eviction Suit No.5 of 2010 has been filed by the plaintiff against the present petitioner for eviction under the Bihar Building (Lease, Rent & Eviction) Control Act, 1982. So far the present suit is concerned, the suit has been filed only for declaration that the survey entry with respect of the suit property is wrong.

From perusal of the order dated 28.11.2013, it appears that the Court below has considered all these aspects of the matter and held that since the petitioner is not claiming any title in the suit property and is claiming only possession for which eviction suit was filed, the petitioner has got no interest in the property, as such, is neither a necessary party nor a proper party.

The Hon'ble Supreme Court in the case of **Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited and others, (2010) 7 Supreme Court Cases 417** has held that "a necessary party is a

person who ought to have been joined as a party and in whose absence, no effective decree could be passed at all by the Court. If a necessary party is not impleaded, the suit itself is liable to be dismissed.”

In the present case, it cannot be said that in absence of the present petitioner, no effective decree could be passed by the Court below because the plaintiff has filed the suit against the State of Bihar. Admittedly, the suit property has been recorded now in the name of State of Bihar whereas the plaintiff has filed the suit for declaration that the entry is wrong. In such view of the matter, it appears that Court below has rightly held that the petitioner is not a necessary party in the suit, as such, the impugned order needs no interference in supervisory jurisdiction under Article 227 of the Constitution of India.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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