

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1868 of 2011

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1. Swami Nath Singh son of Late Gorakh Nath Singh through his guardian Sri Tushant Singh, residing at Mohalla Boring Canal Road, P.S.- Kotwali, District- Patna

.... Petitioner/s

Versus

1. M/s. Net Point, through its Proprietor Shyam Kumar, situated at Shop No. G-8 (Ground Floor), Gorakhnath Complex, East Boring Canal Road, P.S. Kotwali, District Patna

2. Shyam Kumar, son of Ram Khelawan Yadav, (Proprietor of M/s. Net Point) at Shop No. G-8 (Ground Floor), Gorakhnath Complex, East Boring Canal Road, P.S. Kotwali, District Patna

.... Respondent 1st set.

3. Chitranjan Kumar Singh, son of Late Gorakhnath Singh, resident of Gorakhnath Compound, near Boring Canal Road, P.S. Kotwali, District Patna

.... Respondent 2nd set.

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

14 05-04-2016 Heard the counsel for the petitioner and the respondents.

The petitioner who is plaintiff of Title Eviction Suit no. 26 of 2008 filed under the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 (for short ‘the Act’) is aggrieved by the order dated 27.12.2010 passed by the learned Sub Judge 1st, Patna whereby the application filed by his own brother (respondent no.3 herein) under order 1, Rule 10 of the Code of Civil Procedure (for short ‘the CPC’) was allowed observing as under:-

“ Having considered the facts and



circumstances of this suit as well as submissions made on behalf of the parties and also in view of the matters discussed above I find that although the petitioner applicant is not necessary party but he is proper party whose presence before the court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the question involved in the suit. Further to add the petitioner applicant as party to the suit is necessary to avoid multiplicity of the suit between the parties. Therefore, considering every materials available on the record and also for the ends of justice the petition dated 21.8.2010 filed on behalf of petitioner applicant Chitranjan Kumar Singh is allowed and the petitioner applicant Chitranjan Kumar Singh is ordered to be made party to the suit in the category of defendant as intervenor. Plaintiff is directed to insert the name of Chitranjan Kumar Singh in the cause title of plaint accordingly within prescribed period.”

Before appreciating the rival contention, let it be noted, that while the present Title Eviction Suit was pending, the respondent no.3 filed Title Partition Suit no. 467 of 2008, seeking partition in the family property including the subject land claiming coparcenary interest therein.

I have heard the counsel for the petitioner as well as the respondent no.3.

It is submitted on behalf of the petitioner that the order which the trial Court passed is erroneous in law as well as on fact. The plaintiff has *dominus litus*. Who shall be impleaded, considering the relief prayed for, is the discretion of the plaintiff.



He cannot be made to fight litigation against another person. The trial Court has wrongly allowed the application even after finding that a litigation had already been filed by the applicant (respondent no.3 herein) seeking partition in the family property. The litigation had already multiplied. The respondent no.3 is not even proper party to the suit as unquestionably the suit was filed against the tenant for eviction from the tenanted premises and for realization of rent. It cannot be converted into a Title Suit. If so done the nature of the suit shall change. The Court has to guard against it.

Conversely, respondent no.3, has submitted that there is serious litigation going on in respect of the subject property between the brothers which include the writ petitioner and the respondent no.3. The petitioner has got several such litigations collusively filed in order to obtain decree and create evidence in his favour.

Indisputably, the respondent no.3 made an application to intervene in the suit which was allowed by the trial Court to raise a claim of title over the subject property /land. The scope of litigation filed by the plaintiff-writ petitioner shall change as the Court may be called upon to consider and adjudicate the title inter se over the subject land between the plaintiff and the intervenor respondent-defendant. It is settled beyond cavil that in a suit for eviction, the Court has only to *prima facie* consider as to



whether the relationship of landlord and tenant is established. Even if the petitioner is considered entitled to part of the subject property, he would be considered as the landlord of the subject property. That apart, it appears from the documents placed on record that the respondent no.3 has already filed a Title Partition suit in which the writ petitioner is impleaded as one of the defendants. The share/interest in the subject property shall be considered/examined by the Court in the said litigation/suit.

The contention of the respondents is that the present suit is ex facie a collusive suit in the sense that subsequently the plaintiff-petitioner and the alleged tenant shook their hands and came to a kind of settlement/compromise.

Be that as it may, considering the facts and circumstances emanating from the records and the salient feature noted above, this Court is of the view that the Trial Court acted in excess of its jurisdiction in allowing the application of the respondent no.3 and permitting him to question the title of the plaintiff over the suit property. The scope of the suit was not such. It shall definitely change the nature of the suit. This Court would, however, further note that the verdict handed down by the Trial Court in the present Eviction Suit shall not inure to the benefit of the plaintiff and to the disadvantage of the respondent no.3 in the ongoing Title Partition suit. No party shall take benefit of the

order which the Trial Court would pass in the present suit. It will also be open, if any amount is directed to be paid as the rent due to the plaintiff-petitioner in the present suit, to incorporate the said amount of the rent as part of the property to be partitioned in the suit. Further, respondent no.3 may also seek appropriate interim relief in respect of the rent amount, if any, payable to the writ petitioner (plaintiff of Title Eviction Suit no. 26 of 2008). Having observed so, the order dated 27.12.2010 passed by the learned trial Court in title Eviction suit no. 26 of 2008 is set aside.

The writ application stands disposed of.

(Kishore Kumar Mandal, J)

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