

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8094 of 2015

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Rajiv Kumar

.... Petitioner/s

Versus

Smt. Gayatri Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kamala Kant Tiwary

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

5 12-05-2016 **1.** Heard the learned senior counsel, Dr. Uma Shanker Prasad, for the petitioner and the learned counsel, Mr. Ranjan Kumar Dubey for the respondent No.1, 2 and 3.

2. From perusal of the impugned order, it appears that eviction suit was filed by the respondents 1, 2 and 3 against the defendant for the eviction of the tenants. Suit was decreed. Execution was filed. In the said execution case, the present petitioner filed application under Order 21 Rule 97 CPC claiming to be the power of attorney holder of Arun Kumar Sinha. The said application was registered as Misc. Case No.68 of 2014.

3. The plaintiff landlords case in short was that Balmiki Prasad, the father of Arun Kumar Sinha has sold the suit property in favour of the plaintiff respondent, therefore, the plaintiff respondents are the landlord and the plaintiff required the suit



premises for personal necessity and also the tenant committed default. The objection has been filed by the present petitioner claiming that he is the power of attorney holder of Arun Kumar Sinha that in fact the plaintiff landlords are not the real owner of the property rather Arun Kumar Sinha is the real owner. The Court below by the impugned order rejected the application filed by the petitioner for examination of Arun Kumar Sinha as witness of commission or through video conferencing.

4. It is admitted fact that Arun Kumar Sinha is not residing in the suit premises. According to the petitioner, he is resident of Panchkula. It is not the case of the petitioner or Arun Kumar Sinha that the tenanted suit premises is not in possession of the tenant. Now, therefore, it is not necessary to examine Arun Kumar Sinha as a witness in this Misc. case.

5. As stated above, from perusal of the impugned order, it appears that the Court below has on the basis of the arguments of both the parties which are being advanced before this Court has rejected the application on the ground that the application has been filed for delay in disposal of the execution case passed in eviction suit.

6. Admittedly, the registered sale deed executed by father

of Arun Kumar Sinha in favour of the plaintiff respondent No.1 to 3 have not yet been challenged by Arun Kumar Sinha and others.

7. In view of the above facts and circumstances of the case, this Court while exercising supervisory jurisdiction cannot substitute its own view even if second view is possible. I, therefore, find no merit in this application and accordingly, it is dismissed.

(Mungeshwar Sahoo, J)

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