

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.301 of 2017**

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Vaidyanath Tiwari

.... Petitioner/s

Versus

Bijay Tiwari & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ramesh Jha

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 20-02-2017 Heard the learned counsel, Mr. Ram Suresh Roy for the petitioner and the learned counsel, Mr. Dharmendra Kumar Sinha for the respondents.

Perused the impugned order dated 12.01.2017 passed by learned Sub Judge V, Ara, Bhojpur in Eviction Suit No.9 of 2013 whereby the learned court below refused to decide maintainability of the eviction suit on the ground of pendency of Title Suit No.144 of 2007 as preliminary issue under Order 14 Rule 2(2) C.P.C.

It is admitted fact that title suit has been filed by the present petitioner for declaration of title. The defendant-respondent has filed the eviction suit. There is no provision either in C.P.C. or in B.B.C. Act that during the pendency of the title suit, the eviction suit will be barred under any law. Whatever dispute is raised by the present petitioner will be decided in the eviction suit on merit.



So far question of title is concerned, Hon'ble Supreme Court in the case of **Rajendra Tiwary v. Basudeo Prasad and Another, AIR 2002 Supreme Court 136** has held that "the sine qua non for granting the relief in the suit, under the Act, is that between the plaintiffs and the defendant the relationship of 'landlord and tenant' should exist. The scope of the enquiry before the Courts was limited to the question : as to whether the grounds for eviction of the defendant have been made out under the Act. The question of title of the parties to the suit premises is not relevant having regard to the width of the definition of the terms "landlord" and "tenant" in clauses (f) and (h) respectively of Section 2 of the Act."

So far Order 14 Rule 2(2) C.P.C. is concerned, if the court is of opinion that the case or any part thereof may be disposed of on an issue of law only that too if it relates to the jurisdiction of the court or a bar to the suit created by any law, preliminary issue can be framed. None of these clauses are applicable in the present case.

Therefore, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this civil miscellaneous application is dismissed.

Saurabh/-

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(Mungeshwar Sahoo, J)

